



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EQUAL OPPORTUNITIES COMMITTEE

Tuesday 23 November 2010

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EQUAL OPPORTUNITIES COMMITTEE

21st Meeting 2010, Session 3

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Marlyn Glen (North East Scotland) (Lab)

COMMITTEE MEMBERS

*Malcolm Chisholm (Edinburgh North and Leith) (Lab)

*Jamie Hepburn (Central Scotland) (SNP)

*Christina McKelvie (Central Scotland) (SNP)

*Stuart McMillan (West of Scotland) (SNP)

*Hugh O'Donnell (Central Scotland) (LD)

Elaine Smith (Coatbridge and Chryston) (Lab)

COMMITTEE SUBSTITUTES

Rhoda Grant (Highlands and Islands) (Lab)

Tricia Marwick (Central Fife) (SNP)

Mary Scanlon (Highlands and Islands) (Con)

Margaret Smith (Edinburgh West) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Huma Awan (Council of British Pakistanis (Scotland))

John Fotheringham (Law Society of Scotland)

Louise Johnson (Scottish Women's Aid)

Assistant Chief Constable Iain Livingstone (Association of Chief Police Officers in Scotland)

Tanveer Parnez (Black and Ethnic Minority Infrastructure in Scotland)

Claire Platts (Ethnic Minorities Law Centre)

CLERK TO THE COMMITTEE

David McLaren

LOCATION

Committee Room 2

Scottish Parliament

Equal Opportunities Committee

Tuesday 23 November 2010

[The Convener *opened the meeting at 10:00*]

Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill: Stage 1

The Convener (Margaret Mitchell): Good morning, everyone, and welcome to the Equal Opportunities Committee's 21st meeting in 2010. I remind all those present, including members, that mobile phones and BlackBerrys should be switched off completely, as they interfere with the sound system even if they are switched to silent. We have apologies from Elaine Smith.

Agenda item 1 is an evidence session on the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill. The session will be held in a round-table format. It is worth reminding everyone that, although the format is less formal than normal, this is still a public meeting and a transcript will be produced.

We will start with introductions. I am the convener of the committee.

Louise Johnson (Scottish Women's Aid): I am a national worker for legal issues at Scottish Women's Aid.

Hugh O'Donnell (Central Scotland) (LD): I am a member of the committee.

Claire Platts (Ethnic Minorities Law Centre): I am a solicitor with the Ethnic Minorities Law Centre in Glasgow.

Malcolm Chisholm (Edinburgh North and Leith) (Lab): I am a member of the committee.

Assistant Chief Constable Iain Livingstone (Association of Chief Police Officers in Scotland): I am an assistant chief constable with Lothian and Borders Police, but I am here in my capacity as lead for the Association of Chief Police Officers in Scotland in regard to public protection, which includes all elements of honour-based violence.

Stuart McMillan (West of Scotland) (SNP): I am a member of the committee.

Tanveer Parnez (Black and Ethnic Minority Infrastructure in Scotland): I am from BEMIS—the Black and Ethnic Minority Infrastructure in Scotland.

John Fotheringham (Law Society of Scotland): I am representing the Law Society of Scotland.

Jamie Hepburn (Central Scotland) (SNP): I am also a member of the committee.

Huma Awan (Council of British Pakistanis (Scotland)): I am from the Council of British Pakistanis (Scotland).

Christina McKelvie (Central Scotland) (SNP): I am also a member of the committee.

Marlyn Glen (North East Scotland) (Lab): I am the deputy convener of the committee.

The Convener: I will start with general questions about the nature and extent of forced marriages in Scotland. What is the prevalence of forced marriage and how does it impact on the community? What is the profile of forced marriage victims? I am looking for information on age group and gender. Could we have a little bit of detail or any information that you can provide on the profile of the victims?

Tanveer Parnez: We need to differentiate between forced marriages and arranged marriages, as people can confuse the two. A forced marriage is a marriage that is carried out in the absence of valid consent by one party, or both parties, and where duress, with either physical or psychological factors, occurs. Arranged marriages are those that are entered into freely by both parties through the families. The parties may take a leading role in choosing the partner. Especially among the wider community, there is confusion about what is a forced marriage and what is an arranged marriage, so I thought that it would be better to clarify that.

The Convener: That is helpful, and it is a point that is well made in several submissions. Now that Tanveer Parnez has opened the discussion, I ask her to tell us about the nature and extent of forced marriage, in her experience.

Tanveer Parnez: I grew up in Scotland. From my experience of growing up in Glasgow, none of my friends went through a forced marriage. However, there are people who have had that experience, particularly those in the second generation. There are various types of forced marriages. There are civic marriages, but also trade marriages, which are organised by migrant communities to access visas. In gang culture, people can be forced into marriage because of the money or to get a visa.

The Convener: So there can be financial gain and perhaps the aim of gaining United Kingdom citizenship.

Tanveer Parnez: Yes.

Louise Johnson: As the committee might know, as part of the Scottish Women's Aid network, we have two groups that specifically support black and minority ethnic women. In Edinburgh, we have Shakti Women's Aid and in Glasgow we have Hemat Gryffe Women's Aid. In reading the submissions, I noticed that the Scottish Legal Aid Board mentioned that, in 2009-10, Shakti supported seven cases of forced marriage and Hemat Gryffe supported 13 cases. The two groups have reported that it is often when women come to seek assistance from them in relation to domestic abuse that the issue of forced marriage comes to the fore. Alternatively, if women come to see the groups about issues relating to forced marriage, domestic abuse can be revealed at that point. We recognise—and it is recognised internationally—that forced marriage is very much part of the continuum of behaviours that make up violence against women.

Shakti and Hemat Gryffe will give evidence to the committee in, I think, December. They will be able to give you much more information about the prevalence of forced marriages. Hemat Gryffe carried out a research project earlier this year, the results of which I hope will be with the Scottish Government soon. The witnesses from Hemat Gryffe will be able to speak about that.

The Convener: So the issue is identified after people initially come to Women's Aid for another reason.

Louise Johnson: Yes.

The Convener: Can you give us information on the profile of the victims, such as their age?

Louise Johnson: Unfortunately, I do not have any more information on that. However, from talking to both groups about their experiences of supporting women, I know that a lot of younger women look for support. It is younger women, to almost children.

John Fotheringham: We have discussed the distinction between a forced marriage and an arranged marriage. We must be careful about that distinction. By no means is every arranged marriage a forced marriage—of course that is correct—but every forced marriage is an arranged marriage. They are different points on a continuum. The difficulties in the court arise at the interface between the two, when the court has to consider whether a marriage was really forced. The literal shotgun marriage is a rarity. Different kinds of force cause the difficulty in interpretation for the court. Just because a marriage is apparently arranged, that does not mean that it is not forced.

The convener asked about the incidence of the problem. I have been doing family law as a specialist for 35 years in Scotland and I have

never seen a case that had even a hint of a forced marriage about it. Partly, that is because much of my work has been in Fife and forced marriage does not happen there very much, apparently. The difficult profile of forced marriages leads to their being underreported. Therefore, the fact that I have never seen a case does not mean that it is not happening. One purpose of the bill is to let such cases, which have been underreported, come to the fore.

Because of the population demographic in Scotland, forced marriage will always be a low incidence matter. However, although forced marriage is low incidence, it has an extremely high impact, which is why it is important that we are discussing the bill. Louise Johnson rightly mentioned that forced marriages are part of violence against women, but it exists against men as well. Particularly when someone is trying to make a commercial profit by forcing a marriage, it is just as likely to happen against men. Because of the way that the numbers work, forced marriage is more likely to be against women—and domestic violence is much more a problem against women—but let us not forget that it is against men as well.

The Convener: That helps us to understand the profile.

Huma Awan: The Council of British Pakistanis has been working on incompatible and forced marriages since April 2001. Based on the three-year project that ended in 2004, the CBP dealt with about 300 cases throughout Scotland over those three years. Of the victims, 55 per cent were aged between 16 and 20 and almost 40 per cent were male. Forced marriage is always seen as a female issue, but our work, through the project and in dealing with people directly, highlights that it concerns both sexes almost equally. We need to bear that in mind.

The Convener: Was a general reason given? Do the reasons vary much?

Huma Awan: Each situation was very much an individual one. It depended on the family and the set-up. I would not say that there are 100 cases in a year—many of the forced marriage cases that came forward concerned what had taken place previously. In other words, some of the cases that we dealt with, involving divorce issues and so on, had built up among people who had experienced forced marriages in the past.

As Louise Johnson highlighted, people do not come forward because of the forced marriage; there are other angles of the situation that explain why they come into the office to seek advice, on either immigration matters or divorce. From that, it can transpire that there had been a forced

marriage, or a possible forced marriage, in the first place.

The Convener: How far back might we go with some of the people who have been identified?

Huma Awan: Of the 55 per cent who were 16 to 20-year-olds, it was more recent: they had typically just come back from a holiday abroad and had been forced into marriage. Their parents had sent them to us to seek immigration advice for sponsoring their spouse. As for the older groups, some people were married three, four, five or even 10 years previously. They had been forced into the marriage and were now seeking advice on how to get a divorce. There could also be domestic violence issues, which we refer to the relevant people. It depends on the age. The younger people are, the more likely it is that their marriage will have been recent.

Marlyn Glen: We started off with a clear differentiation between forced marriages and arranged marriages. I wish to clarify the difference between either of those and incompatible marriages. A marriage can become incompatible no matter how it started. I sound a cautionary note about the reporting that has been mentioned. It does not merely concern forced marriages.

I was interested in the statistics. An arranged marriage can become incompatible, or it can be incompatible from the beginning. As has been reported, the people might not even speak the same language—not that that necessarily means that the marriage is incompatible. We will have to look out for the statistics on that. In particular, I noted the percentage of victims who are male. John Fotheringham said that male victims are just as prevalent as female victims—I think he said that people are brought into the country and forced to marry for the purpose of visa applications.

John Fotheringham: I was not suggesting that it was just as prevalent for males, but we should not forget the issue. As far as numbers are concerned, we are all guessing—we do not know. I see no reason why it should be less prevalent for males.

Marlyn Glen: In some ways—unless we are talking about support—it does not really matter whether the victims are male or female for the purposes of legislation. From a statistics point of view, we need to gather evidence on the issue. I am really concerned, however, about taking the statistics that have been reported as being about forced marriage, as they are not.

The Convener: Could you comment on that aspect, referring to incompatibility?

Huma Awan: As John Fotheringham said at the outset, it is sometimes difficult to put a marriage into a particular box. It might be incompatible, and

it could be forced. It depends on what the individual felt at the time. Was there coercion? Were the people being manipulated into a situation? Aged 16, someone might think, “This sounds great.” They might go to Pakistan, India or wherever and have a holiday, and they might have a great wedding with singing, dancing and all the rest of it. They go along with it. Then, everything hits home. They have come back with a husband or wife and they wonder, “Wait a minute: what happened here?” When they take stock of the situation, they realise that their parents put lots of ideas into their head and made them think that they were doing the right thing.

In such cases, it can be seen that the marriage was incompatible. In 90 per cent of our cases, the marriage has taken place abroad. We might be able to see that the marriage was not going to work. The person was aged 16, say, and did not really know what they were getting into. Language was an issue, and their cultural experience was different. Their economic and financial background was different. It was indeed incompatible, but there was coercion involved. Each individual case is different, however.

10:15

Hugh O'Donnell: The number of males involved struck me as considerable, and the participants have partly explained that point. Marlyn Glen has spoken about statistics and data. Commercial gain has also been mentioned, as have family tradition and cultural tradition. To what extent do you have evidence that sexuality plays a part in relation to forced marriages? I am thinking of a situation in which an individual has been identified as homosexual and been obliged to marry to avoid or minimise any social or cultural impact. Do you have data about that?

Huma Awan: The Council of British Pakistanis did not deal with any such cases in its three-year project. However, being involved with communities, we know that that is a significant factor, particularly when it comes to forced marriage. If the family see any kind of behaviour that they deem to be inappropriate, whether it is having a boyfriend or a girlfriend or having a same-sex relationship, that can be the trigger point for rectifying the situation. The whole family can get involved, and certain characters have a major role to play to try and stop the behaviour. Homosexuality is a major factor. In England, where there is a larger number of communities, it has been a significant factor.

Assistant Chief Constable Livingstone: All the evidence that you hear today will just give you an indicative feel for the matter. There is an absence of definitive data. The recording practices among the police, local authorities and the

voluntary or third sector are all different. In the past five to 10 years, however, the whole concept of forced marriage and associated but different elements of so-called honour-based violence have become far more prevalent. Every agency will tell you that. How accurate the data are is difficult to say, and it is also difficult to say what lies behind the increase. I understand your thirst for data, but such information is missing at the moment.

From the police perspective, we think that there is a social mischief that the bill appropriately addresses. However, it is just one part of the issue. As we have discussed, there are also arranged marriages where there may well be domestic violence, and there has to be some form of intervention in that regard. That will come not under the bill, but through other legislation, other practice or information sharing and support. We have come a long way over the past five to 10 years, in any case.

The bill's other value lies in its public message. We need to bring the matter into the open and to secure an absolute consensus that forced marriage will not be tolerated and that violence—violence against women and violence against men—will not be tolerated. A whole suite of measures should be available, in statute law, in practice change and in voluntary support for victims.

The convener's first question was about the extent of forced marriages, and the answer is that we do not know. That is the most valid answer. However, we know that forced marriage is there and that its prevalence is growing, partly through generational changes. I think that the bill will enhance our level of knowledge.

The Convener: That is a fair point. Now we have something through which we can identify the problem and put cases in the category of forced marriage. That must be helpful.

I invite Claire Platts to comment.

Claire Platts: Our organisation operates a telephone advice line. We deal with a high number of domestic violence cases in which there is an immigration perspective, with individuals seeking advice having been victims of domestic violence. In my experience of dealing with such cases, the prevalence of forced marriage being a catalyst to ensuing domestic violence issues has been quite limited. We have received a small number of inquiries that have been related to forced marriages, but people seem to present with domestic violence problems first and foremost. That echoes what has been said about forced marriage not usually being the issue at the forefront when people first present; rather, it becomes prevalent when we peel things back.

The Convener: Do you have any indication of the profile of victims? To introduce another aspect, is the same issue prevalent in civil partnerships?

Claire Platts: I have certainly not come across any issues in civil partnerships. In the limited number of inquiries that we have had, the people who have come to us and sought advice have tended to be younger people in their late teens or early twenties. That is the profile of the individuals who have approached us.

The Convener: That is helpful.

John Fotheringham: It is important to combine the issues of sexuality and civil partnerships in the bill because marriages and civil partnerships ought to be treated similarly in the legislature and because, if we have good, strong and effective forced marriage provision and forced civil partnerships are not covered in the bill, those who wish to abuse the system will simply leap on forced civil partnerships. If the issue is about a visa or passport, there must be cover on both sides.

There is an English study that backed up the English statute in 2007 concerning forced civil partnerships. There is the idea that, to save its honour, a family might try to force a young man to marry if they fear that he might be homosexual. I do not know what the relevant statistics are, but I am sure that they will be available from the Home Office. The matter has been considered.

Louise Johnson: On the statistics, I am aware that the Home Office's forced marriage unit dealt with around 400 cases last year. I think that 85 per cent of those who had been forced into marriage were women and 15 per cent were men, but I do not know how many of those cases were Scottish. People might still be phoning the Home Office to deal with that, but we do not know. Part of the reason for the bill is that it will provide a Scottish solution. That is why we welcome it.

We have experience in Shakti Women's Aid and Hemat Gryffe Women's Aid of women being forced into marriage to act as carers for their physically or mentally disabled spouses. There have certainly been incidences of that in Glasgow. I have talked to people about that.

I echo what Iain Livingstone said. The bill cannot be passed without there being training and awareness raising. That is one of the most important issues. Young people, say, are already engaging probably because there is the problem to a certain extent in their own social circle and because of their knowledge as a result of their access to the internet and social networking. They are able to discuss the issue. However, accessing the internet might be more difficult for older women—I am talking about women, but I

acknowledge that men are also forced into marriages.

On making everybody aware of the problem, we know that there are existing legal provisions that can deal with it, but people do not know that they exist. They do not know about interdicts and the other orders and that marriages can be nullified. If the bill is to be used to the extent that it should be, we must ensure that everybody knows about it and how to use it.

The Convener: I think that Hugh O'Donnell wants to develop that theme.

Hugh O'Donnell: Most of the questions that I had in mind have been addressed.

Perhaps another committee member has a handle on what I want to ask about. It strikes me that we are talking about the legal process of marriage or civil partnership, but I wonder about the religious implications. Religions such as Judaism, Islam and Roman Catholicism have their own ceremonies, and I am interested in that issue. I am also interested in how we know what the main barriers are to accessing the existing civil remedies. What are the challenges around—

The Convener: I think that we will go on to that specific question later; we have not quite got to that stage yet. I would like to establish first what awareness exists. Louise Johnson made an important point.

Christina McKelvie: I have a question for John Fotheringham. I picked up on the possibility of the bill being a bit stronger on civil partnerships. Section 10 is on the power of the Scottish ministers to apply the legislation to civil partnerships. Does that provision need to be stronger?

John Fotheringham: If the power is used, that is fine, but as a matter of principle, we ought to treat marriage and civil partnership the same in this context. If we do not, we will invite those who treat matters on a commercial basis—for visas or passports—to move from one form of sexuality into another.

To answer the question about the validity of marriage, a marriage in Scotland is not valid unless there is a marriage schedule and it has been registered. People can be married by the moderator of the Church of Scotland in St Giles' cathedral, but they will not be married if there is no schedule. That is the definition. That was one good reason why, when we were sitting in this room some years ago, we were happy to see the cohabitation provisions in the Family Law (Scotland) Act 2006 go through. Those provisions allow a woman who was married with an Islamic nikah but was not registered to have a remedy under Scots law if, 10 years later, her husband

kicked her out. Although she would not be married, she would be cohabiting within the meaning of the 2006 act.

There is no separate ground of divorce because a person is in a forced marriage. If a person stays in a forced marriage for a long time, that does not prevent them from divorcing. If a truly forced marriage overcomes consent, that can result in a nullity; that is, the marriage will never have existed as a matter of law. The financial remedies in a nullity are exactly the same as those in a divorce. That sounds a little illogical, but it works because we are saying that, although the marriage never happened, the person has been financially prejudiced and they will want their remedy.

Hugh O'Donnell: Is there awareness of those things?

John Fotheringham: There is not. I am sure that everybody here will say at some point in the day that public education matters a great deal. There is no point in having a remedy if people do not know about it. That is a problem with cohabitation, which I mentioned before, and it is certainly a problem with forced marriages. If people—not only potential victims, but their families, teachers, social workers and local police officers—do not know about the legislation and what they can do, they must be made fully aware of it. The more it is known about, the more the culture against forced marriages will be strengthened. The member has made a good point.

Marlyn Glen: We have talked quite a lot about the current awareness of the problem, and I think that people around the table agree that that awareness must be increased. Everybody around the table is aware of it, but I do not think that there is such awareness in wider society in Scotland. Before we proceed to discuss the provisions in the bill, does anybody want to comment on the responses that we have received on preventing and tackling forced marriages? Whether we need a bill has been discussed.

John Fotheringham: I think that evidence on that should come from others. As I have said, a forced marriage case has never crossed my desk in 35 years.

The Convener: Is that partly because people are not aware that forced marriage is an issue?

John Fotheringham: For me, the reason is partly geographical. I have spent much of those 35 years in Fife, and the cases have not got that far yet.

Assistant Chief Constable Livingstone: I will reiterate a couple of observations that have been made.

I think that we need the bill and that awareness has increased, perhaps because of the generational issues that Huma Awan talked about. Perhaps younger women are coming through from two or three generations back and challenging. People's norms, social contacts and networks are different. Generational challenges can often create a number of referrals. We have definitely seen a far greater increase in younger females in particular coming to the police, especially in urban areas, such as in Glasgow and the city of Edinburgh—particularly on its north side—and in particular geographic areas.

We need a specific forced marriage act. To reiterate what I said earlier, the fact that such an act had been passed would answer some of John Fotheringham's concerns and the points that Louise Johnson and others have made about our needing to vocalise and articulate the fact that the problem is intolerable. The proposed legislation in itself would assist with the awareness raising that you all seek.

10:30

Tanveer Parnez: John Fotheringham spoke about annulled marriages. I think that there has been only one case—I think it was in the 80s—when a Pakistani woman's marriage was annulled here in Scotland. It was quite widely televised.

John Fotheringham: There have been a few more than that, but just a handful.

Tanveer Parnez: BEMIS has been working in partnership with the Equality Network on various gender and sexuality issues to raise awareness. Most of the young people are coming forward within the community—we are changing attitudes among the community groups, who were previously attacking BEMIS and asking us why we were doing this project on homosexuality. Now people are coming forward and we have various action organisations where people meet; training is being given to people within the organisations and in the communities. Faith communities are coming on board, too. There is a need for social marketing and a humorous approach to education, both of which will play a part in changing people's perceptions, attitudes and use of stereotyping. All organisations should take part in that.

The Convener: Louise Johnson raised an interesting point about technology. Younger people might have more access to information via the internet. Is that an issue for older people who have been in a forced marriage?

Tanveer Parnez: Again, we need different mechanisms to reach out to the various community groups, especially the elderly, through elderly centres and other means. We need to work with the communities, bringing them on board and

raising awareness of forced marriages to change attitudes and stop forced marriages altogether.

Christina McKelvie: We have covered some of the issues that I was going to bring up. We got evidence that interdicts were not particularly effective; there was a lack of understanding about the difference between civil and criminal law; and there was a lack of awareness of support, which we have already discussed. A specific point that was made was that there was a lack of awareness of victims' rights and of support for victims. Will the panel comment on the sufficiency of the existing legal protection for victims? What do they think could resolve some of the problems that have arisen?

Louise Johnson: The existing protections that are available are exclusion orders—a way to keep someone out of the property—interdicts with the power of arrest under the Protection from Abuse (Scotland) Act 2001; interdicts under the Matrimonial Homes (Family Protection) (Scotland) Act 1981; and non-harassment orders. The problem is that people have to know that those protections exist and what they cover. At the best of times there are people who live in Scotland who have difficulty understanding what an interdict is. We might be talking about women who are not familiar with the Scottish legal system, do not know what an interdict is, do not have information about it, or, for whatever reason, are prohibited from getting information about it. Even if you have an interdict, what do you do with it? You have to go and engage with a solicitor and then there is the whole issue of how you pay for it.

There are parallels between some of the difficulties that we see with women obtaining protective orders, but women in this situation are dealing with a legal system that is quite complex and completely different. The terminology is difficult for most of the citizenry when they are trying to engage.

The beauty of having a forced marriage protection order is that it does what it says on the tin—to use that ghastly expression. It is very clear what it is for. When it comes to promoting it and raising awareness of what it is and what it does, it is not something archaic or complicated like a non-harassment order or an interdict; it is a forced marriage protection order.

By awareness raising, selling this to people and interacting with communities, we will make it very clear, first, to those who are at risk, that the provision is in place for their protection and, secondly, to those in communities who might be involved—families and extended families—that there is now a legal instrument to deal with what they are doing. The forced marriage protection order is a clear legal provision; it is not an interdict that can be construed in a variety of ways.

The Convener: So, the order sends out that message clearly to the victim and extended family.

John Fotheringham: The point will probably be discussed when we come to section 9 of the bill, but Louise made a point that I want to pick up on. Public education depends on the public being interested in it. One of the major differences between the bill and the English provision is that the bill creates a specific criminal offence. That was much consulted on. It is the right thing to do. We are saying, "If you breach a forced marriage protection order, we in this country regard that as a crime." We are saying clearly that that is a separate and public crime, which in England it is not.

The difference in practice could be said to be more illusory than real. If an order is breached in England, a contempt of court has occurred. That is also a crime, but not the specific crime of breaching a forced marriage protection order, which is the case under the bill that is before us. That is an important move forward. We are telling people, "This is not on." We are educating the public to the fact that this country is saying, "This is not on." We are talking not about throwing something into the bill that is about the dignity of the court, as contempt of court might be described, but a specific crime. The Scottish Parliament is saying, "This is not on."

The Convener: Do you want to follow up on any other aspect, Christina?

Christina McKelvie: No, the question was pretty well covered. The replies echoed the evidence that we have received in the submissions. Interdicts tend not to work properly either because people do not understand them or do not access them.

Louise Johnson: People become confused when they see references to injunctions. You would be surprised at the number of people who think that an injunction is an order that applies across the United Kingdom. They may have been reading literature from down south before they come to see us. They say, "I need an injunction", but that does not apply up here. They do not seem to know that something else applies—an interdict. We are perhaps seeing more younger people coming forward. That may be due in part to education in schools. For example, Shakti Women's Aid and Hemat Gryffe Women's Aid have been doing work with students and pupils.

As my colleague from BEMIS said, two levels of education are involved, the first of which involves younger people. At that stage in the game, we have the opportunity to inform young people before anything happens. The second stage is education for older women, where the need is to support them if they wish to do something. A

woman may come to realise that not only is she experiencing domestic abuse or some other form of abuse or violence but that her marriage was entered into not of her complete free will.

The Convener: We now move on to the point that John Fotheringham raised earlier. Hugh O'Donnell will lead our questioning.

Hugh O'Donnell: Many of the points have been covered, convener, particularly the existing civil remedies. Has anyone a sense of the main barriers? Is one barrier, as Louise Johnson indicated, the complicated nature of the problem? Does the bill simplify current legislation? If so, is it more valuable?

John Fotheringham: There has been no barrier up until now because we have had no statutory remedy up until now. One barrier that we may have to—

Hugh O'Donnell: Just to be clear, I was thinking about the existing legislative framework.

John Fotheringham: Right. Even without the bill, it would be possible for someone who is the potential victim of a forced marriage to seek to use an existing statutory remedy. One barrier to doing that is financial, another is educational and a strong barrier is cultural. The young woman—and it is usually a young woman—has to go against the strongly expressed view of the family. We have to get past that, which is probably the most effective barrier to somebody using a statutory remedy against forced marriage. That is where education comes in. There could also be financial problems, if someone does not qualify for legal aid. The young probably will, but they have to know where to get it. Although it is a different matter entirely, the number of solicitors accepting civil legal aid cases is declining—that is a barrier, too.

Hugh O'Donnell: Anyone else?

Tanveer Parneez: Women who have no recourse to public funds would face the barrier of being unable to access any services from lawyers. They might even be scared to go to a lawyer if they did not have that sort of provision.

Claire Platts: Cost is a major barrier. Finding practitioners with the legal expertise to deal with particular issues may also be a barrier, because these are not run-of-the-mill, everyday family law matters. There is also the issue of whether someone going into a high street practice and presenting this issue to a solicitor will experience cultural sensitivity. All those factors would marry into an individual having difficulties in seeking legal advice in the first instance.

The Convener: Yes, they would be reluctant to walk in the door in the first place.

Assistant Chief Constable Livingstone: One of the existing barriers may be the fact that the onus is very much on the victim—or individual. One of the bill's virtues is the proposal to allow an application by a relevant third party. A person would not need to be an expert in family law or Scots law in any way, shape or form. If they came to a support agency, such as the police or the health service, and said that they had an issue, that might allow access to some form of justice. Although the current onus on the victim is a barrier, the bill will provide more support for the victim.

Huma Awan: I completely agree with what Iain Livingstone described as the barrier, particularly for women. The process of going to the police or getting any kind of legal remedy against their own family is a great hindrance. They do not want to bring any kind of shame. There is the whole idea of honour, and to be criminalising your own parents, brother or grandparents is a huge burden. Many of the people whom we have dealt with would come to us to talk about their problem, but they would not want any kind of legal remedy for it or to have any kind of action taken against those people, because they are family.

Hugh O'Donnell: Convener, I think that everyone has encapsulated the challenges in relation to the existing framework and that they tend to be, if I have understood everyone clearly, supportive of the bill's proposals.

The Convener: Do the witnesses feel that the balance is right in terms of making the breach of a forced marriage protection order a criminal offence, as opposed to making forced marriage a criminal offence in the first instance, as it is, I think, in Norway and some other countries? The feeling that I am getting is that everyone is in agreement with that balance. Is that right? Does John Fotheringham want to elaborate on that point?

John Fotheringham: I was just going to agree that the balance is entirely right. Of course, many things are done in the context of a forced marriage that will be crimes anyway. In the extreme cases that might persuade one to make forced marriage itself a crime, there will be crimes of breach of the peace, if nothing else, and probably threats of violence, if not actual violence—the bill will take nothing away from that situation.

The Convener: I suppose, in terms of the reluctance of someone to come forward, it would help a little if forced marriage was not a criminal offence in the first instance.

Stuart McMillan: The witnesses have answered my first question, which was about the level of sentence. My second question is probably directed more to ACPOS. If the bill were to be passed in

some shape or form, would you expect that the offence created would be one of the areas that would be plea bargained a bit more often in dealing with individual cases, or would you suspect that elements of existing legislation would be plea bargained more as compared to this one? I pose that question because I sit on another committee that is considering another bill, and that issue came up.

10:45

The Convener: I defer to the solicitors on the panel to see whether plea bargaining would be a possibility.

John Fotheringham: I do not think that it would be a major issue. You would have to ask the Crown about it, but I would not expect any bargaining to be done because you have a different opponent in this case. There is an applicant, as opposed to a civil pursuer and as opposed to the Crown Office and Procurator Fiscal Service. You could not bargain one off against the other. If there were a breach, the fiscal would have to take up the case, but it is unlikely that the fiscal would wish to abandon any form of complaint under the act—if the bill becomes an act—against one of the crimes potentially committed in the course of trying to encourage a forced marriage. One of the difficulties will not be at the stage of pleading after the service of any criminal complaint but at the stage of giving the police powers to do something practical about the situation. We might want to look at powers of arrest later when we come to do the detailed examination of the bill.

Hugh O'Donnell: If the enforcement of a protection order could coincide with the period in which a victim had no recourse to public funds of any kind, would that mean that the bill would clash with the Home Office's rule about a marriage not coming to an end for two years and people being returned to their country of origin?

John Fotheringham: I regret that there could always be issues with the Home Office's attitude to things. I do not think that that is within the competence of this committee and it is certainly beyond the victim's solicitor's range of competence. I am sorry, but there would not be much that we could do about that.

Provisions towards the end of the bill will allow the court to declare an action of the Crown unlawful. Nothing done by the Crown will be a crime, but the sheriff can declare an action or threatened action of the Crown to be unlawful. You can imagine a decision under immigration legislation being declared unlawful by the sheriff court—you would then have an interesting clash of cultures. I do not know whether that was thought of by those who framed the bill, although I strongly

suspect that it was, which is why it is there. I do not know what negotiations there might be between the procurator fiscal here and this Parliament or the Home Office.

Louise Johnson: The precarious position that the member describes already exists. Scottish Women's Aid network members have been supporting women who have had to leave their partners before the end of the two-year probationary period and are therefore experiencing the very difficulties that Hugh O'Donnell describes—they do not have access to public funds. However, that does not compromise their access to legal aid. Strictly speaking, if they wish to apply for a forced marriage protection order, legal aid access should not be an issue. The issue is about their being able to apply for indefinite leave to remain. There will be problems with that in relation to immigration legislation. The proposed changes to legal aid in England and Wales will not affect it. Discussions about that are going on just now. Hopefully, a forced marriage protection order will assist a woman's application to stay in the country with indefinite leave to remain as a result of domestic abuse.

Hugh O'Donnell: Thanks for that clarification.

Assistant Chief Constable Livingstone: I was just going to respond briefly to Stuart McMillan's query and concur with John Fotheringham. I do not know whether the Crown has given evidence or whether you will invite it to do so.

The Convener: I think that we might have invited it.

Assistant Chief Constable Livingstone: Again, we do not expect the numbers to be exceedingly high, but my take on the issue is that, given the public interest that is at play, if the police arrest someone for breach of an order and there is a sufficiency of evidence and the factual test is met, it is extremely unlikely that the police would not proceed with a specific charge under the act. As ever, the crime will speak for itself, but that is my general observation from my experience.

The Convener: That is interesting. Before we leave this section, we are conscious that we in the Parliament can pass as much legislation as we like, but if people are not aware of it and there is not enough training from the people in the various agencies, it will not be as effective as we would all hope. Are there any comments on that from the police perspective?

Assistant Chief Constable Livingstone: I said at the outset that forced marriage is an element of so-called honour-based violence—I stress that it is “so called”. A couple of months ago, the police and our partners, including a number of colleagues who are here this morning, attended a significant conference at the Scottish Police College. Given

that all sorts of things of media interest were happening at the time—significant trials were starting and various other things were at play—we were surprised and pleased at the level of media interest in the conference. It was just a police conference, but the media were keen to report it because of the issue. When the Deputy First Minister and Cabinet Secretary for Health and Wellbeing launched the bill, there was again a significant level of media interest. People recognise forced marriage as an emerging issue of concern and interest, so it is incumbent on us all to shine as much light on the issue as we can. Even this morning's session contributes to that.

The Convener: Where does the training need to come from? Where is the information likely to come from? Obviously, it will come from organisations such as yours, but can you think of any other agencies that will need to be aware of the issue and do training so that, when they are approached, they are aware of the legislation?

Huma Awan: Particularly in relation to youngsters, people such as teachers and health workers need to be trained up to be able to identify the issue. I know from the cases that I have dealt with that very few people come forward and say, “I am worried. I think I might be forced into a marriage.” There are a lot of other, underlying issues, so people need to be able to identify that there is a likelihood that the person is having other problems at home. If the bill is to work, training needs to be in place. People need to be able to identify the issue, so teachers, health workers, the police and people who work directly with youngsters in the area need to be trained up.

Louise Johnson: Of the groups within Scottish Women's Aid, Shakti Women's Aid in Edinburgh and Hemat Gryffe Women's Aid have been doing training on aspects of violence against women, including forced marriage. That resource would certainly be open to others. I absolutely agree that training is important. I am pleased to see that the bill specifically mentions guidance, which must be not just about the legislation but about the wider issues in relation to forced marriage. Training should cover teachers, health workers, social workers, the police and other support organisations—anybody who is likely to come into contact with a person who wants information or support on forced marriage. That is vital, especially if people are going to be designated relevant third parties. Also, we must have both statutory guidance and codes of practice.

Assistant Chief Constable Livingstone: I stress that the victim might not know that they need advice on forced marriage, so the training must be integrated with the work that we are doing on violence against women, violence in society, domestic abuse, domestic violence, public

protection and child protection. Our experience is that forced marriage will not necessarily be the first issue at the point of contact. The training has to be fully integrated with existing local and national training programmes. Within the sphere of public protection, through child protection and other areas, we try to do as much joint training as we can within our own separate disciplines.

There will not be any specific forced marriage training—it will be integrated into existing greater awareness training, which covers front-line officers, fresh recruits and specialist officers who work in domestic abuse and family protection/public protection units.

The Convener: It goes without saying that it would probably cover third sector organisations such as carer organisations, as well, given that they are among the bodies that have highlighted forced marriage as an issue.

John Fotheringham: We mentioned in our submission that we want to look at judicial training, too. There are no judges or sheriffs in Scotland who will come across many such cases; no one will build up a long course of expertise in forced marriage. When the issue comes up, it will come up suddenly. Sometimes the court will have to make its own order. That requirement will arise suddenly, because it will come up in the context of another case. There will have to be a resource in the form of a named individual or a named body of people that sheriffs and judges can contact, and there will have to be someone in the Crown Office whom the Crown can contact and who has the expertise to act as a resource. Unless sheriffs are well informed on the issue, no one will be able to learn about it sufficiently to react quickly enough. The recommendation that we make with regard to the Judicial Studies Committee would be a very good idea.

The Convener: That is helpful.

Tanveer Parnez: I just wanted to share with the committee the fact that BEMIS has been showing a series of films on human rights education, trafficking, holocaust and other issues that concern civic society. We have a set of films that we show for 20 or 30 minutes, after which we have a discussion. That raises awareness among communities and gives them information on empowering women to take action, how to contact their MSP, their MP, their councillor or any other organisation through which they could access information that they could cascade to other community groups and raise awareness.

I think that the training needs to go wider than just some of the agencies. We have delivered training to a number of Women's Aid agencies, such as Hemat Gryffe Women's Aid, but the training needs to be wider and it should be

culturally sensitive. Account should be taken of the rural dimension, in particular. If a woman is trying to seek information on forced marriage from a Women's Aid group in a rural area, there will not be much information available or anyone who is an expert on the legislation, on forced marriage or on diversity issues. We should be aware that there needs to be more human rights education across the board, which should cover councillors and all public bodies.

The Convener: Is there an issue in rural areas? Someone who walks into a big Women's Aid centre in Glasgow will immediately have a bit of anonymity. Is it the case that there is not the same anonymity in a rural setting?

Tanveer Parnez: We have been contacted by people from the Highlands and from Dumfries, where such provision is not available. People in those areas have to get lawyers from Glasgow and are always trying to find out whether there is anyone who deals with forced marriages or marriages under Islamic law. That has been quite a difficulty. We need to know who people can go to in the legal system. There needs to be more awareness raising throughout the system, which should cover institutions as well as communities.

The Convener: So it is more a question of the expertise not being available than it is to do with sensitivities about anonymity.

Tanveer Parnez: Yes.

Hugh O'Donnell: That brings us on to the bill's main provisions, on which the committee would be interested in hearing comments—positive or negative—as well as suggestions about tweaking them.

11:00

The Convener: Who is desperate to kick off?

Hugh O'Donnell: I can see that John Fotheringham is chewing at the bit.

John Fotheringham: The Law Society has made proposals in our written submissions, but I will just go over them.

There is a very wide definition of forced marriage in section 1, as is entirely appropriate. It could cause difficulties, but once there have been a few cases the courts will tell us what is meant and what is not meant by forced marriage. They will say what the boundaries are. The statute should have a wide definition, and I am glad to see that we have exactly that.

We propose one small change in section 2. Under section 2(3),

"A forced marriage protection order may, among other things, require a person ...

(f) to refrain from taking the protected person abroad,

(g) to facilitate or otherwise enable the protected person or another person to return to the United Kingdom within such period as the court may specify”.

First, what is meant by “abroad” in paragraph (f)? Secondly, there is no provision in paragraph (g) for not removing the protected person from Scotland—just from the United Kingdom. One analogy is with the Children (Scotland) Act 1995, in which the provision is against removing children from the United Kingdom, although equivalent English provisions usually prevent the children being removed from England and Wales. I see no reason why the Scottish statute should not allow the court to prohibit the removal of a person from Scotland, unless there is to be very tight correlation between the Scottish and English systems. The order should be to prevent the removal of a person from Scotland. If a person were removed from Glasgow and taken to Wolverhampton, Salford or Tower Hamlets, the problem could be replicated. We—and the victim—cannot afford that, so that provision could usefully be changed to refer to Scotland.

The major issue that we wanted to look at is covered by section 3, which defines who can make an application. Section 3(2) provides that

“An application may be made by any other person”—

other than the protected person and relevant third party—

“only with the leave of the court.”

Later on, the section provides that:

“a relevant third party” means—

(a) a local authority,

(b) the Lord Advocate—

the Crown, or—

(c) a person specified, or falling within a description of persons specified, by order made by the Scottish Ministers.”

We do not know who that is going to be, but the Law Society proposal is that the relevant third party could include anyone whom the court allows to be a relevant third party. That would mean that any friend, relative or other third party who does not fall within that definition could apply to the court to be the person who makes the application.

I would rather have that than a reference to “any person”, which would be the busybody’s charter; for example, for the next-door neighbour who just wants to be involved. We might find that there are vexatious “relevant persons”—some people could do it maliciously for political or racial reasons, and one would not want any of that. Under our proposal, the relevant third party would have to prove to the court that it is appropriate that they have that power. We would therefore like “relevant

third party” in section 3(1) to be redefined as including the person referred to in section 3(2).

The same point comes up again in sections 7 and 8, which deal with the variation, recall and extension of orders. Again, one would wish the relevant person to be someone whom the court authorises to be a relevant person. We cannot say in advance who that will be in every case. Sections 7 and 8 refer to

“any other person affected by the order.”

Does that include the fiancé? The bill does not say so. We believe that the relevant third party must be somebody whom the court understands to be a relevant person and who ought to have a voice in the situation. It is a small change to the words of the bill, but it would be very useful in many cases.

Section 4 refers to the power of the court to make orders without application. That brings in the matter that was raised earlier about judicial studies being important. Such orders will arise rarely and suddenly, so there ought to be training and a designated contact in the Crown Office for the courts to contact for expertise in the issue.

We have no comments to make about sections 5 and 6.

I mentioned sections 7 and 8 in my comments about section 3. That is really the most important thing that the Law Society has to say.

Our recommendation on section 12 is simply that it be deleted in its entirety, because it does not seem to do anything. It says that part 1

“does not affect any other protection or assistance available to a person”.

Of course it does not. It also says that part 1

“does not affect ... any criminal liability”.

Of course it does not. Why do we have a section in the bill saying so? It could usefully be deleted.

Section 12 also says:

“In particular, it does not affect ... the equitable jurisdiction of the High Court or the Court of Session”.

What? That includes an English legal phrase that does not apply here. I think that it means the *nobile officium*, but we do not need to put that in. Section 12 could really just go. I think that there is an equivalent section in the English statute, which is why section 12 has been included, but we do not need it. Let us just cut it.

We have no comments to make on sections 13 to 16.

Our last comment is on section 17, which has, to some extent, been covered. It states:

“No contravention by the Crown of ... section 9(1)”—

that is the offence section, which is important—

“makes the Crown criminally liable.”

There is no great surprise there. It continues:

“But the Court of Session may, on the application of any public body or office holder having responsibility for enforcing section 9(1) ... declare unlawful any act or omission of the Crown which constitutes such a contravention.”

That is where you may find a clash with the immigration authorities. The committee may wish to consider widening the range of people who can make that application to the Court of Session or even allowing an application to the sheriff court. Why should someone in Kirkwall or Stranraer have to go to the expense of doing it all through the Court of Session? There are perfectly good sheriff courts—why could the application not be made there?

Interestingly, section 17(4) states:

“Nothing in this section affects Her Majesty in Her private capacity.”

One wonders why that is there. Do we expect Her Majesty to indulge in forced marriage of any kind? I do not think that that belongs in a Scottish statute. It may have resonance in English procedure but, if it has been a cut-and-paste job, let us delete it.

The Convener: We are looking at the main provisions and it is good to get on record the Law Society’s detailed suggestions about where the bill could be improved, but can you give us an overview of the main provisions, to give us a feel for them? Now that we have your comments on specific provisions, we can tackle them in a moment—Malcolm Chisholm will bring up some stuff in relation to that. Can you say anything on the main provisions generally?

Assistant Chief Constable Livingstone: I will make three points. The first is on the enforcement of the section 9 offence of breaching the order. I reiterate what we have said in writing: we would like an explicit power of arrest to be attached to that section, just for clarity. One could argue that such a power is inferred or implied, but why argue if we can state it explicitly? That would make the bill consistent with the legislation on matrimonial homes and the Protection from Harassment Act 1997.

The second point relates to the definition of force. I take John Fotheringham’s point about the breadth of the definition. My slight fear is about the interpretation in section 13, that

“‘force’ and related expressions have the meanings given by section 1(6)”.

Although that includes coercion by threats and psychological means and taking advantage of incapacity, for the purpose of being explicit we would prefer a definition of physical and actual

force. Again, that may be implied but it would be easier were the bill to say it.

My third point—apart from what we have said in writing—is that I support John Fotheringham’s observation about the value of section 12. As we have said from the outset, the legislation on forced marriage will be part of a suite of statutes, common law and practice that we will use to address honour-based violence.

The Convener: Does anyone else have general comments on the provisions?

Louise Johnson: I will reflect and agree with what John Fotheringham and Iain Livingstone said. Those matters will all be covered in depth in our submission, so it is good to see that we have got it right.

Guidance for the judiciary is definitely an issue. We also presume that the bench will look for a report. If we have the bar, reporters, safeguarders and curators, it will be important that they, too, have an obligation to undertake training or to be aware of the situation. We see such a problem arising in relation to contact orders, so it would be most unfortunate if that were to be replicated under the bill.

The bill mentions threats, but I do not think that it mentions physical violence, which must be mentioned, too.

We wonder what constitutes “appropriate” in ascertaining the protected person’s wishes. That could be clearer, because “appropriate” can mean different things to different people.

On applications, we are concerned about who would be a relevant third party. It is important to have guidance for them and not to assume that, because someone happens to be part of a statutory organisation, they automatically have knowledge. The task cannot just be bolted on to whatever job they do.

We make detailed points on other sections in our submission. As Iain Livingstone said, a specific power of arrest is needed for the offence of breaching an order. We wonder how section 9 will work. Will the protected person have to take the matter back to their solicitor to have the breach brought before the court, or will it have to be reported to the police? Will a relevant third party or another person be able to report the breach or will that have to be done by the protected person? An order might be breached outwith Scotland—for example, a protected person might ostensibly go on holiday with her family and find that she is put through a marriage ceremony against her will. If that protected person is forced to remain abroad with her spouse, how will the order be enforced abroad?

The Convener: Those comments are helpful.

Malcolm Chisholm: Much of what I had planned to ask about has been covered. Central to the bill are forced marriage protection orders. I will raise a few issues on them, some of which some people have covered. The general question is whether the orders will provide sufficient preventive and protective measures for forced marriage cases. What are the witnesses' views on the provisions that will allow applications for forced marriage protection orders via third parties on victims' behalf? How appropriate is it for local authorities to have that role? I will touch on Louise Johnson's last point. How well will the application of protection orders to conduct outwith Scotland work in practice?

John Fotheringham: We will have to wait for experience. In England, 230 orders have been made, which is double the expected number. Very few orders have been breached, although the orders have been made. If the orders have been made with very few breaches, we can say that the prevention aspect seems to have worked. Perhaps that is a leap too far, but it is all that we have, and we can only try.

We have a couple of years of English experience. The Forced Marriage (Civil Protection) Act 2007 has been in force there for two years and has its second anniversary on Thursday, so it is new and is not well known, although it is becoming better known. We can learn from the English experience: we have learned from it in the bill. We do not know how the bill will work, but it will work better than nothing. If it works as well as the English act, we will be doing not badly, given that the numbers in Scotland will be very small.

How would a protection order work outwith Scotland? I do not think that it would. It would not be enforceable outwith Scotland. However, if there has been a forced marriage protection order and 15-year-old Ayesha is taken to Lahore and married anyway, that will assist Ayesha in her application for nullity, when the matter comes before the court in Scotland. It will also be a reason for her family not to take her to Pakistan to be married, if they want to come back here to carry on with their business, because they know that they will be in criminal breach of an order. The power will be therapeutic, rather than anything else. The paucity, rather than the number, of breaches will show whether it is working.

Have I covered all of your questions, or do you have another one?

11:15

Malcolm Chisholm: I asked about the role of local authorities.

John Fotheringham: We want social workers to have the power to apply for orders. For "local

authority", one can also read "teacher". One indicator that there may be a danger of forced marriage is a child not attending school, having a sudden drop in academic performance or being removed from school without explanation, so teachers may be among the first people to understand what is going on. A child who does not yet have a particular connection with a social worker, because there has been no apparent reason for them to have one, will have a relationship of some sort with a teacher, who may see that something is going on. Through that teacher, the local authority ought to have the power to make an application.

Louise Johnson: As John Fotheringham said, it is not clear to which parts of a local authority the term "a relevant third party" is intended to refer. We thought that it might refer to social work, education and health, but what about children's reporters? Will the police be regarded as a third party, under the child protection agenda? Will they be able to apply for orders when they are supporting someone who has reported domestic abuse, for example?

Regardless of which part of a local authority applies for an order, it is crucial that the responsibility is not just bolted on to those who do that. As John Fotheringham said, it is crucial that there are named people. The provision should apply not just within the Crown Office but to whichever part of the "relevant third party" is dealing with a case. There must be a dedicated and trained team with cultural, religious and community awareness and understanding of the tensions that can surround people who wish to apply for forced marriage protection orders.

One issue is the safety of the protected person, both before an application has been made and after it has been granted. We wondered who would be responsible for policing—if I may use that word—forced marriage protection orders. If the protected person is still living with their family or is in close contact with them, they may be at risk of physical harm, emotional coercion, blackmail and so on while the application is being made. Provision must be made for people who are relevant third parties to take some responsibility for the individual's safety and support while that is happening. If there is not, their focus will be on applying for the order. How do we ensure that they take steps to cover the person's safety?

Christina McKelvie: I have a specific question about an issue on which we have some joined-up thinking in the Parliament. I am a member of the Education, Lifelong Learning and Culture Committee, which is the lead committee for the Children's Hearings (Scotland) Bill. Stage 3 of the bill will take place on Thursday. At stage 2, there was considerable debate about including in the bill

a specific provision on forced marriage; whether the deal will be sealed at stage 3 is another matter. That provision, which was proposed by the Law Society, had to be quite loose, because it must reflect the provisions of the Forced Marriage Protection (Scotland) Bill; it will probably be tidied up by a Scottish statutory instrument at a later date.

There is specific provision for reporters, panel members, panel chairs, social workers and education authorities to take into account in the children's hearings system whether a child is at risk. If a child becomes known to the system just before their 16th birthday, which is sometimes around the time when forced marriages take place, they will be supported by the system until their 18th birthday. That provides a bit of overlap and added protection. There has been some joined-up thinking across a couple of pieces of legislation to protect children.

Louise Johnson: Thank you for that; it is very helpful, and it is a positive move.

The Convener: I think that you are talking about amendment 177, Christina.

Christina McKelvie: The Law Society has lodged about 340 amendments to the Children's Hearings (Scotland) Bill.

John Fotheringham: Yes. We have lodged a fair old number. We were disappointed that the provision was not in the bill, but we were told the day before about the amendment to the Children's Hearings (Scotland) Bill, so that is just fine.

The Convener: We will make the connection during our wind-up speeches at stage 3 of the Children's Hearings (Scotland) Bill.

Assistant Chief Constable Livingstone: I want to make a point that is relevant to some of the observations that have been made about the different pieces of legislation. It is about integration, how it would happen in practice and who will make an application.

If there is concern about a child, there is immediately a referral discussion and a case conference. All the agencies will gather. Again, that might happen before the concept of forced marriage has been mentioned. It is only when you look around the issue that you will see that there is a host of measures, and one agency might take the lead for one, another might take the lead for another, or it might be done jointly. The children's reporter might be involved, or the voluntary sector. There is a complexity of different integrated services, and within any situation, we might want to consider collectively and jointly a third-party application for a forced marriage protection order. I just wanted to set the context because that is just another element that needs to be integrated.

There can be many issues around an individual, a group of individuals, a family or wider network, and the decision to seek a forced marriage protection order would be made on a collective basis. Louise Johnson made the point about someone taking the lead; that would be done on a shared basis.

One of the questions would be about who has the responsibility and accountability for protecting the victim, and the police might take an element of that by removing an individual or taking other measures to give them physical security.

I just wanted to make the point about how integrated the process would be. It would not just be a stand-alone meeting about a forced marriage protection order. The FMPO would be a mechanism that we could use and it would be integrated into a decision about how to support a family.

The Convener: That is helpful.

Tanveer Parnez: I just wanted to flag up the point that we are all in danger of stereotyping 16-year-olds. Forced marriages are most likely to occur in parts of England or Wales. However, in Scotland, we need to be aware that there have not been many cases of people in that age group being forced into marriages. In schools, teachers have the perception that if a 16-year-old girl is taken away from home to go on holiday with her parents, she is being forced into a marriage. Those perceptions are myths and we need to move away from them.

Also the bill seems to focus solely on the south Asian communities, which detracts from the fact that forced marriages also occur in other communities and makes that experience invisible. We need to take that into account as well.

Marlyn Glen: That was interesting because we have not actually talked about other communities, and there are myths. As John Fotheringham said, there might be a low incidence, but there is a high impact, which is important.

My question is really just to get some clarity. Louise Johnson asked about who will police what happens. I am under the impression that that is what an interim order will do. Is that right?

Louise Johnson: I suppose that it depends on whether an interim order is applied for in the first place. If the situation is urgent, presumably an interim order will be applied for. If the situation is not seen as urgent, or if there is no danger to life and limb and an application for an order is being made, how long will it take, and what will be done to support the person while the application is going through?

The children's hearings provisions will allow younger people to be supported. When the

situation involves an older woman, who is going to ensure that the order's terms are adhered to?

Who will support the person if they are experiencing coercion, threats or whatever? Who does the person tell and who will ensure that something is being done? The order will probably operate a bit like an interdict does, but how do we ensure that the person does not suffer while the application for the order is being made and once it is in place?

The Convener: To some extent, that is the point that Iain Livingstone was making. It is integral to the case.

Assistant Chief Constable Livingstone: If there was a suggestion or allegation that an order was being breached, the value of section 9 is that breach of the order would be a criminal offence, so it would be the police's duty to investigate the situation and establish whether there had been a breach. If an order had been breached, there would clearly be a power of arrest.

On the mechanisms that would make the provisions on maintaining, varying or recalling an order work—the provision of information, police awareness, the need for updates on to police computers 24/7—it is vital that the data are accurate, so that people who should be arrested are arrested. It is equally important that people are not arrested when they should not be arrested, because an order is not in place. That is the value of having statutory guidance, because the logistical, mechanical process is critical to ensuring that the system works properly.

Marlyn Glen: That is helpful.

I have been considering protection orders for victims of forced marriages who have a learning disability, in particular. If someone needed a protection order because they had a learning disability, why would the order come to an end? Why would not a permanent protection order be made? I am concerned about that. I have not considered Louise Johnson's point about people being forced into marriage to be carers—I do not think that the committee has thought about that. However, I am interested in the duration of orders. How would we know that a protection order needed to be in place for a certain length of time?

Louise Johnson: That is one of the issues that we will raise. What would the minimum and maximum durations be? Under the bill an order could just continue. When would it be determined that the order needed to be varied or ceased altogether? Who would take that decision?

In relation to the making of orders, we are concerned that the need to take a person's wishes and feelings into account does not seem to be covered in the sections on variation, recall and

extension of orders. We were going to mention the issue in our submission. Where does the question of a person's wishes and feelings fit into a decision to vary or cease an order? That is not covered in the bill.

The Convener: Do Claire Platts and Huma Awan want to comment?

Claire Platts: On applications that are made by third parties, the focus appears to be on minors, but we are concerned about the support mechanisms that would be in place for people who are in their late teens or early 20s in the event that it was deemed necessary for a third party to apply for an order. If an application has been made and the person has been shunned by their family and there is no emotional or financial support in place for them, it strikes me that there might be repercussions for the individual.

Huma Awan: As Claire Platts and Louise Johnson said, we seem to be focusing on youngsters. Tanveer Parneez mentioned that, too. However, as we know from our immigration work, changes in the law in relation to marriages that take place abroad mean that a person must be 21 before they can apply for a marriage visa. Therefore, if there is an immigration angle to the forced marriage, the individual will be in their 20s. What protection will such people be given?

The Convener: The issue is how we ensure that there is awareness, so that people can check for that.

Huma Awan: Yes.

The Convener: Are there any other comments on the bill's provisions?

11:30

John Fotheringham: There is one matter that is a policy question on which the society does not have a specific view. Section 2(1) states:

"A forced marriage protection order may contain such—

(a) prohibitions, restrictions or requirements, and

(b) other terms,

as the court considers appropriate for the purposes of the order."

It does not mention validity.

The committee will have to decide whether an order should render invalid any marriage celebrated in Scotland during the currency of the order. That would certainly make the position much stronger for a real victim. On the other hand, people can change their minds. If orders do not have a specific time limit on them, they continue until they are recalled, as Louise Johnson rightly said. It is quite possible that a young woman might say that she is being forced into a marriage that

she does not want, and an order will be granted, just to sit on the court file. Five years later, things might have moved on and the couple might marry, forgetting that there was an order rendering their marriage invalid, with all the implications for succession and financial provision on divorce. The policy decision that the committee will have to make is whether it wants the order to affect the validity of a marriage or just to give the possibility of a criminal sanction if someone goes ahead with a forced marriage despite an order being in place.

The Convener: Thank you for that. Are there any other general or specific views?

Assistant Chief Constable Livingstone: I will try to be brief. I talked about integration. A case might arise involving a woman in her 20s, 30s or 40s who has children and who has been forced into a marriage. We need to keep in our minds a multiple layer of support mechanisms, interventions and remedies.

There are duties of care. If the police are dealing with a victim but have not clarified whether there has been a forced marriage, violence, marital rape or whatever the issue is, there is an immediate duty of care. We would seek to protect and rehouse that individual and his or her dependants. Those duties stand. Very often, that is when we come into contact with the third sector to provide alternative housing. I apologise for reiterating what I have already said, but it is really important to see all this as integrated with lots of other protective measures that are available.

The Convener: The communities that we seem to be touching on have an element of permanence. Would the bill have an impact on more transient communities, given that people from some of the A2 accession countries are now coming into Scotland? I am talking about people from Bulgaria, Romania and Roma communities.

Louise Johnson: If I remember correctly, the forced marriage network that the Scottish Government has set up includes a representative who has contact with the Gypsy Traveller community. The bill will cover forced marriages where they occur within those communities. How do we engage with them? You are correct to ask how we make women who have come in from other European or candidate countries aware that the legislation exists. That is part of engagement with community organisations, across the wide community. We are talking not just about the black and minority ethnic community, but the Chinese community, the Roma community and Bulgarian and eastern European communities. There is a lot of work to do with people who are supporting those communities in integrating into life in the UK or in relation to their immigration status when they come in. Information should be made available somewhere, in the relevant language, so that

people understand that the legislation exists as part of the legal system of Scotland.

The Convener: That is very interesting, given that our next agenda item is to consider our report on immigration and trafficking. Information packs feature in that. This might be an aspect that should feature in it, too.

Are there any other general or main points on the bill? If there are not, I intend to go around the table and ask people to sum up. It would be a good and helpful way to conclude if you just mentioned what you think is the main point from today's session. I will start with you, Louise—to put you on the hot spot.

Louise Johnson: Our specific concern, which is quite important, relates to the categories of people who can vary, recall and extend orders under section 7, "Variation and recall of orders", and section 8, "Extension of orders". I do not think that "a relevant third party" at section 3(1)(b),

"any other person only with the leave of the court"

under section 3(2) or the Lord Advocate under section 4(3) have the power to do that. They might be covered under section 7(1)(c) as

"any other person affected by the order",

but I am not sure. Those people have specific powers to apply for orders, but it should be stated on the face of the bill whether they also have the power to vary, recall and extend orders.

We are generally pleased with the bill and commend the Scottish Government on all its work with the forced marriage network, and everyone who contributed to getting the bill to this stage. We are pleased that the Scottish Government has introduced the bill.

The main focus should be on awareness raising and training. We can have as many orders as we like, but if people do not know that they exist and what they are for, there is no point. One of the main focuses has to be on saying, "It is not criminal; it will become criminal only if the people who are supposed to be looking after you and who should have your best interests at heart actually act against you. Nothing will happen until then."

It is important to ensure that people are supported through their applications and that the people who make applications are fully trained and named so that we do not have a situation where people say, "Who's going to do this?" and the answer is, "I don't know," followed by a vague phone call about enforcement. We do not want there to be confusion and nobody knowing how to deal with the situation. We are dealing with people who are already confused and perplexed about their rights, so we do not want to make the situation any more difficult. The legislation has to

be accessible and clear so that it can be used well.

Hugh O'Donnell: I simply repeat what I have said on numerous occasions in committee when dealing with such issues: yet again, we are faced with a severe lack of accurate data. I understand the reasons for that in this case, but we need to find a way of getting a handle on what we are dealing with if we are to make meaningful progress and comment on it. That aside, I thank the witnesses for their contributions.

Claire Platts: The bill is to be welcomed. Anything that acts as a deterrent to the behaviour that is exhibited in relation to forced marriages is to be welcomed. Publicity and awareness raising are key to the bill meeting its aims. It must be targeted at the requisite individuals to ensure that they are aware that it exists and they have a clear understanding of the remedies that are available to them.

Malcolm Chisholm: I thank all the witnesses. This has been an extremely useful session and I now know a lot more about the issues than I did an hour and a half ago.

Assistant Chief Constable Livingstone: The police service strongly supports the bill. We think that it is in line with a lot of legislative change that the Parliament has introduced, whether it is the Domestic Abuse (Scotland) Bill, reform of sexual offences law in Scotland, the child protection reform programme or work on adult support and protection. All that is aligned to ensure that specific victims have specific remedies and that all agencies can support the victims.

We have made a number of observations on the bill, but its premise, value and the fact that we will have a specific act on forced marriage in Scotland will help to shine a light and get the clear understanding that we all seek. There is strong support from the police.

Stuart McMillan: I echo my committee colleagues' comments on this morning's session and thank everyone who has come along. It has been an interesting session. A couple of key points came out of it for me. The first is about the lack of data, but we all understand why that is the case. The second is that, if and when the bill is passed, it is imperative that a full range of information is provided to as many relevant people as possible to ensure that the legislation does what it says on the tin.

Tanveer Parnez: BEMIS welcomes the bill. One of the best things in it is the exit option. However, we would like to see more of an interagency approach to the issue. Also, the public authorities should approach forced marriage by initiating long-term dialogue with communities and people who

have been forced into marriage and having appropriate provisions in place for them.

John Fotheringham: As I mentioned, sections 3, 7 and 8 are the only major flaws in the bill. It will be reasonably easy to mend them, and I hope that that will happen. Apart from that, I echo what Louise Johnson said and commend the Parliament for this great step forward. It is a bold step, particularly as we are not following England. We are saying that to breach a forced marriage protection order is a crime. We are not going to tolerate forced marriage in this country, and nobody will be able to hide behind issues of cultural sensitivity to say that they are not committing a crime. It is a wrong, and we are saying that it is a wrong.

Jamie Hepburn: I do not have much to add. I echo my fellow committee members' thanks to the witnesses. Their evidence has been useful. I do not think that much of it has been too surprising, but it has been useful and it will inform our further, detailed consideration of the bill.

Huma Awan: I welcome the bill. It sends a clear message to the perpetrators that forced marriage is not acceptable in Scotland, and the fact that breach of a forced marriage protection order will be a criminal offence sends a strong message that we are supporting the victims and thinking about them. As with any legislation, awareness raising is important if the bill is to work, and there needs to be support for organisations that work with victims in that regard.

My only concern is that we need to get the religious marriage celebrants involved as well, particularly when it comes to nullifying marriages. Where would the victim stand if their marriage was nullified in a court in Scotland? Would they be free to marry under Islamic religious rules, or Jewish ones, et cetera? Some consideration needs to be given to that.

The Convener: That is helpful.

Christina McKelvie: I thank the panel members for their interesting contributions this morning. I echo what everybody else has said, but a few specific things jumped out for me. The first is the value of and need for human rights education—Tanveer Parnez will be happy about that, because it is a real cause for her—and how it can be incorporated into what we do. The second is the need for integration of services, organisations and how we think about the issues.

One of the main things is that the bill needs to use clear and unambiguous language so that people know exactly what it says and what it means. We have all learned a lesson about that this morning. I took great note of what the Law Society of Scotland said. Clear and unambiguous

language is a main factor for me in taking the bill forward.

Marlyn Glen: I add my thanks to all the witnesses and ask for their continued support through the remaining stages of the bill.

The Convener: That concludes our evidence session. On behalf of the committee, I thank you for what has been an extremely worthwhile evidence session. It has certainly implanted in our minds the need for awareness and training out there. We know that it has been a successful session when we come up with not exactly more questions than answers, but certainly a lot of questions. We know that it has been a worthwhile session when we have a body of evidence and information to use as we progress with the bill. I thank you all for your attendance today, which is much appreciated.

With that, we move into private session.

11:44

Meeting continued in private until 12:46.

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