OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 7 January 2020

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 7 January 2020

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JUSTICE COMMITTEE
1st Meeting 2020, Session 5

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

*John Finnie (Highlands and Islands) (Green)
Jenny Gilruth (Mid Fife and Glenrothes) (SNP)
James Kelly (Glasgow) (Lab)
*Liam Kerr (North East Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Liam McArthur (Orkney Islands) (LD)
*Shona Robison (Dundee City East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Joanna Barrett (NSPCC Scotland)
Megan Farr (Office of the Children and Young People's Commissioner Scotland)
Bill Kidd (Glasgow Anniesland) (SNP) (Committee Substitute)
Fiona McMullen (Advocacy, Support, Safety, Information and Services Together)
Chloe Riddell (Children 1st)
Dr Marsha Scott (Scottish Women's Aid)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 7 January 2020

[The Convener opened the meeting at 10:00]

Children (Scotland) Bill: Stage 1

The Convener (Margaret Mitchell): Good morning and welcome to the Justice Committee's first meeting of the new year. I wish everyone a happy and healthy 2020.

We have apologies from James Kelly and Jenny Gilruth. I welcome Bill Kidd, who is attending as Jenny's substitute.

Agenda item 1 is consideration of the Children (Scotland) Bill. I refer members to paper 1, which is a note by the clerk, and papers 2 and 3, which are private papers.

We will have two evidence sessions this morning. I welcome the first panel of witnesses: Chloe Riddell, policy manager, Children 1st; Megan Farr, policy officer, office of the Children and Young People's Commissioner Scotland; and Joanna Barrett, policy and public affairs manager, NSPCC Scotland.

I thank the witnesses for their written submissions. It is always immensely helpful for us to receive such submissions in advance of our taking formal evidence.

We will move straight to questions.

John Finnie (Highlands and Islands) (Green): Good morning, panel, and thank you for your submissions.

I want to talk about children's participation in the decision-making process and, in particular, the proposal in section 1 of the bill to remove the 12-plus presumption in relation to children's views. Will you comment on that, please?

Megan Farr (Children and Young People's Commissioner Scotland): We are very pleased that that presumption will be removed, because we have definitely heard concerns. Instances have come through to us via our advice line in which the approach has been misinterpreted as suggesting that children under the age of 12 are not able to express their views and have them taken into account. We would prefer the existing presumption to be replaced by the positive presumption that all children have the ability to express their views, with those views given due weight in line with the child's age, maturity and evolving capacities.

Chloe Riddell (Children 1st): Thank you very much for the opportunity to share our views.

In line with what Megan Farr said, the view of Children 1st is that a rights-based approach should be taken to the provisions in the bill, and we support removing the presumption. We are concerned—Megan Farr mentioned this—that the complete removal of the presumption might inadvertently lead to fewer children being asked for their views. The impact on children's lives of not listening to them cannot be overestimated. We have heard about many children who have been extremely distressed and whose mental health has deteriorated as a result of feeling forced into establishing, building and maintaining relationships with important people in their lives at a pace that they do not feel comfortable with and which is detrimental to the relationship. We could give more consideration to how we could take a rights-based approach to removing the presumption and what we could possibly replace it with to ensure that even very young children are able to share their views with the court in a way that is, we understand, not currently happening.

Joanna Barrett (NSPCC Scotland): Thank you very much for allowing us to give evidence.

Most of what I will say from the perspective of NSPCC Scotland, with our expertise in working with children and families, will relate to very young children—those aged zero to five. The removal of the presumption is really important for those children because they are the children who are least asked about their opinions and are least expected to give them. The removal of the presumption will help to clarify that children who are younger than 12 are capable of offering a view or experience.

We also support a positive presumption to make it explicitly clear that all children should be entitled to give their view and should be asked to do so. We are concerned about how that will be operationalised and who will take those views, because eliciting the views and experiences of very young children requires a specific skill set. We need to ensure that those who do that are appropriately trained.

John Finnie: I will maybe pick up that issue with another question. However, before I move on to that, I take it that you all disagree with the Family Law Association's view, which is that the existing presumption does not prevent the views of children who are younger than 12 from being taken on board.

Chloe Riddell: Our services have numerous examples of children who have not been asked to give their views or whose views have not been taken into account. We know that that has an impact. We know of cases in which children have

explicitly asked for their views to be taken into account but that has not taken place. We also know of children who have been advised to instruct their own lawyers once they reach the age of 12 because they have not been listened to up to that point.

If all children's views were being taken into account in the way that you have described, we would not have the number of children in our services who do not feel listened to, who are unhappy with their contact arrangements and for whom the arrangements to ensure that the relationships that they wish to establish are safe are unsatisfactory.

Megan Farr: Regarding the existing presumption, like Chloe Riddell, we have heard of instances in which the presumption has been misinterpreted and children's views have not been taken into account.

Notwithstanding that, general comment 12 of the United Nations Committee on the Rights of the Child makes it very clear that states should have a presumption that all children have the ability to form their own views and the right to express them, and that children should not have to prove that they have that capability.

Going further, the Council of Europe issued guidelines on child-friendly justice that state that

"children have the right to express their views and opinion on any issue or case that involves or affects them. They should be able to do so regardless of their age, in a safe environment, respectful of their person."

The existing presumption goes against that, in that it sets an age. The impact of setting an age results in the opposite presumption being possible and, in some cases, being followed. That is why we support a presumption that every child has the ability to express their views and that those views should be given due weight.

John Finnie: As you may have anticipated, I support that position, too. What would that mean in practice, though? What would substantially change? Is everything in place to facilitate that? It is all very well changing the legislation, but the infrastructure needs to be in place to support any proposed change.

Joanna Barrett: As I said earlier, what is not in place at the minute is the skill set that is needed specifically to deal with very young children. We need individuals who are highly skilled and trained in child development to pick up on a very young child's inner world and experience. Such skills are not particularly prevalent among our child welfare reporters and in our legal system.

There is also a cultural issue. In preparation for giving evidence on the bill, we spoke to our Childline counsellors, who were very clear that tension in family relationships is one of the biggest issues that comes to Childline. Children repeatedly talk about not being listened to and not being heard. It amounts to an assumption on the part of adults that children—particularly younger children—are unable to form or express a view. We need not only to have the framework provided by the legislation and the training to implement the framework, but to address what kind of biases might exist in our systems.

Chloe Riddell: The committee will probably be aware that Children 1st and Scottish Women's Aid submitted evidence on the financial memorandum. One of the things that we are worried about is the level of resource to be allocated to the issues that have been mentioned. It is really important to note that removing the presumption does not require the courts to do anything different, because they should already be asking for the views of children; all that is needed is a change to ensure that what should already be happening actually happens.

For us, the positive presumption would help to enforce the message that all children's views, including those of very young children, should be taken into account. However, we believe that there needs to be a strategic review of how that happens, because we know that there are significant barriers. Resource has been allocated to child welfare reporters, and I think that there is something about resource being allocated to allow children to speak to the sheriff, but we know that there are a number of other ways in which children might wish to give their views. We have already spoken a bit about the importance of the relationship with a skilled professional and the level of skill required, especially when it comes to sharing with the court the views of very young children who might not be verbal or who might wish to communicate in a different way.

Professor Elaine Sutherland spoke about being innovative and imaginative, and said that we should think further about what the current barriers to allowing children to share their views look like in practice.

Megan Farr: That is absolutely right. There needs to be more resourcing. In general comment 12, the UN Committee on the Rights of the Child says that it is important for children to be able to participate and to understand their rights, and for them to be supported in expressing their views. That experience will be different depending on the age and maturity of the child and on other aspects of their life.

There has been some important discussion about support workers. I am pleased that the Scottish Government has committed to looking at that issue further, and that work needs to be taken forward. As Joanna Barrett said, work also needs to be done to improve the capacity of the courts,

including in relation to child welfare reporters. That will involve seeking the views of children, and it will require a particular skill set. We are pleased with the proposal on the registration of child welfare reporters, because that will go some way towards ensuring consistency in skills and training for that cohort of people.

More work definitely needs to be done to improve the system's capacity. We know that children are able to express their views, and the system needs to be able to hear them in a way that is not harmful to children and which supports them properly.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Following on from John Finnie's questions, I want to ask about your views on the decision to retain the presumption that children of 12 years or older are mature enough to instruct a solicitor. Should there be a wider review of the law in relation to age and capacity?

Megan Farr: There are definitely issues relating to the Age of Legal Capacity (Scotland) Act 1991, which is not surprising, given that it is almost 30 years old. In some ways, it is not particularly compatible with general comment 12. There are the same issues in relation to the presumption. However, that is a much broader issue. It does not relate only to the type of hearings that we are discussing; it extends to other areas, including medical capacity and education, which is an aspect that is missing from the debate on the age of legal capacity.

There is definitely a need for the issue to be looked at more broadly, but I do not think that that should be done in the bill. There is a tiny mention of it in the bill, but we recommend that that should be removed, because it could cause confusion between the notion of legal capacity in relation to understanding a court action and being able to instruct a solicitor to pursue one, and the ability to express views. Those are very different concepts that develop separately and on very different timescales.

Rona Mackay: To clarify, are you in favour of having no presumption at all, so that a child could instruct a solicitor if they felt mature enough to do so?

Megan Farr: We do not have a position on that at present. Work is not being done on that, although it has been acknowledged that there are issues in relation to the matter. It is being operated differently. However, it is not a topic for the bill, because the issue is much broader.

The interesting point is that a solicitor has an obligation to assess capacity when their client is instructing them, and we know that children under the age of 12 are, at times, assessed as having that capacity. We would welcome a Scottish Government review of the issue.

Chloe Riddell: In our evidence, Children 1st is clear that it seems to be a bit of an anomaly to leave in a presumption that children need to be 12 in order to instruct a solicitor. Our view is that it would be better to remove the presumption and, in line with the rest of the bill, to enable children to determine for themselves whether they wish to engage with a solicitor.

The committee heard evidence from Professor Sutherland, who talked about the role of solicitors in that process. It is important to look at whether solicitors have the ability to determine whether a child is mature enough or has the evolving capacity to instruct a solicitor and to know what that looks like in practice.

We have a 12-year-old in our services who is working well with a solicitor and who is represented and feels empowered by that. He feels that his voice is being heard much better as a result of having a solicitor and representing himself.

10:15

Joanna Barrett: We did not comment extensively on that in our written evidence. There is a potential conflict with the removal of the presumption in relation to giving views but, as Megan Farr says, the two issues are very different. The age of 12 seems arbitrary, especially given that our knowledge of child development and how children behave and mature has grown since the 1991 act was passed. The issue should be reconsidered, but perhaps in a separate forum.

Megan Farr: If there is further consideration of the issue, we should approach it from the point of view of the child's rights and incorporation of the UN Convention on the Rights of the Child. I assume that something that was child's rights compliant in that respect would look at how children could be further empowered and supported.

Rona Mackay: Do you agree with the findings of Dr Barnes Macfarlane's research report—that the bill should set out a non-exhaustive list of the different ways in which children's views can be given to the court, and should give the child a say in which method is used in each individual case? Chloe Riddell touched on the issue in an earlier answer. Could you expand on that?

Chloe Riddell: The primary point is that we know that children want to give their views in a variety of ways, so we are concerned that a prescriptive list would limit the ways in which they could give their views, particularly as technologies evolve and children can share their views in ways

that perhaps have not even been invented yet. It is important to have the review that I mentioned in order that we consider the current blocks and barriers to children giving their views.

It is important to ask the children: we need to check with them what they would like to do and how they want to give their views. The bill says that views should be given

"in a manner suitable to the child",

but it does not mention asking the child what that manner might be. We know from our services that children like to draw pictures, make videos and speak to the sheriff directly. As I mentioned, one of the children we know has their own lawyer.

The child welfare reporter is an extremely valuable role, so it is important that there is adequate training for those really skilled professionals.

To answer the question, I suggest that we need to think a bit more about the detail of such a list. We are cautious about having something that is too prescriptive that would not allow children to express and share their views as they want, or to say that they do not want to share their views. We need to allow flexibility so that children can say that they do not want to express their views, where their doing so would not be appropriate or safe.

Rona Mackay: I was struck by the comment in Children 1st's written submission that

"Children are not robots—we cannot expect them to be passive bystanders, going along with decisions made by adults in a system designed for adults without considering the impact".

That is a powerful way of putting the point.

Chloe Riddell: Thank you.

Megan Farr: On whether children's views should be sought, part of children's participation should be about understanding how they wish to participate—the courts should take that into account. In any situation in which a child's views are taken, it might be that we cannot do exactly what they want, but their views should definitely be taken into account and given due weight.

A list of examples of ways of taking views does not feel like something that belongs in primary legislation, but there is possibly a place for such a list in guidance, which would give it the opportunity to evolve. The risk of a list is that it can become interpreted as being prescriptive rather than as being something that will develop over time. The courts' abilities to take views will develop over time, as practice evolves, so there should always be flexibility. At some points for some children, creative approaches might need to be taken and different expertise might need to be brought in.

A list does not feel like something that is appropriate for legislation, but the Scottish Government should certainly consider including a list in guidance. Overprescription is not likely to be useful for children.

Joanna Barrett: As Chloe Riddell and Megan Farr have said, a prescriptive list would not offer the flexibility that we need, although I think that there needs to be a minimum standard with regard to what children could expect, and with regard to what sheriffs, court welfare reporters and others might be able to offer. It is not only a question of how the views are given to the court: by whom views are given is also an important consideration.

Chloe Riddell: I remind the committee of the upcoming incorporation of the UNCRC through a bill that we will, I hope, see this year. If we are looking to make sure that the current bill is compatible with the UNCRC, and if we introduce the entitlements around best interests and children's voices that we mentioned in our submission, I do not think that there will be a need for a prescriptive list. The flexibility and the safeguards relating to children's best interests and their voices would be built in because those entitlements would be on the face of the bill, which would enable children to decide for themselves the best way to share their views.

Bill Kidd (Glasgow Anniesland) (SNP): The way in which you have developed the discussion on children's interests has been extremely interesting. I will ask about a different area of the bill.

Section 15 creates a new duty to explain court decisions to children—although there will be variations and the duty will be subject to various exceptions, such as if the child is not able to understand the court decision, or if explaining the decision might cause distress to the child, under certain circumstances. Do you have a view on how the new duty to explain court decisions to children will develop? Who would do it and how would they present decisions?

Joanna Barrett: The arguments around the issue are analogous to the arguments around the voice of the child. Who does the explaining will be really important: those people need to have the right skills. It will be done on a case-by-case basis. The ability to explain decisions will rely on the adult knowing how to communicate well with a child, and on their delivering appropriately and sensitively the messages that they must deliver.

We need to reframe our approach to the voice of the child, and to explanation of decisions to children. This is not necessarily about the capacity of the child to give views or to understand; much of the time it is about the capacity of adults to

listen and explain. Maybe we need to think about it differently.

Megan Farr: I absolutely agree that we need to look at the capacity of the adults and of the system to work with children. There is a lot to be done in that regard. We are really pleased to see that the duty has been included in the bill. We hear often that children do not understand and it is left to a parent to explain, which can put that relationship in a very difficult position—in particular, if the child is not happy with the decision.

Work will have to be done to build the courts' capacity to deliver on the obligation to explain decisions. Children will often need some support in understanding and coming to terms with a decision, especially if the decision is not in line with the views that the child expressed. We hope that explanation of decisions will help with understanding of, for example, why contact orders are not always followed. The duty will ensure that the child hears, in a neutral way, exactly why the court has made its decisions. That is good progress, but we feel strongly that there needs to be more research in order that we understand how best to deliver on the courts' obligations. The courts will have to develop their capacity to do that.

I spoke earlier about the UN Committee's general comment 12. The child hearing the outcome of having given his or her views, the extent to which their views were taken into account, or that they were not taken into account and why, are important parts of the participation process. Section 15 is very welcome, but work will need to be done to develop how obligations will be delivered. However, the obligations are the child's right, so delivery is not optional.

Bill Kidd: Is it about the child having trust and confidence in the person who is explaining the decision to them? That person would have to follow the process from an early stage and not just come in at the end.

Chloe Riddell: That question draws on wider issues around support workers. As Megan Farr mentioned, Children 1st is very pleased that the Government will be considering the issue of support workers. From providing our services, we know that having a trusted professional or skilled person build a relationship with the child makes a significant difference to their recovery from what they have experienced—in particular, if domestic abuse has been involved.

We welcome provisions on feedback on decisions to children being in the bill, but the matter needs further consideration. We know that, at the moment, such feedback is not happening consistently or satisfactorily for children, and that they often feel quite lost and confused about what is happening, especially in an on-going court process that lasts for a number of years.

We would welcome consideration of how courts can regularly keep children up to date. Decisions need to be made about how that should happen and who should do it, and it will need resources. Reference to our response to the financial memorandum will be helpful because some resource has already been allocated. However, the task being given to a child welfare reporter is a significant responsibility for them to take on. I wonder whether there are other ways for decisions to be explained to children, and to take into account their views about how they want to be informed. Some children might want to be informed every step of the way, whereas others might not.

It is important to remember that cases do not all involve one-off hearings; there could be several decisions made that could change frequently over a number of years. It is really down to what the child wants and the ability of the court to build a relationship with the child so that it can find out what will be in his or her best interests. I believe that power up/power down, which is a project that is being conducted by the Children and Young People's Commissioner Scotland and Scottish Women's Aid, has talked about integrating a system of providing feedback on decisions and ensuring that children are involved in all parts of the process. How that would work in practice requires further consideration.

Megan Farr: We are concerned about the enabling of the court not to comply where complying might not be in the best interests of the child. We would be really concerned if that power were to be used in anything other than exceptionally rare circumstances. We would welcome such decisions being monitored in order to ensure that excessive caution is not being applied.

The Convener: Two areas that you have covered will be worth examining at stage 2. We will need a lot more information on them, especially as the judiciary has real concerns about how it will deliver its duty.

Liam McArthur (Orkney Islands) (LD): I turn to confidentiality of information. I know that Children 1st, among others, has expressed concerns about that. The Scottish Government consulted in 2018 on a legislative provision and asked whether confidential information should be made available to a litigant who is asking for it. That should be done only when to do so is in the best interests of the child, and after the child's views have been taken into consideration. We have heard, however, concern from Professor Sutherland, in a meeting before Christmas, about how that might come into conflict with rights that are protected by

the European convention on human rights that relate to adults. Could the panel talk us through where their concerns lie and how we might be able to navigate a situation in which there is a potential conflict between the interests and rights of adults and the interests and rights of children?

Megan Farr: A balance needs to be struck between the right to a fair trial—which is what Professor Sutherland was referring to—and the right to privacy for children and anyone else who is discussed in, for example, a service provider's report or notes. We have been concerned by cases of entire case notes being made open to the court. The child's right to privacy is very important; the child's best interests should also be a factor. There are concerns that a child's welfare might be at risk if an entire set of case notes were to be made available to all the parties. A balance needs to be struck, but we would be concerned if there were more such instances; I know that there have been examples of that happening. When information is sought, what is being sought should be tightly specified, and there should not be a request for an entire file.

10:30

Liam McArthur: It is about relevance and proportionality.

Megan Farr: Yes.

Chloe Riddell: The committee will be aware that Children 1st has been keen to address the issue for a number of years. Our view is that primary legislation is needed and that the bill should be amended to ensure that it is compliant with the UNCRC. For us, this stems from a real case—not from a hypothetical situation. It will not be helpful to go into the detail of the case, but I will say that confidential information about children that was held by a third sector organisation—Children 1st—was revealed to the court in its entirety. Our concern was that the rules that were in place did not prevent that from happening, and in the future there is potential for such files containing personal and private information to be released not only to the court, but to a perpetrator. We are therefore in a situation in which private and personal information about abuse or about children's thoughts, feelings and views could be shared with the perpetrator of the abuse.

We are absolutely not seeking a blanket prohibition or inadmissibility of information that is sought by the courts—we know that third sector statutory organisations often hold important information that we need to share with the courts to help them to make decisions. We are talking about ensuring that tests and balances are in place so that such sharing of information is proportionate.

We also want children to be involved in those decisions, when that is appropriate and safe. The committee has already heard about instances of children willingly sharing information without being aware of where that information was going or what would happen to it. We are concerned that we cannot guarantee to children with whom our domestic abuse services, for example, are working, that information that they share and which is not relevant to a particular court decision will not be shared. We are worried that that will have a detrimental impact on the service that we provide by limiting our ability to have full and frank conversations, and to help children to recover. It is a significant issue and it is important to include it in the bill. We would welcome an amendment being lodged at stage 2.

Finally, I want to make a short comment on court rules. There are already court rules in this area, and the Government has talked about further rules. The advice that we have had from solicitors who worked with us on the initial case is that practice notes do not have the same level of protection as primary legislation, so there is a greater risk that a court practice note would not be followed. Some respondents to the initial consultation argued that the rules in the sheriff court and the Court of Session address that concern, but we believe that a clear framework in primary legislation would avoid doubt and put children's best interests and their voices at the centre of decisions, in line with the original intentions for the bill.

Liam McArthur: That is helpful. It is entirely understandable that that would mean that a child—of any age—would likely be more relaxed and willing to be forthcoming with their views, particularly on more sensitive issues relating to abuse.

At the same time, it is not hard to imagine that some sensitive detail about abuse would be entirely relevant to a case. How is that managed, with the child? I suppose that their expectations are managed through the process so that their voice is heard, but some of the information will have to be revealed to the court at some point.

Chloe Riddell: No service is able to guarantee complete confidentiality to a child or a family. The existing law that sets out our child protection duties includes a duty to share information where that is required in order to keep children safe.

As I have said, we do not mean that no information at all should be revealed; rather, the approach should ensure that what is revealed to or shared with a court is proportionate. Where information and case files are relevant, they absolutely should be shared. The voices of relevant people, such as support workers, should be also be heard by the court. In fact, we very

much welcome the inclusion of the voices and views of such workers in the court setting so that they can share their experiences of working with families.

We are concerned about situations in which an entire case file that contains information that is not relevant is released. A service provider would not necessarily make the decision to share such a file, but perhaps the court would. Information that has been deemed to be not relevant should not be shared with other people, for whom it is not necessary. In my example, the file that was shared contained details about the child's dreams and information about what was happening at school, which we did not consider to be relevant to their case.

The approach should be proportionate. We would encourage lodging of amendments that would ensure that the safety and welfare of children were the paramount considerations, and that their views would be sought. The effect should not be that children should have the final say in what happens to their information, but that they are informed about what happens to information and are part of the decision-making process. If a decision is made to share their information, the child should be informed of that and should know what will happen to it after it has been shared.

We know that the information that we hold is important and relevant, but if we were to operate on the basis that any information, case files or other documents that we hold could be shared with the court in a blanket fashion, without checks and balances, that would be really detrimental to how our services operate.

Liam McArthur: Perhaps an amendment could be framed in such a way as to make the bill comply with the ECHR as well as the UNCRC, as you have said.

Chloe Riddell: I think so. We can make a really strong argument that such instances of information disclosure do not, at the moment, comply with either the ECHR or the UNCRC.

The Convener: I would like to explore sections 1 and 12 of the bill with members of the panel.

Section 1 seems to repeat what the Family Law (Scotland) Act 2006 said. The courts must consider two factors: the prospect of parental co-operation and the need to protect a child from the risk of abuse. Section 12 will introduce two further statutory factors that they must consider: the effect that a court order might have on a parent's involvement in bringing up a child and the effect that a court order might have on the child's important relationships with other people. Will you comment on those provisions? What do you think of the idea of having what is almost a list of factors set out in the bill?

I noticed that Megan Farr said that the Children and Young People's Commissioner Scotland was supportive of the idea of the right to contact with the extended family, although he did make a distinction between having that as a statutory factor and relying more on the child's perspective.

Megan Farr: Our view is that where presumptions exist they should always be centred on the child rather than on adults. The one exception is where the child in question has siblings, which means that the best interests of more than one child need to be balanced against each other.

Such issues have arisen in discussions on involving other key people, such as children's grandparents. However, it is important to remember that a range of adults—who may or may not be biologically related to them—might be important to children. Our view is that a child should have the right to continued contact with their extended family if that is safe and in their best interests. We have not gone into great detail on that particular aspect, but our view is that any presumption should be centred on the child and their right to continued contact with their extended family, rather than focusing on any specific adults who might be in their life. Grandparents are often mentioned in this context, but children might have aunts and uncles, godparents or other adults who have played a significant part in their lives.

By concentrating on children, we will keep them as our main focus. The situation should not become one in which adults might be seen as having rights to a child; rather, the focus should be on the child's rights to have the relationships that I have mentioned.

The Convener: Could there be a danger of just ticking off a checklist, as opposed to looking at whether something is appropriate in an individual case?

Megan Farr: Indeed. The general risk with lists is that although what is on the list can help people to think about specific factors, it can also limit what is considered. We have spoken about that risk in another context.

Joanna Barrett: We do not support a presumption, de facto or otherwise, of maintenance of relationships with anyone. The issue has to be what is in the best interests of each child. The relationships around every child will be different and, in each case, will either be beneficial or otherwise. Of course, contact with the extended family is important, but we would not support any presumption in favour of it in primary legislation.

Chloe Riddell: Children 1st has similar views. The court's primary concern must be the best interests of the children. Clan Childlaw, among

other organisations, has done a lot of work about sibling contact, and I would usually defer to its expertise on that issue.

The Convener: Does the panel think that the bill more or less has the provisions right? Does the issue need to be clarified in any way?

Joanna Barrett: We support the intention with regard to sibling contact; sibling relationships are massively important to us all—where we have them. However, the question is how the provisions will work in practice. A possible situation might involve two children and two competing best interests, in which contact with a sibling may be in the best interests of one child but not the other. In resolving and managing such situations, what is in the best interests of each and every child would have to be assessed on a case-by-case basis. Who would make that assessment about what is in the best interests of siblings? Ultimately, we support the general principle of the provision, but we have concerns about how it will be implemented.

Chloe Riddell: I go back to our broader discussion on training and support for listening to children's views and making sure that there is enough time to establish and build relationships so that children feel comfortable about sharing their thoughts about their relationships with the important people in their lives, regardless of who they are. A lot of considerations have to be taken into account. What is important is ensuring resource for the training, so that children are able to fully and clearly express their views in a way that reflects the reality of the situation for them without fearing any repercussions of what they say. There needs to be a trusted relationship so that they can share their views and so that decisions can be made in their best interests.

The Convener: Shared Parenting Scotland said that the bill is a "missed opportunity" to give sheriffs more guidance. Is it fair to say that a comprehensive checklist covering the issues would be too prescriptive and that the bill's wording does not stop any of those relevant issues being looked at in a case, if that is suitable for the individual child?

Megan Farr: We said in our submission that new sections 11ZA and 11ZB would benefit from being reframed from a child's rights perspective in their entirety; we discussed that specific matter with the Scottish Government. Extending the checklist would be overly prescriptive; I do not think that the bill is a missed opportunity in that respect. There would be a missed opportunity if the bill were not made as UNCRC compliant as possible—that would really strengthen it.

The Convener: If you were to seek to amend the bill, what would that look like?

Megan Farr: I do not have specific examples to hand. Rather than scrabble around in my papers, I will borrow Chloe Riddell's copy of the bill.

We would frame it according to the child's right to be protected from abuse, rather than the need to protect the child from abuse. We would frame it using the language of rights—the right of children to be cared for and, in section 11ZB, their right to give their views. The same would apply to children's right to maintain relationships with their family members, instead of talking about individual members of the family.

10:45

The Convener: So it is just turning it round so that child's welfare is absolutely at the heart of this.

Megan Farr: Yes, so that the focus is on the child.

The Convener: That is helpful.

Chloe Riddell: Scottish Women's Aid and ASSIST—the advocacy, support, safety, information and services together service—will give evidence after this session, but it is important to remind the committee now that we must also view any changes to the legislation through the lens of domestic abuse victims. If we get it right for those most vulnerable people, we will get it right for everybody. When domestic abuse is involved, there are significant factors related to safety and children's best interests that should be taken into account when the bill is being amended.

Megan Farr: Although domestic abuse occurs in a minority of families—and that is a good thing—they are not the minority of cases that reach the court.

The Convener: Do the provisions cover sufficiently cases where there is no domestic abuse, but there is a dispute about parenting orders?

Megan Farr: My understanding is that that is roughly half of cases that reach court. That is a fairly consistent research finding across jurisdictions and over time.

As long as they are centred on the child's rights, the answer is yes. Article 18 of the UNCRC has as a principle the involvement of both parents in a child's upbringing. The caveats to that are the best interests of and welfare of the child, but I think that the bill adequately covers those.

The Convener: Thank you.

Shona Robison (Dundee City East) (SNP): Good morning. I have two questions. The first is on the child welfare reporters and curators ad litem. Sections 8 and 13 of the bill propose

regulation of both. We know that you are supportive of that principle, but it would be helpful if you could tell us what you think are the key features of any regulatory regime that should be brought in, such as qualifications or training requirements, as well as any concerns that you have about how any regime would operate in practice.

Joanna Barrett: We support the regulation of court welfare reporters. The policy memorandum says that 90 per cent of court welfare reporters are lawyers. We pose the question whether that skill set is conducive to best practice in engaging with children and fulfilling UNCRC obligations. It is not that lawyers cannot engage with children, but it is arguable that those in other professional disciplines are more skilled at doing so.

We support moves to widen the professionalism of court welfare reporters, to encourage psychologists, social workers and others to be court welfare reporters. However, we are concerned—and our experience in the children's hearings system is—that there are professional biases in our legal system whereby lawyers are deemed to present arguments in a better or more compelling way, and social workers and others feel less confident in legal forums.

We need to consider which is more important: that court welfare reporters have a skill set that fits into an existing legal system or that they have the ability to work effectively with children. We would argue that it is the latter. Therefore, any regulation has to contain minimum standards for training, and that training ultimately has to provide a fundamental understanding of child development and how to engage with and relate to children.

Megan Farr: We also support the proposals for regulation. As Joanna Barrett says, the legislation has been developed in a way that provides flexibility, in that it is not prescriptive about who a child welfare reporter is in terms of their specific qualifications. We would like to see the development of requirements for training and qualification that recognise the importance of human rights, and particularly children's rights; of child welfare reporters having an understanding of child development; and of seeking the views of children and knowing how to support them when they are expressing their views, particularly if they choose to do so in person.

The legislation is framed in such a way that there is flexibility as to an individual's professional qualifications. That is a good thing. The area will evolve over time. We are not likely to see a quick change in who a court welfare reporter is. However, it is good that that flexibility is built into the legislation.

Chloe Riddell: As the committee might be aware, Children 1st currently operates the safeguarders panel for the children's hearings. Our learning from that is that it has been an important process. It has taken a lot of time for us to establish procedures and processes to streamline practice, but it has been worth while. We can take a lot of lessons from that in relation to the operationalisation and administration of the panel.

With regard to what is being achieved, we have heard many times from the children and families in our services of very good experiences of working with child welfare reporters. There have been good examples of children feeling listened to and heard and of the reports being of a high quality. On the flipside, we have heard examples of children feeling traumatised by the experience of repeated questions. We have heard of three or four occasions on which different child welfare reporters have gone back to the same child over a number of years.

The intention behind that part of the bill is important. We strongly support the findings of the research and the work that the Scottish Government has done on that. The child welfare reporter can play a vital role in the civil court process. The report can often be the deciding factor in what contact arrangements look like. Therefore, we need to make sure that we invest in the role and that a significant amount of training is undertaken. If contact arrangements are unsafe for children, because a child welfare reporter has not understood the dynamics of domestic abuse or the realities of family life, that can significantly impact on a child.

We do not want a postcode lottery of provisions. Therefore, it is important to make sure that training is streamlined. The training should be not just on domestic abuse but on trauma, attachment, and—as Joanna Barrett was talking about—child development and how children communicate in non-verbal ways.

Our experience with the safeguarders panel is that putting safeguards in place can be complex. It requires a significant amount of investment and time, but there are advantages in terms of advancing children's rights. If we get the reports right—where it is safe and appropriate for a child welfare reporter to be in place—and make sure that contact arrangements are more stable and that children, families and women are happier with the arrangements that are in place, that can prevent us from repeatedly going back to court, which is what happens when unsatisfactory arrangements are in place.

Megan Farr: We agree that that could be the major benefit from it. We welcome the Scottish Government's commitment to fund court welfare

reporters. Effectively, discrimination existed in that situation, because if one of the parents was in a financial position to pay for a court welfare reporter, or if one of the parents was legally aided, the child had one, but for the children who fell in between those two groups, access to justice was impeded by financial considerations. Therefore, the commitments around funding are welcome.

Shona Robison: Thank you. My second question relates to those contact arrangements. Is regulation of child contact centres desirable? If so, what should the key features of that regulatory regime be? What type of regulation would improve safety, while ensuring that people can still access a centre that is local to them? Not everyone will use a contact centre, but it will be an important part of the process.

Megan Farr: We have also welcomed the regulation of child contact centres, and note that Relationships Scotland, which operates the vast majority of contact centres in Scotland, has also done so. In the long term, this area potentially needs to be developed to define the most appropriate situation for children. We hope that as a result of regulation, there will be improved understanding of what the child contact centres are and why they exist. Over the years, we have heard of instances in which they have been used inappropriately.

In line with the regulation of welfare reporters, we think that there is a real opportunity to raise standards in training on requirements for staff to ensure that facilities are safe, but we recognise that there are significant concerns about resourcing. The welfare reporting service is not funded by Government. It is often funded by the parties involved, some of whom have particular resourcing issues. Therefore, we would be disappointed if regulation were to be so stringent that it restricted the number of contact centres. However, we believe that the Government's current proposal is for inspection to be undertaken by the Care Inspectorate, which probably has the ability to take a proportionate approach to an inspection regime to ensure that standards are improved.

Training for contact centres needs to cover similar issues to training for welfare reporters, including domestic abuse, because, again, disproportionately, those are the cases that reach court, and even more disproportionately, they are the cases that end in contact centre usage. We need to ensure that contact centre staff have an understanding of their role in keeping the child and the non-abusing parent safe.

We are also concerned that in some instances contact is ordered at a contact centre when there is very little potential for that contact to progress to unsupported or unsupervised contact. We are not convinced that contact in the contact centre is always in the best interest of the child, in cases in which, at that point in time, it does not seem that the parent who is having contact will progress to a point at which it will be safe for them to have their child outwith the centre.

Joanna Barrett: I endorse those comments. I do not have much to add.

Chloe Riddell: When we talk about contact arrangements, the starting point needs to be children's right to safe and positive relationships. It is not always appropriate—or indeed safe—for a child to be at a contact centre. When making those decisions, we must be really clear that they are in the best interests of the child and consider what arrangements are safe for them.

In our view, contact centres can play an important role in facilitating safe contact arrangements, and there is potential for them to be part of a rights-based approach to civil justice. There is scope for contact centres to develop into welcoming places where children and families want to go, but that would require resource. We mentioned that in our response to the financial memorandum on the bill, so I will not go over that in too much detail. However, we talked about provisions, for example, for those children who live in island or rural communities. As Megan Farr mentioned, it is also really important to reflect the importance of training in the financial memorandum.

We also know that contact arrangements are often used to perpetuate domestic abuse, and it is vital that that is not allowed to continue and that the staff or professionals who are supervising the contact are alert to that possibility and that the courts are alert to the way that such abuse can happen.

For us, the training must also include child development, communication and trauma. We know from Relationships Scotland's submission to the bill consultation that in recent years there has been an increase in the complexity of issues faced by families that use contact centres, including mental health and addiction. We are therefore keen to see what the practical considerations might be for children whose parents are experiencing some of those challenges and for what contact centre staff should do if they are concerned about what they see happening in the centre, who they should report to, what happens when contact arrangements are no longer suitable, how that can be remedied and the children's views on how the contact is happening.

The broad answer to your question is that we think that regulating the contact centres is important and training is vital, but a lot of

discussion is needed to ensure that the approach is safe, appropriate and in a child's best interests.

Shona Robison: Megan Farr referred earlier to examples of good practice and examples of not so good practice. It would be helpful if they could be presented in an appropriate way in a follow-up letter to get a bit more detail on that.

11:00

Rona Mackay: I have a short supplementary question on that issue. We know that there has been concern about children being ordered to have contact with a parent when they have said that they do not want that, whether the case is domestic abuse related or not. How confident are you that sheriffs and the other people taking the decisions will take into account the views of the child, which are obviously paramount? We have talked about giving children a greater voice, but do you think that the judicial system is ready to accept that and make the decision based on it?

Megan Farr: There is very good practice out there, but there are probably some sheriffs who could benefit from further training on that. It is one of the benefits of the bill and one of the reasons why we are pleased to see the improvements that the bill represents around seeking a child's views. In particular, there needs to be a better broad understanding of the child's evolving capacities. Dr Gerison Lansdown's work on that for the United Nations Children's Fund some years ago is a particularly useful resource. There is undoubtedly a need for training, given the telling examples that we hear about. For example, there could be a family with several children for whom contact is ordered when the children are under 12. When the children reach 12, they are suddenly heard and contact is no longer ordered, but the contact order remains in place for the younger sibling, who is perhaps 10 and is saying exactly the same thing. The continuing number of cases that come to us or we hear about from colleagues in other organisations that are dealing with similar cases suggests that there is a need for better training and awareness. We hope that the bill will be a catalyst for that happening.

Joanna Barrett: That is another area where the needs and behaviours of very young children can be overlooked in a way that is detrimental to their welfare. We work with many young children who are in contact situations that are distressing but who cannot articulate that it is distressing. They come home and their behaviour, toileting and sleep all change—demonstrable behavioural signs that contact is not in that child's best interest. I do not know the extent to which that feeds into contact decisions.

The other thing that I will highlight is the interplay between our various legal systems. I do not think that that happens enough. We have instances where contact is being decided in the children's hearings system, but there is also a civil action or even a criminal action against an individual for domestic abuse or a sexual offence or something else. We have had instances where someone is accused of a schedule 1 offence but contact has continued via the children's hearings system. There needs to be much more integration between our legal systems, particularly on contact, to make sure that it all makes sense and that children are kept safe.

Megan Farr: There needs to be a better awareness that, although children have a right to grow up in an environment in which they have contact with both parents, that is only if it is safe and in their best interests to do so—there are absolutely cases where it is not.

Chloe Riddell: One of the most important provisions in the bill for the families we support is on investigation into non-compliance. That has an important role in understanding why some arrangements have not been complied with.

The Convener: We will cover that issue separately, so if you could hold your fire on that just now.

Chloe Riddell: I just wanted to say that the thing that is missing, which we have all talked about, is the ability for children to feed back when a decision has been made. Although there is the measure for investigation into non-compliance, there is not provision for discussions about what a child thinks about the decisions made, or even a chance to review contact arrangements after a particular time.

Megan Farr: The other thing that is often missing is an understanding of the impact on the child when one parent is in the position of having to force them to attend contact. That puts that parent and especially the child in an extremely difficult position. Although the child absolutely does not wish to attend contact, the court order means that the resident parent has forced them to do so, and that ends up damaging that relationship as well.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good morning. Thank you for the informative evidence that you have provided so far. I would like to hear your views on sections 4 to 6, which are on vulnerable witnesses and the cases that go to proof. Do you support the extension of those provisions to children's hearings?

Joanna Barrett: We support the measures in the bill, and we think that they should be extended to the children's hearings system.

The fundamental point that I would like to make is that the committee should have in mind as part of its wider consideration of the bill, rather than in the context of amendments, how our legal systems interact. It has become accepted that how we treat vulnerable witnesses in our criminal system is not good enough and must fundamentally change. We are looking at the barnahus, or child house, model and we are trying to get children out of the criminal system.

The bill is attempting to introduce in the civil system measures to enable children and other vulnerable witnesses to give their views in a way that is safe without their having to attend fora directly, but in our children's hearings system children are compelled to attend. I read with interest Children's Hearings Scotland's submission, in which it says that child victims, adult victims and perpetrators of abuse are entitled to and must attend hearings. There is a complete lack of synergy in what our expectations are and what our protections are as regards the interests of children in our various legal systems.

We are trying to get children out of the criminal system altogether, whereas in our hearings system we are making children be in the same room as people who, it could be argued, have harmed them. In our experience of the children's hearings system, very young children are being forced to attend hearings in a way that is detrimental to their welfare. Therefore, we absolutely support what is proposed, but we think that it is also necessary to think about what the protections are and what our expectations are for children in the children's hearings system.

Fulton MacGregor: On that point, the Scottish Children's Reporter Administration has said that it thinks that children's evidence in family cases should be treated in the same way that it is treated in criminal cases—in other words, it should be taken in advance, where that is practical. That would mean that sections 4 to 6 would not be required for children. What do you think about the SCRA's views on that? I would also like to hear what other members of the panel think about that.

Joanna Barrett: I think that I am right in saying that the SCRA is talking about proceedings in front of the sheriff that relate to hearings.

Fulton MacGregor: Yes.

Joanna Barrett: It is absolutely the case that there must be protections—we are talking about children who are in the children's hearings system, so we are talking about extremely vulnerable children.

The point that I am making goes beyond that; it is about what happens in individual hearings in our children's hearings system. We have experience of very young children—18-month-old or two-year-old children—being forced to sit across from someone who has caused them harm. Our practitioners are regularly distressed by attending hearings at which children are distressed and are showing attachment behaviours.

I absolutely support what is in the bill, and I support what the SCRA has said about extension of the provisions to children's hearings, but I think that we also need to look at our hearings system. We rightly uphold our children's hearings system. The Kilbrandon principles are to be admired and advocated, but the operationalisation of them falls short of our expectations. It could be argued that we champion the children's hearings system to such an extent that we are quite complacent about it. We need to think about the protections that exist in our hearings system, our civil system and our criminal system and to what extent they are coherent.

Megan Farr: Article 2 of the UNCRC states:

> "States ... shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind".

That is the non-discrimination principle. A child is a child is a child: they are just as much a child in the children's hearings system as they are in the criminal courts, and they should be afforded the same protections across all forms of proceedings.

Chloe Riddell: I agree completely with my colleagues. We cannot have a situation in which we try to establish a gold standard of a child house model in the criminal courts at the same time as having a system in which children feel as though their rights are being violated in civil courts and children's hearings.

My understanding is that children will rarely attend the civil courts, but the provisions in the bill are important for victims of domestic abuse. Much of the bill comes down to implementation. The special measures are very important but will only work if there is consideration of the whole experience, particularly for a victim of domestic abuse. For example, if a victim of domestic abuse walks through the court doors at the same time as a potential perpetrator and then has to sit for three hours in a waiting room that that perpetrator may walk past, they are using the same space and that will be a fairly distressing experience, even if the victim then goes into a court where there is a curtain or screen between them. We must ensure that the special measures are implemented in a way that makes sense for the whole experience. It is important that perpetrators of domestic abuse are not able to continue to perpetrate abuse through the courts. We welcome those provisions.

I imagine that the witnesses from Scottish Women's Aid and ASSIST will talk later about how a victim will be determined and links with criminal

court proceedings. Those are important considerations when the committee is looking at the sections of the bill on vulnerable witnesses.

We welcome the provisions on ensuring that special measures are taken to enable people to cross-examine or question a victim but, as my colleague has said, we must ensure that we streamline the process across the different proceedings, bearing in mind that a lot of the time we are talking about the same children. Many children go through the criminal courts, civil courts and children's hearings at the same time and experience three different proceedings.

Megan Farr: It is important to remember that, although the system experiences that as three different sets of proceedings, that is not how children experience their interaction with the court system.

Fulton MacGregor: Following on from your last point, I wanted to ask the panel for their views on section 7, which would allow the sheriff court, for the first time, to order the use of special measures in court hearings where formal evidence is not being taken. I know that Children 1st and Scottish Women's Aid have criticised that aspect of the bill and that ASSIST has also referred to it, but are there other views on section 7 that the panel would like to put on record?

Chloe Riddell: Sorry, but which section are you referring to?

The Convener: It is section 7, on child welfare hearings.

Chloe Riddell: I do not have any comments further to our written response, which was in line with the comments that I have just made about ensuring that the implementation is well thought out and is not just focused on being in court but considers the whole court building and the whole process. As I mentioned, there are some concerns about how victims will be identified, particularly if there are no criminal proceedings, and how the special measures will be applied.

Our submission mentions that there is a need to ensure that the measures apply to all children; although we understand that it would be very rare that a child would be physically present in court and so would require the special measures, we need to ensure that, if they are in court, those measures are applied. Does that answer your question?

Fulton MacGregor: I fully appreciate that you had already started to talk about your views on that subject in the last line of questioning. If no one else on the panel wishes to comment, I will leave it there.

11:15

Liam Kerr (North East Scotland) (Con): I would like to move on to something that was touched on earlier: situations in which someone fails to comply with a court order. Section 16 seeks to impose a new duty on the court to investigate the underlying reasons for such a failure. The investigation could be done by the court itself or by a court-appointed child welfare reporter.

The committee has received mixed views on that proposal. Some have been supportive, whereas others say that the proposal adds nothing, because courts are already able to carry out such investigations.

I seek the panel's views on that. Are you supportive of the proposal?

Chloe Riddell: The proposal is one of the things—I think that I said this before—that the families who use our services are quite relieved about. I know that there has been some discussion that such investigation already happens, but, anecdotally, we are hearing that it is not happening as consistently as it should be.

There are often very good reasons for non-compliance with contact orders. Often, they come down to the child. It is extremely difficult to get a screaming three-year-old into the car, but I imagine that it is even more difficult to get a screaming 15-year-old into the car. Aside from that, it is extremely distressing. Giving courts the ability to think a little bit more about the reasons behind non-compliance and bottom them out is really welcome.

The situation can be extremely distressing for both sides of a relationship. If a child is being forced to attend contacts, that can be distressing for the child and it can damage the relationship with both parents.

We strongly welcome the proposal, but, as I mentioned before, we would prefer to be in a position where non-compliance does not happen because the court order and the contact arrangements are satisfactory and allow the flexibility for children to change their minds. Without having to go through formal proceedings, children should be able to say that they have been invited to the cinema on a particular day and that, therefore, they do not want to attend contact and would prefer to change it to a different date. Giving children the ability to respond when a decision is made is also really important.

The level of anxiety that we have heard about in our services from families who are concerned about not complying with contact arrangements that they feel are unsafe or unsatisfactory but that they feel they have to comply with is significant.

Parents having the ability to discuss and address those concerns about contact arrangements with somebody who will investigate them is really welcome.

Megan Farr: We agree, and we welcome the proposal. It is an area where there has been mixed practice. We have also heard of cases in which the reasons behind contact not happening were not properly investigated.

It is an area in which the explanation of decisions has evolved. It may assist a child if they understand why contact has been ordered, particularly if they do not want it.

Our biggest concern is that, when a parent has failed to comply with an order, there is a risk that sanctions could be applied without the court understanding the reasons why the order has not been complied with—which could be genuine reasons, such as a child having been sick on a particular day. There needs to be a proper understanding of those reasons. The anecdotal evidence that we have heard of differing practice is such that we think that it is useful to have the provision in the bill as a reminder to courts that, when contact orders are not obeyed, they need to properly investigate that rather than progress further down a legal route. Courts need to understand the views of the child as well.

Joanna Barrett: We support the measure. As Chloe Riddell said, we would hope that court orders would be satisfactory in the first place. The elements of the bill that require properly hearing the voice of the child and taking it into account, properly explaining decisions and reading across different legal systems should go some way to ensuring that an order is satisfactory in the first place and more likely to be complied with.

Liam Kerr: If you support either the court or a child welfare reporter doing the investigation, a question occurs to me: are the extra resource requirements adequately provided for in the bill?

Chloe Riddell: I refer the committee again to our response to the financial memorandum, in which we were clear about the importance of properly resourcing each of those areas. Our sense is that we will eventually save money if we invest properly in ensuring that people are trained and qualified in making sure that children are able to determine for themselves the best way for them to interact with the process. That is because we will not have repetitive, lengthy court proceedings going on, and we will not have vast numbers of traumatised children and adults who are unable to establish and maintain relationships with the important people in their lives because of decisions that are made in the courts.

I suspect that the answer to your question is that we have called for more resources to be put in place and for more consideration of how such things will work in practice.

Liam Kerr: Megan Farr mentioned sanctions being applied. In 2018, the Scottish Government consulted on alternative sanctions for non-compliance; however, there is nothing specific in the bill. The committee heard evidence that there might be alternative ways to address the issue, such as alternative dispute resolution or—as some people have suggested—a parenting co-ordinator. I seek the panel's views on sanctions, alternative sanctions and alternatives to sanctions.

Megan Farr: We are concerned that, in some instances, sanctions have undoubtedly not worked in the best interests of a child. There have been cases in which a primary care giver has been imprisoned for a short period. The imprisonment of the primary care giver of a child on a short sentence is always a matter of concern. Where sanctions are imposed, there should be consideration of the best interests of the child. That should be the case in all instances of sanctions being applied against primary care givers.

It is important to consider forms of alternative dispute resolution such as family group decision making and mediation, among others, as it may well improve outcomes for children. However, we recognise that many cases that reach the courts involve domestic abuse and that, in those situations, where there is a significant power imbalance, it may not be the right answer. Even in situations where alternative dispute resolution is appropriate, there needs to be good understanding among the professionals of issues such as domestic abuse and child development. A skilled professional facilitator or mediator has a role to play in those instances.

Liam Kerr: Thank you.

Megan Farr: Does that answer your question?

Liam Kerr: It does.

If the convener will forgive me, I will ask—briefly—about something else that is buzzing in my mind. In that answer, you said that many cases that reach the courts involve domestic abuse. Do you have any statistics on that, which you can share with the committee?

Megan Farr: There are a range of statistics, some of which were included in the research that we did with Kirsteen Mackay. I have some statistics that I can forward to the committee. My understanding, from speaking to a lot of the academics who are involved in the work, is that the statistics are fairly consistent in that they are around the 50 per cent figure or greater. It is not an easy area to deal with. When I was here before Christmas, I mentioned that we recognise that

conviction rates for domestic abuse are historically low. That is why we have a new act that seeks a better understanding of domestic abuse. Scottish Women's Aid and ASSIST may also have statistics that can help.

On the basis of my consideration of the international evidence, I note that the statistics are fairly consistent in showing that around half of cases that reach the courts involve domestic abuse. That is not surprising when we consider the fact that, simply by their nature, the cases that reach the courts are the ones involving the highest degree of conflict. Parents who can agree do so before they get to court.

The Convener: We should probably point out that Sarah Harvie-Clark provided us with a very good report on some of the statistics. Nonetheless, it is always good to hear other comments. I apologise to Liam Kerr, whom I stopped mid-flow.

Liam Kerr: No—I think that Chloe Riddell was going to answer.

Chloe Riddell: It is also worth noting that those statistics will, hopefully, change with the new domestic abuse legislation. We work with a number of women who do not recognise themselves as victims of domestic abuse; who are encouraged by, for example, solicitors not to report in the civil courts; who do not feel comfortable or confident or that the abuse is relevant; or who are not going through criminal proceedings. That is a note of caution on the research, because there are probably a number of unreported instances as well.

Megan Farr: That knowledge of domestic abuse—particularly of coercive control—concerning people who are involved in alternative dispute resolution and mediation is really important, because that may be the point at which professionals first come into contact with an abuse situation. As Chloe Riddell said, the person may not actually be aware that what they are experiencing is domestic abuse.

Rona Mackay: Section 10 of the bill requires local authorities to promote personal relations and direct contact between looked-after children and their siblings to an appropriate extent. Could I have your views on that and on whether you have any concerns about that section of the bill?

Megan Farr: We are really pleased to see that in the bill, as the commissioner's office and a number of other organisations have been campaigning for it for some time. Our concerns are not around the provisions that are in the bill; they are around the other people to whom the provisions do not extend. My understanding is that they extend to children who are currently looked after but not to children who were formerly looked after.

We think that the bill could be strengthened by a better understanding of whom children see as their siblings, but we are careful about discussing types of relationship. Whom children understand as being their siblings can be quite complex, as families can be quite complex. A family can include step and foster siblings as well as half and full siblings. Although we are aware that it exists in other Scottish legislation, we do not think that the phrase

"whether of the half-blood or of the whole-blood"

is particularly helpful. It is not how we understand families today, and I think that the inclusion of that phrase potentially places a restriction on who those children are.

Our other concern is around ensuring that local authorities have adequate resources to facilitate contact between siblings.

Rona Mackay: Would you be concerned that those decisions should be made by suitably skilled people with the right training?

Megan Farr: That continues to be an issue across all aspects of the bill. Joanna Barrett touched on the fact that we must act in the best interests of the children concerned and consider their views, and, when multiple siblings are involved, their relationships do not necessarily align with what is in the bill.

Presumptions are rebuttable; nonetheless, we support a presumption that it is important to maintain relationships between siblings, as young people—particularly looked-after young people—tell us that that is important.

Joanna Barrett: I jumped the gun and answered the question earlier, so I will repeat what I said then. NSPCC Scotland is supportive of measures to promote sibling contact when that is in the best interests of children, but we are not in favour of a presumption. We have concerns about how parental contact decisions are made, and de facto presumptions are not helpful there. It is the same with sibling contact, which has to be supported on a case-by-case basis. It must be a very skilled person who assesses whether contact is in the best interests of all the children and how to resolve situations in which it is in the best interests of one child but not of another.

Also, how will sibling contact be supported? We have talked about contact centres and concerns about how we support parental contact. There is nothing in the bill, the policy memorandum or the supporting documents about how sibling contact would be supported in our system or about what skills and resources are required.

We support the ambition to promote such contact, but we caution that it must be in the best interests of all the children.

Chloe Riddell: Children 1st similarly supports the bill's intentions and would encourage real consideration of resources and of training for its implementation. We would also encourage the committee to explore the matter further with our colleagues in Who Cares? Scotland and Clan Childlaw, who have done a lot of work on it. It is not an area in which Children 1st has a lot of expertise, but I know that those organisations have done a lot of work on how the provision would work.

The Convener: Thank you. That concludes our evidence session. It has been very detailed and very helpful. I suspend the meeting to allow for a change of witnesses and a comfort break.

11:29

Meeting suspended.

11:34

On resuming—

The Convener: I welcome the witnesses for our second panel this morning. Fiona McMullen is operations manager at ASSIST, and Dr Marsha Scott is chief executive of Scottish Women's Aid. I thank the witnesses for their written submissions, which are always helpful.

We will move straight to questions, starting with John Finnie.

John Finnie: Good morning, panel, and thank you for your submissions. I know that you have been present throughout, so I will join some of my questions together. I started off earlier on children's participation in decision making and the proposal in the bill to remove the 12-plus presumption. Could I have your initial thoughts on that and on what the new presumption should look like? A recurring theme of interest to the committee is whether you feel that there is sufficient infrastructure at the moment, or whether the bill proposes additional resources. I would like you to cover that area, please.

Dr Marsha Scott (Scottish Women's Aid): Thank you for the opportunity to be here, to see you all, and to speak about the bill, which we feel strongly about, and about which children and young people have spoken eloquently.

I have personal experience of working with people who have given evidence to sheriffs in contact cases with children as young as four. It is a problem to put in presumptions that are not evidence based about particular chronological milestones for when children have the capacity to engage with the system. It also implies that their right to participate is somehow abrogated by age. We are definitely in favour of a presumption that children will participate and we want to see the burden put on to the courts to explain why they do not engage with the children rather than a presumption of an age at which they should.

I agree with the comment that was passed on from the Law Society of Scotland or Family Law Scotland—I am not sure which—about the fact that solicitors already do assessments. We have a case study of a young woman in the north-east who was represented by a solicitor whom she got through our service; the solicitor had a meeting with the child to assess whether they were capable of instructing her and decided that they were. The system already works somewhat like that, but it does not work with any protections for children or presumptions that they should be involved. We would therefore like to see the current presumption removed, but we would also like to see a presumption that children will be engaged.

Infrastructure is a terrible problem. The issue, which was woven through the previous panel's evidence, and is in all our submissions, is that our society is not particularly competent on children's rights, and that is reflected in our criminal and civil justice systems. The implementation of the bill will only be as good as the understanding of children's rights and domestic abuse in our world is among the professionals who are supposed to be making the decisions.

I understand that, for any of this to be implemented competently, people will need to look at professional competence around children and understand the dynamics of domestic abuse.

Fiona McMullen (Advocacy, Support, Safety, Information and Services Together): To provide a bit of context for those of you who do not know, I say that ASSIST is a large domestic abuse advocacy project that supports victims and children through the criminal court process. We cover 42 per cent of Scotland's population.

We often find that the criminal court process runs alongside, or is closely followed by, civil court proceedings. If we are thinking about domestic abuse and coercive control, we are talking about tactics such as isolation, exhaustion, degradation and threats that are new and bespoke to individual families and often involve children and child contact. We see children who cannot understand why in one area, if they have court advocacy available, they will be proactively offered support all the way through the process to risk assess and safety plan, because the process will be fluid and depend on the decisions made by the court, but when they come out of that and go into the civil court, there is nothing. Victims say to me that they

find the civil court more adversarial than the criminal court. They may not have a lawyer representing them and they find that bar reporters and sheriffs can be adversarial.

Going back to the point about children giving their views, I note that we routinely support child witnesses to give their evidence in court, and with the new offence and the new presumption in favour of non-harassment orders for every child in relation to domestic abuse, we routinely ask children for their views, either directly or through the parent, depending on what our contact is and what is appropriate.

I echo what Marsha Scott has said about children as young as three saying, "No daddy—I don't want daddy." Recently, a 14-year-old wrote a four-page letter to the civil court following criminal proceedings in which he gave evidence to say that he did not want contact. However, that boy has been supported by default rather than by design, because it just happened that we supported him through the criminal court. Many other children do not have access to that. Marsha Scott and I have spoken about this, and I think that there is a need for court-based advocacy that is not a postcode lottery for children who are involved in civil court processes.

Dr Scott: The infrastructure question is not only about competence but about availability. Both ASSIST and Scottish Women's Aid provide children's advocacy services. Ours are not limited by court processes, so people can come through our services who have not been in a court process. However, the availability of such services is absolutely inadequate even in the best-resourced communities. The west of Scotland and Glasgow have ASSIST, and there are services in Edinburgh, but we need to consider what services exist in the most remote and rural areas in Scotland.

Access to advocacy should be a human right for every child who is involved in court processes, especially those who are survivors of domestic abuse, but it is just not a physical reality. We hope that somebody somewhere—we hope that you will do this—will take that on as a critical element and turn access to justice from something that exists on paper into something that children really experience.

Fiona McMullen: I totally agree. Both of our services support children through the civil courts, but they do so almost by default. That is certainly the case for our service. It happens through someone knowing that they can come and ask us to provide it, rather than it being something that is offered proactively.

John Finnie: The committee has frequently heard about the tension between criminal and civil processes. I did not take it that you were both saying that everything is fine in the criminal—

Fiona McMullen: Not completely, but things are better.

John Finnie: Yes, indeed. Is there a growing gap in provision? If so, is the bill a vehicle that can address that, perhaps by amendment—you know how legislation works—or are there shortcomings in resources in general? I think that both Dr Scott and I have used the term "infrastructure".

Dr Scott: The answer is, sadly, that we need all of the above. I do not think that the bill, even if it is crafted perfectly, will solve the gap between the criminal and civil courts. I am a bit less optimistic about what is happening in the criminal courts, because I do not think that we have, as a country, adjusted well to the provisions in the Domestic Abuse (Scotland) Act 2018 that create a criminal element around the child aggravator, and figured out what that means for children and what their role should be in the courts.

Some of you may remember that we, along with a number of the children's organisations, argued when the 2018 act was in development that children should be considered as co-victims. Our concern was that, as Fiona McMullen has described, when cases went from criminal courts to civil courts, people who had been convicted of being abusers in families were then seen as being good-enough parents.

The gap will potentially get wider, but it is already very wide. Ensuring that there are adequate advocacy services is the best first action that we can take to address the problems that are caused by that gap. There are things that should happen around how we describe children as victims in relation to domestic abuse, but we have no evidence at this point that the aggravator is working adequately to allow us to do that.

11:45

Rona Mackay: I suspect that you will be able to answer my question quite briefly. Should the bill retain the presumption that children of 12 years or older are mature enough to instruct a solicitor? Should there be a wider review?

Dr Scott: In our view, and based on the evidence, there is no benefit of identifying an age. The presumption should be that children should have a voice unless it can be demonstrated that they cannot have one.

Fiona McMullen: The solicitor will not always be the person who can best represent a child's views in a court process.

Rona Mackay: Should there be a non-exhaustive list of ways in which children can give

their views? Should a child have a say in which method is used in their case?

Fiona McMullen: I do not agree with there being a list because, as others have said, it becomes prescriptive. I will keep that brief. In order to get views, skilled professionals can use creative age and stage-appropriate ways of engaging and communicating with children.

Dr Scott: I might disagree a little bit. One of the things that have worked really well in the Domestic Abuse (Scotland) Act 2018 is the extensive guidance notes, which state clearly some of the effects of abuse and what abuse can look like, but the list is not exhaustive. The guidance notes help to inform people's understanding.

Fiona McMullen: The issue is whether that is put in the bill or whether guidance notes are provided.

Dr Scott: Such guidance can be a signal that an F9 form is not going to do it and that there need to be options. The core principle needs to be the outcome, which is that we have done everything that we can do to honour children's human rights and to allow them to input into decisions that affect their lives. That might be done through a video, a painting or—as one four-year-old provided—a picture of the rooms in their house and where they felt safe. We should do whatever works.

Rona Mackay: Should the bill be a bit stronger on that specific point and emphasise it more?

Dr Scott: As Megan Farr said in the previous session, a number of things in the bill are not framed from a children's rights perspective. We should put that up front and in bold, and say what the outcomes are that we are trying to get to. We should outline, as Fiona McMullen said, the many creative and well-evidenced mechanisms that can be used, and we are looking for proof that people have engaged in them.

Fiona McMullen: It is also about how risk manifests and how safety is managed throughout the whole process, in allowing children to give their views. Some children will be terrified to give their views, because they will not know where they will be shared or the consequences of giving them. The process should be no different from a criminal court process, and we should manage risk and safety all the way through it and beyond. Potentially, it will need to be managed for a longer period, given that criminal proceedings can be incidental and very quick and can result in one appearance, whereas multiple appearances can be needed for special measures for victims in a civil court. There should be an absolute emphasis on risk and safety.

Dr Scott: Children and young people have told us about what they need in order to give good evidence and to express what they need and want. In our experience, they have told us that it is a process, not an event. It is not about thinking that, because the right form was used and the child did not want to speak, the child does not want to be involved. We have looked at many cases.

I can talk about the need for children to have a relationship with a trusted advocate or supporter in order to give good evidence, just as in any evidence process. However, we need to set up the process so that it is clearly defined as a process and so that, if it does not deliver safety and wellbeing for children, they can have redress and a way to ask for a review.

Bill Kidd: Thank you for the interesting conversation so far. I want to ask about section 15 and explaining decisions to children. The exceptions to the new duty include where

"the child would not be capable of understanding an explanation"

and where

"it is not in the best interests of the child to give an explanation".

The Sheriffs Association thinks that section 15 is unworkable in practice because of the burden that it would place on the judiciary. Others, such as the Children and Young People's Commissioner Scotland, are concerned about those caveats being introduced, because they believe that it will mostly not be in children's best interests that they should be used. Therefore, there would have to be someone whom the child has confidence in and trusts in order to be able to explain things only if necessary. Are you concerned about that one way or the other?

Fiona McMullen: ASSIST would be concerned by those caveats; we would be concerned that not needing to explain would almost become the norm. In criminal processes currently, we absolutely give the child the court outcome and debrief them after they have given their evidence. That is not dissimilar to giving views, and there is a consequence from that in relation to risk and safety that is then explored.

There is also the issue of believing and validating what the child has been through and done. That would be built up with a person with whom the child has a trusting relationship. If the outcome is not necessarily what the child wants, there should potentially be redress, and there should be acknowledgement of how well they have done to be involved in the process and an emphasis on the safety of the outcome of the decision making.

Dr Scott: I agree with what Megan Farr said in the previous evidence session. The circumstances

and the number of cases in which it would not be appropriate to share the court's decisions with the child or young person are very rare and tiny. Obviously, matters are likely to be addressed on a case-by-case basis, and involving a trusted supporter is always one of the alternatives that we would want. However, I cannot imagine that we would want to put such a get-out clause in a bill—that is what it seems to be to me.

Bill Kidd: Does what both of you have said counter the judiciary's concerns about the burden on its resources, as that is already being addressed in other circumstances? Do you not really have that concern? Are we talking about something that has been put in place because the judiciary does not really want to have to deal with the matter?

Fiona McMullen: It might depend on the outcome. I was involved in supporting children years ago when the procurator fiscal's outcome in a criminal case was to not go ahead with their charges and drop them and to go ahead with the mother's charges. That was a poor outcome for the child, who absolutely wanted to speak to the procurator fiscal about that as opposed to me as an advocacy worker. I can still see times when it might be appropriate for the child to have information given to them by someone other than an advocacy worker, supporter or child welfare reporter. They might prefer that information to come from the judiciary. However, I would not see that needing to happen all the time.

Bill Kidd: So it is always about what is in the child's best interests, which can vary.

Dr Scott: Although I have some sympathy in respect of the burdens on the judiciary, my first thought is that that issue should be solved in other ways as opposed to minimising the rights of children to hear outcomes.

Liam McArthur: You will have heard the earlier exchange on the confidentiality of information. We have also discussed the sensitivity of such information and the balance, which Professor Sutherland talked about in an earlier session, that exists between adults' ECHR rights to fair trial and to privacy and a child's best interests in giving evidence and having their views heard. How should the bill strike such a balance? Should it contain a provision on confidentiality? If so, how should that be framed?

Dr Scott: We support Children 1st's call for an amendment on confidentiality. For a long time, we have been aware of the difficulties that exist in providing support and becoming a trusted source when there is a possibility that information that a woman or a child has shared with us might be used against them in court. I cannot imagine anything more soul destroying—for either children or service workers—than seeing the work that the service workers have done, under what are sometimes incredibly difficult circumstances, to help children to feel more confident that the system is there to protect them turned around on them in the way that can and has been done by the Scottish courts.

Although our approach should always be proportionate, my concern is that we should also do what it says on the tin: children's interests should be paramount. When other people's interests are involved in a case, they will obviously have to be weighed, but we must always act on the basis that the wellbeing and interests of children should be paramount.

Fiona McMullen: I do not have a lot to add to that. I echo what Marsha Scott has said. However, I always go back to the question of how such issues should be managed. A child's ability to have a trusted support worker with them throughout the process would undoubtedly help. We must be able to manage children's expectations about the release of information. In situations in which we cannot address risk unless we share information, we will have to do so. However, we must consider issues such as transparency and consent, and that can be done in a more robust way if one person consistently oversees the process.

Liam McArthur: Any provision should be framed so that it does not move away from the fact that sensitive or difficult information might have to be shared in the interests of providing clarity to the court. However, the management of expectations would need to be handled carefully throughout the process and any information that is shared should be proportionate and directly relevant to the case.

Dr Scott: Some of our existing practice in that area is pretty good. Recently, I was speaking to a sheriff who said that, after taking children's views, she was very careful to ensure that such information was not replicated in court proceedings unless it needed to be used to answer a child protection question.

All the panel members here have worked in an environment in which child protection trumps pretty much any promise of confidentiality that we can give, so that is not a new one for us. The reality is that we can express that to children and then uphold their rights in such a situation. That is not a new concept for the system.

Liam McArthur: Are problems arising at the moment because it is easier to say that all of a particular file or body of information should be made available, rather than because there is a lack of understanding that some of it will be directly relevant while the rest might not?

Fiona McMullen: As Marsha Scott has said, we do that now—bar reporters regularly ask us for information that will go into civil court proceedings, as do victims' lawyers, and we make decisions on how much of that information would be proportionate and relevant to share. For example, it might be the themes of risk, rather than the intimate details of it, that are really required.

12:00

The Convener: I know that you were both in the room when we discussed with the previous panel sections 1 and 12, which include various statutory factors that are intended to guide the courts when they are making decisions about the welfare of a child in an individual case. What are your views on the idea of approving a checklist of factors in principle? What do you think about Parenting Scotland's view that this might be a missed opportunity to have a comprehensive list of factors that might include certain groups of people?

Dr Scott: As you will know from our submission, we are quite concerned about the existence of a checklist. We think that what is on it is pretty random. There are some things that are not on there that we would want to be on it as an absolute principle, such as the views of the child being listened to. We view as problematic the idea of the participation of others—or even both parents—in the life of the child, when the evidence is that that is sometimes not in the interests of children.

I think that the intention, which is to remind the courts of the issues that they should be considering when they make decisions, is good. However, that needs to be expressed strongly throughout the bill. That is a better approach than providing a checklist, which is a sort of shorthand approach that means that people do not have to understand the principles.

If there was a checklist, we would want it to be much more rigorously examined, and we think that it should express the principle of the interests and wellbeing of the child being paramount.

I cannot defend the existing checklist. I think that it could only possibly lead to people supporting decisions that are not supported by the evidence in the case.

On Parenting Scotland's consultation response, I am concerned that it is really trying to protect the rights of parents rather than those of children.

Fiona McMullen: I will not labour that point, but I agree that, at the moment, the rights of the perpetrator—often, in these circumstances, the father—absolutely outweigh any consideration of the rights and the voice of the child. That is what we have found; that is what victims regularly tell us. We do not want anything that would further that situation.

The Convener: I think that that point has been strongly made.

The Scottish Women's Aid submission mentioned that the definition of domestic abuse should be updated to include coercive behaviour. Should that be addressed at stage 2?

Dr Scott: We are concerned that the language in the bill does not seem to reflect the language of the Domestic Abuse (Scotland) Act 2018. In particular, a discussion of coercive control and the impact that it has on children, which we discussed a lot during the passage of the 2018 act, has been completely absent.

I exist in a bubble—one that, possibly, I share with the people in this room—in which, because of the debates around that domestic abuse legislation, everyone understands the mechanisms, dynamics and impact of coercive control. However, it would be a mistake to assume that everyone understands those issues and I would be concerned if the bill that we are discussing today did not demonstrate policy coherence with the 2018 act.

Children and women often do not seek services, report to the police or otherwise engage with our systems because the fear that they have experienced and the harm that has been done to them have been minimised for many years as they do not involve physical assault. We need to understand that those are the same people who will be coming into our civil courts. Many of those people will not have been involved in a formal criminal case. As was mentioned in your discussion with the previous panel, we constantly hear stories from women about lawyers who have told them not to talk about their domestic abuse, for a variety of reasons. We must not be so naive as to assume that people will understand the issue of coercive control and talk about it from the beginning of a case, or that the court will reflect it appropriately.

Fiona McMullen: I echo that view. Anything that makes our court systems and processes more compatible with and complementary to one another would help. We have already heard that there are vast differences in responses, so anything that mitigates those differences would be helpful.

The Convener: That message has been heard loud and clear this morning.

Shona Robison: I have a question on child welfare reporters and curators ad litem. I understand that you are supportive of the proposal to regulate those roles, and it would be helpful to hear a bit more about the features of such a

regulatory regime that you think would be necessary, for example, qualification and training. Similarly, should there be statutory regulation of child contact centres? What should the key features of any regulatory regime be?

Fiona McMullen: I will start with contact centres. My comments are based on discussions with victims over the years. I say this not to be flippant, but one victim recently said to me that using a contact centre was not much different from handing a child over in McDonalds. She would expect the same intervention should she be assaulted, but that would be as much as staff in the contact centre would notice. They would not notice if secrets were being shared, photographs were being taken, the parent was being undermined or something similar was going on. They would not notice the dynamics of abuse. That speaks to me about the training, regulation and complaints procedures, but we should also think about whether we should be using contact centres in the first place and how we use them.

We are talking about domestic abuse and coercive control. The perpetrators are very clever. They turn up at contact centres and look and play the part, so the contact very quickly moves to being unregulated and no longer supervised. Therefore, we have to consider our use of contact centres when reviewing risk and safety through the whole process.

We also hear victims talk about paying for contact centres, either in order to travel to them or to pay for sessions. I worked with a victim who paid more to get to the contact centre than the £6-a-week maintenance that she got from her ex-partner. In managing contact, there is something fundamentally wrong with victims, who will have experienced significant financial control as part of their abuse, being further financially abused by the processes that we have put in place.

Dr Scott: I cannot state too strongly how welcome the regulation of and the required training for child welfare reporters would be. We hear stories about them every week. A week before Christmas I heard that a bar reporter told a woman that she should not take too seriously the threat to kill her, because people say things in the heat of the moment. Such attitudes are not uncommon in our communities and we must take responsibility for making sure that the people who are dealing with the most vulnerable and at-risk people in our society have the tools that they need in order to do so.

I really welcome the proposal. The training needs to be good. It needs to be looked at through an implementation lens. We have had such discussions with the Judicial Institute for Scotland about the training of sheriffs and judges on the new domestic abuse legislation. We have a tendency to say that we have checked the box because people have attended the training. We may even do a pre and post-training review to make sure that they understand what was said in the training. However, we do not then put in the infrastructure that is needed to make sure that they use the training. We must therefore take a robust approach to the training of child welfare reporters, which would be welcome.

As I said when the Public Petitions Committee discussed a petition to do with a contact centre case, if the first principle of contact is that it cannot and should not be ordered unless we are absolutely clear that it is safe for the mother and the child—or the victim and other victims who are children—and in the child's best interests, why do we need an industry of contact centres to protect children? If we have any concerns about their safety, why are we allowing contact?

If contact is safe, it can happen in a lot of places that are probably more conducive to children's health and wellbeing and that connect them and their parents with community services. For example, we have a network of family centres in Scotland that provide lots of services for children and parents. I do not understand why family centres and community centres are not also appropriate places for contact to happen.

If we are going to have contact centres—obviously, I come at this from the perspective of domestic abuse; maybe there are other functions and other circumstances in which we need to have contact centres—they need to be designed and delivered with those outcomes in mind. However, as far as I am concerned, on issues to do with domestic abuse, we have heard few stories about contact centres increasing safety, although we hear stories all the time about children in contact centres.

I had a case in which a children's worker approached a contact centre when a very dangerous perpetrator was being released from prison, so there was a conviction and evidence all over the place. Contact had been ordered, so the children's worker went to the contact centre and said, "We should work together on this, because we have been supporting the three children, so can we make some safety plans?" The response from the contact centre was, "Listen—there are two sides to every story, you know." We must not underestimate the harm that happens in contact centres when services are inappropriate and the people who provide them, with the best will in the world, are unable to provide safety and in fact therefore provide danger.

Fiona McMullen: To go back to the issue of bar reporters, over the 15 years that I have been at ASSIST, I have fairly routinely heard victims talk about feeling that bar reporters come from a

position of disbelief and that they have to convince the bar reporters that it is not a tit-for-tat situation, which follows on from some of the issues around contact centres. It is not just a fight to win residency; domestic abuse and coercive control are at the heart of it. The bar reporter is meant to be the professional who has more understanding than the victim's lawyer or the sheriff and who will convey that to the sheriff, but they sometimes have less understanding.

I have worked with excellent bar reporters, including some who have been honest enough to say after an hour of looking at a case that they missed issues in other cases because they did not notice the risk indicators and what was going on.

I absolutely echo what was said earlier about the quality of bar reporters, or child welfare reporters, and about the need to look outside the legal profession for people. I echo the point that those reporters do not come with the same credibility as others in the system, which I suppose applies to people from ASSIST and Women's Aid in court at times. That needs to shift. There needs to be an acknowledgement of the experience, skill and professional judgments of other professionals who are involved in that work.

Dr Scott: I must echo that. For children experiencing domestic abuse, the vast majority of children's supporters and advocates in Scotland work for Scottish Women's Aid or ASSIST. The fact that it is difficult to get courts to listen to the advice from those professionals is a huge waste of what are mostly public pounds and of the trust that children have finally built up in a system that will listen to them.

Shona Robison: Thank you. You touched on some examples but, if there are further examples or more detail that you want to share with the committee, it would be helpful if you gave us that follow-up in writing.

Dr Scott: I am happy to do that.

12:15

The Convener: That is always worth while, as it kind of brings the issue alive.

Fulton MacGregor: I want to discuss the same issues as I did with the previous panel. I would like your overall views on sections 4 to 6 of the bill with regard to vulnerable witnesses. Your written submissions suggest that you agree with sections 4 to 6 but, in particular, should the protections for vulnerable individuals be the same across civil and criminal proceedings? If so, do those sections achieve that goal?

Fiona McMullen: I believe that the protections should be the same across both processes. Victims just now are incredulous that one week they can be in a criminal court giving evidence at a brand-new site in Glasgow, especially if it involves children, who do not come into any contact with the perpetrator because there are screens in the court and they have safe entry and exit; and the next week they are sitting across a table from their abuser and have to do so for multiple appearances. That is distressing for victims.

I have been around long enough to remember when we did not have automatic measures for children, let alone for adults, and I know how changes in that have removed some of the trauma of going to court for children and adults. I suggest that the civil court should have available something that is not dissimilar to the criminal court's default position when it is not known what is required: the use of screens and a supporter for vulnerable witnesses. It is easy to remove that kind of support when it is not required. Again, it is about how we contact people to get their views about what is required for them at court. That all needs to be considered as part of the process.

Dr Scott: I agree with that. The only thing that I would add is that there is good work in Scotland around the bairn's hoose and the development of responses to children in our system. The principles underlying that work should be integrated with the way in which we protect children in court proceedings.

Fiona McMullen: The difficulty will be around how we determine whether someone requires protection. In the criminal court, the case is about a domestic abuse incident. However, we need to appreciate that the civil court proceedings might be based not on such incidents and convictions but on reports from the victim. If someone wants special measures in court, there is a reason for that. Very few people would ask for them if they did not want them. Indeed, some victims say, "No, I need my abuser to know that I can actually do this without those special measures." The measures are therefore considered on a case-by-case basis.

Dr Scott: Absolutely. Given that we have ample evidence over many years and from many countries that many victims of domestic abuse never report it to the police and that therefore there is no criminal case, we need to include in the bill language that would allow allegations of domestic abuse or abuse generally to define the situation, rather than just a conviction or a criminal case.

Fiona McMullen: I would call them reports because, when we hear of "allegations" in the civil court, that sometimes suggests disbelief. We should call them reports of abuse.

Dr Scott: Exactly.

Fulton MacGregor: Do you agree with the previous panel about supporting the extension of the provisions of sections 4 to 6 to children's hearings?

Fiona McMullen: To be fair, ASSIST does not have a huge amount of involvement in children's hearings. What the previous panel said on that issue made sense to me, but we are not routinely involved in children's hearings. We might have young victims at children's hearings, rather than have a number of children going through that process.

Marsha Scott might want to comment further on that.

Dr Scott: I will follow up a bit on what the witnesses on the previous panel said, although they were pretty clear about children's hearings. We have been working with the children's hearings system to provide training and we are now rolling out a service to provide advocacy for children. It comes back to the point about whether children who are already being supported by a supporter or advocate should then have to switch to somebody else with different credentials, such as a bar reporter. The children's hearings system is moving in the right direction in ensuring that children have advocates and in a way that provides the most appropriate support from the lowest level. From the very beginning, in the power up/power down project and our young experts group, children and young people have told us that, from their perspective, the presence of an adult with whom they have a trusted relationship is the most important thing for justice.

Fulton MacGregor: I have one final question. I asked the previous panel about section 7, and I know that Scottish Women's Aid has been critical of that provision. Dr Scott, do you want to put some of those thoughts on the record?

Dr Scott: I am going to plead holiday brain. I am looking for section 7 but, because of adrenaline, I might not find it easily. Can you explain?

Fulton MacGregor: Section 7 will allow the sheriff court, for the first time, to order the use of special measures in court hearings where formal evidence is not being taken, including child welfare hearings. Unlike under sections 4 to 6, nobody will be deemed vulnerable in that context and an individual's vulnerability will have to be established before the court in each case.

Dr Scott: We want to go on record as saying that we should think about everything that we do—whether in a children's hearing, a civil court or even a criminal court—from the perspective of what is in the interests of the child's wellbeing as well as the interests of good evidence. Happily, the answer to both those aspects is often the same: a default assumption about protections such as those that are in place for vulnerable witnesses.

Our experience is that access to special measures is good in some places and not so good in others, and courts are less than consistent about ensuring that such measures are available. The move to take evidence from children off-site, remotely and by video is a great place for us to begin to think about how we could actually provide protection, rather than use a screen and a supporter, which is an obvious easy answer but probably does not deliver the outcome that we all want.

The Convener: Liam McArthur has a brief supplementary.

Liam McArthur: I appreciate that there are issues around the management of risk. I was struck by the suggestion about setting as a threshold a simple report of domestic abuse, and not even an allegation. That might have the potential to provide incentives for individuals to respond accordingly in marital or relationship breakdowns where emotions are running high. Would setting such a threshold be a sensible approach?

Dr Scott: It is evidence, which needs to be taken on board as a signal that fear and potentially coercion are involved. It is only sensible that the processes that fall out of that report—I agree that "report" is a better word than "allegation"—are there in order to make robust decisions to ensure that all precautions can be put in place. There are few other situations in which a person could say that they were afraid of someone and we would not respond appropriately, but would minimise the issue and say that it was an allegation that might be self-serving. The courts are able to understand those situations if they ask the right questions.

Liam Kerr: I have the same questions that I put to the earlier panel about what happens when someone fails to follow a court order. Section 16 would impose a new duty on the court to investigate the underlying reason for that. What are the panel's views on whether that section is good or adds anything new?

Fiona McMullen: Recently, we have seen stories in the press about non-compliance and the consequences for victims who are afraid. For me, the issue is the reason for non-compliance, whether it is about safety and who determines that—it needs to be someone who is skilled and understands the dynamics of abuse. It is really tricky. Non-compliance can be used by abusers to change arrangements to ensure that the victim is further isolated, perhaps by ensuring that they cannot go out because the abuser is only taking one of the children. Non-compliance can mean several different things.

I would be horrified to think that a victim of domestic abuse who is in fear of her or his life and fears for the safety of their children would face extreme consequences for non-compliance.

Dr Scott: We have so much evidence that there are complex stories behind compliance issues and our system does not address that. There is a significant power imbalance between a sheriff or a judge and a victim of domestic abuse who perceives that she has a choice between protecting her child and breaking the law—I have so many messages about that in my inbox. In reality, that will not always be the case and I am sure that there are many other explanations for non-compliance that are less defensible. However, until we have evidence that our child contact system is working the way that it is supposed to, particularly in the context of domestic abuse, we have to include some safeguards. Assuming that a contact order was the right thing and that lack of compliance is the wrong thing is not useful in such situations.

Liam Kerr: That boils down to your saying that section 16 is a good provision.

Earlier, we discussed sanctions in the event of a breach of an order. What is your view on the alternative sanctions that were discussed previously but which do not appear in the bill, such as ADR?

Dr Scott: I echo what the previous panel said on that. In the context of domestic abuse, where there is an inbuilt power imbalance, mediation is not a good idea. We were involved in a panel with officials some years ago and it might have been the only time that Families Need Fathers and Scottish Women's Aid agreed about something, which was that prison sentences are not a particularly good response to non-compliance with contact orders. Alternatives need to be in place, but the most important intervention that we can have at that point is for there to be a good exploration of why compliance is not happening.

Fiona McMullen: As was said earlier, to go back further, if we put appropriate contact arrangements in place, there should be less room for non-compliance.

The Convener: That concludes our questions. I thank you both for attending the committee and giving very worthwhile evidence.

Subordinate Legislation

Firefighters' Pension and Compensation Schemes (Amendment) (Scotland) Order 2019 (SSI 2019/382)

12:29

The Convener: Agenda item 2 is consideration of a negative instrument. I refer members to paper 4, which is a note by the clerk. The committee previously considered the instrument at its meeting on 3 December 2019 and agreed to write to the Minister for Community Safety. The minister passed it on to Kate Forbes, whose response is included in the annex to paper 4.

Members appear to have no comments to make. Is the committee agreed that it does not wish to make any recommendations in relation to the instrument?

Members *indicated agreement.*

The Convener: That concludes the public part of today's meeting. Our next meeting is on Tuesday 14 January, when we will continue to take evidence on the Children (Scotland) Bill.

12:30

Meeting continued in private until 12:53.

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