



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EQUAL OPPORTUNITIES COMMITTEE

Tuesday 14 December 2010

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EQUAL OPPORTUNITIES COMMITTEE
24th 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:

Smina Akhtar (Amina Muslim Women's Resource Centre)
Suzelle Dickson (United Kingdom Forced Marriage Unit)
Laura McCrum (Saheliya)
Alex Neil (Minister for Housing and Communities)
Rajani Pandher (Hemat Gryffe Women's Aid)
Girijamba Polubothu (Shakti Women's Aid)
John St Clair (Scottish Government Legal Directorate)

CLERK TO THE COMMITTEE

David McLaren

LOCATION

Committee Room 1

Scottish Parliament

Equal Opportunities Committee

Tuesday 14 December 2010

[The Convener *opened the meeting at 10:02*]

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

The Convener (Margaret Mitchell): Good morning, everyone, and welcome to the 24th meeting in 2010 of the Equal Opportunities Committee. 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.

The only item on today's agenda is to take oral evidence from three panels of witnesses on the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill at stage 1.

It is my pleasure to welcome our first witness, Suzelle Dickson, who is joint head of the United Kingdom forced marriage unit. She joins us by videolink from London. I ask members to be mindful that because evidence is being taken by videolink, there will be a slight delay between members finishing their questions and Suzelle Dickson hearing the questions and responding.

I invite members to introduce themselves. I will start.

Good morning, Suzelle. I am convener of the Equal Opportunities Committee.

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

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

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

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

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

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

The Convener: I will start the questions. What is the role and remit of the forced marriage unit and what is the level of joint working with key organisations in Scotland?

Suzelle Dickson (United Kingdom Forced Marriage Unit): Good morning. The forced marriage unit was set up in January 2005 as a joint unit between the Home Office and the Foreign and Commonwealth Office in recognition of the extent to which victims may face difficulties both in the UK and overseas.

The remit of the unit is threefold in that we are responsible for developing Government policy on forced marriage. We work closely with other Government departments and other statutory agencies. For example, we work closely with the police, the Ministry of Justice, the Department for Education, the Department for Communities and Local Government, the Department of Health and the Crown Prosecution Service. As part of that policy remit, we have developed an action plan of our activities to address forced marriage across the year. We have also launched what we call a domestic programme fund that enables us to offer funding to small projects that are working to tackle forced marriage.

The second part of our remit involves outreach. We do a lot of outreach and awareness raising and deliver a lot of training to various organisations in the UK and internationally.

Casework makes up the bulk of the unit's work. We run a helpline that operates from Monday to Friday, nine to five. We speak to victims and practitioners and anyone else who needs advice about forced marriage, whether in the UK or overseas. If the person is overseas, we liaise with the British High Commission and embassies in the relevant area.

Casework falls into three areas. The first area involves what we call our consular cases, which involve a British national who has been taken overseas and either forced into marriage or has been placed at risk of being forced into marriage and is seeking assistance to return to the UK. In those cases, we work closely with the British High Commission and the embassy to facilitate the return of that person. That would involve a visit to where the person is staying and a discussion with that individual to determine their feelings and find out what they want to do. If they say that they want to return to the UK, the embassy staff can facilitate that.

The next part of our casework involves the domestic side: people who are at risk of being forced into marriage in the UK. We would look for refuge space for them, if they wanted to leave the family home, or we would ask the police to assist if the person was being held against their will in their address in the UK.

The last part of our casework involves people whom we call reluctant sponsors. It focuses purely on our immigration side and concerns people who

have been forced to marry someone overseas and, on their return to the UK, are being forced by their families to sponsor their spouse's visa to allow them to come to the UK. We provide a support function and work closely with immigration officials to support that person, in the hope of stopping the visa and preventing the person from coming to the UK.

The Convener: Thank you for that comprehensive response. Can you outline the level of joint working with any key organisations in Scotland?

Suzelle Dickson: We work closely with the devolved nations. I know that before I was in the unit there was close working around the question whether to make forced marriage a specific criminal offence. We work with colleagues in Government in Scotland on policy work, such as the development of and consultation on the Forced Marriage (Civil Protection) Act 2007 and guidelines that will arise from the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill, if it is passed. In September, I attended an event that was run by the Association of Chief Police Officers in Scotland, which was a prelude to the introduction of the bill but also examined how the police had been tackling forced marriage and honour-based violence.

The Convener: Is there any joint working with third-sector organisations?

Suzelle Dickson: We have worked closely with Shakti Women's Aid on certain cases. When we need advice on particular issues, we contact some Scottish third-sector organisations. We have also worked with Hemat Gryffe Women's Aid—in 2008, we funded it for a project from our domestic programme fund.

The Convener: Has there been any contact with social work departments in local authorities in Scotland?

Suzelle Dickson: Possibly. If we had a case in an authority area, there would be contact, but I could not say that we have had a lot of involvement with social services in Scotland.

The Convener: Thank you. Marlyn Glen has a brief supplementary question.

Marlyn Glen: Will you be continuing your liaison with Scottish services after the Scottish bill is passed, as we hope it will be?

Suzelle Dickson: Yes—most definitely. We will ensure that we continue to work with our partners in the devolved nations. There are always experiences to share and things to learn from, so we will definitely continue to do that.

The Convener: What information does the forced marriage unit hold on the incidence of victims of forced marriage in Scotland?

Suzelle Dickson: Since 2008, we have collected a lot more statistics about the calls that the unit receives. We find out which regions of the UK the calls come from and who is making referrals, and if the person is at risk of being taken overseas, we find out what the focus country is. We also find out whether the person is an adult or a child and whether they are already married or at risk of being forced into marriage.

Our statistics are based on calendar years. From January to December 2009, the unit received 1,682 calls relating to possible forced marriage and, of those, we provided direct support in 377 cases in which the person needed consular or domestic assistance or was a reluctant sponsor. In our assistance cases, which include both consular assistance and UK assistance, 37.5 per cent of cases last year involved minors—that is, people under 18—and 16.5 per cent involved under 16s.

Last year, we started to collect statistics about people with learning and physical disabilities. From August to December 2009, we had 15 reported cases involving people with learning difficulties and 7 cases involving people with physical difficulties. We recently launched some practice guidelines for professionals about how to work with people with learning difficulties who might be at risk of forced marriage.

On the gender breakdown, the majority of the cases that we deal with—85 to 86 per cent—involve women, and 14 to 15 per cent of cases involve men. We ran a campaign last summer to raise awareness of the issue in respect of men. The aim was to let people know that forced marriage does happen to men and that men can come forward and seek help in the same way that women can.

Does that give you an idea of the information that we hold?

The Convener: That was very helpful. Do you have statistics on ethnicity? Also, to what extent do the figures in the comprehensive picture that you have painted apply to Scotland?

Suzelle Dickson: We do not necessarily collect data on ethnicity. However, we do collect information on the focus country, so we know that in 2009 56 per cent of reports of possible forced marriage related to Pakistan, 10 per cent related to Bangladesh and 7 or 8 per cent related to India. Smaller percentages—1 or 2 per cent—related to Afghanistan and Africa. We do not have full statistics for the current year, so I will not go into detail on those, but we are seeing increases in the numbers of people who are affected by the

practice of forced marriage in middle eastern, African and European communities.

10:15

On the regional breakdown across the UK, 2 to 3 per cent of reports come from Scotland—I think that the figure at the moment is about 3 per cent. We would welcome people using the service, but I do not know whether there are other organisations in Scotland to which people may go to seek help, rather than coming to the forced marriage unit, or whether people think that the service does not apply to them. Our service is for anyone in the UK, so people in Scotland are very welcome to access it. We will work with partners to do whatever we can to promote it.

The Convener: Thank you very much. That is helpful.

Marlyn Glen: The committee has received evidence on the importance of distinguishing between a forced marriage and an arranged marriage. There is no definition of an arranged marriage in the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill. What has been the experience of the interface between forced and arranged marriages? For example, since the Forced Marriage (Civil Protection) Act 2007 came into force, have there been cases of difficulty in distinguishing between the two in court?

Suzelle Dickson: I do not know about the extent of difficulties in the courts, but I know that there have been difficulties in the past for some practitioners in trying to understand the distinction between an arranged marriage and a forced marriage. The forced marriage unit has made clear the distinction between a forced marriage and an arranged marriage in all its guidelines and the guidance, and the Ministry of Justice has done the same in the leaflets that it has issued about the 2007 act.

In our minds, a forced marriage occurs where consent has not been gained from one party or both parties and duress is a factor in the pressure. People could have been threatened physically, financially, emotionally or psychologically. With an arranged marriage, the family will take a leading role in organising the marriage, but the choice of whether to accept it rests purely with both potential spouses, who are freely able to take the decision.

Our focus is very much victim centred. We always ask the victim how they felt and whether they were pressured into the marriage. If they say that they were—even if they say that their parents arranged it at the beginning and they were happy to go along with the process—we would take the victim's word on that, if they felt that there had been any pressure in the arrangement and were

not happy to go through with it. We would say that the marriage was forced.

We try to make very clear in all our communications the distinction that we are trying to make. Arranged marriages have happened for many years, and the Government is not trying to interfere in that practice. The problem is when people are threatened, abused and forced into marriage by being denied a choice. The Government wants to stop that practice.

Stuart McMillan: How effective has the 2007 act been in prevention and protection of victims of forced marriage? What agencies have been the most active players in the implementation of that act?

Suzelle Dickson: The forced marriage unit and the Ministry of Justice would say that the act has been successful in the sense that more orders were taken out in the first year than were expected. Some 86 orders were taken out between November 2008 and October 2009. That was nearly double the number that had been expected. We know that the police have been very active in taking out orders, but local authorities have been quite slow in taking the applications out and, basically, in understanding the extent of forced marriages. We know that some non-governmental organisations have been actively working with other agencies including the police to raise the issue of applications and get them taken out.

The statistics for the period between November 2008 and November 2010 show that 247 orders have been taken out, and that 30 per cent to 40 per cent of those were for children—people under the age of 18. We also know that 70 per cent of the orders had a power of arrest attached, so we are looking at how seriously the courts are taking that kind of situation. Around 50 per cent of those orders were served *ex parte*, or without notice, taking into account the extent of the emergency of the situation.

We know that we must do more awareness raising. Although the system seems to be working in some areas and the pace has been picked up quite quickly, that is not necessarily the case in other places. Some courts were very slow to become active on the issue. The forced marriage unit, alongside the Ministry of Justice, is looking at ways in which we can raise awareness. When the forced marriage unit does outreach and presentations on awareness raising, it ensures that it talks about the Forced Marriage (Civil Protection) Act 2007 and the orders, and what they can do to protect people.

In our experience of the orders that have been taken out, we know that people have been held overseas and used to facilitate a person's return to

the UK. Orders might stipulate that a person's travel documents and birth certificate need to be surrendered or, if we do not know a person's whereabouts, might order the respondent to disclose that person's whereabouts, or not to use or threaten any violence against the person. The 2007 act has been good at preventing people from being forced into marriage and stopping their being taken overseas. When people have been overseas, in many cases, the 2007 act has helped to facilitate their return to the UK.

Stuart McMillan: You have anticipated some of my questions, one of which was about how many forced marriage protection orders have been issued to date. Can you provide for the committee more written material on that, please?

Suzelle Dickson: I will speak to my colleagues in the Ministry of Justice, which does monthly monitoring of protection orders, so I am sure that we will be able to provide the committee with that information.

Stuart McMillan: Thank you. Is the forced marriage protection unit aware of the issuing of FMPOs in the context of forced civil partnerships?

Suzelle Dickson: That has come up, but the unit itself has not dealt with that situation. Under our remit, and because of the communities that we engage with, that is probably not likely to be an issue. We are dealing with the forced marriage of opposite-sex couples as opposed to civil partnerships, so we have not come up against that problem, per se.

Stuart McMillan: Thank you. Section 2 of the Forced Marriage (Scotland) Bill will make the terms of an FMPO apply to conduct outwith as well as within Scotland. You touched on that in an earlier answer. Could you provide more information about the forced marriage unit's experience in England and Wales of the similar provision in the 2007 act?

Suzelle Dickson: We have had some cases in which the person has been overseas and an order has been taken out and served on family members in the UK, asking them to facilitate the person's return to the UK. If the person is a British national, we can request that they be brought to the High Commission so that the staff there can speak to them. When families comply with the request to take the person to the High Commission, staff are able to speak to the person. If the person wishes to come back to the UK, staff will facilitate that. We are aware of cases in which families have not responded to an order. In those cases, lawyers and solicitors here have had to go back to court to request that additions be made to the order to make parents or other family members comply with it.

When the 2007 act was first implemented, there was some learning to be done by the unit, as British embassies can support only British nationals overseas. We must be mindful of that. If an organisation or solicitor in the UK takes out an order, but the person concerned is overseas and is not a British national, we must facilitate the arrangement by ensuring that we do not ask the person to present at the British High Commission, but instead seek alternatives. Overseas, we work closely with some non-governmental organisations, which can facilitate support for people who are not British nationals.

We have found that, in cases in which legal proceedings have been initiated overseas, those courts have looked favourably on orders from the UK when trying to determine the risk to a person. However, the orders have no jurisdiction overseas.

Stuart McMillan: How prevalent has the issue been since the 2007 act came into being in England and Wales?

Suzelle Dickson: Are you asking about the prevalence of forced marriage?

Stuart McMillan: How many cases have you dealt with outside the borders of England and Wales?

Suzelle Dickson: Do you mean by means of forced marriage protection orders?

Stuart McMillan: Yes.

Suzelle Dickson: I do not have exact statistics, but I can obtain the figures, look through the cases and come back to the committee on that. We have dealt with a fair number of cases, but I do not know the exact details. If we know that someone has been taken overseas, are contacted about it and think that it may be difficult to get access to the person, we advise the professionals to seek a protection order. We are quite active in getting agencies to seek such orders, if we think that it may be difficult to get access to a person.

Stuart McMillan: That will be helpful.

Marlyn Glen: I have a question about the follow-up that you provide to victims. How long do protection orders usually last? Are there issues with removing them? I am particularly interested in protection orders that are issued for people with learning disabilities. If an order is issued for someone because they have learning difficulties and cannot understand the concept of marriage, can the order last indefinitely?

Suzelle Dickson: The terms and length of orders vary depending on the circumstances in individual cases. There is always a review date. In some of the cases in which we have been involved, there may be a review date a week or two weeks after the order was placed or granted,

to look at the circumstances of the case and to determine what has happened. Some orders can remain in place indefinitely, whereas others may be for six months.

I cannot recall many cases of FMPOs being taken out for people with learning difficulties. We would expect social services and social care to be involved in such cases and to contribute to the assessment of risk to the person that the court requests. There would be on-going assessments within the relevant agency to determine whether the person was still at risk.

The Convener: The bill proposes measures on movement of the victim outwith as well as within Scotland. Is there similar provision in the UK legislation?

Suzelle Dickson: Yes. The 2007 act says that, depending on the remit of the order, the person should not be removed from England or Wales, taken outside the jurisdiction of the UK or to any other part of the UK. I hope that that translates into the provisions in the bill.

10:30

The Convener: Yes, that clarifies it. Thank you.

Malcolm Chisholm: A key feature of the bill is the power for the Scottish ministers to introduce statutory guidance. What best practice can the forced marriage unit share on the content and dissemination of statutory guidance for England and Wales?

Suzelle Dickson: Our act has the same remit, and we issued guidance on the day that it came into force. That guidance was directed at chief executives, directors and senior managers within all public agencies that are responsible for safeguarding children and adults.

We are currently reviewing the implementation of that guidance. Over the past couple of months, we have sent questionnaires to social services, the police, health professionals and housing professionals to ask them how the principles that are laid out in the guidance have been implemented. Do they have a lead person? Do they do awareness raising? Are their staff trained? Do they have risk assessments? Are they working within a multi-agency framework?

The guidance basically tells organisations that they need to have a framework in place so that they can respond to forced marriage. As a complement to that statutory guidance, we have developed practice guidelines that set out what step-by-step actions agencies should take.

Where we have done a lot of outreach, we have found areas that are still not aware of the statutory guidance. We hope that the review will highlight

any challenges or gaps, so that we can consider how better to support agencies in the field and cascade the information much further.

Malcolm Chisholm: Thank you. I think that there are some differences between what is proposed in Scotland for breaches of protection orders and what happens in England and Wales. Section 9 of the bill makes provision for a breach to be a criminal offence. I believe that, under your act, breach of an order is regarded as a contempt of court and not a specific criminal offence. Have there been any breaches? If so, how and to whom does the victim make the breach known?

Suzelle Dickson: Yes, breaches have been recorded in the statistics that the Ministry of Justice provides us with. I think that, so far, five have been recorded, but we know that, before those breaches were recorded, a few more happened.

We depend on the victim informing someone about a breach. They might inform an organisation that they are working with or they might inform the police. They might inform us and we might inform the police. How things pan out depends on the circumstances of the case. If the subject of the order or an organisation is aware that a breach has happened, they should inform the police of that breach.

We know that one breach of an order related to surrendering passports. The respondent refused to surrender the passports, was brought back before the court and was sentenced to about a month in prison. We are trying to send a strong message that, if people breach an order, there will be penalties for them.

As you say, the bill proposes that a breach will be a criminal offence, whereas in England and Wales it is a contempt of court. We recently conducted a consultation in England and Wales on whether to make forced marriage a criminal offence. The feeling from the responses was that going down the criminal route would have the counterproductive effect of making victims not want to engage, because they would not want their families to be criminalised—they just want whatever is happening to them to stop and not to be forced into marriage. Without knowing much of the detail, it is safe to say that that was part of the reason why forced marriage was made a civil contempt of court and not a criminal offence.

Malcolm Chisholm: That is useful. It is one of the few seemingly significant differences that we will have to take further evidence on. Has the fact that it is a civil contempt of court rather than a criminal offence led to any specific problems with the punishment of perpetrators, or do you think that making it a criminal offence would not make much difference in practice? You have given an

example of someone being imprisoned for a contempt of court.

Suzelle Dickson: If someone breaches an order and commits criminal offences as part of that, separate criminal proceedings will be taken against them. There is still a remit for that to happen if someone commits a criminal offence in breaching the order.

Malcolm Chisholm: If you have only five examples, that is not much to go on. Would the month's imprisonment that you mentioned be a typical punishment for a contempt of court in such a situation?

Suzelle Dickson: It is too early to say, as we do not have enough information about the breaches. The example that I gave was one of the first breaches that we heard about, which is why it was so significant and sticks in our minds. As you say, the five breaches give us only limited information. We do not know the extent of the problem, as information on it is not collected, but we could try to find out. We would rely on the courts or perhaps the practitioners who are involved to provide us with that information. We could try to find that information if that would be helpful to the committee.

Malcolm Chisholm: That would be helpful. Thanks very much indeed.

Jamie Hepburn: I have some questions on the intervention of third parties in these matters, but before I begin those questions I will ask a question that has come into my head. We have heard that when your unit is told by a person that they do not want to be married, that is good enough proof for you that there is an attempt at a forced marriage. The process is fairly straightforward if that happens before the marriage has taken place—if a person says that they do not want to get married, they do not want to get married—but what happens if the person is already married? You cannot just take their word for it. I presume that there must be some further evidence gathering.

Suzelle Dickson: On the immigration side of things, someone might contact us a year or so after the marriage to say that they were forced into marriage and that they did not know that help was available to them at the time. They might have brought the person to the UK but not want to be in the marriage any more because they are being abused. Lots of different things may have prevented the person from coming forward in the first instance, and they can give us information on that. If the person no longer wishes to sponsor their spouse's UK visa, they have the right to make representations to the immigration authorities for their spouse's sponsorship to be withdrawn and the spouse could be removed from the UK. If someone comes to us after they have

been forced into marriage and says that they need protection or assistance, we still give them that assistance.

Jamie Hepburn: I understand that, but that is not really my question. How do you determine that there actually has been a forced marriage?

Suzelle Dickson: We do that by virtue of what people tell us has happened. It is a victim-centred approach. Sometimes, victims do not understand what has happened. They do not see it but, once they start to unravel the information, they tell us that that is what happened. We can pick that up and understand that the person has been pressured into marriage. I repeat that it is a victim-centred approach. If someone tells us that a forced marriage happened, we take their word on board.

Jamie Hepburn: How many times has an application for a forced marriage protection order been refused?

Suzelle Dickson: I am not sure of the statistics on that. I would have to speak to my colleagues in the Ministry of Justice. I do not think that it has happened many times, but I am happy to find out.

Jamie Hepburn: It would be useful information.

You will be aware that the bill makes provision for third parties to apply for a forced marriage protection order. We are told that third parties means local authorities and, in Scotland, the Lord Advocate. I understand that the Forced Marriage (Civil Protection) Act 2007 has similar provisions for third-party intervention. Is that correct?

Suzelle Dickson: Yes.

Jamie Hepburn: What has the forced marriage unit's experience been of applications from third parties in England and how has that worked in practice?

Suzelle Dickson: The forced marriage unit might provide advice to someone who is making an application, but we do not necessarily work directly with local authorities. However, local authorities have guidance that the Ministry of Justice produced, which sets out what they should do and how they can proceed with an application. Before local authorities were made relevant third parties, they were not very aware of how to take forward applications. Since the guidance was produced, local authorities have had a lot more involvement, and they now take out more orders than the police do. It is encouraging that they are taking the issues on board. They can take into account care proceedings and other issues under children's legislation. However, as I said, more awareness raising and other work can probably be done to facilitate and support local authorities in that role.

Jamie Hepburn: What is the rough proportion of applications from third parties compared with those from parties who are involved in the marriage?

Suzelle Dickson: I think that, for people who are under 18, there are a lot more third-party applications. Overall, there are probably a lot more third-party applications than victim applications. Local authorities, the police and other third parties take out more applications than victims do. The Ministry of Justice has the exact figures on that, so I can send them to the committee. Off the top of my head, I cannot remember all the details, but I know that there are more third-party applications than victim applications.

Jamie Hepburn: You have clarified that—there are more third-party applications than applications from victims.

Suzelle Dickson: I am pretty sure that that is the case.

Jamie Hepburn: To return to my previous question, it is self-evident that, when a victim comes forward, it is much easier to demonstrate that there has been an element of coercion or a forced marriage. How does the unit consider applications by third parties? Practically, how are they taken forward?

Suzelle Dickson: As I mentioned, the forced marriage unit does not deal with forced marriage protection order applications; it is for the court to do that. From what I understand of the process, the court takes evidence from the victim, considers the risk factors and takes any other issues into account. The threshold is more on the balance of probabilities—in other words, the probability of this happening if an order is not put in place. From what I understand, the process is quite straightforward.

10:45

Hugh O'Donnell: I understand that the Ministry of Justice has reviewed the first year of the implementation of the 2007 act. Can you give me some highlights of the lessons that have been learned and how the unit has maintained a level of awareness of the act and its context?

Suzelle Dickson: Obviously, it was still very early days when the one-year-on report was carried out and, given that it could look only at orders that were taken out from November to October, during which time only 11 of the 15 courts had actually served any, it also examined general awareness in the court areas and whether people were finding the process simple or whether difficulties were arising. Where orders had been taken out, the process was becoming simpler and more straightforward; people had been trained in

how to deal with cases, and court staff, the judges and so on were encouraged by how easily the act could be applied.

As I mentioned before, the level of local authority involvement was not what we had expected, but the report's findings and recommendations for next steps included more monitoring of the numbers and the demographics of the people on whom the orders were being taken out and considering how to improve interagency working and take forward work in the different courts. For example, it was suggested that there might be some form of network to share experiences and information.

With the Ministry of Justice, we are looking at what more can be done to raise awareness in some communities, given that in certain areas orders were not taken out because of the fear of repercussions. However, we also need to raise professional organisations' awareness of their roles and responsibilities with regard to people who are at risk of being forced into marriage, and I hope to carry out more work with those organisations in the spring.

The ministry also looked at other things that it could do. We have, for example, updated and revised the guidance to the judicial studies board to give judges a bit more information about their role in the process. The ministry is also considering whether to conduct more in-depth research on the 2007 act later on but, of course, resources will have an impact on that decision.

Hugh O'Donnell: That was very helpful.

In the course of our investigation of the Scottish legislation, we received written evidence from the Equality and Human Rights Commission in which it requested that we look closely at the interaction between immigration status and the treatment of an applicant under an FMPO. What has been your experience of that? We are particularly interested in the potential for a conflict of status; for example, if someone becomes subject to an order, issues might arise with their immigration status. Consequently, the commission suggested that those cases should be taken forward based on the human rights agenda rather than immigration status. Do you have any experience from England and Wales of that type of interaction?

Suzelle Dickson: Do you mean when someone is on a limited visa and is not only at risk of being forced into marriage but is struggling with the fact that they might have to go back to their country of origin?

Hugh O'Donnell: It is more about the connection between being in a marriage and having status to live in the UK. If the marriage is deemed to be false, it can have an impact upon the eligibility of the individual to live in the UK.

Critically, though, it also has an impact on their access to public resources, such as support mechanisms and support organisations. I hope that that clarifies the question.

Suzelle Dickson: This is about the no recourse to public funds issue.

Hugh O'Donnell: Yes.

Suzelle Dickson: So we are talking about someone from overseas who has been forced into marriage to someone in the UK and that marriage has broken down. Forced marriage can fit within the current domestic violence rules. If a forced marriage breaks down due to domestic violence, a person could be eligible to apply under the domestic violence rules to get indefinite leave to remain in the UK. Obviously, they would have to provide evidence of what had happened within the marriage and why it had broken down.

The Home Office is funding a pilot to support women—and men, if they are affected—to leave the family home so that they are not subject to more abuse. They can apply for indefinite leave to remain and seek refuge at the same time.

Before the pilot, there was a difficult case in which someone was subject to the situation that you describe. As far as I know, the police held a collection to support the person because provision was not in place. The UK Border Agency is looking for a longer-term solution to support people who come here and whose marriage breaks down due to domestic violence. We hope that we can ensure that forced marriage is very much part of that.

Hugh O'Donnell: Thank you.

Christina McKelvie: At the beginning of your evidence you talked about communities in which you are seeing some of these issues. The committee has tried to look at what happens in the Roma community. We had some anecdotal evidence, but no one could give us any concrete evidence. You mentioned earlier that you had seen a slight rise in cases from eastern European countries. Will you give us a bit more information on that?

Suzelle Dickson: I am not sure about specific countries. I will have to look at our statistics and come back to you with a qualitative answer and a detailed breakdown. Is that okay?

Christina McKelvie: That would be helpful. It is difficult to get anything concrete on the issue. Thank you.

The Convener: That completes our lines of questioning. Thank you very much for appearing before us today, Suzelle. We are disappointed that we were unable to take your evidence in person due to the adverse weather, but we are extremely

grateful for your evidence today, which will be invaluable in our deliberations on the bill.

Suzelle Dickson: Thank you.

The Convener: I suspend the meeting to allow information technology staff to clear away the video equipment and to allow the members of the second panel to take their places.

10:54

Meeting suspended.

11:00

On resuming—

The Convener: I welcome our second panel of witnesses and thank them for attending today's meeting, particularly as this evidence session had to be cancelled last week, due to the adverse weather conditions.

It is my pleasure to welcome Girijamba Polubothu, manager of Shakti Women's Aid; Smina Akhtar, director of Amina, the Muslim Women's Resource and Development Centre; Rajani Pandher, chief support worker at Hemat Gryffe Women's Aid; and Laura McCrum, development officer with Saheliya.

What is the nature and extent of forced marriage in Scotland? I ask you to consider the prevalence of forced marriage cases that your organisations have supported. Do you think that the number of cases that you support will increase as a result of the implementation of the bill?

Girijamba Polubothu (Shakti Women's Aid): I will give some statistics on the cases that we have dealt with, starting from 2006. In 2006 we had six cases of forced marriage.

Before I continue with the statistics, however, you should know that the forced marriages that I am talking about are among second and third-generation young women in Scotland and England. They are not young women from abroad in whose case the forced marriage happened to them elsewhere—a year ago, say—and the women have just come to the UK and then fled their marriage. There was one case, involving two second-generation cousins, where the marriage happened abroad and, just before the men were brought here, the women fled home.

In 2006-07, we dealt with six cases; in 2007-08 we had six cases; in 2008-09 there were four cases; in 2009-10 we had seven cases; and between April and September 2010 we have had seven cases, which is an increase compared with previous years. We think that that is because there has been more awareness raising about forced marriage in schools. We work in schools, as does

Saheliya. That could be the reason. We also provide training for the voluntary and statutory sectors in which we mention forced marriage. There are more referrals from agencies in those sectors.

In my view we cannot give realistic statistics on the prevalence of forced marriage. When I say that Shakti deals with seven cases of forced marriage, for instance, some of the women concerned will be getting support from more than one organisation. When you ask for statistics, we might say that Shakti is supporting seven women; the police's statistics might contain some repetition, as they might be including some of the same women.

The Convener: Even allowing for that, that is a considerable number of people.

Laura McCrum (Saheliya): Saheliya's statistics are not too dissimilar from those of Shakti.

I will give the committee a tiny bit of background before continuing. We are a mental health organisation, and we support the needs of black and minority ethnic women in Scotland from a mental health point of view. Not all the clients who come through our door have an issue of forced marriage, but our counsellors are highly trained and they assess on intake what issues might apply.

Some women can articulate that their issue is forced marriage, but others cannot. There is therefore a massive grey area in the issues that are presented. Clients present with issues such as domestic abuse, bullying or enforced isolation. We can say that we saw six clients this year for forced marriage, but the indicators from different issues that other clients presented in their initial assessment with counsellors show that there could have been another 35 clients for forced marriage. I grant that that may be an unclarified statistic, but when so many things point to something being a duck, you want to say that it is a duck, even if the client cannot articulate her needs.

You also asked about the impact of the bill on the organisation. I can tell you off the bat that all our organisations are highly underresourced, but they have fantastic people working in them who do a lot of work beyond the hours for which they are paid. From a more quantitative point of view, Saheliya is looking at having a designated caseworker or liaison officer to deal specifically with forced marriage as an implication of the bill going through. We feel that the bill will support and empower a lot of women. Girijamba Polubothu mentioned the schools project. The issue of forced marriage comes up among young girls in our schools group; every single one of them comments on it as a concern. Many of them also state that they would welcome clearer

understanding of the difference between an arranged marriage and a forced marriage. Highlighting the issue of forced marriage has helped more women to come forward, and we will see more of that.

Smina Akhtar (Amina Muslim Women's Resource Centre): Last year we supported six women who reported new forced marriages. We provide both a generic and a relationship counselling service. We have not collected statistics on this, but when some clients get into counselling they start referring to how they got married and there are cases that could easily be defined as forced marriage. An issue that must be addressed is what the definition of force is. The bill and the explanatory notes define forced marriage, but I feel strongly that communities do not understand what persuasion is in this regard, or when gentle persuasion becomes force. Some women in the community are perpetrators of forced marriages but do not know that they are doing it. We need to work on that.

Rajani Pandher (Hemat Gryffe Women's Aid): We had 14 forced marriage cases from April to January 2009-10. We have seen an increase in such cases over the past couple of years. Two of the most recent cases involved girls who were just 16 years old. One was forced into marriage and the other one was threatened with forced marriage. Four of the cases involved women who were aged between 17 and 21, and eight cases involved women aged between 22 and 30. As with the other organisations, women come to us because of domestic abuse, but when we speak to them and question them we come to know that they are also experiencing or have experienced forced marriage. Many of them tend to go back to their families because they feel that there is not enough support available for them. If the bill is implemented, it will greatly help young girls.

We have also done a survey in schools with children between the age of 15 and 17. Of them, 94 per cent said that forced marriage exists and about 74 per cent said that they would not have enough resources available and would not know where to go if they were faced with that situation. We have also done a survey that found that many children who are 16 and 17 say that they are coerced through family pressure and have to go through this experience, and they do not know where to go.

The Convener: Thank you for those comments—they cover the question of prevalence well. Marlyn Glen has a supplementary question.

Marlyn Glen: I am aware that you do most of your work in Edinburgh and Glasgow, where the populations are larger, but do you get referrals from across Scotland? Rajani Pandher said that young girls do not know where to go. It is one

thing if they are already in Glasgow, but if they are outwith it must be even more difficult.

Rajani Pandher: Of the 14 cases that we had between 2009 and 2010, three were from outwith Glasgow and Edinburgh. One was from Dundee and another was from Falkirk. We get referrals from outwith Glasgow and Edinburgh, and we have worked extensively to raise awareness about forced marriage. We provide training to different voluntary organisations. I hope that that answers your question.

Girijamba Polubothu: We get referrals from within Scotland, but we also get referrals from outwith Scotland—from down south. The reason for that is that those young women are at very high risk, and the referrals are made by the police, with the highest confidentiality and so on. Similarly, we have referred young women down south for their safety.

Smina Akhtar: Many of our cases originate from our helpline. We have a national helpline, which is a freephone number, and calls can come from anywhere in Scotland or the rest of the UK. We also have an office in Dundee, and our domestic abuse staff operate throughout the country—we have a staff member for the south of Scotland and two for the north. Cases are not just Glasgow based.

The Convener: You mentioned the age of some of the victims and the fact that some are children, aged 18 and under. I wonder whether there is an older age group, which is leading me to ask whether there is a hidden generation who are now in forced marriage and—Smina Akhtar and Girijamba Polubothu both touched on this briefly—whether it is more common that the people who speak up about it are second and third generation. Could you say something about the aspects related to age, ethnicity and gender—whether it affects males and females? On the idea of the hidden community, Laura McCrum mentioned that there can be grey areas. Are there other communities in which the issue is hidden and people do not come forward? If you could comment on those aspects, it would be very helpful.

Laura McCrum: One case study that we submitted included disability—a young disabled man. If we are to cover all the diversity strands, that must be included.

I speak for myself, but I assume that we are all keen to support the bill and see it go through because we deal with cases on a daily basis and see how horrific they can be. You asked about age. Interestingly, our stats threw up the fact that when we are talking about British nationals and second or third generations we are dealing with a younger population, but when we are talking about

non-British nationals it is a much older population. I hope that that helps.

11:15

Girijamba Polubothu: The reasons behind forced marriage are very complex. Men are forced into marrying as well. In cases that we have had dealt with where British Asian men were forced into marrying women from abroad, the women did not know that their husbands were forced into their marriages. The man always had a girlfriend in this country. It is the family that wants somebody from their own culture and background. The man goes along with that and gets married, the woman comes here, and there is domestic abuse.

When I give examples, I talk about the forced marriage that is happening now and the woman who is fleeing from it, but if you look at all the situations, there are more scenarios where forced marriages are happening. When a man is forced into marrying, it is still the woman who faces domestic abuse and who suffers. The man is allowed to continue with his affair. All that the family want is someone from their own culture who can do the housework. It is domestic slavery.

The Convener: So it is about keeping up appearances.

Girijamba Polubothu: That is one scenario, but there are many other reasons. Disability is another issue. We have cases in which the family get a woman from abroad who is forced into marriage—the force is from abroad, on the woman's side. The man's family is looking for a carer, more or less, but the marriage does not work—there is domestic abuse and the woman flees. There are different scenarios.

Laura McCrum: When we were going through the bill from Saheliya's point of view, what stood out was that forced marriage is not a religious, community or cultural issue. We want to consider it across the board and we want the bill to hit home, because the issue affects all backgrounds and cultures.

We have some fantastic clients and families who use our services. There are young women who participate in an arranged marriage, but they are given choice and a lot of input into that. It comes back to educating people, which is high on the agenda. We are keen to see protection in place for all communities and to move away from viewing forced marriage as a religious or race issue.

Smina Akhtar: The newer cases tend to involve younger women, but we get people who call in because, once they experience problems in the marriage, they start to unravel their experience and realise that they were forced to marry. We

need to address that, which the legislation does to some extent.

Rajani Pandher: I agree with what the other witnesses have said so far about many women from the older generation having had forced marriages. When those women come to us because of domestic abuse we question them, which is how we come to know.

We conducted a survey, and I can give you a breakdown of the ages of the respondents. We had 118 people taking part in the survey. There were 21 people aged over 30; 19 who were under 16; 30 who were between the ages of 17 and 20; and 48 who were between the ages of 21 and 30. That information might give you some idea of the age range.

I can give you some figures on ethnicity if you want.

The Convener: Yes, please.

Rajani Pandher: I cannot give you percentages, but I can give you a breakdown of numbers. We had seven from the Indian community; 23 from the Pakistani community; two who were Chinese; one in the category of "Other"; one from the Caribbean community and one African. Those are stats only for individuals who were forced into marriage. We also have stats on people who were threatened with a forced marriage and on people who knew about others who had been forced into a marriage. I could go on and on.

The Convener: It would be interesting to see the statistics on those who were threatened with forced marriage, as that could become a forced marriage later on.

Rajani Pandher: Of those who were threatened with forced marriage, three were Indian; eight were Asian British; 10 were Pakistanis; four were Bangladeshi; two were classed as other Asians; none were Chinese; one was black or black British; one was Caribbean; and one was white British.

The Convener: That is helpful. What was the gender balance?

Rajani Pandher: The survey was conducted by telephone as well as the internet. Of 118 respondents, 39 were male and 79 were female.

Hugh O'Donnell: Where do male victims go? Assuming that we do not have a scenario such as the one that Giri described, which involved a relationship continuing while the marriage was put in place, where can male victims go and what support network is available to them?

Girijamba Polubothu: Although they do not work specifically in the area of forced marriage, agencies such as men in mind are useful.

Laura McCrum: Also, from a sexual-orientation point of view, Gay Men's Health is a relevant organisation. We work with other organisations, providing them with training and referring people to them, if need be, to support men in such circumstances. We are a women's organisation, so we could not support the young disabled chap who was forced into a marriage, whom I mentioned earlier, but we were able to work with other organisations in that case.

Hugh O'Donnell: Should there be an equivalent male organisation that mirrors the work that you do for female clients?

Laura McCrum: I think that men in mind does that, to a certain extent. It is a black and minority ethnic mental health organisation that works a lot with men throughout Scotland in relation to issues from racism to forced marriage. It not only works with victims but engages in preventive work with young men and boys and with imams in the mosques.

The Convener: Could you each give an example of a case of forced marriage that you have come across?

Rajani Pandher: Yesterday, I met a girl who is now 21 but was 16 when she was forced into a marriage. She was taken to Pakistan with no idea of what was happening—she thought that she was just going on holiday with her parents. She was married to her cousin, her mother's sister's son. She came back to the UK and they applied for a visa for him, not knowing that she was underage. Obviously, the visa was refused.

She left school after her standard grades and started working. When she turned 18, her parents again applied for a visa for the young man, who was once again refused. The third time, the application succeeded and he was brought into the country. At that time, she was 18, so she was more aware of her rights and she realised what had happened. She was forced into the marriage—she was too young to realise what was being done when she was just 16. Her mother wanted her cousin to come into the UK. As members know, in the Muslim community, first cousins can marry each other.

The young woman was distraught when she came to me yesterday. He is in the UK at the moment. Her parents are forcing her to apply for his indefinite leave to remain, so that he can stay permanently in the UK. She said that, initially, he did not stay with her and the marriage was not consummated. However, pressure was put on her and her parents forced them to live together, and he has sexually abused her, too. She has fled her home and is staying with a friend's mother, who is from the same community and who is supporting her. She is looking into the help that she can

receive. She says that she is distraught. Her extended family is still pressurising her to get a visa for her husband and to continue the marriage, but she says that she was forced into it—there is no question about that.

The Convener: Thank you—that illustrates the situation clearly. Can other witnesses talk about different circumstances?

Laura McCrum: I have mentioned already the case that I will describe, but I feel that I will never forget it—it has stuck with me. The example is not recent, unfortunately. The client whom we supported was the young woman in the situation, which also involved a British national who was a young disabled man with severe learning difficulties. His family decided that he was to be married, to produce an heir for them, so a young woman was brought over to marry him. I say “young woman”, but “girl” would be a better choice of word, because she was 15.

The girl had been told nothing of his learning difficulties or his disability. Furthermore, she had little understanding of even the mechanics of sex, let alone of marriage or what any of that meant. Added to that were the possible implications of language barriers.

The people involved were from the Sikh community. By the time that we worked with the girl, her mental health was in such a state that she needed continuing support for many years.

It was heartbreaking and traumatic to hear the young man’s side of the story. His family wanted an heir, so they forced the man and woman to have sex to try to produce an heir. For him, that was incredibly frustrating and distressing, because he did not understand the situation.

The bigger issues that we dealt with for our client were isolation and the fact that she was basically kept as a slave to cook, clean and be the man’s full-time carer, as well as partner and wife. She was allowed no access to other people or to language support. Such support was available, but it was denied her. That case stays with me.

The Convener: That is a good example. We already have quite a range of examples.

Girijamba Polubothu: I will talk about forced marriage that happened on the phone. Is what we say in public?

The Convener: Everything is in public and on the record. If you are in any doubt about whether what you say could lead to a person being identified—

Girijamba Polubothu: The case that I would have talked about is quite recent, so people would still be aware of it.

Forced marriages are happening on the phone. The young woman is on the phone here and the man is on the other end of the phone, somewhere abroad. It happens because parents are in a rush, in case the child changes her mind or flees. Parents want the marriage to happen, so they make arrangements. All that the young woman is forced to say is yes in Arabic, and that is it—they are married.

11:30

The Convener: The legal status of that would be recognised under religious law, but perhaps not—

Girijamba Polubothu: We asked quite a few people whether the marriage would hold and we got different answers from each person. We were told that, if the marriage is conducted by a registered imam on both ends, it is recognised. I am not sure about that, but that is what we were told.

Smina Akhtar: Having just gone through a visa process personally, I am 99 per cent sure that the UK Border Agency does not accept phone marriages for visa purposes.

I have dealt with a complex case in which we could not do anything to support the woman. She was forced into a marriage by her parents and taken to Pakistan. She did not know that she was going to be forced into a marriage. Her passport was taken away from her and she was told that she would get it back and be able to return to the UK only if she agreed to marry the person. So, she finally agreed to do it. It is now almost two years down the road and she does not want to apply for her husband’s indefinite leave to remain but is being forced to do so because he is threatening her brother in Pakistan with violence. She has absolutely no choice but to apply for his indefinite leave to remain, after having been forced into a marriage with him. It is a pretty complex case.

The Convener: That is helpful in giving us a flavour of the extent of the problem and the various circumstances.

Malcolm Chisholm: Let us move on to the bill and the benefits that you think it will bring. There are some existing civil and criminal remedies, but I do not know whether you have seen any of those being used to protect the women whom you are talking about. What benefits do you think the bill will bring that do not exist currently?

Smina Akhtar: The fact that legislation is being proposed to make forced marriage an unlawful act will, in itself, benefit the community, especially people who are being forced into marriage. It lets them know that what is happening to them is completely wrong. However, the proposed

legislation needs to be accompanied by a lot of community work, so that young people and potential victims will feel empowered. It will be difficult for them to report forced marriage—that is one of the reasons why the number of reported cases in England and Scotland is so low.

As I said at the beginning, people do not realise what constitutes force and it is important that young people feel empowered. A parent might say, “I’m going to kill myself if you don’t marry this person.” Some young people believe it, but how many parents actually kill themselves? They do not. Things such as that need to be addressed. A lot of development work needs to be done not only with young people, but with the potential perpetrators as well. They need to be shown that what they are doing is forcing their son, daughter, niece, nephew, granddaughter or whoever to be married and that that is unlawful. The legislation will be beneficial, but it will need a lot of accompanying work.

Malcolm Chisholm: One body that has given a different view is the Muslim Council of Scotland. Its view is connected with the previous point; it argues in its written submission that existing laws are sufficient to prosecute perpetrators. It also argues that there is a risk that the bill will be seen to target ethnic minority communities and states that the bill will not be effective because victims will not come forward. What are your comments on those views?

Laura McCrum: I disagree with those comments. When we are looking at any of these issues, we need to look at the power balance. When the issue has come up, the police and other organisations have often been accused of being racist when they speak to an imam in a mosque, but who are they speaking to? They are speaking to the community leaders, who tend to be men in those situations. There is a block between the two. I see the bill as a way to offer more direct support to women and ensure that they feel more confident and more empowered to come forward and stand up for their rights in such situations.

I agree that work needs to be done in communities at the same time. I can give you an example from our girls group. A young girl told our caseworker recently that she is really struggling with the idea because her faith tells her to obey her parents and she loves her faith and enjoys worshipping. She does not want to go against the commandment to obey her parents, but her parents are forcing her to get married. She is stuck in that situation, which highlights the importance of education.

I disagree with the Muslim Council of Scotland’s comments. I think it is coming from a different standpoint and not from the area in which we work.

Girijamba Polubothu: Shakti feels the same. We all accept that forced marriage is against human rights and the wrong thing to do. If we all accept that, we should do something about it. As a BME woman, I expect that from the Government. If it did nothing, it would be pulling out of its duty, and I would see that as discriminatory. The bill is necessary. Yes, there will be people who might not use it, but it is not for those who do not want to use it. The bill will ensure that women have a choice. If they do not want to use it, that is fine, but if they wanted to use it but it was not there for them, that would not be right.

Smina Akhtar: The Muslim Council of Scotland represents a certain section within the religious community. I think we have to recognise that. I am a practising Muslim woman and I know that there are a lot of progressive and forward-thinking imams and religious leaders in Scotland who support the bill and have spoken out publicly to support it. We, as a Muslim organisation, definitely support it.

Laura McCrum: Malcolm Chisholm mentioned the view that the bill might be seen to target Islam or Muslim communities. The statistics that we have on forced marriage, which I am happy to submit as further evidence, show that there is an even spread among religious and non-religious people and across the communities. It might be seen to occur only in one particular community, but that is not the case.

I am particularly proud that Scotland is taking a lead with the bill. It is saying not just to Scotland but to the rest of the UK and the world, “This is our standpoint on forced marriage: we’re not going to condone it.”

Malcolm Chisholm: Concern has also been expressed, including when the issue was considered a few years ago, about criminalising family members. Does the bill strike the right balance between identifying and helping victims of forced marriage and overcoming the concerns that some people have about criminalising family members? Breach of the order would be a criminal offence.

Smina Akhtar: I was thinking about that this morning. Sanctions need to be put in place, because otherwise what is the point? What are we trying to achieve?

If the sanctions are in line with those under similar legislation—for example on domestic abuse—that is fine. The figure is up to £10,000 for breach of an order. I support the sanctions under the bill if they reflect sanctions under similar legislation, although I do not know what those are.

Rajani Pandher: We all support that position. If breaching an order is a criminal offence, people will be aware of that and will not proceed. Some

young people may not come forward because of the provision, but it is their choice not to do so. We should at least give those people who want to come forward a chance to do so.

Girijamba Polubothu: We want to send a strong message to the community and to the perpetrators that this practice will not be tolerated. If I tell my children that I will stop giving them chocolates if they are naughty but give them chocolates even when they are, they will think, "That is just something that mum always says." It is the same in this case.

Smina Akhtar: Once an order has been issued, the perpetrator will be told that breaching it is a criminal offence, which will deter them. If they are told that not much will happen if they breach the order, what is the deterrent? One organisation—I cannot remember whether it was Shakti or Hemat Gryffe—said that victims should be monitored for a couple of years. We fully support that approach. There must be some way of monitoring victims, because once the situation cools down perpetrators may tell victims that they will force them to get married or else.

Laura McCrum: The flip-side of that for Saheliya is that when our clients come through the door they are often much further down the line in their need for support or are at crisis point because they have been to many other places that they thought could assist them but have been unable to get support or help. From a mental health point of view, if we are able to work with women and other people at a much earlier stage, we will prevent many more crises.

Hugh O'Donnell: I am interested in Laura McCrum's comments about the composition of the Muslim Council of Scotland. Is it a democratically elected organisation? Does it include any females, or does it consist of self-appointed representatives?

Smina Akhtar: I may be wrong, but I do not think that there are any women on the council. I know that it had a meeting in Glasgow at which it discussed the sanctions and decided to oppose the bill. I was away and was unable to attend that meeting, which was not attended by anyone from my organisation. I am pretty sure that there are no women on the council, but I cannot be 100 per cent certain.

Most mosques do not have women on their committees. I know that there has been a struggle in Glasgow central mosque to get women on to the committee. There is very little representation of women.

Stuart McMillan: Would the orders that could be made under the bill provide sufficient preventive and protective measures in forced marriage cases?

Laura McCrum: Yes, if they are applicable to the case. We have provided you with examples of a variety of cases at different stages, so it is slightly hard to answer the question, but primarily I would say yes.

Rajani Pandher: The criminal aspect will be really helpful.

Girijamba Polubothu: We have given different scenarios. I am not absolutely sure how the orders will be applicable to each of them. In cases of straightforward forced marriage they will be sufficient, but we are not sure about the complicated examples that we have given. I am not a lawyer, so I do not know.

Stuart McMillan: I was going to ask about the criminal element, but that has been addressed.

11:45

Christina McKelvie: Good morning. I have the luxury of sitting on the Education, Lifelong Learning and Culture Committee—some people might not view that as a luxury, but I do—which has just agreed to some changes to the children's hearings system. One of the new provisions relating to grounds for referral is forced marriage. What do you think about that? Do you support it? Do you think that the interaction between the Children's Hearings (Scotland) Bill and the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill should be a bit more explicit? I opposed that amendment because I felt that we needed to get the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill sorted first, to ensure that we had the proper definitions and a proper understanding of the issues so that when we applied those terms to the child protection legislation they would mean something. The issue can be addressed at a later date, but what are your thoughts on how the two types of legislation should interface?

Laura McCrum: What you have just said is something that I have been thinking about, not being up to date with that bill and what you were proposing or opposing at that point. It will be interesting to see the outcome. I wonder why, if you considered forced marriage among young girls, you should not also consider female genital mutilation and other things that have an impact from a child protection point of view. My view is that you cannot look at just one element. You are right to say that the definitions need to be fixed and the message clear before they are absorbed into the child protection legislation.

Girijamba Polubothu: A few years ago, we had referrals from social workers of children aged 15, and we sometimes get referrals from schools involving children aged 13 or 14 whose parents are suspected of planning to take them abroad for

the purpose of marriage. In such cases, as a voluntary organisation, we cannot do anything because they are only children—they are not 16 or older. All we can do is support the social worker or the school by carrying out awareness raising, advising them on what they should do, informing them of the risk factors so that they can carry out a risk assessment and that kind of thing. So yes, this should be part of the child protection legislation.

Rajani Pandher: I agree. There must be a lot of awareness raising in schools and among young children, but please do not generalise; not every child who goes abroad will be faced with this issue. However, I agree that it should be included in the child protection legislation.

Girijamba Polubothu: There are ways to do assessments, to get it right. I will give an example. A few years ago, I dealt with a forced marriage case in which the adult daughter fled a forced marriage. As a result of that, the family took all three girls abroad and somehow blackmailed the young woman who had fled the forced marriage into getting married abroad. The parents then got the other two girls, who were under 13—one was aged eight; I cannot remember the other one's age—engaged to two of their cousins, to be married later. I do not know at what stage they got married, but they were at primary school here in Edinburgh when they got engaged.

Christina McKelvie: It is an interesting dynamic. We heard earlier from Suzelle Dickson that her unit has dealt with a number of cases in which the victims have been aged 16, which is the legal minimum age for getting married in Scotland. One of the new provisions in the Children's Hearings (Scotland) Bill is that if a child becomes known to the children's hearings system just before their 16th birthday they will be taken care of by the hearings system. Before, if they had not been in the system, they would go into the adult system. There was a bit of a gap.

It is interesting to hear what you say, as 16 seems to be a pivotal age. You say that you get people who are referred from England. Are those young people? Have they had any interaction with the hearings system? If so, how has it supported them?

Rajani Pandher: No, we have not had any.

Girijamba Polubothu: They have all been aged between 16 and 25.

Laura McCrum: One of our counsellors, who is here with us today, works with young girls in that situation. She has just commented that, for her job, having as much legislation as possible would be a good thing, particularly because some threats relating to forced marriages equate to child abuse or bullying. From her point of view, legislation would help.

Girijamba Polubothu: Is it okay if I give another case scenario from a few years ago? I received a call from a woman who was 16 and had a child of a year and a half. I did not know about that before. She said that her parents were forcing her to bring her husband to this country and that she did not want that, so she wanted to leave. When she said that she was 16 and had a child of a year and a half, I asked her when she got married. She said that she got married at 14. I said, "Oh, but you're not allowed to marry at 14." I assumed that she was married here. She said that something happened and her parents decided to take her abroad and get her married. I think that they did so because she had a boyfriend. She got married, got pregnant, was brought here and had a child. She was forced to marry. This shows that it is happening to children of 11 and 14 in Scotland.

Rajani Pandher: I had a case in which the child was taken back to the country of origin. The person was forced into marriage at 13 and was not brought back to the UK until she was 18. She had two children. That is when she came to us.

Christina McKelvie: Underage marriage seems to be a particular issue. Obviously, the legislation here means that that is technically child abuse. That is how it would be viewed.

Girijamba Polubothu: The other countries have legislation as well. People are not supposed to get married at that young age, but nobody reports cases to the police or anybody, so nothing happens. Child marriages are happening now in India, Pakistan and Bangladesh.

Rajani Pandher: People cannot get a visa until they are 21, so there is that restriction, but it still happens.

Christina McKelvie: That leads me nicely to my next question, which is about third party referrals on behalf of victims. Obviously, there is the overlap of the children's hearings system, the Social Work (Scotland) Act 1968 and the Children (Scotland) Act 1995 for young people who are victims. They are all meshed together and we need to ensure that they are working properly. Would forced marriage protection order applications via third parties protect people in any of the cases that you have mentioned? How would they be used? Do you see them working in practice in a positive way?

Girijamba Polubothu: They could have protected the 16-year-old with the child and the young girl who was forced to marry on the phone. That is how I see things. If the school was involved and was aware of what was happening, it could have taken action. The same applies to the three sisters who were taken abroad.

Rajani Pandher: We are working hard on raising awareness in schools so that children know that such things can happen. If such a thing happens to one child and her friend knows about it, she can go to her counsellor or someone in the school such as a teacher, who can then go to a social worker and inform them that they are worried that there could be a threat of forced marriage. There must be inter-agency working over here.

Laura McCrum: When I saw my daughter's curriculum on bullying and the work that is being done on that, I thought it was excellent. There was a thing about whether the person would support a friend or do other things, but I thought that that missed a trick and could have gone much further to include other topics, especially in schools with higher BME populations of young boys and girls. Why not include that in that education-type process?

Christina McKelvie: You are absolutely right. What is very interesting about the legislation is the effect that it might have on young people in that age range. A few weeks ago, the Education, Lifelong Learning and Culture Committee took evidence from Tam Baillie, who was touting a version of human rights education that would tie in with what you have just said. However, I will not go any further down this road—I could certainly talk about this issue for a long time and try to get a lot more information out of you. Thank you for your input; the committee will certainly take particular cognisance of what you have to say.

Marlyn Glen: Section 2 would make the terms of the FMPO apply to conduct outwith as well as within Scotland. We have already heard about some of your experiences of the interaction between immigration law and support for forced marriage victims. How will all that work in practice if the bill is passed? Do you think that the situation will improve?

Girijamba Polubothu: I do not understand the question.

Marlyn Glen: What difference will it make if we set out in the bill that orders should apply to conduct outwith as well as within Scotland?

Rajani Pandher: Outwith Scotland would mean England and Wales as well as abroad.

Marlyn Glen: That is right.

Rajani Pandher: The question is how such legislation would be enforced abroad. I do not know, for example, how interagency work would take place between Governments. However, such a move would be very effective if we are talking about England and Wales, because those forcing others into marriage might take them from Scotland to, say, Birmingham.

Girijamba Polubothu: In our submission, we asked how this legislation would work abroad. However, we feel that there should be some provision, given that most forced marriages have an international element to them.

Rajani Pandher: Then again, if the protection order is taken out before the person goes abroad, whoever is forcing the child to go abroad will be in breach of it and immediate action could be taken to stop them. The party who has taken out the order must be constantly vigilant in monitoring the situation.

Smima Akhtar: Are you proposing to have relationships or contacts with the police, Government agencies and so on?

Marlyn Glen: I am sure that we already have those things.

Smima Akhtar: I am still not sure how the provisions would be implemented effectively.

Girijamba Polubothu: The bill's provisions will be difficult to implement abroad. It might be possible in countries such as Pakistan, India and Bangladesh where the UK has arrangements through the forced marriage unit, but I do not know about other countries.

Marlyn Glen: So you are all concerned about how the provisions would work. I should point out that when, in the previous session, the committee considered the FGM bill, we managed to insert a provision making aiding and abetting illegal. Such a provision would mean that people who seemed to have an arm's-length involvement in a situation would also be in breach of an order.

Girijamba Polubothu: In some cases, the pressure comes not directly from parents but from grandparents abroad, who force the parents to force the children into these situations.

Marlyn Glen: We will certainly put your concerns to the minister.

12:00

Hugh O'Donnell: I come to quite an interesting interface, and perhaps one of the most challenging ones: part 2 provides that the sheriff may make a decision on nullifying a forced marriage. That seems a bit of an oxymoron because the two do not work together, but it could bring the decision of the legal jurisdiction into conflict with the religious jurisdiction. Do you have any views on how civil legal decisions will impact on faith-based marriages, even if they are forced?

The question is not just about Islam, because most of the main monotheist religions have separate and clear ceremonies and rules. For example, Roman Catholicism does not recognise divorce in the same way as civil society. Do you

have any experience of that tension and friction and of how it works? What impact would the bill have on a religious marriage?

Rajani Pandher: It would affect the Muslim community more than the Hindu, Sikh or any other community. With Hindus, Sikhs and other ethnic minorities, there must be a civil registration of marriage—even though we have a ceremony—and annulment can take place. People who get married within Islam have a nikah. I ask Smina Akhtar to expand on that.

Smina Akhtar: A couple who want to divorce can get a civil divorce regardless of whether there is abuse or forced marriage—that is totally irrelevant—but before they can remarry they must go through the Islamic Sharia Council in the UK to get a Sharia divorce. That can take anything up to two years, although it can happen really quickly as well.

It would be the same with forced marriage. The option of nullifying a marriage exists in Islam. In theory, it should happen immediately if it is shown that what has happened constitutes a forced marriage. In days gone by the imam could nullify the marriage, but these days people have to go through the Sharia Council, which, as I said, can take a long time.

Nikahs on their own, without registration, are quite uncommon unless there are specific issues. If one of the people in the couple is underage, a nikah will happen and there will be no civil registration—the same will apply in a case of polygamy—but even in countries such as Pakistan people are encouraged to register their marriage. People cannot apply for a visa without registering the marriage with the local authority in the area where they get married, whether they are here or abroad.

Hugh O'Donnell: I recognise what you are saying, which helps to clarify the position with regard to annulments. I was aware of some of what you have said. What is the potential for strife where there is a civil nullification but a refusal to nullify the religious ceremony? Does anyone have any experience of that? Can we keep the two either completely separate or completely conjoined?

Smina Akhtar: I do not think that we can keep them completely separate because neither the woman nor the man can legally remarry until the ceremony has been nullified by the Sharia Council. I think that the Sharia Council can refuse to nullify. Whatever happens, it will take a long time.

Hugh O'Donnell: So it is a bit of a red herring in terms of being a barrier to the bill?

Smina Akhtar: Yes.

Jamie Hepburn: Does any of the witnesses have experience, directly or anecdotally from other organisations, of forced civil partnerships? I take it from your shaking heads that the answer is no, which tallies with what we heard from Suzelle Dickson. That being so, do you think that the bill is correct not to provide for FMPOs for civil partnerships, but to make that power possible through an order laid before Parliament?

Laura McCrum: Yes.

Rajani Pandher: Yes.

Jamie Hepburn: That is helpful. Thank you.

Marlyn Glen: Section 11 provides for guidance to be made available to those “exercising public functions”. Do you have a view on the content of the guidance on forced marriage and how it should be disseminated? What key agencies should be “exercising public functions” in the context of forced marriage?

Rajani Pandher: We would like the women's aid organisations to be involved because we have first-hand experience with forced marriages. We have trained other voluntary and statutory organisations, such as the police, to raise cultural awareness of the issue. Women's aid organisations, social work departments and the police should be aware of the cultural issues around forced marriage and receive training on it. I trust that that answers your question.

Marlyn Glen: Yes, thank you.

Smina Akhtar: We are organising a community workshop in January for women in Pollokshields in Glasgow, which has a high Muslim BME population, to explore their thinking around forced marriage—for example how prevalent they think it is, how acceptable it is and what they think constitutes the forced aspect. I am interested in finding out what they think. I think that all the organisations represented here, and more, should be involved.

Marlyn Glen: It would be interesting to ask them how the guidance should be disseminated and what should be in it.

Smina Akhtar: Yes.

Laura McCrum: Schools and education should be used, too.

The Convener: That completes the lines of questioning. I thank you all for coming today. There is no doubt that you have provided a tremendously useful insight into the bill's provisions, how they will work and the scale of the problem in Scotland today.

I suspend the meeting briefly to allow the third panel to take their places.

12:08

Meeting suspended.

12:14

On resuming—

The Convener: I welcome our third panel of witnesses: Alex Neil, the Minister for Housing and Communities; Lesley Irving, the Scottish Government's team leader for gender equality and violence against women; Eileen Flanagan, policy manager for gender equality and violence against women; and John St Clair, a solicitor in the Scottish Government's legal directorate. You are all very welcome.

We will start with questioning. I take it that you do not have anything to say at the outset, minister.

Alex Neil (Minister for Housing and Communities): I do, in fact—it might be helpful. However, you might prefer to go straight to questions.

The Convener: If you do not mind—it would be better to move straight to questions, given the time constraint that we are under.

Alex Neil: Fine—that is no problem.

The Convener: We understand that the Scottish Government's consultation on the need for civil legislation ran from November 2008 to March 2009, although it did not consult on a draft bill. What key messages did the Scottish Government take from the consultation responses on the need for a civil remedy into the development of the bill? What has the Scottish Government learned from the implementation of the Forced Marriage (Civil Protection) Act 2007 in other parts of the UK? How has that informed the development of the bill?

Alex Neil: As you know, we consulted widely on the issue of forced marriage and, simultaneously, the UK Parliament was passing its bill. A number of messages came out of the consultation, but there were two main ones. First, there was a strong desire to introduce the sort of bill that we have now presented to Parliament to deal with the issue of forced marriages. There was universal support for that in principle. Secondly, there was the question whether to impose more criminal sanctions or to deal with the issue as more of a civil matter. There was more support for the latter course, rather than the former. That is also reflected in the bill.

As for the lessons that we have learned from down south, the legislation there has been in place for well over a year. At the end of the first year, a document was produced on the initial impact of the 2007 act. We have considered that report carefully and we have learned some lessons—not

just from reading the report; we have been in constant touch, particularly at official level, with the team down south, so that we could learn any lessons that were thought to be helpful in drafting the bill for Scotland.

The area in which we have differed slightly on the basis of experience south of the border is in making it easier to annul a forced marriage, particularly by allowing cases to be put to a lower court rather than their always having to be taken to the Court of Session; the sheriff court is easier to access. As for the criminality element, there will be stronger criminal sanctions against people who breach their forced marriage protection orders. Our provisions in that respect are stronger than the equivalent provisions south of the border.

The Convener: I want to get down to the nitty-gritty of the bill. We have received several written submissions and had a very worthwhile evidence session this morning; it is not clear from that evidence the circumstances in which a victim will be able to apply for a forced marriage protection order in Scotland. In particular, for how long would someone have to be domiciled in Scotland for them to be able to apply?

Alex Neil: There is no specified period. Anybody who is in Scotland, and who is living in Scotland, can apply for a forced marriage protection order. The person's stay here could be as short as just over a month—40 days—or they could have been living here for longer. There is no prescription on that. It would be up to the court to decide whether the person was domiciled in Scotland.

The Convener: In those terms, if a person was staying here on a visa and had found themselves in the circumstances that the bill deals with, how long would the protection apply? I suppose that that is going on to other questions.

Alex Neil: If somebody is a visitor to Scotland, they are not domiciled in Scotland. It would be up to the court to decide whether they were domiciled in Scotland. The situation is the same as it is for other, completely different, subjects of legislation. Sometimes a court has to decide whether a person is domiciled in Scotland—that is entirely at the discretion of the court.

The Convener: We will probably explore those questions further as we proceed.

Hugh O'Donnell: We refer fairly regularly to the long arm of the law, but the bill applies the concept of forced marriage protection orders outwith Scotland. How far outwith Scotland would they be applied? How do you perceive their being enforced in those circumstances?

Alex Neil: On the first question, if a forced marriage protection order has been issued against

someone, it will be in place worldwide as far as we are concerned, and there are certain circumstances in which we would pursue it worldwide. There are several ways in which we could pursue a person with a forced marriage protection order against them who has gone to another country. If the UK has an extradition treaty with the country, we could apply for the extradition of that person so that they would come back to Scotland and face the consequences here. If there was no extradition treaty, we could do as Mohammad Sarwar did in the case of murder suspects in Glasgow. He negotiated their extradition from Pakistan to return to Scotland to face trial. We could take action against people who returned to Scotland, or the country that a person had gone to might be prepared to enforce a forced marriage protection order that had been issued in Scotland. The option that we would follow would depend on the territory to which the person had gone, on knowing where they are, obviously, and on the country's legal relationship with the United Kingdom for extradition.

Hugh O'Donnell: There is quite a range of permutations. Has it been possible to project what the likely financial costs and burdens might be in any of those circumstances, based on any historical cases that there might have been?

Alex Neil: That can be done. The English legislation can be considered. There have been around 86 cases in England so far, and I think that I am right in saying that not a high proportion of those cases have involved people who have gone abroad. Therefore, we do not expect such cases to be a huge problem and a huge cost.

Hugh O'Donnell: The interface or potential for conflict between the civil annulment of forced marriages and religious law has been brought to light in a number of written submissions and in verbal evidence that we have taken. Will you clarify that you are quite comfortable that all the possible pitfalls or bear pits that may exist in that context have been satisfactorily dealt with? If they have, how was that done? What engagement was there with the religious organisations, if any was necessary?

Alex Neil: Interfering in the governance of any particular religion or church has never been part of Scots law, and that will be no different as a result of the bill. We will not intervene legally in the governance of religious organisations. That said, we have had extensive discussions with religious leaders, all of whom supported the principles of the bill and all of whom assured us that, in its practicalities, their religion would respect legal decisions on nullifications.

Malcolm Chisholm: Section 9 would make it a criminal offence to breach an FMPO. In its written and oral evidence, the Association of Chief Police

Officers in Scotland called for an explicit power of arrest to be attached to that section. Will the minister clarify why an explicit power of arrest has not been included in that section to make it consistent with the power of arrest for the breach of an interdict in the Protection from Abuse (Scotland) Act 2001?

Alex Neil: The simple reason is that we do not think that it is necessary because, in effect, the power of arrest already exists under existing legislation. Indeed, it is possible for the sheriff, in issuing the order, to provide for the power of arrest without warrant if there is a breach of the order. That also means that it is not necessary to build in the power of arrest. It is, however, something that I would not go to the barricades about. If the committee feels that we should explicitly build in the power of arrest, I would not resist that, but we genuinely think that it is not necessary.

Malcolm Chisholm: That is helpful, thank you.

Let us move on to third-party applications, with specific reference to local authorities. The committee received three written submissions from local authorities, which, although broadly supportive of local authorities being defined as relevant third parties, said that it is not clear what duties third parties have to monitor individuals. Scottish Women's Aid also commented on the issue, stating:

"Regardless of which part of a local authority this applies to, it is absolutely crucial that those directly involved in applying for Orders do not simply have this responsibility 'bolted on' to their other duties and that care and attention will be taken to ensure that this work is regarded as a specialised support area."

Given that local authorities will have a large part to play in supporting the victims of forced marriage and may be called on to act as a relevant third party, can the minister outline what consultation has been undertaken with them on their role?

Alex Neil: We have consulted widely and are still consulting local authorities and the Convention of Scottish Local Authorities on all aspects of the bill. Indeed, we are also talking to them about issues around training, the aftercare services that are to be provided once an order has been issued and so on, as well as having discussed with them, during the initial stages of consultation, the guidance that will result from the passing of the bill.

It is worth emphasising that local authorities are in exactly the same position as the victims of attempts at forced marriage and the Lord Advocate, in that they can apply for a forced marriage protection order without initially requiring the permission of the court to do so. Local authorities have a crucial role to play both in applying for a forced marriage protection order, if

they so decide, and in ensuring that the totality of support is available and provided to the victim.

Malcolm Chisholm: Taking account of the comments that local authorities have made about their duties and the comments that Scottish Women's Aid has made about the need to regard the work as a specialised support area, how will applications by local authorities work in practice? Are there other bits that go with the application for an order and how will they work in practice?

Alex Neil: It is up to each local authority to decide how it organises its internal affairs. Nevertheless, we have had substantial discussions with Glasgow City Council, as we believe that Glasgow is where a high proportion of the cases will come from. In the discussions that we have had with Glasgow City Council and other local authorities, there has been a recognition that there is a need for specialist training, guidance and support in the area. The lead may well fall within a particular department, such as social work; however, there is recognition of the need for a specialist team with the necessary skills to deal with this unique bill and unique circumstance.

12:30

Christina McKelvie: Good morning, minister. I want to follow on from Malcolm Chisholm's point and pick up some of the points that the earlier panel made about child protection. We have a forced marriage protection order and a child protection order. We heard some harrowing stories about young people being engaged at the age of eight or 12, being married at 14 and having babies before they are 16. There was a bit of concern about how the forced marriage protection order and child protection order would work together. Is there potential for conflict or confusion? What work will be done to remedy that?

Alex Neil: I do not think that there is any potential for that. Let us take the example of the existing legislation on how children are treated in Scotland. The law is very clear that a person cannot be married if they are under 16 years of age. That applies to forced marriages in the same way that it applies to every other circumstance in Scotland. Similarly, a child protection order, irrespective of whether there is an issue about forced marriage in the family, will be pursued and implemented accordingly.

If anything, the forced marriage protection order should be complementary to the child protection order. A child can often become a bit of a ping-pong ball between families who are trying to arrange a forced marriage. It is important to ensure that the child is protected, but it is also important to ensure that the mother or father of the

child who is the victim of an attempt to arrange a forced marriage is protected. The orders will be complementary to one another, I would have thought, and they will certainly not conflict.

Christina McKelvie: I did not think that there would be conflict, but there might sometimes be a bit of confusion about whether we should apply an FMPO or a CPO. It is quite heartening to find that the CPO would supersede everything else as far as Scotland's legislation for children goes.

Alex Neil: Absolutely.

Christina McKelvie: That is interesting.

One of the other things that the committee picked up on was the grounds for referral in the Children's Hearings (Scotland) Bill and how they will interface with the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill. There was a wee bit of concern about that and I wondered whether any work had been done on it. The grounds for referral will have to be modified by a Scottish statutory instrument, because there is no definition of a forced marriage in the Children's Hearings (Scotland) Bill.

Alex Neil: Obviously, we have taken measures to clarify any consequences of the bill for any other legislation. The SSI to which you refer is already within our power in existing legislation.

The Convener: In some of the evidence that we have heard, concern has been expressed about the summary procedure being used for the application of the forced marriage protection order, especially given that, in many cases, the witnesses will be vulnerable. Do you have a comment on that aspect?

Alex Neil: Anyone who comes to court to give evidence will be subject to the normal support that is available. We are discussing with the judiciary the guidelines that it will use for the whole procedure, and we will be conscious of the need to ensure that the court is made as user-friendly as possible, if I can put it that way. We are talking about victims who need to be protected at every stage.

John St Clair is one of my advisers on such matters; I ask him whether he wants to add anything more specific.

John St Clair (Scottish Government Legal Directorate): Although it is called summary procedure, it is a wide range of procedures that can be adapted for any type of situation. There is a series of chapters in the rules of court that are tailored to a particular type of order. It might be that they will be appropriate to cases of this type, but we do not anticipate that at the moment.

The Convener: How do you envisage breaches of FMPOs being policed? Again, that takes us

back to how long the orders will be in place. On third parties that have the ability to apply for orders, it has been suggested that the police should be included. Do you have any comments on those points?

Alex Neil: The order can last forever, unless it is rescinded by a court. There is no deadline for expiry of the order. It is there and will remain there.

We have heard the debate about whether the police could go to court. As members know, in every case in Scotland, the police operate through the procurator fiscal and go to court through the procurator fiscal. Given that, under the bill, the Lord Advocate has the power to go straight to court without asking permission, as do the local authority and the person involved, it is better to maintain the status quo in the relationship between the police and the Crown Office and Procurator Fiscal Service.

If we went down the road of allowing the police to go straight to court rather than through the Procurator Fiscal Service, the police would have to be given their own legal advisory service. That would involve a lot of cost when such money would be better spent on other aspects of enforcement than on duplicating the work of the Lord Advocate and the Crown Office and Procurator Fiscal Service.

The Convener: On monitoring and policing, who will look after how protection orders play out? A year or two years down the line, the protected person might have a false sense of security and could be lured abroad. Who will monitor that?

Alex Neil: Several aspects are involved. We are in detailed discussion with local authorities and others to ensure, once an order is issued, that appropriate support mechanisms will be in place for the victim and that the police will maintain vigilance in relation to the person against whom the order was issued.

It is important that the victim has continuing multi-agency support. We have a network of agencies that are discussing how that support can best be delivered, to ensure that on-going multi-agency support is available for as long as it is needed. The police are involved in that multi-agency task force, as are local authorities and other organisations that are active in the field. The police will be responsible for enforcing orders and dealing with any breach of orders.

Marlyn Glen: I seek more clarification of section 3(7)(c). You have said that you would prefer to keep the status quo for the police. Section 3(7)(c) provides for the ministers to specify relevant third parties that will have the automatic right to apply for an order. The local authority and the Lord Advocate will have that right, but you would prefer

the police not to have it. Who else might have the right? What about specialist support organisations such as Shakti Women's Aid and Hemat Gryffe Women's Aid?

Alex Neil: We are open to that suggestion and we will consult on it when we issue the guidance. Such agencies will not be named in the bill, but they could be nominated once the bill was passed—we would have the ability to do that. Ideally, we would want to agree criteria for any agency that is to be nominated to have the automatic right to apply. Another organisation that might be appropriate—although I am not saying that it would be—is Scottish Women's Aid. We intend to consider other agencies that can be nominated, but we are not giving a commitment on specific agencies.

Marlyn Glen: You would not want to have a list, because there is always somebody else. We heard evidence that the men in mind service might be a relevant organisation. When Scottish Women's Aid gave evidence a couple of weeks ago, it suggested amending the bill to refer to anyone who is allowed by the court, rather than just

"a person specified ... by order made by the Scottish Ministers".

Alex Neil: We will listen to what the committee says about that. I am not automatically against the suggestion, which is worthy of consideration.

Hugh O'Donnell: It just occurred to me that, regardless of who is on the list of third parties, a change in resource allocation might well be required to provide additional resources. Has anyone thought about how that might work? Is it included in the financial projections for the current local government settlement? Can you give us some idea of how the arrangement will work, so that any money that is necessary does not disappear into a general black hole?

Alex Neil: As you know, we do not ring fence police budgets on the basis of different types of crime. It is entirely up to the chief constable to decide how he allocates his resources. Similarly, it will be up to each local authority to decide how to organise the resources that are required for the bill and to put together funding from all the moneys that are available to it.

Hugh O'Donnell: Will a small sack of money be distributed to local authorities for them to use once the bill has been enacted, or is the money included in the current settlement?

Alex Neil: It is included in the local authority settlement. There will be no additional or supplementary settlement.

Hugh O'Donnell: You have answered the question.

Alex Neil: We have nae extra money.

Stuart McMillan: Section 11 states that Scottish ministers “may” issue guidance about the effect of the bill, or on the issue of forced marriage more generally, to organisations that they consider appropriate. Given the importance that witnesses and respondents to the call for written evidence have placed on the issuing of guidance, can you give a commitment that guidance will be issued and indicate what status that guidance will have? Will it be statutory guidance?

Alex Neil: The bill says that we “may” issue guidance. I make absolutely clear that we will issue guidance. At stage 2, I will lodge an amendment to change “may” to “will” so that there is no dubiety about whether we will bring forward guidance, which will have statutory status. We will consult widely on the guidance, as we always do, before we come to Parliament with secondary legislation to implement it, where that is required, or to issue it, where we do not require further parliamentary approval.

Inevitably, because of the consultation and all the work that must go into preparing guidance, there is always a time gap between royal assent and the agreeing and issuing of guidance. I make categorically clear that we intend to commence the bill the minute that it receives royal assent and not to wait to implement it until we have the guidance. I do not want there to be a gap because we are waiting for guidance—we want to start to implement the bill right away.

In response to a previous question, it may be useful if I provide the committee with a clear legal definition of whether someone is domiciled in Scotland.

John St Clair: Or connected with Scotland.

Alex Neil: That is the phrase in the bill. We will provide the committee with more detail on that.

The Convener: That would be helpful.

Stuart McMillan: When does the Government expect to consult its partners and other bodies on the guidance, to ensure that there is no time lag between the point at which the bill receives royal assent and its implementation?

Alex Neil: It is inevitable that there will be a time lag, because of the processes that we must go through, but we want to minimise that. In effect, we are discussing at the moment with interested parties what the guidance should include and what issues it must cover. However, we are obliged to undertake formal consultation. The consultation period is normally around two months—sometimes three months. After that there must be a period of reflection and decision making. Then we must prepare secondary legislation, where that is required. If only straightforward guidance is

required in some subject areas, we can issue that. All of that takes time. If the bill receives royal assent around March or April, I hope that we can have guidance in place well before the end of the calendar year 2011.

Stuart McMillan: That is helpful.

The bill’s policy memorandum states that the Scottish Government intends to undertake awareness-raising work on forced marriage and the bill. We heard from Suzelle Dickson that more awareness raising needs to be done down in England and Wales, and we heard from the previous panel that a lot of community work needs to be undertaken. What other details can you provide about awareness raising? What specific training will be provided to judicial staff?

12:45

Alex Neil: We are in discussion with the judiciary on provision of training to ensure that people are aware of all aspects of forced marriage, including the non-statutory aspects and the statutory aspects. It is not, however, just about training judicial staff; there is clearly a training requirement across a number of agencies, which is why we have an interagency, multi-agency task force looking at the issues.

We will implement on-going training and awareness programmes. I do not believe that subjects such as this require just a one-off awareness campaign. It is an on-going process and people need to be continually reminded about the issue and about the options that are available to people who are under duress to engage in forced marriages. We will put together an awareness programme, which will, clearly, need to be in a number of languages to be effective. All those matters are being discussed.

Stuart McMillan: From the evidence that we have received this morning, it sounds as if awareness down in England and Wales is quite patchy. We heard from the previous panel that the number of cases has increased, particularly over the past year, because some work has been undertaken in schools, in particular. That is a good example of raising awareness. There will potentially be further increases in the number of people who take cases forward when there is more awareness out there and more people fully understand what the bill will provide by way of safeguards when it is, I hope, enacted.

Alex Neil: You mentioned schools. It is very important to have one of our awareness programmes specifically directed at the school population, because we want people who are growing up in Scotland to be aware that forced marriage is illegal and to be aware of their rights so that they know, if they become a potential

victim, that there is recourse to law to stop it happening and there are support mechanisms out there for them, both before going to court and after having been to court. An awareness programme that is specifically directed at the school population is crucial.

Christina McKelvie: That leads on nicely to my next question, which is on data collection and key data. What has the Scottish Government done to determine what key data are needed? If you are doing big awareness-raising campaigns and some sort of human rights education in schools, it is important to find the trends and gather the information that emerges.

Alex Neil: We are working with the forced marriage network, the Scottish Court Service and ACPOS specifically on data collection. Because of the low number of cases, it is difficult to know exactly the scale of the problem. They have had the same problem south of the border.

It is an area in which we need to gather intelligence. We cannot just do a sample survey and get a lot of information; it would be very difficult to collect data in that way. We need to establish a mechanism to gather as much intelligence as possible on an on-going basis. We also need to tie in any information that we get from the awareness campaigns, which we hope will result in people who have been under pressure coming forward, no matter what their age, gender or geographical area.

We are talking to the police—ACPOS in particular—and to the Scottish Court Service and the forced marriage network to consider how best we can get a data collection system together, and how we can evaluate and monitor progress and the impact of the act, once it is up and running. We want to ensure that we get into every hidden corner to root out the problem from 21st century Scotland.

Christina McKelvie: Some of the hidden corners have been explained to us today. We heard that young people are becoming more aware, and that most cases are coming from the younger age group. However, some cases involve someone who presents at an organisation that deals with domestic abuse, a rape crisis centre or a mental health support service with forced marriage as the root cause of their problem. I do not know whether there is any on-going work on that, or whether anything can be added to our awareness campaigns on domestic abuse, rape crisis and mental health issues. Could something be bolted on to those campaigns, or addressed as an intrinsic part of them, with regard to forced marriage being a root cause?

Alex Neil: On violence against women, for example, there are a number of information

sources. The police have access to data, and we can get information from local authorities, the Scottish social attitudes survey, rape crisis centres, Women's Aid and so on.

We try to pull all that together as much as possible so that we can get a handle on the scale and the nature of the problem. Very often, the nature and incidence of violence against women can change, and we need to deal with the problem effectively. The more information we gather, the better and more focused our policies will be.

We anticipate a similar process with the forced marriage legislation, as we must continually consider how we apply the legislation, and everything that goes with it, more effectively.

Christina McKelvie: That is helpful. Thank you.

The Convener: Just for clarification, minister, what is your understanding of the definition of force in section 1?

Alex Neil: I will ask John St Clair to give you the legal definition.

John St Clair: The definition in the bill largely mirrors the case law: it is unreasonable pressure, which is quite a low threshold. It can be psychological or physical pressure, and it also depends on the age and vulnerability of the victim.

The Convener: As you may be aware, some of the witnesses suggested that the definition should specifically include physical violence and threat, and examples of the psychological means by which people can feel that they are forced and coerced.

John St Clair: It is very much a parliamentary counsel view, but the section is drafted in such a way as to assume that major force is included, and it sets out one or two other aspects, such as the psychological aspect. It is not necessary to list all the types of physical abuse that could constitute force: that is assumed, and it is in case law.

The Convener: Is that strong enough, given the evidence that we have heard in the previous session this morning? Some agencies specifically mentioned situations in which a person threatens suicide in order to make the protective order victim comply. Do you think that the definition is strong enough in those circumstances, given that it merely assumes that the psychological aspect is implied?

Alex Neil: I think that the definition's threshold is so low that it covers all eventualities. To list all eventualities in the bill could be counterproductive, but I am happy to listen to what the committee has to say about that. I am keen to move forward on the bill as consensually as possible. If the committee thinks that there is a need for further clarification or an improved definition and it has

recommendations on that, we will take that very seriously.

The Convener: That would be welcome, minister, because we are talking about family situations in which extreme psychological and emotional blackmail pressure can be put on women. We are not talking about all eventualities, but being quite specific. Do you think that the person whose conduct is considered to pose a risk to the protected person should be named in the protection order?

Alex Neil: Again, I am open to suggestions on that; there is a case both for and against. There are obvious dangers in naming the person, but there may be circumstances in which the person should be named. Again, the committee has listened to the evidence, so I am happy to listen to what the committee has to say.

The Convener: Under sections 5 to 8 there is provision for interim orders. Could those be made in the victim's absence?

Alex Neil: Yes. That is one of the reasons why the Lord Advocate and the local authority can go to court and get the orders even if the victim is not in the country—that is the provision's purpose.

The Convener: It is helpful to have that clarification. Can you also clarify when it would be competent or necessary to vary, recall or extend an order?

Alex Neil: Do you mean through a time extension?

The Convener: Yes, and I also mean through varying the conditions or recalling the order completely.

Alex Neil: There should be no need to extend the time because, as I said earlier, once the order is made, it is made and that is it, unless it is rescinded.

The Convener: So, there will never be a case where it is said that the order is in place for two years or five years, for example. That would just never happen, because as soon as an order is put in place it is there for ever more.

Alex Neil: An order would be in place until it was rescinded.

The Convener: Would recalling an order be a possibility?

Alex Neil: I do not think so. There may, under certain circumstances, be an application to a court to say that the order is no longer necessary or whatever. It would obviously then be for the court to decide.

The Convener: It might not just be about time; there could be various conditions, depending on the protected person's circumstances.

Alex Neil: Obviously, the court could be asked for a variation in the conditions or in the order itself. However, the initial order may have such wide conditions that that may not be necessary.

The Convener: Witnesses have expressed concern about how—if an order might be varied, recalled or extended—an investigation will take place to deem whether that is necessary. Will the protected person's wishes be taken into account in an investigation?

Alex Neil: If it is necessary to go back to the court, the person who is the victim can do so, as can the Lord Advocate, the local authority or any organisations that we name. Obviously, they would need to do so with the reasoning and evidence to support whatever it is that they want the court to do.

The Convener: Would the protected person's wishes and feelings be taken into account? A lot of witnesses have specifically asked for clarity on that.

Alex Neil: I cannot imagine any sheriff in the country not giving a great deal of weight to the victim's views.

The Convener: So, the answer is yes.

Alex Neil: I imagine so. I cannot prescribe what every judge or sheriff will do in every circumstance. As you will know, many MSPs are critical from time to time of what sheriffs appear to take into consideration or not to take into consideration. However, according to our discussions with the judiciary, the victim's views would certainly be extremely important. *[Interruption.]* My officials have just pointed out to me that section 1(3) states:

"In ascertaining the protected person's well-being, the court must, in particular, have such regard to the person's wishes and feelings".

So the bill makes that clear.

13:00

Marlyn Glen: I am still confused about the extension of orders. From my reading of section 8, I understood that an order would be of a certain length and that, if one wanted to extend it, one would have to go to the court. I was concerned about that. However, you are saying now that once an order has been issued—

Alex Neil: The sheriff can put a time limit on the order, but we anticipate that most orders will not be time limited.

Marlyn Glen: I was concerned about a situation in which the person had learning difficulties. I could not see why the order would be time limited.

Alex Neil: Exactly. I would anticipate it being rare for an order to be time limited.

John St Clair: We think it more likely that the orders that are time limited will concern situations in which, for example, a vulnerable person has to be taken to a place of safety and kept safe for three weeks. It might be that another week is needed, in which case the order could be extended. The normal orders, preventing violence, are much more likely to be open-ended, even at the interim stage.

Marlyn Glen: I still think that there is a bit of confusion there. I will re-examine the issue, however.

Alex Neil: I would be happy to give the committee further clarification. I would also be happy to give further details about ensuring victims' anonymity.

Marlyn Glen: That would be helpful. The witnesses to whom we spoke earlier talked about the importance of cross-border support to ensure victims' safety. Could you give us some reassurance about the current degree of liaison between the Government and the UK forced marriage unit and how that will continue after the bill is passed?

Alex Neil: At policy level, we are continually talking to our colleagues in London and are sharing notes and trying to learn from each other's experiences. We all want to ensure that best practice is followed by everyone—Government, the police, the Crown Office, the voluntary agencies, local authorities and so on.

At operational level, there is close cross-border working between the police in Scotland and the police south of the border. That is absolutely essential, as is close working with colleagues outwith the United Kingdom. Our police are tied in closely with police south of the border and with Interpol and other police organisations to ensure that they have access to assistance from their colleagues, and vice versa.

Marlyn Glen: What about support services?

Alex Neil: The same would need to apply. Obviously, if someone requires cross-border support, we would liaise with the appropriate agencies south of the border or in countries outwith the UK. All the statutory agencies have to co-operate with each other and assist each other across borders in relation not only to this issue but to a range of issues.

The Convener: That completes our questioning. Thank you, minister. We look forward

to exploring some of the issues in more depth as the bill progresses.

Meeting closed at 13:04.

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