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Official Report

JUSTICE COMMITTEE

Tuesday 5 October 2010

Session 3

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JUSTICE COMMITTEE
27th Meeting 2010, Session 3

CONVENER

*Bill Aitken (Glasgow) (Con)

DEPUTY CONVENER

*Bill Butler (Glasgow Anniesland) (Lab)

COMMITTEE MEMBERS

*Robert Brown (Glasgow) (LD)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Nigel Don (North East Scotland) (SNP)
*James Kelly (Glasgow Rutherglen) (Lab)
Stewart Maxwell (West of Scotland) (SNP)
*Dave Thompson (Highlands and Islands) (SNP)

COMMITTEE SUBSTITUTES

Claire Baker (Mid Scotland and Fife) (Lab)
John Lamont (Roxburgh and Berwickshire) (Con)
Mike Pringle (Edinburgh South) (LD)
*Maureen Watt (North East Scotland) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Rhoda Grant (Highlands and Islands) (Lab)

THE FOLLOWING GAVE EVIDENCE:

Louise Johnson (Scottish Womens Aid)
Mhairi McGowan (Advocacy, Safety, Support, Information, Services Together)
Fiona McMullen (Advocacy, Safety, Support, Information, Services Together)
Girijamba Polubothu (Shakti Womens Aid)
Heather Williams (Ross-shire Womens Aid)

CLERK TO THE COMMITTEE

Andrew Mylne

LOCATION

Committee Room 6

Scottish Parliament

Justice Committee

Tuesday 5 October 2010

[The Convener *opened the meeting at 10:31*]

Domestic Abuse (Scotland) Bill: Stage 1

The Convener (Bill Aitken): Good morning, ladies and gentlemen. I remind everyone to switch off their mobile phones.

Maureen Watt MSP is substituting for Stewart Maxwell, who has sent us his apologies. The rest of the committee is, as ever, in attendance.

We turn to the first evidence session on the Domestic Abuse (Scotland) Bill, which has been introduced by Rhoda Grant MSP, who will attend for this item. I welcome her to the committee—as with other members' bills, the member in charge is entitled, as any MSP is, to attend any public meeting of the committee.

I welcome the first panel of witnesses: Louise Johnson, legal issues worker, Scottish Women's Aid; Heather Williams, manager, Ross-shire Women's Aid; and Girijamba Polubothu, manager, Shakti Women's Aid. We are grateful for your attendance this morning.

We will move straight to questions, and the first will be from Bill Butler.

Bill Butler (Glasgow Anniesland) (Lab): Good morning, colleagues, and welcome to the committee.

You may all want to respond to this question. Is there a danger that the bill will add to the complexity of the law surrounding domestic abuse? Would it be preferable to improve the effectiveness of existing measures to deal with domestic abuse, as the Law Society of Scotland has suggested to the committee, rather than creating new legislation?

Louise Johnson (Scottish Womens Aid): First, the problem is that the existing legislation is not only ineffective but quite inaccessible. When an interdict with a power of arrest under the common law is breached and no separate criminal prosecution is undertaken for a criminal act committed during the breach—an assault on the woman or on a police officer, for instance—the only option open to the court is to hold the abuser over in the cells for another two days, if the sheriff so decides. The option for the woman of enforcing the interdict involves taking a separate action for contempt of court, which means that she will have to obtain finance to fund the action, for which additional legal aid may not be available.

Secondly, in all the time—about 10 years now—that I have been with Scottish Women's Aid, I do not think that I have ever heard of any woman taking such an action. In anecdotal evidence from solicitors, they said that such actions for contempt of court can take some time and, if several months have passed by the time a case finally gets to court, the sheriff will look at the behaviour in the intervening period and then nothing will happen. It is a toothless and ineffectual remedy.

Bill Butler: Do the other witnesses agree?

Heather Williams (Ross-shire Womens Aid): Certainly, in the experience of women with whom we have worked, the current situation is that at times interdicts are not worth the paper they are written on. The hurdles in the process that the woman has to go through if she wants to invoke her rights are too high, and it is not seen as being worth while. She is the one who has to take action to protect herself. The man has done something wrong, but she has to go through the process at a cost to herself that includes time and inconvenience. The police and the agencies that are meant to be there to protect her are unable to do anything, because the man has not committed a criminal offence when the interdict has been breached. Taking such action can sometimes be a step too far in terms of the energy that it requires.

Bill Butler: Do you agree with Louise Johnson, and is it your experience, that the action that is open to the women of taking the perpetrator to court for contempt of court has never or only rarely been undertaken?

Heather Williams: I have never heard of anyone who has done it. The advice that the woman gets from lawyers is that she will get very little out of doing it.

Girijamba Polubothu (Shakti Womens Aid): It is even more difficult for black and minority ethnic women who have no recourse to public funds to take a man to court. As Louise Johnson said, it takes time to do that and, meanwhile, the woman may be harassed by the extended family members, or she may go back to the abuser and drop the whole case. There is also the fear that she will be taken away or abandoned; the consequences are not so good for some of the women.

Bill Butler: So that increases the pressure on the woman, who is innocent.

Girijamba Polubothu: Yes.

Bill Butler: From either the perpetrator or the extended family.

Girijamba Polubothu: Yes, it does.

Louise Johnson: It does indeed.

The Convener: Ms Johnson, you can perhaps confirm that the law on contempt of court was recently changed fairly radically as a result of an intervention by the European Court of Human Rights. Cases for contempt of court are now somewhat convoluted, to say the least. They cannot be taken before the sheriff who made the original judgment, and they have to go somewhere else after having been reported. Would that increase the difficulties for many of your clients?

Louise Johnson: Yes. Any process that makes it more difficult to enforce the order or is more convoluted certainly does not help, because the law is difficult enough as it is. I agree with you, convener.

James Kelly (Glasgow Rutherglen) (Lab): In relation to civil cases, the bill proposes to move away from the current provision that requires a course of conduct to be demonstrated before a non-harassment order is granted. Given that the Criminal Justice and Licensing (Scotland) Act 2010 has already removed that provision for criminal non-harassment orders, is it important for the bill to include such a provision for non-harassment orders in civil proceedings?

Louise Johnson: There should be parity in the law, for a start. If provisions have been amended to make it easier to obtain an order in criminal proceedings, it should be made easier to obtain one in civil proceedings, particularly where a member of the public—in this case, a woman—has to take the action herself. The problem with civil non-harassment orders, which has been rectified in criminal legislation, is the requirement to show a course of conduct, which in effect means that women have to be assaulted or there have to be several incidents before the order can be made. The removal of the course of conduct requirement would save women from having to go through a period of extended abuse before they can get an order.

The approach would also make the process simpler. Women who are experiencing domestic abuse find it difficult to seek an order in a crisis. The process can be difficult for them, so anything that makes it simpler is to be welcomed.

Robert Brown (Glasgow) (LD): As you said, section 1 would remove the course of conduct requirement. I am wondering about the ability of section 1 to change the law in practical terms, because it seems to me that the definition of "harassment" will still involve an element of continuity, even if we take out the course of conduct aspect. Given that "harassment" will continue to be defined as conduct that

"is intended to amount to harassment of that person",

are you concerned about whether section 1 would do what you want it to do?

Louise Johnson: We have no issue with section 1, but we can look into the matter further and raise issues with the committee at stage 2. Thank you for making that point.

The Convener: It would be preferable if you could raise the issue before stage 2, through correspondence.

Louise Johnson: No problem.

Robert Brown: The provisions on legal aid are perhaps the more difficult aspect of the bill. If legal aid without a contribution were to be introduced for a pursuer—I presume that most pursuers in such cases are women—would there be an obligation to introduce legal aid for defenders, in the context of equality of arms and the European Convention on human rights? Is an inevitable consequence of changing the approach for one side the obligation to change it for the other?

Louise Johnson: That has been suggested to us, but I am not sure that it would be an inevitable consequence. The issue needs further research. It has certainly been suggested that there would be more of an issue if breach of interdict were criminalised, because a person would be facing a criminal charge and potential imprisonment.

On equality of arms, we are aware of the ECHR implications of the approach. We would be interested in getting more information on that because, although a couple of colleagues have raised the issue, we have not had an in-depth explanation. We are looking for a more detailed treatise on why there would have to be legal aid without a contribution for defenders. The Law Society and a couple of other organisations have suggested that that is an implication of the approach in the bill, but we would like to know their reasoning.

Robert Brown: Do you regard that implication as a problem?

Louise Johnson: When we consider the whole issue of legal costs, we have to look at the overall benefit, depending on the number of people who are likely to take up the opportunity to pursue an interdict and the number of defenders. Our overriding concern is the safety of women, children and young people. It is clear to us that the increase in costs, which of course would be unfortunate in the current economic conditions, would be outweighed by the benefit that free legal access would bring in the context of protecting women.

Robert Brown: That brings me to a more general point about whether the approach is the best available use of resource in straitened times. In a sense, we would be giving protection to

people after the event, as opposed to trying to prevent the event in the first place. Is the approach the top priority in the list of changes that could be made to the civil legal aid system?

For example, we could extend legal aid without a contribution to death claims that arise when someone has been killed by an industrial accident or disease. We could make the case for giving such a change a high priority, if resource were available in that regard. Is removing the financial eligibility test for civil legal aid in the context that we are talking about so important that it should have priority over all other potential changes to the civil legal aid system?

10:45

Heather Williams: We think that it is important. Women are put off accessing justice. There are barriers that get in the way of their ability to protect themselves. We must remember that the perpetrators, not the women, are causing the problem, although it is women seeking to protect themselves who have to jump hurdles to access civil legal aid. One hurdle is the cost and, if that can be taken away, it will be easier for women to protect themselves.

There are financial issues, but we must consider the savings that could be made as a result of the change. An increase in the civil legal aid budget would mean up-front costs, but there could be savings for other agencies down the line, for example through fewer call-outs for the police.

Robert Brown: Is there anything more than anecdotal evidence that there is a problem with access to legal aid? I do not dispute that you have come across individual cases. However, the Scottish Legal Aid Board said in its submission, which you might have seen:

"The position in 2008/09 was that, of the 1371 financial assessments completed by the Board in cases containing at least one crave relating to a protective order, 97% were assessed as eligible, 77% with no contribution."

The board said that the lack of probable cause in some instances is a bigger problem than financial issues. If the figures are correct, they do not suggest that there is a major problem with access to legal aid.

Louise Johnson: First, the proposed approach would be of great assistance to the women who currently have to pay a contribution. We are talking about women who are fleeing domestic abuse and seeking protective orders at a time of crisis. It is obvious that they might have to move home and have all the expense of setting up home. They should not face an additional financial burden. They should not have to worry about how they will pay to protect themselves from the unlawful and abusive behaviour of a third party. There is that aspect of the matter.

Secondly, the bill would criminalise the offence of breach of interdict. Currently, women might not be applying for interdicts, because they know that there are difficulties with them and that, in some cases, abusers completely ignore the terms. If the approach is made more stringent and an interdict becomes a robust protection, so that women know that if an abuser breaches the terms the police will intervene and the abuser will face a criminal penalty, women will have more confidence in interdicts and it is likely that more people will seek them.

I agree with Heather Williams. If the offence of breach of interdict is criminalised, we think that the overall costs of policing and accessing interdicts with a power of arrest will reflect a reduction in call-outs. Currently, there is no criminal offence. An abuser can just turn up and stand or wander around outside the house and, if he does not commit a criminal offence, there is not an awful lot that the police can do about him. Women report that men continue to breach interdicts in that way. We hope that criminalisation would remove the problem of repeated incidents, each of which must be attended by the police and might involve a subsequent court hearing.

Robert Brown: I understand those points, which are valid, but may I go back to my original point? I was trying to find out whether there is any evidence—statistical or other—that contradicts the evidence from the Legal Aid Board. For example, is there evidence on Scottish Women's Aid's clients that shows, perhaps as a percentage, the extent of the problem of non-access to civil legal aid in the circumstances that we are talking about? Have you done any kind of survey of your clients in that regard?

Louise Johnson: We tried to do that, but it is difficult. Some women who come to us for support do not come back. Some see a solicitor but do not report to us the outcome of their application. We have asked solicitors about the issue—we did an exercise two or three years ago in relation to the matter—and solicitors are still telling us that contributions are the biggest barrier for women who are accessing protective orders, in particular because a whole wodge of benefits is treated as assessable income.

Girijamba Polubothu: Unfortunately, we do not keep statistics but, because we are a BME organisation, we more or less accompany the women to every appointment. One thing that we have realised is that when a woman has to make a contribution, no matter how little it is—even if it is £1,000 or £1,500—she pulls back from asking for the interdict because she cannot afford to pay that. As Louise Johnson said, one factor is that the

woman has to settle her life and another is that she has to pay.

Some of the women with whom we deal are on spousal visas and have no recourse to public funds, which means that they cannot access housing benefit or any other benefit. They have to support themselves by working. The majority of them have menial jobs such as cleaning, so they do not get much. Out of that small amount, if they have to contribute even £1,000, that is a lot. So women pull back. As Heather Williams said, the woman goes back to the abuser and there is a repetition. The abuse becomes much harsher. She faces much more hardship than she faced before she left. Then she realises, "Oh, I shouldn't have left—there's nothing for me out there."

If you want, we can get statistics even for the past two years on how many women have pulled back because they had to make a contribution and could not do so.

Robert Brown: I do not pretend that the problem does not exist, but I would be assisted by an indication of its extent. If you have statistics to give us, they would be useful.

Finally, I have a fairly important question on a technical point. In comment on the bill, a distinction has been made between legal aid for stand-alone actions such as those for protective orders, and legal aid as part of a wider action such as a divorce action. The bill is a little ambiguous on that. How do you hope that the provision on legal aid will apply? Should it cover all those actions and, if so, how do we deal with the implications of that? Alternatively, should the measure be restricted to stand-alone actions for orders, which might encourage separate actions and be unnecessarily complicated?

Louise Johnson: We anticipate that the provision on legal aid would cover stand-alone actions and craves for protective orders within a bigger application. I confirm that we do not envisage it covering other orders in an application that included an application for a protective order. If a woman was seeking a protective order and a divorce and so on, the other matters would not be covered. Obviously, there is a difficulty with isolating the application for a protective order. We discussed the issue with the Legal Aid Board and others at a recent conference. We wondered whether it was possible to identify a specific allocated cost for the part of an overall action that involves an interdict or protective order.

Obviously, we do not want to duplicate costs and we do not want women always to have to make a separate application for an order. The best people to advise the committee on the practicalities of that are the Legal Aid Board and the Law Society. However, no one has told us that protective orders could not be separated out or that an allocation of block fee could not be done, with everything just carrying on from that.

Robert Brown: A linked point is about other craves. There can often be disputes over custody and access to children, which in many instances is the top priority for the pursuer in such cases. Is there a valid distinction to be made in that situation between craves about child issues and craves about abuse issues, which are the subject of the bill?

Louise Johnson: We are clear that the measure deals only with issues of protective orders. Anything else would dilute the impetus of the bill, and is a separate discussion for another time. It would be handy in due course to have a discussion with the committee about free access for contact, but that is not what the measure is about. We are clear that it is only for protective orders.

Maureen Watt (North East Scotland) (SNP): Section 3 of the bill makes it a criminal offence to breach an interdict with a power of arrest in domestic abuse cases. The criminal standard of proof is that the matter must be proven beyond reasonable doubt. In addition, the criminal law requires corroboration. The Law Society expressed the view that any criminal liability without the criminal standard of proof and corroboration could not be accepted. If the effect of section 3 is to introduce the criminal standard of proof and the need for corroboration, what will that mean for victims of domestic abuse who use civil protection orders? Is there a case for taking a different approach, such as relaxing the general requirement for corroboration?

Louise Johnson: I mentioned in the Scottish Women's Aid submission the existing procedure for breach of probation orders and restriction of liberty orders: there is no need for corroboration and the evidence of a single witness can prove the breach. That is something to consider. We would not want to render civil protection orders unfavourable in the court. We would not want the courts to say that the procedure is uncertain and that they will not convict because the case has not been proven. However, there are already exceptions to the requirement for corroboration.

The problem is that one part of the process is a civil action and the other is a criminal action. The standard of proof that is needed to obtain an order in the first place is the civil standard, which is the balance of probabilities. As you rightly said, the standard of proof for a breach of an order would be the criminal one. There are other situations in criminal law in which the police take all steps to ensure that all necessary evidence is collected. The procedure that they follow, the robust approach that is taken by procurators fiscal to the

prosecution of offences that involve domestic abuse and their insistence on good levels of evidence should help.

We do not think that the bill will make proving breach any more difficult than it is now, but we ask the committee to consider other offences that do not need corroboration from two single witnesses. Perhaps that could apply.

Maureen Watt: Will you give me an example?

Louise Johnson: My submission says:

"The general requirement of Scots Law that essential facts be corroborated by evidence from two independent sources has been relaxed in relation to proof that an offender has failed to comply with a probation order for the purposes of section 230(1) of the Criminal Procedure (Scotland) Act 1995. In such proceedings the evidence of a single witness that a probationer has failed to comply with a requirement of a probation order will be sufficient."

It also goes on to mention that

"breach of a restriction of liberty order"

can

"be proved by the evidence of one witness"

along with

"breach of probation, community service, drug treatment and testing, and supervised attendance orders."

The exception to corroboration already exists.

Maureen Watt: The difference with those cases is that the evidence is given by an independent person, usually an official, whereas, with civil protection orders, the victim is usually the one who has the evidence.

Louise Johnson: You cannot suggest that the evidence of the woman who has experienced domestic abuse would be of any less value than, or would be compromised in any way in comparison with, a report from an official.

Maureen Watt: It is a matter of independence, is it not? That is what the Law Society would say, I think.

Louise Johnson: The existing law regarding the exceptions does not say anything about the allegation having any more weight if an official makes it. If a woman has a civil protection order and calls the police to say that her abuser has breached it, that is her evidence and her evidence alone should be sufficient.

Do not forget that the evidence would be tested in court. The fiscal would not take the case forward unless they were sure that they could prove it. It is not in their interest, it is not in the court's interest and it is certainly not in the woman's interest to go ahead with a case in which the sheriff cannot say that the breach has been proven. The exception to corroboration is only one part of the matter. The evidence would have to be tested and would have to be solid.

11:00

Heather Williams: At the moment, the breach of an interdict with the power of arrest is pretty much a toothless instrument. The one positive thing about it is that the police will attend and remove the abuser if he is still there, and that would give the corroboration. The police are there, he is there and he has breached the interdict.

The type of case that you are talking about is when a woman phones up and the abuser is no longer there when the police arrive. I can see why that might be a difficulty if it becomes a criminal offence. Again, as Louise Johnson said, there are already exceptions to the requirement for corroboration. If it becomes a criminal offence when the police turn up and the abuser is still there, that will be better than what we have at the moment whereby the police take him away and she has to go to the courts to get some kind of satisfaction, which rarely happens. However the bill goes, I suppose that there will still be benefits.

Maureen Watt: That is helpful.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I move on to section 4, which, if it is not the most controversial, is nevertheless causing quite a bit of debate between organisations that have an interest in the field. If the bill is enacted, there will be a statutory definition of domestic abuse. Is that necessary? If no definition was provided, would it be clear what the term means?

Heather Williams: One of our concerns is about the definition in the bill. We do not support the introduction of a statutory definition in the bill because it does not exist in other legislation that covers domestic abuse. When we try to define something in statute in that way, we face the problem that the definition could be too wide or too narrow. Domestic abuse is a pattern of behaviours; it is difficult to capture that in a definition that covers everything, so some people could be left unprotected.

Louise Johnson: We have a problem with the meaning of the term because of the problems that Heather Williams has just outlined. The definition in the bill, which is too wide, moves away from the accepted understanding of domestic abuse of partners. I have spoken to several solicitors who have said that the definition is not helpful, that it should be removed completely, and that the only reference should be to domestic abuse.

The Children (Scotland) Act 1995 operates perfectly well by using the term "domestic abuse" with regard to the consideration that the court must give to the welfare of the child in terms of

contact and residence. Other pieces of legislation, with regard to housing and so on, use the term "domestic abuse".

The definition in the bill is not correct, and its inclusion will have unforeseen consequences.

Cathie Craigie: You said that the definition is not correct. Is there a correct definition?

Louise Johnson: The understood definition is the one that the Scottish Executive gave in 2003, which refers to partners. However, we would prefer the bill just to use the words "domestic abuse", and for the term not to be defined in law. The 2003 definition is not incorporated in legislation.

The problem with a definition, especially with regard to domestic abuse, is that if it is too wide, it encompasses relationships and people incorrectly. If it is too narrow, abusers can take themselves out of it. It could also cause problems under criminal law. We would rather have no definition at all.

Girijamba Polubothu: For us, the domestic abuse definition gets a bit more complex. Most of the women who come to us also face domestic abuse from their extended family members. I mean those who live within the household; I am not talking about those who live outside the community. The women tend to live in joint family systems, so the abuse might not come from the husband. The mother-in-law might instigate it and the husband might join in later after a few months or a year. However, that is a different issue.

As Louise Johnson said, for us it would be better just to have the term "domestic abuse" in the bill.

Cathie Craigie: One of the responses that we have received to our call for written submissions is from the Association of Chief Police Officers in Scotland. Assistant Chief Constable Cliff Anderson, who prepared the response, highlights the issue of honour-based violence. He states:

"Adoption of the proposed definition would provide increased protection to such victims from specified family members".

However, he also points out that

"such abuse can be perpetrated by other members of the extended family"—

uncles and whatnot. That is support for an extended definition coming from a senior source among people who have to go out there and call people to justice for acts of domestic abuse. How do you respond to that point?

Louise Johnson: The problem is that, if the definition were extended to cover all family members, it would be possible for it to catch someone falling out with their parent, brother, sister or other relative. That is not domestic abuse as we know it just now, but it would be domestic abuse under an extended definition. An interdict would be an inappropriate use of public funds in such cases, and it would not be right to bring such incidents into the sphere of domestic abuse. Nevertheless, we take Giri's point on board. She raises a valid issue, and we would be interested to see how we could address the situation under the existing law without extending the definition. We have discussed the matter, and the number of women who experience that situation—is it high?

Girijamba Polubothu: It is quite high. I cannot give a percentage, but the majority of women in that situation in the Asian community face domestic abuse from their mother-in-law, brother-in-law or sister-in-law. For us, it is important that that is recognised in the definition of domestic abuse; the issue is how we can do that. As Louise Johnson says, if a woman's brother abuses her is that domestic abuse? However, in forced marriage cases, that can happen. There was a case in England in which a mother held down a young girl while the brother put a pillow over her face and killed her. We need to discuss how we can bring such issues into the bill. For us, it is important that abuse by family members is included.

Cathie Craigie: So, is it the general view of the panel that the definition in the bill would not be useful?

Louise Johnson: Yes.

Girijamba Polubothu: It is not sufficient.

Cathie Craigie: Could it be amended to take account of some of the issues that we have heard about this morning?

Louise Johnson: The problem is that, in including additional family members and relationships outside the known definition that is used by the Scottish Government, there will be unforeseen consequences for the operation of other legislation regarding the criminal law, funding, services and so on. Also, we do not know whether it would be proportionate. If the definition were extended to parents, children and grandparents, where would it stop? That is the problem. It is an issue for black and minority ethnic women that we need to address, but we do not think that it would be addressed by extending the definition with a catch-all clause that could include family members across the board in situations where domestic abuse would not be an issue, as opposed to situations such as those that Giri is talking about.

Cathie Craigie: Keeping to the subject of honour-based abuse, could we try to include that anywhere else in the bill?

Louise Johnson: If such abuse involved the woman's partner, that would be covered by the legislation. I do not know how the legislation itself will operate, but I presume that it will also cover cases in which a woman was being harassed by her family as an extension of the domestic abuse that her partner was already perpetrating on her. The Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill might also contain provisions that would cover some of these issues. Certain issues need to be considered in parallel, but not all of them.

The Convener: Might it not be tidier to deal with the issue in the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill?

Louise Johnson: It might well be. Again, we raised the issue in our submission.

Girijamba Polubothu: Honour-based killings happen not only in forced marriages but when a woman leaves an abusive partner, because such an action brings dishonour to the community. In the past three years, we must have dealt with at least half a dozen cases in which a woman, having left the perpetrator, was duped into going back to her country because she was told, "Everything's fine. Let's go and see your family," and was then simply abandoned. For some reason, the children stayed here or one of the children was taken abroad and then brought back along with all the papers, leaving the woman in the other country. We have helped about half a dozen women come back to this country because legally they had immigration status and could stay here. In those cases, the women were only abandoned but, in other circumstances, there could be a killing.

Cathie Craigie: I take the point about the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill, but we are quite a few steps ahead of that with our consideration of this bill and I would welcome any other thoughts that you and your organisations have on the matter.

Girijamba Polubothu: When the bill was introduced, we met a number of women to explain it and get their thoughts on it. Although most of them welcomed it, especially its criminalisation of the breach of interdict and the fact that the man in question will be put in prison or will have a criminal record, they made it clear that they would need protection from other family members because they would be seen as having done something really, really wrong. It is not as if everything is fine once the man is put away.

Louise Johnson: The type of behaviour that we are talking about could be covered by non-harassment orders. If it were easier to get such orders, the woman could get them against the extended family; indeed, such an order could be taken against the partner before any other action is taken. If he breached the order, he would be dealt with, and the rest of the family would still be subject to another non-harassment order. The process, in which the breach of a civil order has a criminal outcome, would be similar to that for forced marriages and such provisions would be a very welcome step in supporting women from black and minority ethnic backgrounds in dealing with continuing abuse from families.

Girijamba Polubothu: Last year, we supported 229 women; of the 161 who left their husbands, 86 were from Asian communities and of that 86, 56 were from Pakistani communities and the rest from Indian and Bangladeshi communities.

Robert Brown: Most of us who have any experience with such matters will agree that breach of interdict actions are very cumbersome and, as you say, very difficult to use.

Louise Johnson: Indeed.

Robert Brown: I imagine that some of these issues arise from child access disputes either on handing over or at some other point at which allegation and counterallegation might flow. Do you agree that most breaches of interdict are actually breaches of interim interdicts, which are granted before anything has been proved and as a result of allegations made to the court? Does that raise any issues? It seems to me that it raises a number of problems if the matter becomes criminalised further down the line.

11:15

Louise Johnson: We have not particularly looked at that, so I cannot give you a definitive answer. In relation to breaches as regards contact, the interdict would have to be changed or the situation at handover would have to be such that it did not breach the interdict. Heather Williams and Girijamba Polubothu can comment on this as well, but women tell us that the breaches are not in relation to child contact. Most of the breaches that occur involve the abuser turning up at the home and so on. What is happening in relation to contact orders is probably a criminal offence, but such breaches are not.

Robert Brown: That is helpful.

Heather Williams: In the area that we cover, the Highlands, a few of the lawyers are advising women not to go down the interdict route because it causes difficulties if there have to be handovers and things like that. That is the advice that some of the lawyers in the Inverness area have given to some of the women we have worked with. On a few occasions we have supported women to challenge that, because concerns for the safety of the woman and the children have shown that an interdict is required, whether or not contact

arrangements are put in place further down the line. That is certainly happening in the Highlands. If there are children in the equation, the solicitors are recommending that an interdict might not be the best way to go. They are writing to the abuser to ask them not to do whatever is happening. If that does not work, they are going for the interdict.

Child contact complicates the situation slightly because there might have to be handovers and things like that, but it is certainly not just because of child contact that interdicts are being breached, that abusers are turning up when they are unwanted, or that there are texts and phone calls or other behaviours that create pressure and fear.

Robert Brown: Can I pursue that point? The difficulty is that we are talking about criminalising things that in other circumstances are not criminal. If someone assaults or harasses their partner or ex-partner and causes a breach of the peace, that can be dealt with by the criminal law. Can you give us a flavour of what circumstances might lead to a breach of an interdict that does not have criminal consequences, so that we have an idea of what we are talking about?

Heather Williams: This example involves somebody we are working with at the moment. The abuser has been taken to court for his criminal behaviour and he is now changing tack. He is turning up and standing outside the person's place of work. He is turning up on streets where he knows she and the children will be. It is not overtly threatening; it is just being there. This is a gentleman who has been physically violent in the past. None of the tactics that he is using is criminal—he is not actually doing anything that would be seen to involve the police—but he is turning up at places where he knows the woman and the family will be, standing across the street from her workplace, and being in the shops when she is going for her shopping. Those things are causing the woman great alarm and distress, but he is not breaking the law per se.

Robert Brown: You are aware of the new provisions on stalking that are coming in under the Criminal Justice and Licensing (Scotland) Act 2010.

Heather Williams: Yes.

Robert Brown: Will they not deal with many of those incidents more effectively than the arrangement in the bill?

Louise Johnson: Non-harassment orders, as they stand just now, can cover behaviour that is not overtly criminal, such as sending texts and letters and making phone calls, which can also be breaches of the Communications Act 2003. They also cover things such as the sending of unwanted letters and gifts—behaviour that goes beyond that covered by an interdict.

It depends what behaviour we are trying to cover. Interdicts prohibit the continuance of a particular course of behaviour, which includes stopping the abuser abusing. They also prevent the abuser from being outside the woman's house, the family home, her place of work and the children's school. As Heather Williams said, all that abusers need to do is stand outside the house, follow the woman, be there when she is shopping, get their friends to do that, hang about the school or be where she goes out for a drink or to the cinema—just be there. They do not need to do anything. The perspective of the woman is that the individual is there and she does not know what is going to happen. The continuance and dynamic of abuse mean that the person has the ability to place the woman in a state of fear just by being there.

Heather Williams: The difficulty for us, working in small rural areas, is that his defence is, "Where am I meant to go?" If we are talking about the High Street in Tain or wherever, the question is, "What's the problem?" However, the issue is the impact. The defence is that they live in a small area, and he has to do his shopping and so on, and it can be difficult to prove the pattern of behaviour because obviously he has to go about his daily life. The actions that he is taking, such as standing outside her workplace or being in the shops, are targeted, but how do we prove that in a small town?

Robert Brown: So there are quite difficult issues of definition.

Louise Johnson: The new stalking provision has not been tested. The circumstances that brought it about were not specifically to do with domestic abuse. Women can be stalked when domestic abuse is not an issue, by someone whom they do not even know. They can be stalked by previous partners or partners whom they have separated from, which is a different issue. We do not know how that provision will operate, but there are tried and tested existing orders. They might not necessarily work completely as they stand, but we know that they have an application and that the courts will grant them.

Girijamba Polubothu: I want to add something from the perspective of BME women. Sometimes it is their own family, the in-laws or the friends who facilitate the behaviour that we have talked about. They invite the man and the woman, but the woman does not know that the man will be there too. How would we deal with that situation? Once the woman is in the house, she sees him, and although the friends or family say, "He's just visiting us," it is actually a planned visit. That is harassment, but it is very difficult to prove that it is.

Louise Johnson: That might be looked at under the new harassment law, but as it is new we do not know. We are talking about specific

situations that we want to ensure that the law covers.

Robert Brown: Thank you.

The Convener: We have had a few cuts at the issue, and in the first answer to Mr Butler you indicated that the existing law is not affording the protection to your clients that you would wish. In the old days, the issue was dealt with simply by the criminal law under breach of the peace and assault, the civil or common-law interdict being introduced as necessary. We then had the Protection from Harassment Act 1997, and we then had another go with the Protection from Abuse (Scotland) Act 2001, which Rhoda Grant clearly feels is not working satisfactorily—she would not have introduced the bill, otherwise. Should we go back to basics and start again?

Louise Johnson: Oddly enough, we were discussing that earlier. First, I do not think that this is the time to engage in a wholesale review of every protective order that we have. We need to ensure that women are protected, and then we should see whether what we have is working and look at that. If we start to review orders in the interim and women are still not protected by what we have, there is no guarantee that a wholesale review of the law will obtain what we want. We have elections next year and we do not have time to introduce anything else—how long would it take? Our concern is immediate protection for women; anything else would be a long-term view.

The Convener: I think that the collective political will would be that we would wish to do everything that we can to help, but sometimes it is not possible simply to cut and paste from existing legislation; more radical action may be required. However, you feel that speed is of the essence.

Louise Johnson: Yes, because we would have to start again but, in the interim, there would still be situations in which interdicts did not protect women. Interdicts are the most common kind of protective order that women get, although some women may seek non-harassment orders. It depends on how their application is received, the evidence that they have and so on. There will come a time when we need to look at all the orders, but we must look at how non-harassment orders and interdicts with a power of arrest are applying. We know for a fact, as we have evidence and research to show it, that exclusion orders are not working particularly well, either.

How do we decide what to do? When should we do it? We would have to redraft all the relevant provisions, which would take time. There would have to be consultation. As I said, that is perhaps something for the longer term. We need to look at protecting women, children and young people who are experiencing domestic abuse and we need to do that now.

The Convener: Rhoda Grant has listened to proceedings. Do you have any questions to direct to the panel?

Rhoda Grant (Highlands and Islands) (Lab): Thank you for allowing me to be here. I will resist the temptation to give evidence. It has been interesting to listen to the arguments, and ideas have occurred to me as I have done so.

I have just one question, which is really a cover-all question. What is the impact of domestic abuse on women and families? It is extremely important for the committee to understand what we are trying to do.

Louise Johnson: How long have you got? We can send the committee some information that we have.

Domestic abuse is a pernicious, sustained attack on someone's very liberty, their spirit of being and their existence. It is a controlled, definite course of action; it is not a one-off incident. It is an abuse of power and control over a person with whom the abuser is having a relationship, whom they should be protecting and looking after. Instead, they are abusing power and placing people—usually the women, children and young people whom we support—in a state of fear and alarm with absolutely no justification.

Heather Williams: The convener asked whether we need to start again. Although I agree with Louise, I think that a review would probably not hurt, because there are cases in which women are simply not protected or have great difficulty getting protection, particularly if they have had to flee from their home to another area. In those circumstances, it can be particularly difficult to get protective orders, because that can lead to it having to be disclosed where in the country the person is, for example. There are definitely difficulties with the laws as they stand.

As far as Rhoda Grant's question is concerned, the answer is that it varies from woman to woman, but for a lot of women the major impact is on their self-esteem, their self-confidence and their mental health. In other words, domestic abuse affects their very being. We all know about the violence, which has been well publicised. When we talk about domestic abuse, physical violence is what people think of most often. It is true that domestic abuse has repercussions such as women being murdered or ending up in accident and emergency wards, but it has wider effects.

I am talking about coercive control, which, as Louise said, takes away people's liberty and their ability to make decisions and choices that, to me and you, are everyday. We get up in the morning

and decide what we are going to wear and what we are going to do that day. We decide what our plan is. To an extent, women who live in abusive situations do not have those choices because they have been taken away from them. Basically, they have to do what someone else tells them to do, which has a massive impact on their well-being and how they live their lives; it also has a huge impact on the children and young people who come to our organisation. That aspect can sometimes be forgotten about if we are focusing on the actual incidents, which can be to the detriment of the people whom we are trying to support. It is not about incidents or one-off events; it is about a pattern of behaviour and on-going assault on the person's very being.

11:30

Louise Johnson: Imagine waking up one morning and having to leave your house. You have to go now. You might have to leave with whatever you are wearing. You might be lucky enough to have some of your important documents with you. You might have to collect your children from school—making sure that he is not there—or you might have to keep them off school and make up a reason why they are off school. You might have to leave your job as well as your house. You will need to get into a Women's Aid refuge, say. You need to find a refuge that is able to take you in, and you have to remain anonymous. You then have to find another job and access benefits—you have to find housing benefit for living in the refuge.

Then, you have to get an interdict with a power of arrest to keep him away. You might want to get back into your house, but you cannot get back into your house in certain situations, if he has the legal right to stay there, so you need an order to get him out. All that is going on, you are still concerned about your safety, and he might be wanting to see the children, but you know that the situation will not be safe for you, and that such contact is not of any benefit to the children—it might only be for carrying on the abuse that has been perpetrated against you and the children. That is your life.

Girijamba Polubothu: In addition to that, if the woman cannot speak the language and she does not know the rules and regulations in this country, if she leaves and then finds out that no refuge will take her because they cannot access any benefits for her, and she has children, you can add that to what Louise has been saying and you can appreciate how difficult it would be for a woman in that situation to leave the abusive relationship. Most of them think that they are better off staying in that abusive relationship, rather than leaving. Most murders happen once the woman has left, not while she is with the abuser. For a woman, her journey starts after she leaves—the difficult bit is after she has left the abuser.

When you review things, you must take into consideration the fact that Scotland is a multicultural country now. You have to take into account other communities' cultural views and so on when you are considering the legislation. That is for the longer term, however.

The Convener: Thank you very much indeed for your attendance. Your evidence was very clear, and the committee is obliged to you.

Louise Johnson: Thank you for the opportunity.

11:32

Meeting suspended.

11:35

On resuming—

The Convener: I welcome the second panel of witnesses, who are from ASSIST—advocacy, safety, support, information, services together. The panel comprises Mhairi McGowan, operations manager, and Fiona McMullen, service manager. ASSIST provides advocacy and support services for victims of domestic abuse and is linked to the domestic abuse court at Glasgow sheriff court, which has been operating since 2004.

ASSIST works in partnership with Strathclyde Police, Glasgow sheriff court, the Crown Office and Procurator Fiscal Service, Scottish Women's Aid, victim information and advice, Victim Support Scotland, Children 1st and others, so it is a fairly comprehensive organisation. It is funded by the Scottish Government and Glasgow community and safety services. I welcome both witnesses to the meeting and thank them for giving evidence. We will proceed straight to questions.

Bill Butler: Good morning. Thank you for coming along. I will put to you the same question that I put to the first panel of witnesses. In your view, is there a danger that the bill will add to the complexity of the law surrounding domestic abuse? Would improving the effectiveness of existing measures, as the Law Society has suggested, be preferable to creating new legislation? What is your view on the Law Society's opinion?

Mhairi McGowan (Advocacy, Safety, Support, Information, Services Together): The bill will clarify the position and simplify the situation for people who experience domestic abuse. The current situation is not tenable. I am pleased that the bill has been introduced, because we deal daily with situations that it would cover. It is a welcome piece of legislation.

Bill Butler: You said that the current situation is not tenable. Can you explain in greater detail why it is not tenable?

Mhairi McGowan: ASSIST was brought into being to deal with criminal situations, but civil proceedings have also become part of our currency. There have been situations in which women have obtained interdicts, the perpetrator has been arrested on a criminal charge, the charge has not gone forward and the accused has been liberated. If someone is taken to court for breach of interdict, they are put in custody for two days. I know that that is supposed to be a cooling-off period to allow folk to think about what they will do next. However, when all that happens is that someone is remanded in custody for two days, women who have been living with the process of abuse for a period of time wonder whether people and society are taking them seriously.

When they ask us what happens next, we tell them that they need to raise an action for breach of interdict. Then they have the difficulty of finding a solicitor who will accept legal aid cases and of dealing with payment issues. There is also the time that it takes to raise such an action. Throughout the process, there is the issue of the safety of the female or male victim and of any children who are involved. At the end of the day, safety should be the paramount question. However, the complexity of the law at the moment presents women with an unmade jigsaw, and they have to move from pillar to post to sort it out. It is society's responsibility to say that we believe that all our citizens deserve to be safe.

Bill Butler: That is a clear answer.

Fiona McMullen (Advocacy, Safety, Support, Information, Services Together): One of the welcome things about the robust stance that is taken with the domestic abuse court and ASSIST is that women are no longer the people who are responsible for bringing cases to court. Elements of the bill mirror that in making society responsible for saying, "This isn't acceptable and we will take measures to protect you."

Bill Butler: That is very clear. Thank you.

James Kelly: Good morning. In your submission you argue that non-harassment orders have to be made easier to access. The Criminal Justice and Licensing (Scotland) Act 2010 removed the need for a course of conduct to be demonstrated in relation to criminal non-harassment orders, which makes it easier for such orders to be accessed. How important is it that the bill addresses non-harassment orders in a civil context?

Mhairi McGowan: Many victims of domestic abuse never come into contact with the criminal justice system, so it is important that there is equality between civil and criminal law and that people who experience harassment and who want a non-harassment order, which is the best option available at the moment, should be able to get it without proving a course of conduct. It is incredibly difficult to prove a course of conduct. I can understand why the Protection from Harassment Act 1997 said that a course of conduct should be proved, but I go back to the point that the convener made earlier: time has moved on and we have seen how the 1997 act has operated in practice. It is really important that the requirement to prove a course of conduct in relation to non-harassment orders is removed.

Robert Brown: I want to move on to questions about legal aid. I want first to deal with the technical point about legal aid being available for stand-alone protective orders and for protective orders as part of a wider divorce action or whatever. What should we be seeking to do?

Mhairi McGowan: I agree with what Scottish Women's Aid said. It is important that we do not open the floodgates and say that everything that is going through the court at one time should be free. I do not think that that is appropriate. However, it is appropriate that safety orders and protective orders are free.

It is not my experience that people will look at all the options at the one time. Most of the women whom I have supported since I came into this field 15 years ago asked for an interdict first. That is about giving them safe space to consider their options after that. It might be some time before they think about divorce or other issues, but it is important that they have that period of reflection. When you are living with domestic abuse, it is very difficult to think about the big picture. You are so taken up with the day-to-day reality of creating a safe environment for your children and trying to ensure that they still have good Christmases, good birthdays and a good quality of life that it is incredibly difficult to work out what you want to do in the long term. Interdicts should give you the safe space to think about what would be best for you and your child.

Robert Brown: I guess that many cases involve non-married partners.

Mhairi McGowan: Absolutely.

Fiona McMullen: As we heard earlier, separation is recognised as being a time of great risk. Women are often looking at how to get to safety. The rest can come later.

Robert Brown: Are you suggesting that we should deal with legal aid for stand-alone orders, if that is what is desired, rather than try to get into the rather more complex issue of wider actions?

11:45

Mhairi McGowan: Yes, but a number of victims of abuse might well decide that the best way forward is to sort out the situation at the beginning. They should not be disadvantaged just because the majority deal with matters differently.

It is important to remove means testing for stand-alone orders. However, if somebody decides to do everything at one time, the protective order part must be protected. The suggestion by the Scottish Women's Aid witness that the Scottish Legal Aid Board could estimate the costs of the relevant part of an action would help.

Robert Brown: Your submission says:

"It has been suggested that 1 in 4 women cannot proceed with an application for a civil protection order due to legal aid contribution levels or failure to access legal aid."

Where does that statement come from? It is not sourced.

Mhairi McGowan: I found the information in a study. I have been looking for it for the past two days and—if members can believe it—I cannot find it, so I will need to send the information to the committee.

I have been trying to estimate the number of women who are involved. We deal with men, too, but few of our male clients—if any—have sought protective orders. Of the women whom we have supported, roughly 10 per cent of our client base decide not to go for protective orders. That concurs roughly with what other organisations have said in their submissions.

Robert Brown: Will you elaborate on the reason for that?

Mhairi McGowan: The standard answer is that an interdict is not worth the paper that it is written on, so why should people bother? The difficulty relates to the breach issues. An interdict is seen as having no teeth: people think that it has no point, so they do not go for it.

The other issue is the cost. Nobody—whether they are male or female—can leave an abusive situation without incurring financial consequences. When people separate from their partner, disentangling all the different monetary and other financial assets is incredibly difficult and cannot be done without a loss being incurred. It is inappropriate for women to have to pay for protection while trying to ensure a decent standard of living for themselves and their children. People should not have to pay for protection.

Robert Brown: So that we know the context, I will ask about the cases that you deal with. One imagines from the description of your organisation that your clients are already in the court context in some way or other.

Mhairi McGowan: Mostly.

Robert Brown: Is what I suggest not quite the case?

Mhairi McGowan: ASSIST was set up to deal purely with criminal cases, but we receive referrals directly from the police. At that point, the police might still be looking for the perpetrator, who might have to be traced. The fiscal might decide that the evidence is insufficient and liberate the guy, so the case might not proceed. By that time, we will have done the risk assessment and initial safety planning, because we are in touch with a client within 24 hours of receiving a referral. We must follow up what has happened to a case and find out whether it is going through court. If it is not going through court, we still provide safety planning. Fiona McMullen will talk about that.

Fiona McMullen: Often, the very high-risk clients are those who do not have cases that are going through court. Alternatively, they might have a case going through court for a domestic breach of the peace but—because of the nature of domestic abuse—they might have a horrific history of assaults, for example. Bail conditions offer excellent protection for a short time, but they might apply only for the course of the domestic breach of the peace case. The need for other protective measures would remain, because of the relationship's history.

Robert Brown: My final question on legal aid is about the focus. Increasing legal aid is an expensive operation—it has a reasonably significant cost. The Scottish Legal Aid Board and others have suggested that there might be a better way of doing what the bill seeks, perhaps by greater funding of an organisation such as yours or some other voluntary sector group that would focus on domestic abuse issues, rather than a general change in the legal aid provision. Would that be appropriate?

Mhairi McGowan: The issue then would be how to ensure that everyone in Scotland had the same access to justice, which would be incredibly difficult to achieve. We know that there is a huge discrepancy across the country. We have the only start-to-finish domestic abuse court and we are the only service of its kind. I understand why it is not currently possible to extend ASSIST's remit to further geographic areas but, at the end of the day, we must try to get the law to a state in which, no matter where someone is, they can obtain the same orders. If we began to license organisations, what kind of administration would need to be set up to ensure that they all worked appropriately?

Fiona McMullen: Although it is important to support victims, which is what we have been doing

for several years, the bill is also about making perpetrators more accountable. Until we do that, we will not get enough protection for women and children. The bill is partly about making perpetrators more accountable.

Robert Brown: You have made the point that fewer solicitors are willing to carry out civil legal aid work. That is not quite what the Legal Aid Board says but, nevertheless, in your view that is one of the barriers to access to justice.

Mhairi McGowan: Absolutely—that is a huge barrier.

Robert Brown: Is that a problem in Glasgow in your experience? I would be surprised if it was.

Mhairi McGowan: Yes, it is, actually. Fewer and fewer solicitors are doing this kind of work, and it is an issue in Glasgow, too. It is an issue for people no matter where they live in Scotland, and it needs to be tackled.

Maureen Watt: Section 3 is on breach of an interdict with a power of arrest. In your written submission, you argue that there are considerable advantages in criminalising such a breach. You say that it would free up court time and send out a message that those breaches of court orders were being treated seriously. What impact would there be on victims of domestic abuse if breach of an interdict with a power of arrest in domestic abuse cases were made a criminal offence?

Mhairi McGowan: It would give them additional protection. They would know that, if they phoned the police, the situation would be treated seriously. They would know that society was saying that the breach was not acceptable. For the victim, it would take the matter out of their hands. You might remember that, a number of years ago, people asked the victim, "Will you charge him?" There was no understanding that it is the police who charge and not the woman. People now understand that better. The perpetrator would know that it was not the woman who was stopping him or criminalising him—it was his behaviour.

The measure is part of the move to hold perpetrators to account and to say that it is their responsibility, not the woman's. The more of the process that we can take out of her hands, the better. Many clients say, "Thank goodness the police didn't ask me if I wanted to charge." We have women who are too frightened to say anything to the court other than, "I don't want to pass any information to you at this time." That is because they are frightened that, at the end of the day, the system will not hold the perpetrator accountable. Criminalising the breach of an interdict would give a strong message to perpetrators that Scotland treats the issue seriously.

Maureen Watt: If the effect of section 3 is to introduce the criminal standard of proof and the need for corroboration, what will that mean for victims of domestic abuse who use the civil protection orders?

Mhairi McGowan: There are many occasions when there are witnesses. Strathclyde Police converts roughly 70 per cent of domestic incidents into crimes, although the figure varies across the forces in Scotland.

Maureen Watt: Is the figure for Strathclyde Police higher than it is for other forces, perhaps because your service exists?

Mhairi McGowan: I think that it is higher in Strathclyde, because of the support that is available. However, our service is available only in Glasgow rather than throughout the whole of Strathclyde, so other issues are involved in that too.

There will always be situations in which we cannot find any evidence and it is difficult to prosecute. I listened to the Scottish Women's Aid evidence on breach of probation orders, and I would like more time to think about that and provide the committee with written evidence, because it is not something that I had thought about before. However, I will say that the criminalisation of a breach is a very important step.

Maureen Watt: Is there a case for taking a different approach, such as relaxing the general requirement for corroboration? We seem to be ratcheting everything up, but could we perhaps take a more mediation-based approach?

Mhairi McGowan: Absolutely not. Mediation is not safe. In dealing with domestic abuse, anger management is not safe, and mediation is absolutely not safe.

The Convener: Sorry, I lost you there—you said that mediation is not safe, and that something else is not safe.

Mhairi McGowan: I said that anger management is not safe either, because domestic abuse is rooted in issues of power and control. Those of us who conduct mediation or who are involved in agencies go home at the end of the day, and we leave the victim and the perpetrator on their own. If she says during the mediation that she is frightened, or she explains how difficult life is, she will pay for that when she goes back home.

Mediation is never appropriate in domestic abuse situations. I would be happy to send the committee some research evidence on that.

Fiona McMullen: Anger management is not appropriate because the perpetrator is not angry at everyone. He is not angry at the bus driver or

his boss; the power and control are directed at the woman, so the situation is very different.

Cathie Craigie: Thank you for your written evidence and your comments so far today.

You may have heard the previous evidence session this morning in which I focused on section 4 of the bill; I will do the same in this session.

In its written evidence, ASSIST states:

"ASSIST do not agree with the definition of domestic abuse contained in the bill"

and goes on to say that after

"serious consideration, we believe that defining domestic abuse legally would create significant difficulty."

Can you say a bit more about that, and whether you believe that it is necessary to have a definition at all?

Mhairi McGowan: I do not think that a definition is necessary; I have changed my mind on that over the years. When I came into this field 15 years ago, I was clear that we needed a definition to make things different, but I now feel that that is not the case.

Perpetrators will believe that there is a relationship when the victim does not. We have dealt with many situations in which the perpetrator says to the social worker and the social inquiry report writer, "It's great, we're getting back together, everything is hunky-dory and we're working towards a reconciliation," while the woman is very clearly saying, "There is no relationship, there hasn't been for 15 years, and I can't get rid of him."

In that situation, a definition of domestic abuse would mean that valuable court time was taken up with the perpetrator saying that there was a relationship and the woman saying that there was not. We would get into arguments about proof and what is and what is not a relationship, which would not be helpful. I do not know what purpose a definition would serve.

The only advantages of bringing in a definition lie in dealing with honour-based violence issues. However, the disadvantages of having a definition outweigh the advantages. We need to come up with another way of looking at issues that have arisen to do with violence involving extended family members.

12:00

Cathie Craigie: So in light of all the difficulties that we can see surrounding domestic abuse and the hurdles that women and men have to go over to get peace, you still believe that what we have now is better than having a definition of domestic abuse in legislation.

Mhairi McGowan: Yes, I do.

Cathie Craigie: The committee is interested in the argument about established relationships. I think that you have dealt with that already, but do you want to say anything more about that matter?

Mhairi McGowan: I do not think so. I think that I have covered it. I do not think that it would be a good idea to have a definition of domestic abuse, although I understand why—

Fiona McMullen: Relationships are diverse. We work with clients who met and then went out with someone for two weeks, and we meet women who have been separated for nine years or have been married for 15 years.

The Convener: For the record, approximately how many clients do you have at any one time? I am sure that I could look that up for myself, but encourage my laziness.

Mhairi McGowan: We deal with around 3,500 clients per annum. We get between 50 and 70 new clients every week. Around half our clients—around 60 per cent of them, I think—are at very high risk of further violence. We deal with a huge number of people. Our repeat rate is roughly 40 per cent—I think that it is 44 per cent at the moment. Strathclyde Police's repeat referral rate is 53 per cent.

Maureen Watt: In the first evidence session, we heard different BME perspectives from Girijamba Polubothu. I presume that you deal with BME clients as well. What is your perspective on the differences in their experiences?

Mhairi McGowan: What Girijamba Polubothu said is undoubtedly true. Women from BME communities experience violence and/or abuse from extended family members as well as from their partners. If English is not a person's first language or they have no recourse to public funds, it is incredibly difficult for them to escape from domestic abuse.

We have discovered that women from eastern Europe are sometimes shocked by the robustness with which domestic abuse is treated in Scotland. When they phone the police because they are frightened, they expect the same thing that happens in their country to happen here. In their country, the police will just take the man away. That is what happened here 30 years ago, say, but it is not the case now, of course. In fact, the Scottish Parliament should be incredibly proud of what it has done since its inception to deal with domestic abuse.

Things are very difficult for women from BME communities or women who are not from Scotland. We need to look at the situation and see how we can make things easier for the people who

find it harder to access help and, as I said, my only issue relates to the definition of domestic abuse.

We know of cases in which women and children have been threatened with abduction; in which people have been taken out of the country, eventually finding their way back; or in which family members in India or Pakistan have been assaulted by the friends, colleagues or family members of the accused. The pressure on women from the BME community not to stand up in court can be far more difficult to handle than in other cases.

Fiona McMullen: A great deal is also being done to share information behind the scenes. In one case that we worked with, the children of a woman who had separated from her husband were abducted to Pakistan and not returned for three years. The high-level intelligence on future risk that we are now able to share with the police comes out of cases in which bail conditions have been breached. Such breaches have brought matters to the attention of agencies that might not have known anything about them.

Maureen Watt: That is helpful.

The Convener: As committee members have no further questions, I ask Rhoda Grant whether she wishes to ask anything.

Rhoda Grant: On the question of definitions, Mhairi McGowan has worked at the domestic abuse court in Glasgow, where I believe the common-law definition of domestic abuse is used in cases involving people who have been subjected to violence from the extended family. If the bill simply used the common-law definition of domestic abuse, would it be able to encompass those people?

Mhairi McGowan: We need to keep the status quo. It has not presented any difficulties in the domestic abuse court, which, I have to say, has got busier over the past few years. In times past, we might have been able to ask the fiscal to bring to the court certain cases that had only a loose link to domestic abuse, but we do not have the room to do that any more. I think that that is the only issue that I would highlight in that regard.

However, we are now straying into a far bigger discussion about the differences between the domestic abuse court and the ordinary courts. As a great supporter of specialist courts, I am very happy to have that discussion with the Scottish Parliament but the fact is that in Glasgow—and in Ayr, where there is now a trial court—the response to such cases is different. Things can be dealt with differently in a domestic abuse court from the way they are dealt with in an ordinary court.

Rhoda Grant: You mentioned a figure of 44 per cent with regard to repeat referrals; certainly, my research suggests that the figure in Scotland is about 60 per cent. Is that because, with the greater focus that has come about with the introduction of the domestic abuse court in Glasgow, the whole issue is being taken much more seriously?

Mhairi McGowan: Absolutely. It is because of the multi-agency response that we have built with all the agencies that were mentioned earlier; because we get in touch with people within 24 hours of an incident and provide support throughout the whole process; because we have introduced in Glasgow multi-agency risk assessment conferences to deal with those at highest risk and ensure that a multi-agency action plan can be concocted to keep people safe; because we have more of a focus on perpetrators; and because of Strathclyde Police's multi-agency tasking and co-ordinating process, in which we participate, and the fact that we can now share intelligence directly through a police intelligence officer. The combination of all those elements is really making a difference.

The Convener: As there are no further questions, I thank the witnesses for their attendance and their very clear evidence, which has given the committee a clear understanding of their perspective.

Having dealt with this morning's business much more expeditiously than has recently been the case, the committee will now move into private session to deal with a couple of administrative matters. I thank the public for their attendance.

12:09

Meeting continued in private until 12:36.

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