JUSTICE AND HOME AFFAIRS COMMITTEE

Wednesday 22 September 1999
(*Morning*)

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JUSTICE AND HOME AFFAIRS COMMITTEE
5th Meeting

CONVENER:

*Roseanna Cunningham (Perth) (SNP)

COMMITTEE MEMBERS:

*Scott Barrie (Dunfermline West) (Lab)
*Phil Gallie (South of Scotland) (Con)
*Christine Grahame (South of Scotland) (SNP)
*Gordon Jackson (Glasgow Govan) (Lab)
*Mrs Lyndsay McIntosh (Central Scotland) (Con)
*Kate MacLean (Dundee West) (Lab)
*Maureen Macmillan (Highlands and Islands) (Lab)
*Pauline McNeill (Glasgow Kelvin) (Lab)
*Tricia Marwick (Mid Scotland and Fife) (SNP)
*Euan Robson (Roxburgh and Berwickshire) (LD)

*attended

WITNESSES:

Sheriff Allan (Vice-President, Sheriffs Association)
Chief Superintendent Stewart Davidson (President, Association of Scottish Police Superintendents)
Mrs Anne Smith (Chairman, Scottish Partnership on Domestic Violence)
Sheriff Wilkinson (President, Sheriffs Association)
Deputy Chief Constable Tom Wood (Association of Chief Police Officers)

COMMITTEE CLERK:

Andrew Mylne

SENIOR ASSISTANT CLERK:

Richard Walsh

ASSISTANT CLERK:

Fiona Groves

Scottish Parliament

Justice and Home Affairs Committee

Wednesday 22 September 1999

(*Morning*)

[THE CONVENER *opened the meeting at 09:39*]

The Convener (Roseanna Cunningham): I am sorry for the slightly late start. We are not accustomed to holding committee meetings in the chamber and the organisation is rather different. I welcome everybody to the meeting.

There are one or two small items on the agenda of which we need to dispose before we move on to the major items, which involve the witnesses. I hope that the witnesses will bear with us for a few minutes while we do a little housekeeping.

First, I suggest that we take item 3 on the agenda—future business—in private, for half an hour around noon. We have to discuss, in some detail, the evidence that we have heard so far in both of the issues that we are investigating. We need to make some practical decisions about how to take those issues forward. I cannot make a decision to meet in private; the committee must agree that that is appropriate.

Mrs Lyndsay McIntosh (Central Scotland) (Con): I think that that is an excellent suggestion.

The Convener: We will schedule that part of the meeting for 12 pm. I hope that we will have got through the remainder of the business in sufficient time to allow us 30 minutes for that discussion.

Petitions

The Convener: The first item on the agenda concerns two petitions that have been referred to the Justice and Home Affairs Committee by the Public Petitions Committee. Both petitions have been circulated to members.

The first petition concerns the Tenancy of Shops (Scotland) Act 1949 and has been submitted by Maclay Murray and Spens, a Scottish law firm. I presume that committee members have at least read through the petition, even if they do not understand it all. Are there any particular comments about the petition and the way in which we should proceed? I have an opinion as to what to do with the petition, but I want to ensure that other views are heard as well.

Phil Gallie (South of Scotland) (Con): The proposed bill has many implications for small businesses. I am rather concerned about its contents, which seem to be weighted towards the owner of the property and would remove some protection from a small business, which might be a long-term lessee.

I can see some advantages to the bill, for example when we consider building renovation and improvement and the requirement to terminate leases in order to improve an overall business aspect of a property, but the interests of the lessee should also be examined. If we take the matter forward, we should perhaps talk to the Federation of Small Businesses and some retailer associations, as well as groups representing landlords.

The Convener: I was going to suggest that, in the first instance, we should write to the Minister for Justice and inquire as to what consideration—if any—is being given to the general area of law the petition covers. We could establish whether the Executive is considering the matter and what approach it is taking. We could wait until we receive a reply from the minister before we decide whether the committee wants to take the matter any further.

At the moment, I do not have any information about what is being considered in relation to that area of law. There might be—or have been—consultation or discussion that would affect what is being suggested in the petition.

Gordon Jackson (Glasgow Govan) (Lab): I do not have any problem with doing that. My difficulty with the petition is that it comes from people with a particular bundle of clients, with a particular commercial interest—I mean them no disrespect. Like Phil, I am afraid that the petition represents one side of the story. I do not have enough expertise to know the other side of the story.

I am happy to do as Phil suggests and to take information from the other side of the story, as it were. I am also happy to do as the convener suggests and to consult the Executive on its views. I am not willing to do anything until I feel that I know what is going on.

The Convener: In any case, the committee might not want to progress the matter in the early stages of the committee's meetings, given the work load that we have. We have already started a couple of important areas of investigation and there would be problems finding time to deal with this one.

It would be useful to write to the minister to find out whether the Executive is doing anything. That would move us forward a little bit. When we get the Executive's response, we can discuss the matters that Phil raised and decide whether the committee wants to address the issues that are raised in the letter.

Does everyone agree with that?

Members *indicated agreement.*

09:45

The Convener: We will ensure that the committee sees the draft of the letter to the Minister for Justice.

The second petition, petition 6, deals with the European convention on human rights. I have to say, at the outset, that I think that we should refer this back to the Public Petitions Committee and ask why it thought it was appropriate to send it to our committee. I think that it might be an inadmissible petition and I would like some guidance on that. I appreciate that that might put the Public Petitions Committee on the spot, and I also appreciate that there are members of this committee who are on that committee, but I am concerned about what we are being asked to do and whether it is admissible.

Does anybody have a contrary view?

Gordon Jackson: We can send it to the Public Petitions Committee for the same reason it sent it to us: that we think someone else should deal with it.

The Convener: When we receive petitions, we must deal with them seriously. I would want this petition to be treated seriously. My concern is with its admissibility. Before we begin to consider petitions, we have to be clear that they are admissible. I want to know why the Public Petitions Committee thought that this one was.

Christine Grahame (South of Scotland) (SNP): As a member of the Public Petitions Committee—I am sure that Phil and Pauline, who are members too, will be with me on this—I feel that I should inform you that we are trying to provide guidelines for the presentation of petitions. To be blunt about Mr Frank's petition, it is rather rambling in places. We are trying to have the process for the submission of petitions tightened up so that there is clarity when petitions are remitted to other committees.

I agree with you that petitions must be taken seriously. People make an effort to submit petitions to the Parliament and, although we might find some of them difficult to follow at times, they are calls for the Parliament to do things and should be treated in a fitting manner.

Phil, Pauline and I will take this petition back to our other committee and try to assist Mr Frank to formulate his submission so that the point is clearly made.

The Convener: That would be helpful. Is the committee agreed that we should send the petition back to the Public Petitions Committee to secure a clearer explanation of why it is considered admissible and to ask for it to be submitted in a form in which we are more able to deal with it?

Phil Gallie: Your comments are valid. The Public Petitions Committee will also welcome your comments on attempts to overturn court decisions.

The Convener: Phil is referring to a discussion in which I said that we need to be careful that we do not end up in a situation where people petition this committee on the outcome of court decisions. That is not the job of this committee and I would be concerned if it were seen to be.

Christine Grahame: Can I assist you on that? The Public Petitions Committee discussed that yesterday and made it plain that that would be one of the areas where a petition would not be admissible, because it would be endeavouring to review an appeal. In defence of the Public Petitions Committee, we are finding our way and are trying not to be too hard on petitioners to start with. To assist people, we are beginning to structure things to make plain what is competent and not competent, admissible and inadmissible. We dealt with that yesterday.

The Convener: That is as may be, but we must still deal with petition 6. I have suggested that we return it to the Public Petitions Committee for a clearer explanation.

Is everybody agreed?

Members: Yes.

Domestic Violence

The Convener: We now move on to the main item of business, which is a continued discussion of domestic violence, with the emphasis on considering potential changes to the matrimonial interdict legislation in Scotland.

A number of eminent people are giving us evidence. We are extremely grateful that the witnesses have taken the time and trouble to come this morning. Many may have been pleased to receive the invitation, although perhaps others were not so pleased. We are progressing a particular aspect of the domestic violence debate through this committee. It is useful to hear a wide range of views and concerns from every side of the debate and to hear from some of the practitioners involved. That is why invitations have gone out to the organisations represented here today.

First, we will hear from the Scottish Partnership on Domestic Violence, which has been operating since earlier this year. It would be foolish to discuss this issue as a committee without hearing from the partnership. We are lucky this morning to have—despite her court commitments—Mrs Anne

Smith QC, who is the chairman of the Scottish partnership. Will you give us a brief outline of what you have been doing and the areas that you cover?

Mrs Anne Smith (Chairman, Scottish Partnership on Domestic Violence): I tender Sheriff Daniel Convery's apologies. He had hoped to join me today but has been unable to do so due to his court commitments. We have been working not just since the beginning of this year, but since last autumn. We were appointed under a Government remit, which asked us to recommend a strategy to deal with domestic violence. We will examine service provision, monitoring, costing and make recommendations for legislation and changes in policy.

We held a number of meetings to develop a work plan. We heard from groups that had information to give us on the incidence of domestic violence in the community and the way different groups are dealing with prevention and protection. We issued our work plan in March this year. I checked that it was available for you, and hope that members have all had the opportunity to see it. Consultation has been going on since March. We meet next week to review the responses to the work plan and to consider how we will progress.

There is a lot of work to do, as you will see from the many boxes that have different time scales identified in the work plan. I know that there is not time for me to take you through it. I encourage you all to read it.

The partnership has 20 members, and we come from all sorts of different backgrounds. I, as a lawyer, chair it, and we have other legal representation from the judiciary, from legal practice and from the Crown Office. We also have police, health board and prison representation, as well as representation from Women's Aid and from the children's rights and support section of Women's Aid. We have representation from Victim Support, from Rape Crisis and from the health, home, education, industry, housing, civil law and legal aid departments of the Scottish Executive. That is a great group to work with, as we can draw from many aspects of experience with domestic violence. I think that we manage to strike a balance between the varying interests that are represented.

The Convener: I see from the information that you have given us that you are considering whether policy and/or legislative changes are required. Are you looking specifically at the issue that has been raised in this committee: the scope and extent of matrimonial interdicts?

Mrs Smith: That matter has been raised with us. There is concern because protection stops on divorce. That does not make sense. If a woman needed protection from a man who was liable to abuse her before the decree of divorce was issued, she is liable to need it even more when the decree is issued. In many cases, men are disgruntled at the outcome of a divorce. For example, a property transfer order in favour of the wife can be the ideal fuel for an incident on the doorstep.

We are concerned that cohabitees—or even women who could not qualify as cohabitees but have had a relationship with a man who is liable to harm them—do not have long-term protection. That matter has been raised with the partnership, but we have not, as yet, come to a firm conclusion about the best way of dealing with it.

The Convener: You are aware that this committee has begun to examine matrimonial interdicts. Right at the beginning of our proceedings, five or six committee members said that they wanted to address the issue of domestic violence. Maureen Macmillan subsequently suggested that a committee-initiated bill could be presented to Parliament. From your point of view, as chair of the partnership, how would that fit into what you are doing?

Mrs Smith: I would be a little anxious about that. I foresee that we will make recommendations for legislation not just on the subject of interdicts, but on dealing with service provision, reviewable sentences and contact orders to children. All of the proposals would focus on the recognised problem of domestic violence, and I hope that that would form one cogent piece of legislation. I am concerned that, if the single issue of interdicts is plucked out, we could lose sight of the whole picture and domestic violence could appear to be less important than it is.

Maureen Macmillan (Highlands and Islands) (Lab): I raised the issue because I thought that it was very important. I wanted to make progress on it rather than wait for the package to come from Mrs Smith's committee, which might take another year to present anything to Parliament.

Mrs Smith: I appreciate that, but it is not as if the Matrimonial Homes (Family Protection) (Scotland) Act 1981 gives no protection to anybody other than wives. It does. Section 18 gives quite extensive protection to cohabitees. The downside for cohabitees is that their protection is limited in time; they get an initial six-month period and can apply for an extension after that. That is not as good as the protection that a spouse can get, but, even in the case of a spouse, there is a cut-off on divorce, which is a matter for concern.

From our point of view, however, we can probably live with that for the sake of producing a single cogent proposal to cover all aspects of the problem. It would fit with the way we were asked

to examine the problem, and it seems to be working.

10:00

The Convener: The problem might be that it is not us who have to live with it. That is what is causing concern.

Christine Grahame: I am moving backwards and forwards on this. I was a family practitioner for 12 years and took your view to start with: that it was better to deal with this matter comprehensively. I did so for a range of reasons, not the least of which was that it is good to have one piece of legislation rather than several bits of acts and amendments.

However, the Family Law Association took the view that we could deal with the continuation of post-decree powers of arrest—I think I am correct in saying that—with a simple piece of legislation and then move on to deal with all the other matters, such as property. You are quite right to say that many problems happen post-decree, for example after the husband finds that the pension is in the pot, and he is being told this, that and the other by his pals.

You disagree with that view.

Mrs Smith: At common law, there is no problem in pronouncing an interdict to protect somebody who can satisfy the court that they are at risk; there does not have to be a cut-off at decree of divorce, although the person cannot get the power of arrest attached to the interdict. I appreciate that that has concerned people.

Christine Grahame: What is the problem in this committee presenting a bill that simply deals with a matrimonial interdict with power of arrest continuing post-decree?

Mrs Smith: That is not a problem, but the ideal would be to have everything in one piece of legislation.

Christine Grahame: Yes, but as Roseanna said, such piece of legislation could go through quickly and make a big difference to a lot of women. We could then have a comprehensive overhaul of the Matrimonial Homes (Family Protection) (Scotland) Act 1981—or whatever—which could deal with matters such as contact.

Mrs Smith: The only women you will help will be married women—I do not underestimate the value of that, but there is a wider problem of all women who are subject to domestic abuse.

Christine Grahame: I am sorry, I have misled you; we want to deal with the continuation of interdicts with the power of arrest for cohabitees after they separate, so that there is protection for cohabitees. That will reflect social changes.

Mrs Smith: Do you mean continuing interdicts with powers of arrest after the two six-month periods?

Christine Grahame: Yes. Such interdicts could perhaps be continued on a cause-shown basis for a period, so that cohabitees had protection that was as close as possible to that for married women post-decree. It could be run from decree for—say—two years. It might be done for cohabitees from the separation date for a period. Those things could be defined, but the principle is that all the women who need protection get it. That could be dealt with now, or quickly, by legislation.

Maureen Macmillan: Would it be a problem to incorporate a small piece of legislation like this into your package later on? I do not think that it would be difficult. This has to be done quickly because there are real problems for women.

Mrs Smith: Do not get me wrong. The Scottish Partnership on Domestic Violence would, of course, welcome any improvement in protection for women at risk. My anxiety is that by doing that one little bit of legislation, the problem could get lost sight of—the feeling could be that it has been dealt with.

We are worried that by focusing purely on married women or on women who are cohabitees, you will miss other women. The essence of the problem is not whether a case is one relating to marriage or cohabitation; it is whether it is a case of a woman who can reasonably say that she is at risk from a man. It does not matter whether there is a background of marriage or cohabitation if she can satisfy a court that there is a risk—it may be from a pre-existing relationship—of her being physically or psychologically harmed by a man.

The Convener: You will not find any argument about that among members of the committee. We do not pretend that this committee-initiated bill has the potential to deal with the whole problem of domestic violence. We have known from the start, and have made it explicit, that that is not the intention.

Apart from anything else, addressing all the issues would take much longer than the short period we have been considering the matter. We have focused on this issue because it seems most amenable to legislative change without causing disruption in other areas. That is always a problem if something is taken out of context.

We are concerned to establish from the partnership whether by proceeding on this basis we will rock any boats. That is not the same as saying that the wider problem might get lost. That will not happen as long as this committee is meeting, because after you have produced your report you will be back before us to discuss the whole range of issues on which you have reached

conclusions. This is not about losing anything, but about whether our focusing narrowly on married women and cohabitees will cause any practical difficulty. From what you are saying, that would not seem to be the case.

Mrs Smith: It would not cause a difficulty, but I would not like the committee to think that it is enough.

The Convener: I do not think that anybody here would begin to imagine that it was.

Phil Gallie: Could Mrs Smith give us an indication of when her committee will report?

Mrs Smith: Realistically, I would not expect the committee to report back until next March.

Phil Gallie: Getting everything into one package, as you suggest, might be a reasonable way ahead, particularly given the fact that this committee and the Parliament have a heavy programme of work. If your committee did not intend to report back for 18 months, I would have expressed some concern, but six months does not seem too long to wait.

Mrs Smith: As you will see from our work plan, we expect that some work will carry on through 2000 and into 2001, but after that we will be into monitoring periods. We meet on Monday to consider the responses to the work plan, and I hope from next week to take forward some positive aspects of our work.

The Convener: When is a draft bill, rather than a report from the partnership, likely to be available?

Mrs Smith: I cannot tell the committee that. I can say only when we will report. I would love to be involved in drafting a bill, but as yet I have received no indication that the partnership will be involved.

The Convener: So the partnership is likely to report on proposed legislative changes by March next year, but that is not to say that there will be draft legislation by then?

Mrs Smith: Everything depends on the support that we get.

Tricia Marwick (Mid Scotland and Fife) (SNP): I was going to make the same point. The partnership will present its report in March next year, after which there is likely to be a period of consultation by the Executive. It will, therefore, be some time before draft legislation comes before the Parliament. I think that both the Justice and Home Affairs Committee and the Parliament have a responsibility to reflect women's long-standing concerns that the law is not protecting them. For that reason, we on this committee have a duty to take forward our bill so that legislation can be put in place as quickly as possible.

I recognise that the bill is imperfect and that it does not cover the whole range of domestic violence issues, but it is more than we have at the moment. It may be two or three years before we get a bill that covers all aspects of domestic violence. Many women who are suffering now or who will suffer over that period would be grateful for the protection that a bill such as the one that we are proposing could offer.

Pauline McNeill (Glasgow Kelvin) (Lab): Anne, I have some sympathy with what you have said about the need for an overhaul. However, I would like to hear your view on a number of issues.

The Matrimonial Homes (Family Protection) (Scotland) Act 1981 deals largely with occupancy rights and includes provision for exclusion orders. In your view, is it possible to separate out occupancy rights from protection orders?

Mrs Smith: In some respects, that is what has happened in practice. In one area of the law it is recognised that a spouse has an occupancy right, irrespective of whether there is a violence problem. That has been respected every time that property has changed hands. However, whenever applications to the court have been made in respect of occupancy rights, it has been because there is a problem of physical or psychological abuse. It is, therefore, not appropriate to separate out the two issues. Clearly, in 1981 Parliament considered this and decided that the two could sensibly be combined in one piece of legislation. Oddly enough, however, the act ended up in the conveyancing section of the Parliament house book, because it was reckoned that it would be consulted most often by property lawyers who wanted to establish who had rights and interests in a particular property.

Pauline McNeill: The second issue that I wanted you to address is that of cohabitees. We are concerned to widen the scope of protection, but there are difficulties in doing that. Given what you have said about not being keen to separate occupancy rights from protection orders, is it possible to enshrine in legislation a protection for cohabitees? Would we have to redefine what is meant by a cohabitee?

Mrs Smith: Yes, if that was how you planned to proceed. Defining cohabitation will be a nightmare. The 1981 act defined cohabitees as people who are cohabiting as man and wife, but many cohabitees in 1999 would say that that is exactly what they are not, because they have specifically opted out of the obligations and rights that arise from marriage.

However, there is no reason for a woman in such a relationship not to have protection. That is why I was encouraging the committee to go right

back to basics and think about what it is trying to do—to protect women who are being subjected to abuse. Women should not need to qualify as wives or cohabitees if they qualify as women at risk. Take the case of a woman who moves in with a man after having a relationship with him for a couple of years without sharing a house. Three weeks later, the violence starts. Would you be satisfied that she is a cohabitee? Some people would say that three weeks is not long enough to establish that.

Pauline McNeill: Such cases would come into the category that concerns us. Do you think that we do not need to redefine cohabitation?

Mrs Smith: I suspect that you will never arrive at a satisfactory definition of cohabitation and that you will create scope for argument about whether people qualify within the terms of the definition. By worrying about that, the committee is missing the point. As you have recognised, many women out there need protection. They should be entitled to that if they can demonstrate that they are at risk.

Pauline McNeill: With respect, I do not think that any of us are missing the point. I simply want a straight answer. Are you saying that we do not have to redefine cohabitation in order to protect such women?

Mrs Smith: We do not want you to do that. We want you to focus on women in need.

Pauline McNeill: We are considering whether single-sex couples require protection. Are you aware of Professor Norrie's submission to the Law Society in response to the consultation paper "Improving Scottish Family Law"?

Mrs Smith: I am aware of it as a lawyer, but the partnership has not examined it. As chairman of the Scottish Partnership on Domestic Violence, I could not responsibly comment on the submission, because it has not come before us.

Pauline McNeill: In his submission, Professor Norrie suggests a helpful way around the question of cohabitation.

Mrs Smith: In my capacity as chairman of SPDV, I cannot comment on that.

10:15

Kate MacLean (Dundee West) (Lab): Apart from the opinion that you have expressed, is there any strong reason not to deal with this piece of legislation? Given that the Scottish Partnership on Domestic Violence reports to the Parliament, the legislation will come to this committee and I imagine that it will go to the Equal Opportunities Committee. The Social Inclusion, Housing and Voluntary Sector Committee will probably look at the social inclusion and housing elements of the report. The Executive will want to scrutinise it and then it will go to the Parliament.

Given that it could take a year or more for anything helpful to happen, would it not be useful for the committee to deal with this little piece of legislation now? As an interim measure, could we introduce a bill to amend the legislation slightly?

Mrs Smith: Do not misunderstand me. The partnership is delighted to see women at risk being helped, but I am anxious to caution people not to forgot that there is a lot more to it.

Maureen Macmillan: When it gave us evidence, Scottish Women's Aid suggested that the way forward might be to remove the protection from abuse element from the Matrimonial Homes (Family Protection) (Scotland) Act 1981. As you say, the act ends up in the conveyancing books, rather than in the protection from abuse books. Scottish Women's Aid suggested that certain sections of the act could be repealed and replaced with a stand-alone piece of legislation, perhaps called the protection from abuse legislation, which would deal with the protection aspect. Could that be a way forward, as far as you are concerned?

Mrs Smith: I would much rather see it flagged up as dealing with the protection issue than enshrined in a piece of what is effectively conveyancing legislation. That is unfair, because it does more than that, but it is viewed as an important piece of conveyancing legislation.

Gordon Jackson: We started this discussion weeks ago—and maybe I am not following it—but I thought that we were looking at it in the context of occupancy rights. We began to think that it is not only married women who should be able to exclude their partner from the home and have an interdict against violence; we got the clear message that that should be extended to people who cohabit. In general terms, I think that we were sympathetic to that, but it gave us the problem of defining a cohabitee, which, as you say, is something of a nightmare. We were trying to tackle the issue of how to define a person who could exclude someone from their own property.

Because it is your remit, what you are doing to some extent is refocusing the issue on domestic violence and saying that we should forget about—in inverted commas—occupancy rights and simply look at women, as cohabitees, wives or girlfriends, who need protection. You are saying, "Let us stop the violence", and in that situation we can forget about definitions of cohabitees. However, one problem with that is that a few weeks ago we were talking about something different. That brings me back to the question, why do we need a change in the law so much? If occupancy rights and excluding someone were needed—and that should be extended to cohabitees—we have to

deal with legal definitions. If all we are doing—I do not mean that pejoratively—is protecting someone from violence, why, in Anne's view, does the existing law not do that throught interdict and through the police and other authorities?

I understand the power of arrest, but in my experience, a nutter is not deterred by anything. A man who is determined to get to someone will do so, whether or not there is a power of arrest. What is done with him thereafter, in terms of locking him up, is a different matter. I do not believe that a determined man will be deterred by a piece of paper. Why does changing the law on that help us?

Mrs Smith: You have raised a number of matters, Gordon; I will go back to the beginning first. Occupancy rights are a separate issue from giving a woman protection from an abuser. I am not suggesting that any women who is potentially a victim gets an occupancy right. Of course, that has important ramifications in property law. I would not like the partnership to lose credibility by irresponsibly saying that any women who is at risk from a man can get his house. That is not what we are about.

Put occupancy rights to one side for the moment, and look at the protection of a woman. We are told that where there is a power of arrest, it makes a difference in the way the police behave. In most instances, they act responsibly and promptly if it is intimated to them that a power of arrest is attached to an interdict. You are right that in common law any woman who is at risk can go to court and get a protective order, if she can satisfy the court that she is liable to be harmed by a man. What she cannot get through common law is the power of arrest. That has, as I understand it, proved to be one of the most valuable tools in the 1981 act.

Between April 1998 and February 1999 the Scottish Legal Aid Board dealt with 2,305 applications for interdict. In my experience, and from speaking to people involved in the sheriff courts where most such interdicts are sought, those interdict applicants will almost invariably have sought power of arrest as well. They can do that because of the statutory power; it is not common law. Again and again, that has been portrayed to us as what those women need.

Gordon Jackson: Could you deal with it by adding power of arrest to interdicts of a certain kind in a more general sense?

Mrs Smith: That is what the 1981 act does. It tells the court that if it is granting an exclusion order it shall attach a power of arrest. However, even in a non-exclusion order case, the court has a separate capacity to attach a power of arrest. Indeed, it must do so, unless it is satisfied that that is not necessary.

Gordon Jackson: I will not bore for Britain, but could you not just make a change to common law by adding powers of arrest into interdicts in a more general sense?

Mrs Smith: That is what the 1981 act does, but the problem is that it is limited to wives and to cohabitees for six months.

Gordon Jackson: Could you widen power of arrest?

Mrs Smith: That is what is being looked for at the moment.

You may be interested that between April 1998 and February 1999, the Scottish Legal Aid Board had only 34 applications for what they call the 1981 act orders. I think that they are talking about applications for exclusion orders. We were surprised that there were only 34, but we asked people who have experience of the sheriff courts, and apparently the courts are not seeing many applications for exclusion orders now. We have not yet worked out why that is.

My impression is that when the act came into force there were many applications for exclusion orders, but they tailed off. I do not know whether that is because matters are sorting themselves out and men are realising that they have to leave and then leaving, or whether women are managing to find other accommodation. However, it is an interesting statistic.

The Convener: In among those helpful statistics from the Scottish Legal Aid Board, do you have one that tells us how many women who go to it for applications for legal aid end up not being able to take it up because they cannot afford to progress the case?

Mrs Smith: No, it has not told us that.

The Convener: I am curious because, despite repeated attempts to find that out, it seems that the Scottish Legal Aid Board makes no attempt to track that. Everywhere one goes there is anecdotal evidence and not a great deal else. That could include all categories of women, whether or not they live within the matrimonial home, and could also protect single-sex couples.

Mrs Smith: That is interesting, as it would be the statistic for applications, not for grants.

The Convener: That is precisely why I ask the question. All the anecdotal evidence suggests that one of the reasons for the tail-off may be the fact that when people are hit with the bill, they decide not to take the case any further. That is beginning to happen with civil legal aid.

Mrs Smith: In fairness, we have not been told that, but from my experience as a lawyer I do not

doubt for a moment that that happens.

Christine Grahame: Can we work through all those points to deliver something? First, is it possible for us to introduce a piece of legislation that would dovetail into the existing Matrimonial Homes (Family Protection) (Scotland) Act 1981 that would extend the powers of arrest post-decree for married couples and give more extensive protection for cohabitees, but that is detached from occupancy rights?

Mrs Smith: I do not see why not.

Christine Grahame: We might want to think about that.

My second point is that it appears to me that we are sometimes trying to use civil law instead of criminal law to deal with what we call domestic violence, which is a criminal activity. Perhaps the police who are here could address that issue. I agree with Gordon Jackson's remarks. I had a case where power of arrest was nothing to a certain gentleman, because he had a huge criminal record. Some of these people can run rings around the police. I do not mean to impugn the police by saying that; it is simply that such people know how to get round civil law.

Thirdly—and I do not know whether this is part of your remit—I hope that you are considering the question of whether the Scottish Legal Aid Board should approach interdicts with powers of arrest differently from other applications. Hard-pressed lawyers find it difficult to handle such applications. Perhaps a different financial test is needed. I do not know whether that is possible. Certainly the legal aid board's activities must be addressed, because it is becoming extremely difficult for practitioners to deal with such urgent matters while dealing with the legal aid board.

Mrs Smith: I wholeheartedly agree with your views on the Scottish Legal Aid Board. An interdict application is a short, sharp piece of work. It is not the most expensive thing that the Scottish Legal Aid Board has to deal with.

Christine Grahame: Yes, and as you and I both know, sheriff officers must be paid large amounts of money to serve such interdicts and powers of arrest immediately and to intimate that to the chief constable and the local police. That burden is carried by the solicitors. I am not making a special plea for them; that is a fact. The board must examine that issue.

Mrs Smith: Another idea that the committee might consider has been floating around. Current thinking on the matrimonial interdict, as it is called—I hesitate about the word matrimonial as it sounds limiting, but we know what I am talking about—tends to focus on protecting the woman from the man turning up on her doorstep. That is not the only protection required. We also need to protect women in the workplace and at school. It may be effective for legislation to specify that the court has the power to say that the man cannot go into certain areas other than the home.

Christine Grahame: Would that be like the common law interdict?

Mrs Smith: Yes. However, rather than the order saying in general that the man must not go anywhere the woman is, such legislation would specify certain areas where he could not go. Otherwise, he could turn up at the workplace and say that he was there not to see the particular woman, but to see a friend.

Pauline McNeill: I am glad that that point has been raised because I want to return to Gordon Jackson's question, as it seems to me that there may be an obvious answer. Would not it solve the problem to put interdicts on a statutory footing for domestic situations, or whatever the term is changed to? If the problem is not just the man turning up on the doorstep, but getting power of arrest if the partner even suggests that he is going to go to the school, why cannot we have a law that introduces a statutory framework for that type of interdict with powers of arrest? We would not have to legislate or define cohabitation.

Mrs Smith: Yes, I would be delighted for that to happen.

10:30

Gordon Jackson: I am no expert in these matters. In your view, Mrs Smith, would it be easy to deal with the power of arrest? We could add powers of arrest—which would be either at the discretion of the sheriff or mandatory—into the interdict framework in a general way.

Mrs Smith: The power is there, but it is limited to specific people. I would like it broadened.

Gordon Jackson: Would that be easy to do, though?

Mrs Smith: It would not be difficult. I also want the courts to be told that they have the power to specify places that the man has to stay away from. That would be similar to bail conditions that are commonly used by sheriffs and are quite effective in rural areas. Bail is often conditional on a man not going within, say, half a mile of his wife's home.

Gordon Jackson: On one famous occasion, a man was banned from Stranraer.

Pauline McNeill: The common law interdict does not grant the power of arrest and cannot be amended to make it do so. We would have to work within the statutory framework.

Mrs Smith: There is no common law provision to grant a power of arrest, which is why that came in with the 1981 act.

The Convener: We have probably exhausted our questions for this morning, Mrs Smith. I have no doubt that you will be before us again, probably many times. Thank you for coming. I hope that you did not find it too unpleasant.

Our next witnesses represent the police. I welcome their input as it is important that the police get a chance to contribute to the way the law might change.

We have Chief Superintendent Stewart Davidson, who is the president of the Association of Scottish Police Superintendents. He is accompanied by Deputy Chief Constable Tom Wood, from the Association of Chief Police Officers in Scotland, and Chief Inspector Lesley Warrender.

We are grateful to all three of you for coming this morning. Thank you for the brief that you sent to the committee. Given the scene-setting that Mrs Smith gave us, we could start with our questions, unless you have an overwhelming desire to make a short statement.

Chief Superintendent Stewart Davidson (President, Association of Scottish Police Superintendents): I thank the committee for the opportunity to give evidence. I am aware that you are taking evidence from experts in family law. We can contribute information about the experience of police officers and the difficulties that they face in trying to satisfy the needs of those at risk from domestic abuse and violence.

The Convener: Are there any questions?

Phil Gallie: The policy paper that you submitted said that Fife constabulary feels that the increase in the number of incidents of domestic violence that are being reported has come about as a result of procedural changes. Over the last 10 or 15 years, have there been real changes in the domestic violence scene, or do you think that the increase in reports is because more people are reporting domestic violence now?

Deputy Chief Constable Tom Wood (Association of Chief Police Officers): I can respond to that. Domestic violence is one of the most ingrained and under-reported types of crime in Scotland. None of the figures that we produce do more than indicate an index of activity by the police. The figures should not, in my view, be read as an indicator of the number of actual cases. That is a huge, dark figure. Those crimes are hugely under-reported. It would be difficult to plumb the depths to find out to what extent domestic violence, both physical and emotional, occurs in this country.

Phil Gallie: I do not dispute that, but you have highlighted—and it is mentioned specifically in your report—that the problem goes very deep. Is it getting worse by the month?

Deputy Chief Constable Wood: I do not think that the situation is getting worse, but we are finding more cases. The figures can, as I said, be seen as an index of the activity of the police service in Scotland.

Gordon Jackson: Certain matrimonial interdicts are granted that include a power of arrest; other interdicts do not include that. This committee is considering expanding that power of arrest with interdicts to anyone who is reasonably apprehensive that they are in danger from attack. Would the police welcome that? How important does the police service think that is? This is about the reality of women having violence inflicted upon them or, equally important, the fear of that because of a lack of power of arrest.

You are here to tell us what happens on the street, whereas our experience is very theoretical. To put it bluntly, from your perspective, are many women being attacked or hurt in those circumstances? What difference does the power of arrest make?

Deputy Chief Constable Wood: I will answer first and then I think that the representative of the superintendents association would like to comment. The simpler things are, the better they are. The more clear-cut the powers of arrest are, the better that is for police officers on the street.

It is not often appreciated how difficult and complex such cases are to deal with. They are almost never black-and-white cases. They are subtle shades of grey and often lack any element of independent evidence. The more clear-cut the interdict is, and the more clear-cut the powers of arrest are, the better it is for an operational policeman who is called out at two o'clock in the morning.

Gordon Jackson: What difference do you think it makes in terms of people being hurt?

Deputy Chief Constable Wood: It does make a difference. We have already heard somebody mention that there are desperadoes who will pay attention to nothing. Those people exist, but they are a small minority. The power of arrest prevents many men from conducting themselves violently towards wives and partners. I think it works.

The Convener: Would you like to come back in on that, chief superintendent?

Chief Superintendent Davidson: What reinforced the point to me was that some of our research indicated that 73 per cent of incidents that were reported involved an element of violence. That figure is very high. I endorse what

Tom Wood says: the problems facing operational officers at one or two o'clock in the morning are complex. Anything that simplifies that situation can only benefit all the parties concerned.

I was conscious that some of the discussion this morning switched between criminal and civil law. One of the difficulties is that the legislation at the moment is civil legislation. Unless there is a power of arrest attached to an interdict, and unless the commission of another crime is corroborated, police cannot effect appropriate action—they can only go to the house.

It is frustrating for police officers to have to walk away and it can put victims in a dangerous situation. The majority of experienced police officers will attempt to remedy the situation by separating the parties. They will do something other than just walking away, but there is a weakness that exposes people to violence.

As to the statistics, there is no doubt that more people are reporting incidents. That may be a reflection of the greater confidence that some have in the police. Police forces are also more geared up to respond to recommendations coming from the inspectorate and the Scottish Executive.

The Convener: Do you think that the law, civil or criminal, as is stands is sufficient to protect women?

Chief Superintendent Davidson: The difficulty is that the Matrimonial Homes (Family Protection) (Scotland) Act 1981, which is the main legislation under review, does not take into account the complexities of modern relationships. There are exclusions that make for difficulties. A power of arrest, if it is available, is effective—it allows a police officer to apprehend someone—but, where there is no power of arrest, the act is very limited unless other crimes have been committed. Our view is that, because the act relates to civil law and because it focuses on matrimonial situations, the limitations impede effective police action.

The Convener: That suggests that, from the police point of view, it is almost a relief if straightforward criminal activity has taken place, as it enables you to act without having to be concerned about other aspects. Does it put you in that position?

Chief Superintendent Davidson: Certainly it is easier for police officers to deal with a straightforward situation, but no one here needs to be reminded that such situations are seldom straightforward and there are always two sides to the story.

Mrs McIntosh: Mr Davidson, could you confirm that you said that, in the 73 per cent of reported cases where there has been an incident, the police attending could put women at even more risk? I am referring to occasions when there is not a clear-cut case in which the officer can apprehend someone and remove the risk of danger. Scottish Women's Aid gave us the number of people who are killed by their husbands or partners. Does the difficulty over whether you can remove the partner inflame the situation?

Chief Superintendent Davidson: To clarify the statistical reference, I remind the committee that, of the number of incidents that were reported to the police, 73 per cent had an element of violence. Of that percentage, a significant proportion would be dealt with by the police, so I was not saying that the police could take no official action in 73 per cent of incidents.

Mrs McIntosh: In those cases where no official action could be taken, were some of the women put at even more risk following the intervention?

Chief Superintendent Davidson: There is an element of that. If the police cannot take effective action, they leave a victim in a potentially vulnerable position.

Mrs McIntosh: So the ideal solution is something clear cut—the police officers can look at a situation and know exactly what action they can take without any need to go into grey areas or to become lawyers.

Chief Superintendent Davidson: That would be an ideal situation.

Deputy Chief Constable Wood: Before we go too far down the road of looking at the common law and other criminal activity, we should remember that there has to be corroboration for a police officer to take action and arrest someone. The advantage of an interdict with powers of arrest is that it is clear cut and there is less room for the fudges that can take place and leave women vulnerable.

Christine Grahame: I agree about the difficulties of corroboration. From my experience, it is often the children who can corroborate and that is the last thing that anyone wants. I also agree that the more specific the interdict, the better for all concerned, including the potential offender.

I have some practical questions. I have been in the position where I have intimated the terms of an interdict, with power of arrest attached, to the chief constable and to the local police station, only to find that, when the local police turned up at my client's house, they did not have details of the interdict. That resulted in the client losing confidence in the police.

I have a great deal of sympathy for the police on response times. However, if someone has a threatening husband at the door and knows that it will take 10 or 15 minutes for the police to arrive—and that is a quick response time—they will think

that a lot can happen in that time. They think, "By the time the police get here, he has either threatened me even more or he will be off." In my experience, they decide not to call the police and not to use the interdict with power of arrest.

10:45

I want to ask what happens when an attempt is made after that to apprehend the offending husband. Again, I know of a case in which a woman gave up—the man breached the interdict time and again and the police did not apprehend him. He was able to use that as a negotiating position, saying, "I will not come and do this to you if you let me see the children when I want." Against that background, which is not uncommon, what practical things are the police doing about the implementation of the powers of arrest?

Deputy Chief Constable Wood: On the information about the existence of an interdict, local officers should know and should be informed. Most police forces are now highly computerised and would have a marker against a particular address to show that an interdict existed. There is always room for administrative error, no matter what system is operated—that seems to be what happened in the case that you described.

Most forces—although this depends on their size; we rightly have different approaches—now have domestic violence liaison officers whose task is to ensure that all operational police officers perform to a high professional standard in this field. The reason why the Scottish police service is in that position today is because of some notorious cases in the late 1970s and 1980s in which we performed badly. We are determined to improve our performance.

On response times, we often find that people who want police assistance but do not want to raise much attention do not use the 999 system. We are constantly preaching to people such as you describe that the best way of getting a quick police response is through the 999 system. All police forces have performance targets and figures for ordinary calls, in both urban and suburban environments. Even for ordinary calls, the response time is less than 10 minutes; that target is met by forces on more than 90 per cent of occasions although, again, if it is midnight in a busy part of town in a busy force area, the resources are liable to be stretched. However, I can assure you that a call about domestic violence—especially when an interdict is in place—is treated with priority.

In apprehending the offenders, we have a difficulty when some people play the interdict card selectively. In other words, perhaps with regard to access to children, one day someone will welcome or put up with the visit of a partner or husband, but the next day they will not. Sometimes it is difficult because the police are called only to be told that an hour and a half ago so and so came to the house. I do not know the circumstances of the situation that you described—perhaps you could elaborate—but sometimes things are not clear cut. If the police are called to a house where the person who is the subject of an interdict is present and there is a power of arrest, there should be absolutely no question that that person should be arrested.

Christine Grahame: I appreciate that. I acknowledge the difficulties that face the police in this issue and I know that many officers do not subscribe to the view that says, "It's just a domestic."

I have seen police bending the law to assist in domestic circumstances—perhaps I should not have said that, as it will go in the minutes—to the benefit of both parties in the long run. Once the heat has gone out of the situation, people often get on with their lives. Do you accept that many women are so browbeaten that they have not got the strength of will that you or I might have to use powers of arrest?

I should perhaps have asked Mrs Smith this question. Do you think that, in addition to applying the stick, the courts have a role in recommending counselling—I hate those American expressions—for the offending spouse or partner in those circumstances?

Deputy Chief Constable Wood: On your first point, as I said in my introduction, we never see or hear of the vast majority of victims of domestic violence—nobody does. They just carry on: some live under a reign of terror for years and others raise their head above the parapet but are too frightened of the consequences to phone the police and apply the interdict.

Disposal is a problem for us. Our experience shows that, if we arrest the offending partner and he gets three months imprisonment, he is not likely to come out any better—he may come out a lot worse. The fact that he has been imprisoned, perhaps following a trial in which the partner has given evidence, leads to further acrimony and is yet another problem that must be overcome. The whole family usually pays the fine, not the principal, because the money tends to be taken out of the family coffers.

I am attracted to domestic violence probation projects, provided that they have teeth and are not seen as a soft option. I know of one good example of a domestic violence probation project operating in this city. Instead of fining the person or taking them out of circulation, an attempt is made to address what is going wrong and get to the root

cause of the problem. In the long term, that is the only solution.

Christine Grahame: Do we have information on that project in our papers?

The Convener: No, I do not think that we do.

Christine Grahame: It would be useful to know about that project.

Deputy Chief Constable Wood: I will provide you with background data on the domestic violence probation project operating in Edinburgh. I suspect that there are more, but I know of the efficacy of the one operating here.

Christine Grahame: That will be useful. I do not want the legislation to be seen as anti-partner or anti-husband, but we must deal with the bad moments in relationships.

Maureen Macmillan: I welcome your comments to Christine about police attitudes and responses. I worked with Women's Aid for about 20 years and I know the big change that there has been in the force. In the past, it was sometimes thought that the police did not respond quickly and did not view certain forms of breach of interdict as serious. I believe that that has now changed, which I welcome.

Anne Smith talked about the idea of naming specific places with the power of arrest. Would you find that helpful?

Deputy Chief Constable Wood: That returns to the difficulty that we are dealing with what is essentially matrimonial homes legislation. Exclusion orders will centre on the home and its immediate environs but the perpetrator is likely to turn up elsewhere—at the workplace or outside a school, for example. That is a serious difficulty. Our association would welcome an extension in the scope of the legislation, so that it did not focus on matrimonial homes but became more protective. There are practical difficulties, such as with the lodging of interdicts—police officers would need to know that there was a power of arrest if they were called to a street incident. However, with current technology, that is not an insurmountable problem.

Maureen Macmillan: Do you favour the idea, which we have discussed, of protection being covered by separate legislation, with named places, rather than being attached to the Matrimonial Homes (Family Protection) (Scotland) Act 1981? Would that be more helpful?

Chief Superintendent Davidson: That would be helpful, although using named places could throw up other problems—if the individual does not turn up at the named place, there could still be a problem somewhere else. There may need to be a more open approach to protection.

Deputy Chief Constable Wood: The more prescriptive we are about exact places, the more room there will be for error. It is far better to be more general.

Pauline McNeill: I know that you are keen to have law that is clear and can be operated—that is entirely understandable.

I want to go through in a bit more detail some of the points that Maureen Macmillan and others have made about how the scope of the interdict could be widened. I am particularly concerned about the cases that Women's Aid told us about, in which there has been a long history of domestic violence and there is danger to the woman's life.

You talked about response times. How far can we widen the scope of an interdict so that we can act before a violent partner gets to the home or place of work? There have been discussions in the court about how wide an interdict should be, such as whether a phone call saying that a partner was coming would be included—it was thought that it probably would not be at the moment. Is there any way of widening the scope to include, for example, having reasonable cause to believe that an incident was going to occur? What can we do about that if we legislate on interdicts with the power of arrest?

Chief Superintendent Davidson: I can see where you are coming from, but there would be immense difficulties. The great strength of the interdict with power of arrest is that, if police officers find the person referred to in the interdict where he is forbidden to be, the matter is unequivocal and clear cut. However, it would be difficult to uphold action on the basis of a phone call that may or may not have been made or on the basis of reasonable cause to believe that someone was going to come to a place. I have no doubt that that would be the subject of considerable legal challenge. I doubt the practicality of that, although I understand your concerns.

Pauline McNeill: I am trying to separate cases of domestic violence from other cases in which there is a known danger to a person's life.

Deputy Chief Constable Wood: I cannot see a practical way around the difficulties. Clearly there are priority cases. There are cases in which we have, as it were, a red circle around an address. It is quite common for us to install an alarm system in the home of a victim or potential victim, which, on the press of a button, instantly alerts police radios. I do not want to give too much detail on that, but we regularly use such systems and methods for rapid intervention in high-priority cases.

Chief Superintendent Davidson: In practical local situations, if a person, who officers know may

be particularly vulnerable, makes a phone call seeking assistance in anticipation of something happening, officers will try to be there in advance of the problem. From our perspective as operational commanders, it is important to ensure that there are good intelligence systems within policing areas to enable us to identify such cases.

On whether orders should be general or specific, it would be helpful if the power of arrest was put in more general terms. Police would be able to act before the individual came within 50 yards of the matrimonial home, or whatever limit was prescribed.

11:00

The Convener: Can you give us an example of what you would like the order to say?

Chief Superintendent Davidson: I am very conscious about straying into the technical difficulties of family law but I think that it would be useful if a general power of arrest could be issued if a sheriff was convinced that there was reasonable apprehension of violence. That would enable the police to act without the individual being in breach of the prescription. I understand that there are difficulties with the suggestion.

The Convener: Reasonable apprehension of violence is rather vague. Whose apprehension would have to be reasonable? Would it be that of the police, the individual who might be the victim of attack or someone else? The term could mean different things to different people.

Chief Superintendent Davidson: It would not be up to the police to decide. Currently, the applicant has to present evidence to a solicitor to obtain an interdict. The decision is based on the evidence.

The Convener: That relates not to specific instances but to a more general position that leads to the granting of the interdict with the attached power of arrest. Breaches of the interdict are more specific and lead back to court. The granting of an interdict because there is a reasonable apprehension of violence in general terms does not deal with individual circumstances that arise when the interdict is breached. At that point, reasonable apprehension of violence becomes a much more difficult thing to work with.

Chief Superintendent Davidson: I will clarify our position without straying into the complexities relating to the issue. We would like the prescriptive conditions that are attached to powers of arrest in the case of exclusion orders to be removed; we would like police officers to have more power to arrest in those cases than they have at the moment.

Phil Gallie: The paper that you presented points out that domestic violence does not discriminate between social backgrounds. That is true, but the fact is that interdicts do. It can cost a lot to apply for an interdict. The paper says that you would like access to interdicts to be made easier. Would you like the cost of obtaining an interdict reduced for those who do not have access to legal aid?

Chief Superintendent Davidson: We have made that point. The cost of obtaining an interdict makes it an unavailable option for many people. People have produced costs on that.

Phil Gallie: Did you say that you could produce costs on that?

Chief Superintendent Davidson: I understand that there are costs. It would be for others to—

Phil Gallie: How about the volume of cases that you are called out to and the number of people who could not afford an interdict? I know that that is a difficult question to answer.

Chief Superintendent Davidson: It would be difficult to give a specific figure. If an individual is not eligible for legal aid, costs will be incurred, which will deter many people from seeking an interdict.

Phil Gallie: We are concentrating on the availability of the interdict, but it seems that there is a large element of exclusion in this area. That is why I asked for an idea of the number of people who you feel might be excluded.

Chief Superintendent Davidson: I would not be able to give specific figures on that. Many of our responses are to homes in which there is an element of financial difficulty; many more will not be eligible for legal aid.

Deputy Chief Constable Wood: There is another element to exclusion. Although we know that domestic violence goes across the social strata, we deal with many more cases in the housing schemes than in other areas. The disgrace element of that kind of crime is a great inhibitor to people reporting it. In many instances, we discover that domestic violence has been taking place only when we are called to a serious incident and we find that there is a long history of abuse, which the woman has not felt able to report because of a perception of social disgrace.

Christine Grahame: I am not happy about going down the road of reasonable apprehension of violence—that is very vague. I prefer to deal with specific interdicts so that everybody—the potential breacher of the interdict, the spouse or cohabitee, and the police—knows what they are dealing with. As you said, the police will arrive and from computer information will know exactly what the person is interdicted from doing. If the person is on the scene there can be no argument: they are not supposed to be there. I may be pre-

empting what the sheriffs have to say but, in my experience, sheriffs want interdicts to be specific. We cannot ask for someone to be interdicted from doing anything at large—even from entering Stranraer. There is a human rights issue.

I want to be devil's advocate. The police have a power of arrest, normally against a man, and that man needs to know his position. His rights must be protected so that we are not just acting willy-nilly. We know that a minority of women—the matter was raised by the Family Law Bar Association—use interdicts to influence other matters relating to matrimonial property. Let us have something that is fair to everyone. I am not happy about the general line that is being taken. We should be very specific, so that everyone is clear and there are no grey areas.

Chief Superintendent Davidson: I want to respond to that with my whole-hearted agreement. The avoidance of complexity is important. Perhaps my earlier point about reasonable apprehension of violence was misleading. We are looking for clarity in the power of arrest. We are extremely aware of the human rights implications and there are always at least two sides to the story.

However, put simply, by whatever means the power of arrest is granted—be it through the civil courts or any other way—we would rather that that was more general than tied to an exclusion order.

Christine Grahame: I see. Thank you.

Euan Robson (Roxburgh and Berwickshire) (LD): The submission from the general secretary of the Scottish Police Federation says that on-the-job or refresher training is virtually non-existent for serving officers. It strikes me that training for officers who will confront domestic violence is extremely important. If the law is changed, will training be made available? It is a sensitive and difficult area and the submission from the Scottish Police Federation seems to suggest that, if resources are not made available for training, a change in the law will not achieve the desired aim, because officers will not know what they ought to be doing.

Deputy Chief Constable Wood: Can I address that? I was not aware that the federation had made a general statement, but I can speak with intimate knowledge of my force. In each of our areas, an officer is tasked specifically with ensuring that operational officers are up to speed on the law. As it happens, I have with me our most recent fact sheet on domestic violence for the guidance of our officers. We also provide detailed information on our in-force intranet. We must keep on pushing home the message, but we are aware that we are only as strong as our weakest link and that we have to keep drumming home the message to all ranks. That is why we have this system. I know that all Scottish police forces have put in place systems that they find compatible with their uses and needs. I have no reason to believe that they are any less efficient than we are.

New legislation would require a new form of training. That brings us back to simplicity. I agree with one of the earlier speakers, who said that we should keep things dead simple, so that everyone knows exactly where a person should be and at what time, and whether they are liable to arrest. It should be simple not only for the person to whom the interdict applies or for the victim, but for the police officer. The committee would find it hard to believe how many shades of grey police officers confront on the street.

Tricia Marwick: You said in your submission—I will ask the sheriffs to speak for themselves later:

> "Procurators Fiscal are too timid in instigating prosecutions, and Sheriffs are too reluctant to issue interdicts or apply punitive sentences."

Can you expand on that?

The Convener: Could you clarify which submission you are referring to, Trish?

Tricia Marwick: The Police Federation submission.

The Convener: That would be difficult, because there is nobody from the Police Federation here today. Our witnesses might want to make a general comment, but they cannot speak to a submission that they have not made.

Deputy Chief Constable Wood: There is general frustration among police officers when cases that seem clear cut to them turn out differently in court. However, I have no specific information from my force about dissatisfaction with the prosecution service or the sheriffs—the sheriffs are sitting behind me, so I need to be careful about what I say. Like policemen, they have to deal with subtle shades of grey at 2 o'clock in the morning. On the evidence that is presented to them, they have to make a decision that is fair to everyone.

There will always be frustration among working policemen about how cases turn out in court and there will always be cases that are misunderstood, but as far as I can tell, there is no general dissatisfaction. If we think that a case has turned out badly, we make representations, through organised forums, to the procurators fiscal, who are our prosecution service, and tell them that we are not happy with what has happened.

The Convener: I think that we have exhausted questions for the moment. Thank you very much for your contributions. I dare say that representatives of the police will appear before the committee again in future.

Because we are running on schedule, I intend to propose—if the two learned sheriffs do not mind—a brief break to allow members of the committee to make themselves more comfortable.

11:14

Meeting suspended.

11:21

On resuming—

The Convener: We now move to evidence from Sheriff Wilkinson and Sheriff Allan, who are respectively the president and vice-president of the Sheriffs Association. I advise both of you that your presence at this committee has stirred up considerable interest. Many people were not even aware that the Sheriffs Association existed, so there has been some media interest.

You might want to talk for a minute or two about generalities, or you might want us to proceed straight to questioning. I suspect that this will be something of a role reversal for you. [*Laughter.*] Perhaps you would like to start by expounding for a minute or two.

Sheriff Wilkinson (President, Sheriffs Association): It would be useful to say a little by way of introduction. We were happy to accept the invitation to give evidence to the committee. Domestic violence and all the miseries associated with it are matters that come to the attention of sheriffs practically every day of their working lives and we are concerned to assist in finding solutions to the problem.

As you said, some people might not know that the Sheriffs Association exists, so I shall say something about the association and what it seeks to do. Our membership consists of practically all sheriffs in Scotland and we represent Scottish sheriffs on issues of common concern to the judiciary of the sheriff courts and on matters that affect the work of those courts and the system of criminal and civil justice. There is, of course, a variety of views among sheriffs, and the association does not claim to speak for every sheriff. The views that we put forward are those of the council of the association and are formed after taking account, as far as possible, of the views of our members.

Nor can we answer for sheriffs in their judicial conduct or decisions. Sheriffs are independent judges who take independent decisions over which we have no control and for which we have no responsibility.

We represent only sheriffs who hold permanent positions—temporary sheriffs have a separate organisation. As the committee may know, a substantial volume of work in the sheriff courts is done by temporary sheriffs. At least, that is the position at present; whether it will continue to be so is an open question.

As I said, domestic violence is a matter of concern for every sheriff. I think that I am speaking on behalf of all sheriffs when I say that we are concerned to seek solutions to that problem, as far as is possible. We are represented on the Scottish Partnership on Domestic Violence. In response to the consultation paper on improving Scottish family law, we dealt with the matter with which the committee is primarily concerned—the extension of the scope of the present matrimonial interdict. We indicated that we favoured an extension of that interdict to protect former spouses and present and former cohabitants. In our experience in both civil and criminal courts, those are the people who are most in need of protection and for whom no protection, or inadequate protection, is at present afforded.

We are conscious of the need that gave rise to the move to extend the matrimonial interdict. Beyond expressing our support, there might be a question of what we can usefully and helpfully say. We have not, even as a council of the association, had an opportunity to consider the matter, except in the fairly limited context of our response to the consultation paper. However, one matter has emerged on which I can say a little—the definition of cohabitation. When we responded to the paper, we assumed that, in due course, we would see draft legislation and would be able to comment—adversely or favourably, but constructively—on any definition in that legislation. Of course, things have not worked out like that.

However, we did not consider the definition of cohabitation to be a major problem in extending the scope of the interdict. There is a distinction to be drawn between the problems of defining cohabitation for such an extension and the problems of defining cohabitation for the purposes of property rights and financial provision, which was another matter with which the Law Commission had dealt and which was raised in the consultation paper. We were not supportive of the Law Commission's proposals in that area. One reason for that—among others—was that we saw difficulties in defining cohabitation for those purposes.

In the context of domestic violence, however, the problem of definition is less. When we consider domestic violence, the emphasis is on the protection of the vulnerable. Any qualification—other than vulnerability or risk of harm—for the protection afforded by an interdict with the power of arrest attached should, we would suggest, have a low threshold. In other words, the test should be easy to pass. Attention ought to be

concentrated on the need to protect the vulnerable person from future harm, rather than on any other qualification that one might seek to impose.

11:30

The purpose of an interdict is to provide a remedy against the commission of a threatened wrong. Although the council of the association has not had an opportunity to consider the idea, we should start with the position taken by the Scottish Partnership on Domestic Violence, which is: why worry about a test of cohabitation or marriage at all?

We need to consider whether the power of arrest should be attached to an interdict when anyone can show that he or she is at risk of personal violence at the hands of a particular person or persons. We should not trouble at all with cohabitation or marriage restrictions in that context. That would incidentally have the advantage of making such a remedy available to the neglected category of parents and grandparents who sometimes have difficulties in the same area. I am not saying that such cases are frequent, but, from time to time, parents and grandparents have been terrorised by their grown-up children and grandchildren. Again, the mother or grandmother, a woman, is usually the victim of such conduct.

The Convener: Are you suggesting that, instead of using the matrimonial interdict as the basis for extending the power of arrest, we should attach power of arrest to the common law interdict?

Sheriff Wilkinson: That is what it comes down to. I think that the issue has already been discussed this morning. As you say, convener, a way of tackling the problem is to have a common law interdict to which the power of arrest could be attached, where the interdict was directed against personal violence. I do not think that anyone would want the power of arrest for such matters as breach of contract.

The Convener: Do not suggest that.

Sheriff Wilkinson: Where the interdict is directed against personal violence, the court should be able to attach a power of arrest similar to the power of arrest for matrimonial interdicts. That should be our starting point.

Although I see no objection in principle to that proposal, there might be practical objections. As the police might have practical problems with such measures, we would need to hear their views. We are certainly taking the discussion beyond what was considered before today's meeting, although I realise that the matter has already been raised today.

If that proposal is thought to go too far, there are other ways in which the matter could be approached. We could address the question of definition. On cohabitation, the question is whether a man and a woman are living with each other as if they were man and wife. That could be determined with regard to all the circumstances of the case, using the present test of section 18 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981, but without referring to the time for which they have been living together, or to whether there are children of the relationship. I do not think that the courts would find that approach too difficult to handle, if it was thought necessary to retain a cohabitation test.

If that solution were thought to contain difficulties, an alternative would be to have a rule whereby an applicant claiming to be a cohabitant was presumed to be such—to fall in that category—unless the contrary was shown, again with regard to all the circumstances of the case. That would shift the onus of proof.

The Convener: In other words, the issue of cohabitation, rather than being one for definition, should be one for discretion, in terms of the circumstances before sheriffs when they are dealing with a case.

Sheriff Wilkinson: This may just be a legal quibble, but I am a little hesitant about speaking of sheriffs having discretion in that respect; I would favour a wide definition.

Mrs McIntosh: As the convener has identified, your presence today has created something of a stir, Sheriff Wilkinson. One question that has been raised several times in evidence that we have had from other witnesses is, "How much training do you get in domestic violence?" There is a thought abroad that sheriffs are perhaps not living in the same world as those who are experiencing domestic violence. Could you comment on that and dispel any misperceptions in that regard?

Sheriff Wilkinson: We have always favoured the education and training of sheriffs. The association was instrumental in setting up the judicial studies committee, which seeks to pursue that matter.

I cannot recall training specifically on domestic violence, but a good deal of training on family law matters has been made available to and taken advantage of by sheriffs. It has perhaps focused more on children than on domestic violence, but efforts have been made to provide considerable training in family law in general.

Gordon Jackson: I am happy with the idea that we can extend the whole business of interdicts—the extension of common law interdicts to include powers of arrest—and take it out of matrimonial, matrimonial homes and property legislation. Such an extension would have some effect, and I have

suggested that we do it. However, when the committee started discussing the matter weeks ago, that was not, oddly enough, what we were really talking about.

At a previous meeting, the witnesses from Scottish Women's Aid were interested in not simply protection against violence, but, as they said to us time and again, occupancy of the family home. "The family home" was the phrase that they used repeatedly. They felt it unfair that cohabitees who, for all practical purposes, are currently considered to be like husband and wife, could not get rights of occupancy or exclusion orders in relation to the family home. If we decided to tackle that issue—we were tackling it weeks ago—it would be more difficult, because it would lead us to definitions of cohabitee. Sheriff Wilkinson, you have suggested that all we need to do is to insert the phrase, "as if they were man and wife". How confident are you that that would work?

As you and I know, many people in the criminal courts use the phrase "common law" in response to the question, "Are you married?" That is easy to deal with—it covers people who have lived together for 20 years and who, for various reasons, have not bothered going through a marriage ceremony. They live as if they were man and wife. However, Anne Smith pointed out that many people cohabit quite deliberately. If they were asked whether they were man and wife, they would say, "No, we are not man and wife." They have chosen to cohabit and have deliberately not made the long-term commitment that they perceive marriage to represent. They have deliberately left their relationship open, with the get-out clause of not being man and wife.

How would you deal with that? Would you say that people in such a relationship would lose that right? It is all very well to describe them as living together as man and wife, but do you not think that there are problems with that?

Sheriff Wilkinson: I recognise the difficulty. The phrase is from section 18 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981, which applies to a man and woman who are living with each other as if they were man and wife. It does not require that they regard themselves as husband and wife—merely that they are living together as if they were man and wife. My understanding—I might be wrong about this—is that the difficulty in affording occupancy rights to cohabiting couples has not arisen from that wording, or from the provisions of section 18 as such. The difficulty has arisen from provisions elsewhere in the act—from the various tests that are laid down for the granting of an exclusion order. I might be wrong, but I am not aware of difficulty in the operation of that provision.

Gordon Jackson: Would you extend the law to cover single-sex couples who cohabit?

Sheriff Wilkinson: I noticed that that was mentioned in the committee's previous discussion, but we have not considered that issue. If one enlarged the common law interdicts to provide a power of arrest, there would seem to be no reason why single-sex couples could not be brought within the scope of the law. Single-sex couples could not readily be brought within my suggested—and it was merely a suggestion—definition of cohabitation. If there were a desire to extend protection to single-sex couples, further thought would have to be given to the definition.

Christine Grahame: I am trying to find my way through this, Sheriff Wilkinson. According to your suggestion, the procedures open to us would be to produce a bill that created a statutory offence of personal violence against an individual, which, if proven, would lead to an interdict with a power of arrest attached to it. Is that correct?

Sheriff Wilkinson: My first suggestion would require a bill that amended the law of interdict generally, rather than the 1981 act, although I think that it would have certain consequences for that act.

Christine Grahame: That is what I am coming to. To develop my question further, if one takes decree and has perpetual interdict, what happens to the perpetual power of arrest?

Sheriff Wilkinson: That raises the question of the duration of interdict, on which I have not yet touched—the question has not yet been asked.

Christine Grahame: I will leave it, then, as it is a difficulty.

Sheriff Wilkinson: It is true that matrimonial interdicts are limited in time under the present law. Common law interdicts, once they become perpetual, are not limited in time—that matter might have to be addressed. In fact, it would have to be addressed if amending legislation was to have the effect that I canvassed.

There would have to be a provision as to the length of time that a power of arrest should last—either it could be a fixed time, or the court could be given power to fix the time within certain limits. A limit would be desirable; one does not want a power of arrest to exist in perpetuity unless it can be shown that there is a need for that. A requirement for a power of arrest without a limit would cause difficulties in administration and might reduce the effectiveness of the power.

11:45

Christine Grahame: Your second suggestion, Sheriff Wilkinson, is that we produce a bill that either amends or stands alone to work in tandem

with the 1981 act. That would deal with domestic violence by extending protection and making the presumption of cohabitation—under your definition—a loose one, to be rebutted.

My third point covers our concerns about the complexities if we leave the 1981 act standing in cases before the courts. Fourthly, I ask Sheriff Wilkinson for his views on Mr Wood's point on the disposal, the probationary system for husbands, spouses, partners or whatever. Should that system be included in any bill rather than a power of arrest being attached?

Sheriff Wilkinson: I do not think that I mentioned that.

Christine Grahame: No, it was Mr Wood, but what are your views on a probation system as another option for the courts, rather than arrest and incarceration, which seems quite draconian?

Sheriff Wilkinson: I do not see probation as an alternative to arrest, but there might be a case for probation as a disposal that was available in the event of a breach of interdict.

Christine Grahame: I accept that it is not an alternative. Perhaps I put my question wrongly. Is there another middle route for dealing with breach of interdict? I suggested counselling as an alternative to going directly from liberty to arrest and incarceration.

Sheriff Wilkinson: I do not think that a great deal of thought has been given to penalties for breach of interdict. One can imprison, fine, admonish and so on, but the matter has not received a great deal of consideration by the legislature or indeed, as far as I am aware, by the Government so far. Perhaps the availability of probation in such cases could be considered. However, it would be necessary to consult on that. For example, one would need to know how social work departments would react to the proposal. We have a great deal of trouble as it is with the enforcement of probation orders and community service orders, because of apparent staff shortages in social work departments. One does not want to add to those problems, and that possibility would have to be taken into account. Perhaps Sheriff Allan has a view.

Sheriff Allan (Vice-President, Sheriffs Association): Christine Grahame touched on an important point. We tend to think of the power of arrest as the end of the story but it simply removes, or gives the power to remove, the person from the scene of the trouble. We need something to follow that up. The 1981 act was framed with the complicated structure of having a prosecution, if there was evidence of a criminal offence, or a holding for a period of two days until a breach of interdict could be organised if there was no such evidence. I know that there is a recommendation from the Law Commission that that should go, but I am not clear on what will replace it.

I think that we are reaching for something like the Protection from Harassment Act 1997, so that a breach of the interdict would be a criminal offence. We could query whether that would need corroboration—probably it would. That would open up the range of disposals, which was raised with Sheriff Wilkinson, of which probation might be one. It is important that the committee keeps in mind what the penalty will be after the arrest takes place.

Gordon Jackson: I am not entirely clear on this point—could you tell me what happens to someone once they are arrested? In the real world, after a police officer arrests someone, what happens to that person in the following few days and weeks?

Sheriff Allan: My information might be a little out of date. Previously, the matter was reported quickly to the procurator fiscal for a decision on whether to take proceedings, and arrangements were in place for the person's solicitor to be notified if there were not to be criminal proceedings. I gather that that resulted in a short time for the solicitor to try to initiate breach of interdict proceedings. I am not entirely up to date on whether that is still the way in which it is done.

Scott Barrie (Dunfermline West) (Lab): On a more general point, mention has been made of the fact that we received information from the Police Federation. It stated:

"Police officers who work in specialist units dealing with domestic violence complain that Procurators Fiscal are too timid in instigating prosecutions, and Sheriffs are too reluctant to issue interdicts or apply punitive sentences."

Would you be prepared to comment on that and, if the scope of the interdicts were broadened, would that cause further difficulties for yourselves?

Sheriff Wilkinson: I cannot answer for procurators fiscal and I cannot comment on what particular sheriffs may or may not do. However, in my experience, interdicts are sought almost as a matter of course in cases in which there is any history of violence. Although I cannot say that they are granted as a matter of course, I am not aware of any reluctance on the part of sheriffs to grant them.

Scott Barrie: That would tend to be my experience of the courts, and I find it interesting that police officers have decided to comment on the matter in such terms. I thought that it would be useful to have clarification.

Tricia Marwick: I was interested in your earlier response to Christine Grahame, in which you said that you had had no specific training in domestic

violence issues. Can you give me an idea of the work load? What percentage of cases that come before sheriffs are domestic violence cases, or is that question too difficult?

Sheriff Wilkinson: I do not have any statistics.

Tricia Marwick: Do you have a rough guess?

Sheriff Wilkinson: Certainly, and sadly, it is an everyday occurrence. In the civil and criminal courts, we see a considerable number of cases of domestic violence, but perhaps particularly in the criminal courts. Applications for interdicts in respect of domestic violence are common in the civil courts, too. It is a common experience.

Tricia Marwick: Given that you are suggesting that domestic abuse cases come before sheriffs at least daily, do you think that specialist training should be available to sheriffs? If they knew about domestic violence issues, perhaps they would have a more considered view on them.

Sheriff Wilkinson: My answer might show my need of training, but I am not sure what we need to know. We know that it happens, we know that it is bad—if I may put it that way—and we know what the remedies are under the existing laws. I am not quite sure what more we need to know. Perhaps we do need to know more, but that is my response at present.

Tricia Marwick: We know that women in Scotland do not feel protected at the moment. Comments from the Police Federation about sheriffs and procurators fiscal support that view. The fact is that there are women in Scotland who feel unsafe. With respect, Sheriff Wilkinson, we all need to know more, and that includes sheriffs.

The Convener: I think that that was a statement rather than a question.

Sheriff Wilkinson: I do not know that I can add to what I have already said about that.

The Convener: To return to what you were saying a minute ago about the frequency of cases—what are you beginning to see under the Protection from Harassment Act 1997? Is that beginning to register on the radar?

Sheriff Wilkinson: I have no statistics, but my impression is that fairly little use is made of the act at present. I have not had a single case. Sheriff Allan tells me that he has had one. I would have thought that that was fairly typical. The impression that I have is that the act is not bearing fruit so far. That might change, but there seems to be limited use of it and such use as there is seems to be running into difficulties.

The Convener: Is there any indication of what the problems with the act might be? I appreciate that you are speaking without the advantage of detailed information, but have you picked up any indication of what the problems are?

Sheriff Wilkinson: I have not discussed this, so I do not think that I can say that I have picked up anything. The act requires either an action for harassment to be raised or for there to be relevant criminal proceedings. The tests for making an order have been interpreted in a way that does, perhaps, give rise to some difficulty. I suppose that the problem arises from some reluctance—because of the act's novelty—to raise the relevant actions, or from difficulties in interpreting the act that were not foreseen when it was passed. I cannot speak to any detailed feedback on that.

Maureen Macmillan: Sometimes I think that I am getting more and more bogged down in this quagmire. The idea of having legislation that stands separate from the 1981 act, that has powers of arrest and that is detached from the notions of occupancy rights or property rights, seemed very good. It then occurred to me that a person might end up having an interdict with powers of arrest against someone who was still living in the same house because, if one was a cohabitee or a grandmother, one could not exclude them from the house. Might we not get ourselves into a silly situation if that happened, and what is the way out?

Sheriff Wilkinson: Do you have it in mind that there might be difficulties in having a power of arrest where there was no power to grant an exclusion order?

Maureen Macmillan: If the exclusion order was attached to the 1981 act, there could be a power of arrest through that, but the protective element is separate and is easier if one is a cohabitee, say, because the definition of cohabitee is looser. We might find that a cohabitee can get an interdict with powers of arrest, but cannot get the man out of the house.

Sheriff Wilkinson: I can see that there might be a certain misfit when it is possible to get a power of arrest but not an exclusion order. Even under existing law, in relation to spouses, there can be cases in which an interdict with a power of arrest is thought to be useful but an exclusion order is not granted, or not applied for. The number of applications for exclusion orders is remarkably low. It would appear that interdict with power of arrest can coexist with non-use of exclusion orders. I take your point. I can imagine some cases in which that would be awkward.

12:00

Phil Gallie: Maureen spoke about a quagmire. You will forgive a simple mind who is not part of the legal profession.

We have talked about the Protection from

Harassment Act 1997, the Children (Scotland) Act 1995 and the Matrimonial Homes (Family Protection) (Scotland) Act 1981. We seem to be submerged in a range of acts which to some extent deal with the same problems, but perhaps the committee is going down a legislative line that will create another act.

Having heard Anne Smith speak this morning, should we—in your opinion—err on the side of caution and not rush into another piece of legislation? Should we wait to try and straighten everything out at one fell swoop?

Sheriff Wilkinson: It would be better if the committee could wait. This is a matter for the committee rather than for us, but you must consider priorities, and one is that people might suffer while the committee thinks about a general review of the law.

We are against piecemeal legislation in general. It creates problems and it makes the law untidy; it also usually results in problems being overlooked. Ill-considered legislation is always wrong, but there might be a need for urgency, and proper consideration might be given to what might otherwise be regarded as piecemeal legislation.

It is possible to give full consideration to the matter and to enact legislation that is directed peculiarly at this issue. As far as I can judge, you would be able to legislate in that fashion in this area.

Phil Gallie: Before hearing some of today's evidence, I was to some extent persuaded that that was a line that I would go down. One of the factors that coloured my judgment was that there appears to be a large proportion of victims of domestic violence who—because of the price—are excluded from going through the system to obtain interdicts. Surely that is important, and if the committee addresses only one element of the problem urgently, only half the problem will be solved.

Sheriff Wilkinson: That is a matter of policy for the committee.

Christine Grahame: Is not the solution to go along with Sheriff Wilkinson's first option—to attach the power of arrest to a common law interdict when there is personal violence? We could leave the 1981 act as it is, allowing cohabitees and spouses to apply to the courts for the two kinds of interdict that deal with the problems. We could also open that out to people who do not live in the same house.

I am thinking about the problem that was raised by Maureen—an exclusion order could still be obtained if there were grounds for that, but in tandem with that would be a common law interdict with the power of arrest attached, for issues that might arise after an individual left the matrimonial home.

Sheriff Wilkinson: There could be a common law interdict that excluded one party from a particular house as well as restraining that party from violence. That depends on the occupancy rights.

There is a problem—and one cannot get away from this—if the person against whom the interdict is directed has the right of occupancy of the house.

Christine Grahame: Would not that be solved by having the two kinds of interdict? The court could be asked for a common law interdict and a matrimonial interdict. Could attaching the power of arrest to common law interdicts in cases where there is personal violence solve the problem?

Would there be two powers of arrest, or am I too confused?

Sheriff Wilkinson: No. I do not think that you are wholly confused, or even at all confused.

If the matter were approached only in the way that you envisage, without any amendment of the 1981 act, there would be overlapping provisions. I do not know that that need result in two interdicts being granted, but there would be overlapping provisions.

Christine Grahame: Amending the 1981 act seems much more complex. I now tend to favour—God forbid—Gordon's proposal.

Gordon Jackson: I do not have a proposal.

Christine Grahame: You first raised the subject of the common law interdict with powers of arrest attached. That seems to be clear.

Sheriff Wilkinson: If you go down that road, you should consider what should be done about the 1981 act.

Christine Grahame: Yes. I am aware that they must interact.

Gordon Jackson: That is not my proposal; I am merely exploring possibilities. I am unconvinced that that would solve the problem that we are trying to solve. I am not at the proposal stage.

The Convener: We might be reaching the private committee discussion stage, which is a slightly different part of the proceedings. I thank both sheriffs for coming along.

I see that Anne Smith is still here. She is not scheduled to come back to speak to us; however, in view of everything that she has heard this morning, I ask her to return for five minutes to give her reaction to some of what has been discussed.

I promise that this will be brief. I want to get a

feel for some of the things that have been discussed, particularly the issue that Gordon has prompted us to explore to a greater extent than he might have expected—that is, to consider the matter from the perspective of a common law interdict with powers of arrest attached in certain circumstances. Would that go some way towards dealing with some of the concerns that you expressed earlier?

Mrs Smith: I think that it would. It would be a simple, neat way of approaching the problem to look at it from the police's point of view. They want something that is clear to the ordinary policeman on the streets at 2 o'clock in the morning, and I think that that would help.

One thing that concerns me slightly is whether common law interdict and matrimonial interdict are being confused. You might be using the term matrimonial interdict when you are talking about the special orders under the 1981 act. An exclusion order can be pronounced under that act. Automatically, an interdict and a power of arrest will follow an exclusion order, according to that legislation. That legislation also refers to any other matrimonial interdict, meaning a common law interdict. That is how it is interpreted in practice. In practice, we often talk of matrimonial interdicts when we are talking about common law interdicts as well.

I encourage you to focus on examining the plain and simple common law interdict, to recognise that, at common law, the court does not have the power to put on a power of arrest—that must be done statutorily—and to consider how you can sharpen the teeth of the court, on the matter of the power of arrest, in the context of common law.

Before I forget, I shall advise you on the protection from harassment orders that you mentioned. A problem has arisen regarding people's perception of the usefulness of such orders, as there are two conflicting decisions on whether an interim order can be pronounced under the legislation. Obviously, people are looking for a quick remedy; they need an interim order. One sheriff court decision says that there can be one; another interprets the act to mean that there cannot be one. I understand that that has put people off using such orders. You might want to consider the wording of the act and decide whether that issue can be resolved.

The Convener: Thank you. Does anyone have any brief questions for Anne Smith? I wanted her to have the opportunity to respond to some of this morning's discussion.

Gordon Jackson: I am trying to gather information, as I do not understand all of this. If two people are living in the same house as husband and wife, the wife can get an exclusion order and an interdict with a power of arrest. If two people are cohabiting, the woman cannot get an exclusion order.

Mrs Smith: Yes, she can.

Gordon Jackson: She can get an exclusion order?

Mrs Smith: In some cases, under section 18 of the act.

Gordon Jackson: Then why has it been presented to us as a problem that people cannot get exclusion orders?

Mrs Smith: Such orders are limited to six months. Section 18 of the act specifically gives a cohabiting partner the same rights as a spouse under section 4, which empowers the court to award an exclusion order. However, that order is limited to an initial period of six months and a second period of six months on special application.

Gordon Jackson: The only difference is in time scale?

Mrs Smith: As I understand it, yes.

Gordon Jackson: Am I allowed to ask the sheriffs something? Do they find exclusion orders for cohabiting couples easy to deal with in practice?

Sheriff Wilkinson: I have never done so.

Gordon Jackson: You have never had to deal with that situation?

Sheriff Wilkinson: The statistics show that there are fairly few applications for exclusion orders. I cannot recall the number of applications that I have had from cohabitees rather than from spouses. I cannot make that comparison.

The Convener: In fairness, I think that there might be some conflicting evidence of the practice as far as cohabitees are concerned.

Thank you. That concludes the committee's proceedings. I thank Anne Smith for returning to the debate for a few minutes.

Mrs Smith: Not at all. That was not a problem.

The Convener: That concludes the committee's public business. I remind committee members that we will now have a brief private discussion, which will last no longer than half an hour.

12:11

The meeting continued in private.

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