



OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities, Human Rights and Civil Justice Committee

Tuesday 7 September 2021

Session 6



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EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE

2nd Meeting 2021, Session 6

CONVENER

*Joe FitzPatrick (Dundee City West) (SNP)

DEPUTY CONVENER

*Maggie Chapman (North East Scotland) (Green)

COMMITTEE MEMBERS

*Karen Adam (Banffshire and Buchan Coast) (SNP)

*Pam Duncan-Glancy (Glasgow) (Lab)

*Pam Gosal (West Scotland) (Con)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Alexander Stewart (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Blair Anderson (End Conversion Therapy Scotland)

Keith Brown (Cabinet Secretary for Justice and Veterans)

Ash Denham (Minister for Community Safety)

Tristan Gray (End Conversion Therapy Scotland)

Neil Rennick (Scottish Government)

Denise Swanson (Scottish Government)

CLERK TO THE COMMITTEE

Katrina Venters

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Equalities, Human Rights and Civil Justice Committee

Tuesday 7 September 2021

[The Convener opened the meeting at 10:01]

Decision on Taking Business in Private

The Convener (Joe FitzPatrick): Welcome to the second meeting of the committee in session 6. Everyone is here today, so there are no apologies. Thanks to everyone for attending.

The first item on the agenda is to decide whether to take items 5 and 6, which are consideration of today's evidence, in private. Do we agree to take those items in private?

Members *indicated agreement.*

Petition

Conversion Therapy (PE1817)

10:02

The Convener: Agenda item 2 is an evidence session with Tristan Gray and Blair Anderson. We are pleased to welcome Tristan, who is the principal petitioner, and Blair, on behalf of End Conversion Therapy Scotland. I refer members to papers 1, 2 and 3, and invite Blair to make a short opening statement.

Blair Anderson (End Conversion Therapy Scotland): Thank you for having us. I am Blair Anderson—my pronouns are he/him; Tristan Gray's are also he/him.

Since the petition was submitted last year, I have joined the End Conversion Therapy Scotland group. There are four of us, but Sophie Duncan and Erin Lux could not be here today. End Conversion Therapy Scotland has co-hosted events with other conversion therapy organisations across the United Kingdom and Ireland and has met members of the Scottish Parliament to discuss our campaign asks. We ran a very successful pledge campaign during the Holyrood election. I am sure that some of you signed our pledge—thank you very much for that—which was signed by 214 candidates, 55 of whom were returned as MSPs. All five Holyrood parties committed to a ban on conversion therapy in their manifestos. Since then, we have been meeting regularly with LGBTQ+ sector organisations.

We are happy to answer any questions from the committee.

The Convener: Thanks very much for coming. I will kick off the questions. What is the definition of conversion therapy that we should recognise? A lot of submissions to our consultation say that we need to be really clear about what we mean by conversion therapy.

Tristan Gray (End Conversion Therapy Scotland): Conversion therapy can be best understood not as an attempt to change the box that someone believes that they can fit in but to change their behaviour to better fit the box that society or their community has placed them in. You cannot actually change someone's gender identity or sexuality through the various forms of pressure and psychological abuse that are used as part of conversion therapy; you can only force them into expressing themselves differently from how they feel, or to live in denial to prevent the abuse from continuing.

Conversion therapy has the directed intent to change someone. It is not simply expressing an opinion or faith, or distaste at someone's identity or behaviour; it is a concerted effort to change that to what is considered to be the correct way to be. The targets of conversion therapy are often made to feel as if the behaviour that they are most comfortable with—the expression of how they feel—shows that they are broken or wrong. They are pressured or threatened by psychological abuse or torture if they express themselves and rewarded with acceptance and freedom from that abuse if they fix their behaviour to fit the box that they have been placed in.

Conversion therapy is, therefore, a broad term for psychological conditioning that seeks to force people to change or suppress their sexual orientation, to repress or reduce their sexual attraction or behaviours, or to change their gender identity to match the sex that they were assigned at birth.

The Convener: Blair, do you want to add anything?

Blair Anderson: We additionally stress the importance of a fully comprehensive ban in legislation. We know that there are various issues to consider, but it is our group's belief that any ban has to be fully comprehensive to be worth the paper that it is written on. That includes covering sexuality and gender, and it includes forced conversion therapy, so-called consensual conversion therapy and any attempt to change or suppress someone's sexuality or gender identity in whichever form it takes and whichever setting it takes place in. We stress the need for that to be done without loopholes or exemptions. In particular, it should cover non-affirmative forms of therapy for trans people. Trans people are perhaps those in the LGBTQ+ community who are most at risk from conversion therapy, and any ban must be sure to protect trans young people in particular.

The Convener: What do you mean by "non-affirmative"?

Blair Anderson: Perhaps the best international practice is the Change or Suppression (Conversion) Practices Prohibition Act 2021, which was passed by the Victorian Parliament in Australia this year. That does not prohibit every form of conduct, and excludes therapy and counselling that are supportive or affirmative of someone's sexuality or gender identity. We would ask that any therapy or counselling that has the intended outcome of changing someone's gender identity to match the sex assigned at birth be covered in any legislation.

Pam Gosal (West Scotland) (Con): Thank you for the definition of conversion therapy. What kind

of impact would your proposal have on the support that is provided by religious leaders?

Tristan Gray: We do not believe that freedom of religion will be impacted by any legislation that is brought forward. We understand that there have been submissions to the consultation that express concern that a ban on conversion therapy would have an impact on people's right to practise their faith and the right for religious leaders to promote their faith. However, the majority of religious leaders and denominations support a ban on conversion therapy.

The Ozanne Foundation's open letter featured more than 400 religious leaders who committed to a ban against conversion therapy, including Desmond Tutu and Mary McAleese. There is nothing in a conversion therapy ban that should pose any restriction on the right of people to practise freedom of thought to hold someone in their thoughts and prayers as they see fit.

That is distinct from the practice that some people have outlined as part of the conversion therapy that they have experienced, in which they are expected to take part in prayer to correct their sexuality or gender identity, or where such a practice is used to place pressure on someone by their community. We think that that crosses the line from freedom of religion into an abusive situation in which the target of the pressure is made to feel sinful or broken for simply living and loving as other people do. That is the line that I think should be made clear in any legislation. The freedom to pray for others and have faith should not be impacted by the legislation. However, the practice of pressuring someone using faith should be covered.

Maggie Chapman (North East Scotland) (Green): I have a couple of questions to explore the role of the medical profession in this context. Blair Anderson outlined the definition of conversion therapy. What sort of links with medicalisation are we talking about, and what is the relationship between support for people and the potential criminalisation of medical professionals? What are your thoughts on that, and what do you want to happen in that space?

Blair Anderson: It is worth saying at the outset that, as far as we understand it, the majority of cases of conversion therapy do not happen in a medical setting. They often take place in religious settings or behind closed doors, in family homes and so on.

In the healthcare setting, a number of sector-wide bodies such as the Royal College of Psychiatrists—almost all healthcare bodies in the United Kingdom, in fact—have co-signed a memorandum of understanding that expressly

denounces conversion therapy and states that it is not acceptable under the operating procedures.

On the medicalisation aspect, there are a limited number of instances in which healthcare comes into play. For example, the Ozanne Foundation's 2018 faith and sexuality survey listed some forms of conversion therapy and treatment, which, alongside things such as prayer, included hormone treatment, electro-convulsive treatment, counselling and psychiatry. At present, we do not know the prevalence of those practices in regulated professions, but we know that they have been expressly condemned by the regulatory bodies.

Maggie Chapman: I want to come back on two points. In the counselling and therapeutic space, in psychiatry and psychotherapy, there are already guidelines around not doing conversion therapy. What routes would a ban open up to a survivor of such behaviour that they do not already have available to them?

My other question is on the criminalisation of the non-medical and non-religious forms of conversion therapy that may take place behind closed doors in a family home. How would you see that playing out?

Blair Anderson: I am not a medical professional, but I would say that the purpose of psychiatry or counselling is to provide a space for someone to explore their feelings and experiences. It is not undertaken with a set outcome in mind. If a psychiatrist or counsellor goes into a relationship with a patient with the intention of changing, suppressing or otherwise affecting that patient's sexual orientation or gender identity, we would like that to be covered by any potential ban.

Provided that a psychiatrist or counsellor is providing a space for people to explore their experiences, such as difficulties that they are having with their sexuality or gender identity, and providing a supportive and affirmative environment without preconditions or an intended outcome in mind, that would not be affected. We do not foresee, therefore, a significant tightening of regulations for people who are practising psychiatry and counselling.

With regard to the other settings where conversion therapy takes place, such as religious settings or behind closed doors, we would like to see the conduct of the practice itself banned, however it takes place. If it fits the aim of conversion therapy, we would like it to be banned, regardless of the setting. This stuff takes place in more settings than we can count. People might have an idea in their heads of what conversion therapy looks like—they may think, for example, that it happens at Christian summer camp, a one-

to-one prayer group and that type of thing. However, that is not often the case.

I myself am a survivor of conversion therapy, and what happened to me happened at the hands of a parent, entirely within the family home. There was no organisation behind it—it was motivated purely by that parent's homophobic beliefs. Over seven years, there was intimate abuse, psychological abuse and isolation from friends, peers and other family members. Barriers were put up to prevent me from accessing healthcare, because the situation that I was in would have come to light.

We feel that there is a lot of overlap between what happens in conversion therapy and what happens in cases of intimate partner violence, psychological abuse and coercive control. There are a lot of elements of psychological abuse. There is not often a straightforward or clear "procedure" of conversion therapy; it can take place over a series of years, entirely informally, on the basis of prayer or through forms of psychological abuse such as isolation, gaslighting and so on.

10:15

Tristan Gray: With regard to handling situations where that is happening in a community or a household, the second branch of what we are calling for, which is non-legislative support, is important. Without a strong reporting mechanism for survivors to come forward that provides them with support and counselling should they need it, we are unlikely to come across most cases of conversion therapy. In fact, that support and having a body that is capable of handling survivors' cases is, if anything, as important as criminalising conversion therapy through a ban.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Thank you, Blair, for sharing your personal experiences, because it is always helpful to the committee to hear that.

As a sort of declaration of interest, I say that I was one of the MSPs who signed the pledge during the election campaign, and I was pleased, having signed that pledge, to be returned by the electorate.

To go back to an earlier question, what is your understanding of the prevalence of conversion therapy in Scotland? You touched on that in earlier answers and in your opening statement, but can you expand a wee bit on what the prevalence is now and what it has been over the past five to 10 years?

Blair Anderson: When we start to talk about conversion therapy, people often say, "Does that really happen?" and then, "No—really?" People do

not think that it happens, but it does. It happened to me and it happens to countless others. On the prevalence, because of the nature of the conditions that people are in when they are undergoing conversion therapy—often, as I say, they are experiencing psychological abuse—fewer people come forward than are affected by it.

There were thousands of respondents to the 2018 national faith and sexuality survey by the Ozanne Foundation, and around 20 per cent of those said that they were either advised or forced to undergo conversion therapy. That sort of data pool is self-selecting. However, based on the demographics of the survey, 4 per cent of the respondents were based in Scotland. Therefore, conversion therapy is definitely an issue in Scotland. It happens to countless people. People have come forward to us as an organisation to say that it is happening to them, but they do not have the opportunity to speak out about it.

Fulton MacGregor: Is it therefore difficult to put a figure on it? As politicians, we sometimes look for figures, but I can understand how difficult that would be, given the situation.

I will move on to the main theme of my questions. As I said, I supported the campaign, and I probably made my position reasonably clear, but part of my job as an MSP in the committee is to scrutinise so that we can ensure that anything that the Parliament does is as good as it can be. Therefore, I want to ask some questions that might be in the more difficult bracket, if that makes sense.

I want to hear your views on the idea that some people might wish to seek support for what they might perceive as their discomfort with being lesbian, gay, bisexual or transgender. Tristan Gray referred to that, but please elaborate on it. On that basis, is it possible to have consent to any of these practices by organisations, where someone is not coerced but is seeking that therapy, for want of a better word? I ask that with the caveat of my comments at the start of my question.

Blair Anderson: It is useful to consider the fact that conversion therapy is not a form of therapy. In the first instance, it does not always take place in a therapeutic or counselling atmosphere. It can take a number of forms. Conversion therapy is not a positive, therapeutic or beneficial treatment, for want of a better word. It is often seen as a form of torture. The International Rehabilitation Council for Torture Victims has said that conversion therapy violates the global ban on torture. The United Nations independent expert on sexual orientation and gender identity said that some cases, depending on their severity and form, can amount to torture.

On that basis, we would say that people cannot consent to be abused or tortured. It is not possible for a person to change their sexuality or gender identity. It cannot work. Anything that comes from that process is based on trauma, suppression and the denial of fundamental and unchangeable aspects of who someone is: their sexuality and gender. We would say from the outset that we consider conversion therapy to be a form of torture and that it does not and cannot work. You cannot change your sexuality or gender.

There are cases where people may consent to it, although I have said that people cannot consent to torture. We are aware that people find their sexuality and their gender identity difficult. Most people who come out find that, especially those who grew up in very religious households. They will struggle with their sexuality and gender identity.

We are not trying to ban people from getting support to explore their sexuality and gender identity. We would not criminalise therapy or counselling in which people say that they are uncomfortable with their sexuality. More often than not, that discomfort will come from the setting in which they have grown up and where they have been told that their identity is sinful or wrong or that they are broken. That will have a traumatic effect on people and they will need therapy or counselling to undo those effects. We are not trying to criminalise people who are struggling with their sexuality or gender.

We seek to prohibit any process where people have an outcome in mind. Conversion therapy is based on the homophobic and transphobic belief that something in people needs to be changed or fixed. If someone goes into a counsellor or therapist's office or has a one-to-one conversation with a minister or faith leader and the person on the other side of the table wants to "fix" them, that will never work. It is based on a false assumption that they can be fixed or changed, or that they need to be. We are not trying to prohibit people from being more comfortable in their sexuality and gender; we are trying to prohibit people from being forced to change or suppress their sexuality or gender, even if that comes in the form of group prayer.

It can be difficult to draw the line between what is consensual and what is not. If someone says that they are uncomfortable with their sexuality and that they want support with it, and if they have been brought up in a fundamentalist religious environment in which they have been taught since childhood that they are broken and need to be fixed, that is not truly consensual. They have been conditioned into believing that they need to be fixed or changed. We would draw the line at things

like group prayer or any sort of treatment that is forced, pressured or coerced.

Fulton MacGregor: That is a robust response. When you said that a person cannot consent to torture, that was really strong. It might be the quote of the meeting.

A constituent asked me to ask my next question, which is in the same vein. What account have you taken of individuals who have detransitioned, or who might do so, and who change their gender identity?

Blair Anderson: We do not have first-hand experience or testimony from people who have gone through a detransition or who have developed their gender identity over the years. We stress that, provided that there is no presupposition of an outcome and no conditioning, coercion or pressure, people can freely make changes in how they understand their gender identity during their lifetime. Provided that there is no attempt to change or suppress that, we do not think that detransition would come under the remit of any legislation.

Pam Duncan-Glancy (Glasgow) (Lab): I echo my colleagues' thanks to you both for coming today. I, too, declare an interest—I signed up to the pledge during the campaign, and I was delighted to be elected to Parliament to support the work that you are doing. I also thank you for your strong personal testimony.

My question is about the comprehensive nature of a ban, which has been mentioned. I want to dig into that a little bit more, if that is okay. What is the importance of including both sexual orientation and gender identity in the definition of a ban and in relation to its comprehensive nature? What are your views on the approach that the UK and Scottish Governments are taking? Is one more suitable than the other? Is this something that we should be doing in Scotland, or should we wait to see what happens at the UK level?

Blair Anderson: On the issue of gender being covered as well as sexuality, we need to go back to basics to see that all this comes from the same principle—the homophobic and transphobic belief that someone's sexuality and/or gender needs to be changed. In public life in the UK, and particularly in Scotland, we have a culture in which transphobia is often accepted and put forward by people in high-profile public positions. That is unacceptable from the word go. With conversion therapy, we would not be happy with any legislation that does not comprehensively protect trans and otherwise gender non-conforming people. It all comes from the same place—the hatred and bigotry that underpins homophobia and transphobia—and any ban has to protect trans people.

We understand that there are additional complexities. Transitioning can, more likely than not, be difficult for trans people compared with, for example, coming out for gay people, but we do not believe that there are additional barriers to protecting trans people in the legislation. Any legislation can comprehensively protect people's sexuality and gender identity.

Tristan Gray: We will probably be able to provide you with a bit more information about this, but the Scottish Trans Alliance, which we know you will be hearing from next week, will be able to provide more expertise on the issue of conversion therapy with regard to gender identity.

On the approaches being taken by the UK and Scottish Governments, we are sceptical that the UK Government approach will provide a comprehensive ban that will be applicable in Scotland, given the announcements that it has made so far about who and what situations it will cover and its statement that it intends the ban to cover the territory of England and Wales, not Scotland. As a result, legislation needs to be progressed here instead of its being delayed, only for it to have to be picked up when it is inevitably found that the UK legislation does not cover the situation in Scotland.

We are aware that the Scottish Government has a lot on its plate, especially with the on-going pandemic, and there might be a delay in its introducing legislation due to that workload. It has committed to introducing a ban if there has been nothing from the UK Government or this Parliament by 2023, but we do not believe that there is a need to wait and we are confident that the committee will be able to progress legislation in that time.

Karen Adam (Banffshire and Buchan Coast) (SNP): Good morning. It is nice to see the both of you here. I, too, declare that I signed the pledge. I want to thank Blair Anderson in particular for bringing his lived experience to the committee. It is crucial that we hear from you today.

You just touched on the legislative approaches that the UK and Scottish Governments are taking. Basically, that is about devolved and reserved powers. What can we in Scotland do within our devolved powers? Is there anything further that could be done in, say, education or health that a ban would not cover?

Tristan Gray: Everything that we are calling for in legislation that would be brought forward by this Parliament—the criminal ban, healthcare support and the setting up of a reporting service—would fall within its devolved powers and could therefore be implemented by it.

10:30

The one area that is reserved is professional certification, which would cover the professional certification of psychotherapists. However, all the organisations that are involved in providing those certifications have signed the memorandum of understanding on conversion therapy. They already consider that providing conversion therapy is a reason for disqualification of therapists from operating as certified providers of healthcare. As such, we do not consider that area to be a priority for any legislation to cover. If the UK Government covers it separately, that would be fantastic. However, it is not a priority and therefore not something that we have called for. Everything that we have called for would fall under devolved powers.

Karen Adam: What further work could be done outwith the legislative process—in the education remit, for example?

Blair Anderson: The main headline of the ban would be the criminalisation of conversion therapy, but a lot needs to go alongside that to stop it from happening in the first place. That would include things such as outreach to communities where we know that conversion therapy is particularly prevalent and engaging with faith leaders to provide clear guidance from the top down in religious organisations. We think that that is all doable under the devolution framework.

Additional support can and must be provided for conversion therapy survivors. More often than not, conversion therapy leads to significant mental health issues. Surveys show that it leads to high rates of anxiety, depression, eating disorders, self-harm, suicidal ideation and post-traumatic stress disorder. I have PTSD from the experiences that I went through, but some seven to eight years down the line, I am still struggling to access appropriate healthcare for that. There is a need for specialist healthcare, which the Scottish Government and national health service could provide, if they are instructed to do so.

The Convener: Thank you for being so frank, Blair—I am sure that members really appreciate that.

Alexander Stewart (Mid Scotland and Fife) (Con): I, too, thank you for the frankness of your evidence and the personal testimonies that you have given today. It is useful for the committee to hear at first hand about your experiences.

I will focus on where we are on evidence. Can you give examples of how a legislative ban has been, and continues to be, effective? Can you advise us of any areas of best practice that we should look into when we are looking at how the evidence is being managed and processed?

Blair Anderson: One of the key benefits of legislation is that it provides clarity. Legislation in this area would explicitly state that the Parliament, and Scotland as a whole, condemns and prohibits conversion therapy. That statement of clarity could be immensely useful to people who are going through conversion therapy. When I was going through it, I did not understand what I was going through. It was only when I was out the other side of it that I came to understand it as conversion therapy. I went through it as a child. I did not know what support I was entitled to or what the options were. I did not know what the legal consequences would be, or about any protections that I would get, if I tried to remove myself from that situation.

Clarity and a statement of principle from the Parliament that conversion therapy is explicitly wrong and prohibited would provide lots of support for survivors, who would not just know that the support was there but gain a bit of clarity about the experience that they were going through. They would understand that what they were going through was conversion therapy and that there was criminal liability for the person who was putting them through it, which does not currently exist. That would be a key benefit of the clarity provided by legislation that prohibited it.

We believe that the best example of international best practice is the Change or Suppression (Conversion) Practices Prohibition Act 2021, which came out of Victoria in Australia this year. We have seen that come fully into effect, but there is a lot in the legislation that we would hope that Scotland could also enact and that would have tangible benefits for survivors.

Alexander Stewart: You have given us the example of what is happening in Australia. Any other international practices or benchmarks that the committee should investigate or analyse, so that we can collate as much information as possible to find out what is happening in other parts of the world?

Tristan Gray: The Australian state of Victoria has what we consider to be the best practice so far, which includes the criminal ban that we are calling for. Scotland—and this Parliament—would have to strike its own distinct path in the non-criminal legislative aspects. The Victorian Equal Opportunity and Human Rights Commission set up a body that survivors can report to. That body has the power to investigate claims of conversion therapy. Scotland has different circumstances and different public bodies. You would have to investigate which of those would be most capable of taking on those responsibilities.

Other countries have introduced similar legislation that we consider to be strong. One of those is Germany, which has a slightly different criminal approach to the one that we are calling

for, but its non-criminal approach is similar to the one that we want. Unfortunately, because an election was called in Canada this summer, legislation that had passed the House of Commons and gone to the Senate has been put on hold. We hope that it will return in the next parliamentary session. That is another case of strong legislation that we would advise the committee to look at.

Maggie Chapman: I should also have declared an interest at the start. I support the campaign and have signed the pledge. I appreciate the witnesses' frankness, openness and honesty. Talking about personal stories is not always easy and I appreciate your willingness to do that in a public forum.

This might be a little off piste, but you might not expect anything else from me. I know that you are specifically focusing on the LGBTQI+ community when you talk about a complete ban on conversion therapy. We are considering the legislation that is to come from the UK Government and whether we want to put something together ourselves. What would the consequences be if we were to expand that to include conversion therapy for people who are not neurotypical? Autistic conversion therapy uses the same kinds of coercion and torture that you have both spoken about. What would be the pros and cons of widening this out into a ban on all conversion therapies, not only those around gender and sexuality?

Tristan Gray: About six months into our campaign, we were approached by several autistic people who asked the same question. Unfortunately, everyone on our campaign team is non-autistic. We do not have the expertise or lived experience to take up that campaign. We have offered them our support with their own campaign and have shared the information that we have gathered over time.

Although there is such a strong overlap in the roots of autistic conversion therapy and LGBT conversion therapy that they could have been founded by the same person, we do not have extensive information about how that is happening to autistic people. As a result, we felt that it was not our place to take on that campaign, because we could potentially lead it in a direction that would not be supported by autistic people. However, we would be delighted if the committee has the capacity to alter any legislation to include autistic people and to take on the expertise of the organisations that represent them.

The Convener: That has been very helpful.

Obviously, the committee is at the start of a process of gathering evidence. A substantial amount has been submitted in writing by

organisations and individuals. Some of that is going through a process before being published. However, we are keen to hear from you as to whether there are any further groups that we should be engaging with and potentially hearing evidence from as we go through our inquiry.

Tristan Gray: We know that, next week, you will be hearing from various LGBT+ organisations. We have been working with them for the past year and we know that they have a lot of expertise to bring to the table in advising you on how to progress with any legislation.

When it comes to dealing with the more complex areas of a criminal ban, engaging with legislative and legal experts who have experience with domestic abuse and coercive control would be an extremely useful direction for the committee to progress in, because we feel that there is a strong overlap at the edges of those criminal activities and the situations in which they are carried out. We therefore think that it would be useful to hear from such experts.

Blair Anderson: In addition, I sound a note of caution. Aside from the issues of territorial application by the UK Government, we as a group are not entirely convinced that the UK legislation that comes forward will be comprehensive—purely on the basis of who the people who are involved in writing it have been meeting. As far as I understand it, Liz Truss and Kemi Badenoch, the people who are responsible for equality in the UK Government, have had meetings with the likes of LGB Alliance and the Evangelical Alliance—people whose intention is to open loopholes in that legislation in order to prevent protection for trans people and to insert religious exemptions.

As a survivor, I ask the committee to consider survivors first and foremost in the drafting of any legislation, and not to allow such loopholes to be opened up. It is a point of absolute principle that conversion therapy is wrong in all forms that it takes. That includes sexuality and gender, and it applies in places of religion. It is a form of torture. Torture should be outlawed outright, in all instances. We ask you to be mindful of that when, perhaps in future, you receive evidence or pressure from certain organisations whose intention is to open the legislation to loopholes.

The Convener: Thank you very much for that and, again, thank you for your openness today. Clearly, one of the groups from which we want to take evidence is a wider group of survivors. We need to do that as sensitively as possible because, although it is great that you have been able to come and speak so openly and give voice to so many people, we know that some people will not be in a position to do that, because of the trauma that they have faced. Rest assured that that is one of the areas that we are considering,

and any suggestions that you feed in for that will be helpful.

Pam Gosal: Thank you, Blair, for opening up so honestly. Obviously, you had a lot of pressure from your family and certain groups. I want to know about barriers of language and culture. If those are a problem, how do we overcome them? That could involve any religious leaders or backgrounds. I know that you mentioned earlier that you did not see a lot of that, but if it comes up, how can those barriers be tackled?

Blair Anderson: As a cisgender white man, I am not necessarily best equipped to talk about overcoming cultural barriers. However, I stress that around 60-plus per cent of respondents to the national faith and sexuality survey that I have mentioned came from Christian households, as defined by what religion was taught in their home as a child. That includes various denominations. A further 20 per cent were from non-religious households. The issue is not exclusively religious but, more often than not, it tends to come from a place of religion or culture.

When it comes to overcoming barriers, I stress again the importance of outreach and engagement with faith leaders. We have had positive engagement, and the Ozanne Foundation down south has had very positive engagement with faith leaders across the board, across religions and across countries. That is a very important and clear step that can be taken by faith leaders. It would send a clear message if leaders of religions or faith groups, whatever form those might take, were to clearly state to all their followers, "This is not in line with our practices."

10:45

My personal experience of conversion therapy was that it was not done at the hands of a religion or a religious organisation; it was one person's interpretation of their beliefs, although they were part of a larger church. There is the potential for people to interpret their belief and faith in any way, but it would go a long way for faith leaders to send a clear statement.

Pam Gosal: Blair, you mentioned that about 60 per cent of respondents to the survey were from Christian households. Is there a gap in the sense that people from other religions have not come forward? Some people are quite open and they will talk about it, but there are many cultures that do not talk about these things.

Blair Anderson: Yes, that is more likely than not. As I said, it was an opt-in survey so the respondents were self-selecting and the results are, therefore, not entirely objective. There will be people from other faiths—non-Christian faiths—who are perhaps at more risk. For example, I am

thinking about the barriers that people of colour face when accessing healthcare and reporting to institutions. I ask the committee to be mindful of such barriers. It is not confined to any one faith, and it is also not confined to faith. People can use their faith as a means of channelling their homophobic or transphobic beliefs, but that is not necessarily the case and it can come out in other ways. We are not an anti-faith or anti-religion organisation. Some of our biggest allies are people of faith and religious organisations. We would ask the state to step in where homophobic or transphobic beliefs are used in the context of faith.

Alexander Stewart: I will follow up that point. You have touched on the issue of faith, but the committee has seen evidence that, in about 20 per cent of cases, the conversion therapy was carried out by people in the medical profession or by healthcare providers. What lessons can we learn from that sector? That is quite a large percentage, and there are much stronger rules and regulations in that sector, on which, as parliamentarians, we can have more impact to ensure that the proper procedures are followed. What areas should we strengthen, and what lessons can be learned from experience in that profession?

Blair Anderson: Yes, medical settings are another significant place where conversion therapy takes place. That said, as we said previously, the NHS in Scotland, NHS UK and a number of sector-wide organisations have explicitly condemned conversion therapy. However, we know that that number of people have said that they have been advised or encouraged to undergo conversion therapy or had the issue broached in healthcare or medical settings. That is not to say that there is force or coercion in those cases, but guidance to all healthcare professionals is one step that could be taken on that. In particular, that could be done in the context of trans healthcare.

I was very pleased to see the Government's commitment to trans healthcare reform. However, we know that the current trans healthcare system in Scotland and the UK more widely is not fit for purpose, because of gatekeeping and the barriers that trans people face when accessing healthcare. There is a lot of overlap between being unable to access healthcare and being unable to fully express your gender identity.

There is more to be done on guidance and training, but a clear message could be sent that all settings, including healthcare and religious settings, are appropriate settings for an affirmative and supportive approach to sexuality and gender.

Tristan Gray: I will return to something that the convener said earlier. On statistics, as a group, we are working with LGBT organisations to set up a

survey to discover the experiences of survivors in Scotland. We hope that we will be able to provide that evidence to the committee later in the parliamentary session.

Pam Duncan-Glancy: I am interested in hearing more about the survey that you have just mentioned. Do you have any data on the experience of disabled people in conversion therapy? My question is similar to the one that Maggie Chapman asked about neurodiverse people, but, although that question focused on changing people's neurodiversity, I want to know about the experience of disabled people and whether they are more or less likely to have had some form of conversion therapy. If you do not have that data yet, could you work with disabled people's organisations on that sort of survey?

Tristan Gray: Thank you for raising the issue. We do not yet have that information, but we will ensure that we make that outreach.

Blair Anderson: It is also worth pointing out that disabled people will face additional barriers with reporting these matters and being able to escape these situations. One of the biggest barriers that I faced was that I was 14 when my conversion therapy started—I was a child. I was unable to look after and provide for myself or escape to a different setting. Disabled people might also rely on, for example, close family members as care givers, and those barriers provide additional risks with regard to conversion therapy. As has been said, we do not have data on that, but clearly there are additional risks when it comes to being able to escape such settings.

Karen Adam: I want to squeeze in a final question. In asking about education earlier, I was thinking more of the school system. Does that have a role to play in this and in moving us away from a culture in which the default setting is cishet? Will you be linking with, for example, the time for inclusive education—or TIE—campaign, which I know has been very successful?

Tristan Gray: When we first put in our petition at the beginning of our campaign, we went to the TIE campaign for advice, because of its incredible success in campaigning for change through the Parliament. We are keen to continue working with it. Indeed, the non-criminalising parts of the legislation that we have called for should include outreach and education, and we think that the TIE campaign will have a lot to add on how that can be expanded through schools to ensure that children know what conversion therapy is, how to identify it and where to go if they experience it.

Blair Anderson: Schools will have a role to play in any reporting framework, given that, more often than not, one of the first people that children come out to is a teacher or guidance counsellor in their

school. There is therefore a role for school education, and staff will need training and support to deal with what are very often complex and difficult situations.

With regard to the TIE campaign, having that road into schools would be an incredible step forward, and I hope that it would go a long way towards tackling the root cause of conversion therapy, which is not any one belief system, person or organisation but the underpinning homophobia and transphobia that says that LGBTQ+ people need changed, fixed or converted.

Hopefully, as the years progress, cultures will change and Scotland will continue to become a more accepting and inclusive society, and hopefully education will play a part in that.

The Convener: That is a really good point to end on. We have planned a number of evidence-taking sessions on this matter and are continuing to consider our approach to ensure that we are getting the widest range of evidence, but, for now, I want to thank you both so much for your evidence.

I suspend the meeting until 11 o'clock.

10:54

Meeting suspended.

11:01

On resuming—

Scottish Government Priorities for Civil Justice

The Convener: Under the next item, the committee will hear from the Cabinet Secretary for Justice and Veterans and the Minister for Community Safety about their priorities for session 6 in the civil justice area, which is part of the committee's remit. I welcome to the meeting Keith Brown, Cabinet Secretary for Justice and Veterans; Ash Denham, Minister for Community Safety; and Neil Rennick, director of justice, and Denise Swanson, deputy director, civil law and legal system, from the Scottish Government.

I refer members to papers 4 and 5 and invite the cabinet secretary to make a short opening statement.

The Cabinet Secretary for Justice and Veterans (Keith Brown): Given that the portfolio is split and that civil justice rests with the minister, I ask whether she may speak first. I will come in after that, if that is okay.

The Convener: That is fine.

The Minister for Community Safety (Ash Denham): Thank you, convener, and thank you to committee members for inviting us both to speak about our priorities for Scotland's civil justice system.

Many of our daily interactions and important milestones in life are governed by civil law, whether that is getting married and having children, buying a house, entering into a contract when ordering goods or services, taking out a loan or using social media, to name only a few examples. When things go wrong, we are likely to come into some degree of contact with the civil justice system.

I will give some figures to set out the context. In 2019-20, the proportion of adults who were victims of crime was 11.9 per cent, which is down from 20 per cent 10 years before. However, the Scottish crime and justice survey shows that nearly three in 10 adults—that is 28 per cent—were estimated to have experienced at least one civil law problem during the previous three years. Evidence tells us that people with certain characteristics, such as those who are economically disadvantaged, are more likely to experience civil justice issues and to have to rely on the civil justice system.

Over the past 18 months, our civil courts and tribunals have had to adapt to the impact of the Covid-19 pandemic. With the help of amended court rules and the extensive use of technology, they have ensured that the vast majority of activity

has been able to proceed effectively and efficiently. I take this opportunity to thank the legal profession, court staff and our judiciary, social workers and the police who provide order in our court buildings for all their efforts. We can all agree that it is because of their dedication and hard work that civil justice has managed to continue as well as it has during the public health pandemic.

All that does not mean that we want civil justice to remain as it is. We want to drive forward changes and improvements so that we have a modern civil justice system that works for the people of Scotland. Our manifesto sets out our ambition to increase the choice that people have in deciding how to resolve disputes. There is widespread evidence from across the world that disputes arising from a range of issues including debt, housing, consumer purchases, contractual matters and family problems can be resolved quickly, cheaply and more effectively for all parties by using alternative dispute resolution—ADR—methods, rather than going to court. The Scottish Government will work with stakeholders to expand the availability of mediation and arbitration services within the civil justice system and consult as appropriate to give our citizens, businesses and organisations access to flexible, affordable and less stressful means of settling those disputes, benefiting them and saving time in courts.

In line with the disclosure requirements on other senior participants in public life, including all of us, we will begin work to establish a judicial register of interests that will improve transparency and trust in our justice system as a whole.

Last session, the Scottish Government engaged with the Parliament, in particular the Delegated Powers and Law Reform Committee, to reconsider the criteria for Scottish Law Commission bills. Given that effort, we will over the coming session try to accelerate our implementation of SLC recommendations as set out in various reports. Reform of those areas will bring Scots law up to date so that it serves the people of Scotland.

Finally, on access to justice, we will reform the legal aid system to ensure that Scotland has a modern, flexible and user-focused service. The legal profession contributes to the social value of Scotland and helps to protect our human rights and freedoms. It plays a vital role in upholding the rule of law and providing access to justice. We will therefore continue to engage with the legal profession to consider how best to reform the regulation of legal services. Our manifesto sets out our priorities for reforming Scotland's civil justice system over this parliamentary session. I look forward to working collaboratively with the members of the committee to ensure that we have a modern system that works for everyone.

The cabinet secretary would like to say a few words as well.

Keith Brown: I will be brief. Thank you for the invitation to committee. Last week, we both appeared before the Criminal Justice Committee for a similar session. Given that the minister's portfolio responsibilities cover civil justice, I imagine that you will look to talk to her over the coming months, but I will, as ever, be happy to come and answer any questions on the wider issues.

I will take up one point that the minister has made already about the impact of public health measures on court business. It is an important point because, in discussions about court backlogs—which, as you can imagine, are substantial—some people may have been looking at the issue purely as a criminal justice matter. However, we need to recognise that resources that are essential to our recovery work, such as the judiciary, court staff and court buildings, cannot be stretched in one area without that having an effect on the work in the other area. It is essential that we look at the criminal and civil justice system as one in relation to that, rather than as two distinct issues.

From my part of the portfolio, recent laws on hate crime and protection from domestic abuse orders that were passed in the previous session each in its own way demonstrates ways in which criminal law impacts on our civil legal system. Parliament has taken the decision to split the justice portfolio between two committees, but we know that such a split can never be entirely clean or absolute when we cleave apart the criminal and civil justice system. We will see that over the coming months and years, when we discuss manifesto commitments such as legal aid or the register of judicial interests, which the minister touched on and which come into both areas.

Last week, as I said, the minister and I appeared before the Criminal Justice Committee to discuss our priorities. We both expressed our willingness to work collaboratively with members of that committee when taking forward our proposals for reform. I reiterate that commitment to build consensus where possible to the Equalities, Human Rights and Civil Justice Committee. Together, I believe that we can reform for the better the way in which civil justice works for the people of Scotland.

The Convener: Thank you both. That was a helpful outline of your priorities. The cabinet secretary touched on the potential for backlogs, particularly in the criminal justice system. I am keen to hear about the status of backlogs in the civil justice system as a result of closures due to the pandemic. Can you give us a wee update on that?

Ash Denham: That issue has been in the news, particularly on the criminal side, because there is quite a backlog that needs to be cleared on the criminal side.

Things have not quite been the same on the civil side. Proceedings have continued throughout. Many of the adjustments that have been made have been enabled by court rules, although some have been made by legislation—including, obviously, Covid legislation. Sheriff courts reinstated business very quickly after the first lockdown and business continued through the pandemic. Often, that was conducted by telephone conferencing, but there is also a civil online service—I do not know whether the committee is familiar with that. The courts were able to use that to carry on. By the end of last year, all sheriff and civil courts were able to conduct proofs, debates and evidential and fatal accident inquiry hearings virtually, using their WebEx video platform.

There has been an impact. We think that business is down in general. There is no backlog, as such, in civil justice, but we think that there has been an impact and that it has reduced the amount of business that has gone through. I ask Neil Rennick to give a little more information.

Neil Rennick (Scottish Government): The minister has reflected the position very well. Relatively quickly after the start of lockdown, there was a drop in the volume of business that was being initiated in the civil courts. However, the courts were able very quickly, particularly through technology, to deal with much of the business, initially using the telephone and then, more recently, as the minister has said, using digital techniques to move it online. By the summer, the Court of Session had largely moved its business online, and that spread over the civil courts.

I would not want to say that there has been no impact, because there has been a drop in business, but we are not seeing the same level of backlog. There may be an impact on individual cases—again, I would not want to deny the impact on family cases, for example—but, on aggregate, business has been dealt with very well by the courts and by the legal profession.

The Convener: A couple of questions follow on from that. There is some concern that, for some people—perhaps a minority—virtual hearings provide a barrier, which may partly explain the reduction in business. How are we making sure that folk do not fall through the cracks? Does the reduction in business mean that folk are just not seeking justice, or does it mean that those cases will happen down the line and that we need to be prepared for that?

Ash Denham: When it comes to the number of cases, the answer is that we do not know. We think that, in particular, fewer family cases have been started in court. It may be, as you have said, that those cases will come through in future but, at this point, we do not know.

On virtual business, the picture is mixed. There was a lot of positivity about remote hearings for procedural matters in particular. That positivity was right across the board, I think—civil and criminal. There has been quite a lot of engagement, and I may ask Denise Swanson or Neil Rennick to speak about that. A number of surveys have been done by the Law Society of Scotland, I think, and others; I think that the Faculty of Advocates has done some engagement with its members on what they think. The Lord President has suggested that remote hearings should certainly feature in the future in some form or other.

Adapting to Covid has presented us with opportunities. The ability to change things has been very beneficial in some cases. Previously, civil business was literally pinned to the walls of the court. That was how things used to be done. Obviously, during Covid, nobody was going into court, so the business was published online. Most people would say that such changes are more efficient and allow us to get business done.

In the criminal and the civil system, we need to look at which of those changes—what uses of technology—are working and improving the system, and at what we should and should not retain. Obviously, we want to make sure that we maintain access to justice. We do not want participants—for example, complainers—to feel that they are not able to present their evidence in the best way. We have definitely got to get that balance. One of the officials may be able to talk a little more about the research that has been done.

11:15

Neil Rennick: I am happy to cover that. You are absolutely right that one of the things that we must be aware of is that different people who engage with the system have different needs, and we need to take account of that with regard to the use of technology. It is important to distinguish between what was possible during the pandemic—when the choice was between cases not being able to go forward at all and moving them online—and the position as we emerge from the pandemic, which is that we want to learn the lessons of what has worked well and what aspects we might be able to continue with, as the minister says. The committee might be aware that the Scottish Civil Justice Council, which has a role in looking at how the civil justice system operates, published a consultation document this week,

specifically seeking views on the types of business that would be appropriate for electronic procedures and those that would be better as in-person procedures. Part of that is exactly the issue that you raise, convener, which is that different people who engage with the system have different needs, and we need to ensure that that is reflected in the choices that are made.

The Convener: The committee would appreciate being kept apprised of any developments in your thinking in that area.

Pam Gosal: I will follow up the convener's question. I am the shadow minister for higher education and further education, youth employment and training, so my question is about broadband poverty and how you have accounted for that in holding remote hearings.

Ash Denham: That is an issue—absolutely. Let us take the example of family court. If you were fleeing domestic abuse and you were not living at home, you might not have your phone and you would not have an internet connection, so you would not be in a position to sit down in front of a computer and calmly access and take part in your court proceedings. Anecdotally, we have heard about issues in that regard, so there is an option to use the telephone instead. It was not expected that everybody would have a broadband connection. Consideration was definitely given to the fact that not everybody is able to use technology to interact. As we discussed earlier, as we move forward, we want to ensure that we look at that. We are not suggesting that we will move everything to an online platform, because that would not be appropriate. However, you raise a good point.

Pam Gosal: Thank you. Minister, you touched on the issue of data. Given the importance of equalities data in measuring and tackling structural inequalities, are there any plans to improve data collection in the civil justice sector?

Ash Denham: We recently established a cross-justice working group on race data and evidence, which is working to improve the collection and reporting of race data and evidence in the justice system. I will ask Neil Rennick to give the committee a bit more background on that.

Neil Rennick: Pam Gosal is absolutely right about the importance of equalities data and, as the Government moves forward with its agenda for focusing on human rights, that will become all the more important. Therefore, it is an issue not just for the justice system; ensuring that we improve our data on equalities issues is recognised as a cross-Government issue. An analytical group has been set up specifically to look across Government at what we can do to improve data on

equalities issues, and justice is represented on that group.

As the minister said, on the justice board for Scotland, which includes the key justice leaders, we have also recognised a specific need to improve the information in the justice system on race and people in the justice system. Again, a group has been set up to look at that specifically, recognising that gap and the fact that we need to do more on that. That fits in the wider context that, over the past 10 years, we have been working to strengthen and improve the information on justice as a whole but civil justice in particular, which is an area that has always required further attention and improvement. All these areas of work aim, together, to deliver the improvement to which you referred.

Pam Gosal: Thank you. If it is okay, I will raise a question from one of my constituents about a remote hearing for a family case. My constituent felt that, because they were not there in person, they were not able to justify or talk about things in the way that they would have been able to if they were. When you are face to face with someone, it is easier to express empathy and you can talk more. They felt that the remote hearing was a barrier in that regard. Has that been communicated to you? Do your findings show that people felt that they could not communicate or did not feel heard?

Ash Denham: I have certainly heard that anecdotally, but I do not think that we have any research findings on people's experience of remote hearings. As has been covered, we moved online in a number of areas, particularly in civil justice, in order to keep that business going. I think that most people would say that, rather than waiting a year for the outcome in a family court case hearing, they would prefer to get that business through court so that the sheriff can decide what will happen on their family issues.

I completely accept that, for some people, a remote hearing would not have felt the same as sitting in a room and being able to interact with the sheriff. However, other people might have preferred it. There are some people who are in a domestic abuse situation who find it extremely difficult to sit across the table from the person they consider to be their abuser. I think that remote hearings might have been an improvement for people in that position.

Therefore, I think that it is a mixed picture, but I take your point.

Keith Brown: When the minister and I met the Faculty of Advocates, it expressed a similar concern. Even when putting a case to somebody who is very accustomed to a courtroom, there is the issue of being able to read body language and,

to an extent, to lip read what people are saying. There are two sides to it.

As the minister said, there are benefits to remote hearings in certain circumstances. The Faculty of Advocates also raised with us the fact that there should not be a practical logistical reason for somebody not being able to participate. We talked about the provision of additional keyboards and iPads for some people, and what we can do to help with that.

As we go forward, there will have to be awareness of both forms of participation. I do not know about the situation in other parties but, in my political party, we will not be dispensing with the use of online fora, because they enable people to make meetings that they could not otherwise make. Therefore, there will have to be a blend.

The Lord President has a very good and refreshing attitude, in that he is very keen to learn from and to keep the best of what we have done during Covid, but to be aware of some of the shortcomings, one of which Pam Gosal mentioned.

Pam Duncan-Glancy: Thank you for what you have said so far. I am really pleased to have heard what you said about taking a cross-Government approach to equalities data, because I think that that is really important. Organisations that I have met have said that there is a real lack of data, so that approach will be helpful.

About 75 per cent of the 550 calls that have recently been made from Scotland to the Equality Advisory Support Service have been from disabled people asking about disability discrimination issues. Given that the service deals with all protected characteristics, that could be evidence of there being quite a gap in unmet need for legal advice on discrimination for disabled people. What is your analysis of underrepresented groups' access to civil justice?

Ash Denham: That is a very good question. Obviously, we are looking at reforming legal aid. One of the advantages of the reform process is that it could give us the ability to direct legal aid to groups that might face barriers in accessing it.

I am not sure whether the officials can fill us in on any research that has been done on that. Do we have any statistics?

Denise Swanson (Scottish Government): We have spoken about the issue many times in the past. The legal aid system, as it is currently framed in statute, has some limitations in terms of its ability to flex. In response to the reforms that we proposed in the consultation that we undertook, we got valuable feedback from consultees on issues around access to justice and access to legal advice for people with protected

characteristics; indeed, we also heard about that from organisations that provide such services. We might look at reform of the legal aid system as a means of improving how the system operates to meet individual and more marginalised needs. At the moment, there is a kind of one-size-fits-all approach, which has its limitations. Such issues can be dealt with through the reforms in which ministers are involved.

As I said, we got excellent information from the consultees who responded to the consultation paper on the subject.

Neil Rennick: In addition to the information that we collect specifically on civil justice statistics, we undertake the Scottish crime and justice survey. That is partly to try to identify unmet need—people self-reporting having civil justice problems, and comparing that with the number of cases that feed through. Pam Duncan-Glancy is absolutely right that identifying unmet need is one of the challenges—in particular, on the civil side—so it is clear that we need to do more work on that.

Pam Duncan-Glancy: I have one more question. It is great to hear about the consultation and the depth of analysis that it has brought you. Do you have a timescale for when reforms might come in? I remember working with you on the matter, minister; it seems like it was some time ago, so it would be good to hear whether you have a timescale. Do you plan to look at access to justice beyond the legal aid system for people with protected characteristics? I am thinking about the expertise and support that are available from law centres, for example.

Ash Denham: You are right—it does seem that that work was quite a long time ago. For the benefit of the newer members, I point out that I was a minister in the justice portfolio for the last three years of the previous session of Parliament, and have been working on reform of legal aid and legal regulations for quite a few years.

As the committee will probably understand, there is quite a lot to work through. We are trying to take that at the right pace and to build consensus, because some of the proposed changes are really quite broad and would have quite a widespread impact on the sector. The right way to go about all this—I try to work in this way in general—is to try to build consensus, but that can sometimes take quite a bit of time.

I appreciate that that is not always what people want to hear. When people see that there is a need, as Pam Duncan-Glancy has outlined very well, they want to move forward to address the issue and do something, so I apologise for the fact that the work is going quite slowly.

We are now working towards legislation on legal aid, which would give us the ability to target

support in ways that we have perhaps not previously been able to do. I cannot give you a timeframe for when we will publish a bill, because it is not up to me, but we are certainly working towards doing something in the current session of Parliament.

The Convener: That is very helpful—thank you.

Maggie Chapman: My questions follow on from what Pam Duncan-Glancy asked about. I thank the minister and her officials for what they have said so far, but I want to explore the changes to legal aid a bit further. I was grateful to hear what Denise Swanson said about the opportunities and potential that arose from views in the consultation, and how those might be taken forward.

Pam Duncan-Glancy's question was about a timescale, which is key. There are several other areas of access to justice—in particular, debt advice—where the system does not currently meet need very well. Could you say a little bit more about that?

On what you said earlier about ADR, is there a way to tie the two things together? As you suggested, not everything has to go through a formal court process, but there needs to be support for people to go through the ADR process—not only financial support, but wraparound support, for mediation and other forms of dispute resolution.

Ash Denham: First, I will give a bit of context around legal aid. We hear quite a lot about the problems with legal aid, so I want, for the committee's benefit, to set out a couple of the positives about legal aid in Scotland. The committee might not be aware that 72 per cent of the population of Scotland are eligible for legal aid. We are a leading jurisdiction on legal aid—we are one of only two jurisdictions that have a completely uncapped fund that is entirely demand led; only Scotland and the Netherlands operate such a system. The system is working for the people of Scotland, but we want to modernise it and provide a bit more flexibility. As we discussed earlier, we want to be able to direct aid more than we have previously.

I suppose that there is a way of thinking about legal aid that is more like how we think about other public services, because it is a kind of public service. Should we try to reframe legal aid in that way and, potentially, put the user more at the centre of how it is accessed and how the system is set up in the future?

11:30

We have talked about the timings; Denise Swanson will talk a bit about themes that came through the consultation. However, I believe that,

in general, people are looking for a user-centred system that is easier to access and use.

Denise Swanson: I will answer on debt advice first. The committee will be aware that the Scottish Legal Aid Board manages, on behalf of the Scottish Government, a range of grant-funded projects in civil law areas. In the past, there was a concentrated programme with multiple partners, including debt advice partners. However, debt advice funding changed and came directly to the Scottish Government; it now sits with the Cabinet Secretary for Social Justice, Housing and Local Government. Our colleagues in that area are taking a different approach to how debt advice is delivered.

Some of the projects that SLAB ran for us on debt advice have changed, and there is now a route map or pathway. We are still involved in and engaged with that work, but SLAB is undertaking it. That is part of a wider package and more strategic approach to debt advice and how it is delivered in Scotland.

Previous to the changes in how the debt levy was managed, we were able to access funding for Scotland only through the Money Advice Service, but now it comes directly to the Scottish Government. A specific stream of funding and work is under way for debt advice. The grant-funded programmes that SLAB runs for us provide advice on a range of matters, including debt advice, although that is not its main area of work.

The third sector organisations that work in communities and provide front-line advice are important for us. They do not necessarily provide legal advice or legal representation; they are very much entry-level advice services. We also have civil legal aid offices that are operated by SLAB and which employ solicitors who work on civil legal aid, and we have law centres, which benefit from legal aid funding.

On reforms, one of the ways in which we might be able to adjust the legal aid system—again, this is from the consultation paper—is by looking at how law centres are funded. We have quite a convoluted funding arrangement for law centres and we are not necessarily able, because of the legislation, to provide direct grant funding to them. That is one of the opportunities that ministers will perhaps be interested in, in relation to how we move ahead with the reforms. We work closely with law centres and have been doing so throughout the pandemic. We continue to discuss with them how we could increase their direct funding packages through legal aid funding. The Scottish Legal Aid Board is, of course, very much involved in that.

Fulton MacGregor: It does not seem so long ago that you were at the previous session's

Justice Committee discussing the Children (Scotland) Bill. I have a couple of questions about that legislation. What key issues has the Government identified in relation to statutory regulation of child contact centres and child welfare reporters? Can you outline when the committee can expect the secondary legislation on those topics?

Ash Denham: Yes. It does not feel like that long ago; I think that it was in September last year.

We are still working on analysis of the consultation responses, so I will have to get back to the committee once that work has been completed, if that is okay.

The responses point to broad issues that one would expect to come up, around how the child welfare reporters would operate and how they would be appointed. There is broad consensus that child contact centres need to be safe and welcoming. Disabled access to centres was one of the themes that came up.

With regard to timings, we hope to introduce secondary legislation in the autumn—probably around October—which will allow us to commence provisions.

Fulton MacGregor: You touched on the fact that you are still going through the responses to the consultation, but I wonder whether you could outline some areas a wee bit. As one of the members who helped take the bill through in the previous session—it was a really good bill that I know you were proud of, as well—I remember that the committee discussed who welfare reporters would be. Could you expand on that and, perhaps, on issues around contact management in contact centres when domestic violence is in play, if those two matters are coming up in the consultation?

Ash Denham: We need to work through quite a lot with those issues. The matter of child welfare reporters was clearly a big part of the bill, so we spent quite a bit of time discussing it. We have a real opportunity to set training and standards for child welfare reporters and curators ad litem, and to ensure that the people who do those jobs are sufficiently trained to work with children in a trauma-informed way. Those are things that members of the committee would, I am sure, want the legislation to have. We still have quite a bit of work to do on getting feedback from the consultation into the regulations that we will introduce. Denise might be able to say more about what came through in the consultation.

Denise Swanson: The response to the consultation was quite a mixed bag. As with many such things, the devil is in the detail. We get broad headline responses—many in favour and many against particular issues. In some ways, responses depend on the detail of how elements

will be implemented. Some of those little notes are being unravelled at the moment.

Fulton MacGregor: That is me finished on that subject, convener. I have a supplementary on a later subject, if you can bring me in on that.

Karen Adam: I will follow on from what Fulton asked about, so he might have to come back on this answer, as well. Domestic violence survivors and coercive control survivors feel that they do not have much confidence in the civil justice system when it comes to family law, and perpetrators might know how to use and work the system, as well. Has any feedback come back on that issue? You kind of answered that in the last question, but I want to highlight the point.

In addition, adverse childhood experience groups and child development experts have highlighted the importance of, and the need for, trauma-informed services to limit damage as much as possible when families and young people, in particular, go through the civil justice system, so that people feel safe and confident in it. What will statutory regulation do in those regards?

Ash Denham: I agree with Karen Adam's points. One of the aims of the Children (Scotland) Act 2020 that we took through Parliament in the last session was recognition that we need to do more to protect victims of domestic violence on the civil side. A number of representations were made to me by groups of people who were going through criminal proceedings for domestic abuse, sometimes very serious, and when they went into the civil court that would not be taken account of in the way that we might expect. One of the aims of the act and of changing the law was to try to protect victims of domestic abuse more.

We have not commenced all the sections of the 2020 act—that is why we are having this conversation—so not all of its provisions are in force. I am very hopeful that, once all sections of the act come into force, both the perception of what happens and what actually happens to victims of domestic abuse and children when they go through the family courts system are much better. That is what we set out to do.

I set out to ensure that the welfare of the child is paramount and to bring the child's voice into proceedings, so a sheriff will be able speak to the child, ask them what they want and get feedback. Having the child welfare reporters and the register—which we are discussing now—gives us the ability to ensure that the people who do those jobs, which involves going to families to speak to children and other family members, are able to spot domestic abuse. People have to be trained to see things—it is not always obvious—and to act in a trauma-informed way, as you have just

described, so that children have a better experience. We hope that that will be the case.

I am sorry—I cannot remember whether there was a second part to your question. Have I covered it?

Karen Adam: Yes—I think that was it: you mentioned trauma-informed services and support for dealing with domestic violence.

Maggie Chapman: I will change tack a little bit. I know that, earlier this year, the Scottish Government published its response to the consultation on challenging men's demand for prostitution. There was no specific approach or proposal set out by the Government in that consultation. Can you give a sense of what the approach might be, and of what the timescale might be over the next five years?

Ash Denham: Last year, we published what I think was a first: a consultation on what sort of approach we should take to tackle prostitution in Scotland, with an emphasis on challenging men's demand for prostitution and with the aim of working to reduce the harms and supporting women to exit, should they wish to do so. We received about 4,000 consultation responses, which is quite a lot. Some were from organisations and some were from individuals.

The responses have been published, so members of the committee are free to have a look at them. It would be fair to say that they were evenly split. We did not ask whether we should change the law on prostitution, but lots of people wrote in to say that they favoured one criminal approach or another. Lots of people supported the Nordic model, in which the seller is decriminalised and the buyer is criminalised, such as is done in Sweden and a number of other countries in Europe. There was an approximately equal level of support for what is called the decriminalisation model—the sort of thing that is being done in New Zealand.

The committee may be aware of the Scottish Government's equally safe strategy, which sets out that commercial sexual exploitation, of which prostitution is a part, is a type of violence against women. If we want an equal society in Scotland, we need to think about how women and girls should be treated. I am particularly interested in making Scotland a hostile place for sex traffickers. I will not beat about the bush: I am really keen that we set that out, and we are very firm on that. To my mind, challenging demand for prostitution is one of the ways to do that.

I know that this is a long answer to your question. We will develop a model for Scotland that contains an element of challenging demand, but we have not got to the point where we can set out exactly what that model will be. We have quite

a bit of road ahead of us, and I do not anticipate that our bill will be introduced imminently. However, there is a lot of potential to think about how we want women and girls to be treated in a modern Scotland.

Maggie Chapman: Thank you for that. I hear what you say about that issue dividing opinion and I am pleased to hear what you said about making Scotland a hostile place for sex trafficking; that is well said and I doubt that any people around this table will disagree with it.

11:45

I am interested in the division and conflict around what harm reduction means, and I have a separate question around the need to hear the voices of sex workers and people who are not in prostitution for reasons relating to a mechanism of abuse, or for whom it is not their only means of financial support or security. I am interested in understanding how the work over the next two, three or four years to gather support and information for the Scottish Government's approach will recognise those very vocal but dissenting voices from organisations such as Scot-Pep and all the people who support their approach to sex workers' rights.

Ash Denham: You have hit the nail on the head—there is quite a polarity of opinions in that area and that is one of the reasons why, as I said, taking a little bit of time to see whether we can build consensus on the issue might be a good way forward. There is probably consensus in a couple of areas. Almost everybody agrees that we should decriminalise the seller—there is good consensus there, and we should absolutely do that. It is also important that support services are designed to reflect the priorities of women, because it is mainly women and girls who have been exploited in prostitution. We must prioritise that service design and make sure that the services are there and are easy to access—that is another area where there is probably a lot of consensus.

I am very interested in listening to the voices of people who have been involved in prostitution. Some committee members will probably be aware that, yesterday, a survivor-led organisation called on the Government to look at that area and see what more we could do. We should all listen to those voices, but there can sometimes be a problem with that. Sometimes, people who have worked in prostitution do not want to sit in a Scottish Government focus group and talk about all the ways that they were traumatised, or even admit to the fact that they have worked in prostitution, so that can be an issue. There are challenges around doing that work, but I am determined that we will try to get those voices in here somehow. We are developing a programme

for lived experience engagement, which we will work on over the next year or so. I am happy to engage further with Maggie Chapman if she wants to contribute to that work.

With regard to harm reduction, we reduce the harm if we reduce the number of people who are being trafficked into the market of prostitution. The data shows that trafficking inflows are much lower in countries that challenge men's demand to purchase sex, so we have a duty to take note of that. We also have international commitments that we need to make good on in Scotland and move towards. I think that we all want the same things—to reduce harms, protect women and girls from that exploitation and promote equality. That is the starting point that I am working from. I do not know whether our proposals will come to this or another committee but I hope that we can work together to achieve those aims.

The Convener: It is one of those areas where a couple of committees could be involved. We will certainly take an interest, but it will be for others to decide whether we are the lead committee. Thank you for that.

I have a question before I bring in Alexander Stewart. South of the border, in England and Wales, there has been legislation in relation to a system of no-fault divorce or dissolution. Are there any plans for such a system to be introduced in Scotland? Is there a need for that to happen?

Ash Denham: I do not think that there is a need. From my recollection, the divorce laws in Scotland are quite different from those in England and Wales. If I am remembering correctly, the issue in England was that there was quite a long time to wait if one partner did not agree to a divorce. I think that it was five years—my officials can correct me if I am wrong—whereas in Scotland it is two years. We do not have plans to do anything similar, because I do not think that there is the necessity for it in Scotland.

Fulton MacGregor: I mentioned earlier that I had a supplementary question—it is on the issue of coercive control and relates to a constituency case that I am dealing with.

In the previous parliamentary session, the Justice Committee dealt with a very good piece of legislation to outlaw coercive control. My constituent has given me details about her experience of quite horrendous coercive control through the civil court system. I am dealing with that situation as her MSP, and I know that the issue is not one for the committee. However, I committed to asking today, under this question theme, whether the Government has any thoughts about strengthening that area in a way that would almost take a parallel approach to the criminal justice approach that we now have. I know from

previous discussions that some safeguards are already in place, but people such as my constituent are continuing to be exploited, if I may put it that way, through the system.

You might not be able to comment on that today, minister, and I would have given you prior notice of the question had the query to me not been so recent. However, I wonder whether that is in the Government's thoughts, given the change in the criminal law.

Ash Denham: I think that it is. We are always cognisant of the potential for things to be used in that way. May I give that a bit of thought and come back to you?

Fulton MacGregor: Yes. Thank you.

The Convener: I have one more question. As well as the impacts of the pandemic, we are having to deal with the impacts of Brexit. Do you have reflections on the impacts of Brexit on the civil justice system? In particular, are there any common frameworks between the UK and Scottish Governments that you feel it would be helpful to update the committee on?

Ash Denham: Scotland did not vote for Brexit. It is going to be very difficult in a whole host of areas—I will stick to my own brief and not rehearse all of them now—where what we are going to end up with is far shy of the arrangements that we had previously.

The co-operation on civil justice that exists among the members of the European Union is obviously not there for us now that Brexit has gone through, so we are in a bit of uncharted territory. I will ask Neil Rennick to come in to give more background, because it is quite complicated.

As the committee might be aware, previously we had the Brussels 1a and Brussels 2a regulations; we also had the Lugano convention. We are not party to any of those anymore, which means that there is quite an issue with regard to co-operation on a number of civil justice issues across borders. That is going to make things a lot more complicated, and I think that it is going to slow things down.

On family law matters, we still have the Hague convention, and that gives us something of a fallback. However, for some civil and commercial law issues, we do not have that fallback, so the best option is for us to get back into the Lugano convention. I think that that will be the best way to protect the interests of Scottish businesses and citizens, although that protection will not be as good as it was before. That is where we are.

The European Commission has advised that the EU should not let the UK be a party to the Lugano convention; however, the EU is not the decision maker—the nation states in the European Council

will make that decision. Some countries—France, in particular—have said that they are not a fan of the idea and do not want the UK to have membership, but other countries are saying that they are okay with it.

Neil Rennick can add more detail about where we are for those who have a civil law issue right now, when we are not covered.

Neil Rennick: The minister has described the position very accurately and well. To answer your question honestly, convener, we do not know what the overall impact of Brexit has been, or what it will be in the long term. It is not just about the impact on individual cases; there is business that will not go ahead because the mutual recognition arrangements that were in place previously no longer are.

We are very much relying on anecdotal evidence from the legal profession to assess the impact of Brexit. When the Brexit deal was agreed, the Law Society expressed regret that civil judicial co-operation was not included in it and said that that would have an impact. Like the minister, it was keen for the Lugano convention to be put in place swiftly, but that has not happened. Based on the advice that we have had from the legal profession, we can say that that will have an impact on individual cases and, more generally, on the business that is able to go through the civil courts.

Ash Denham: My understanding is that we do not have a date for when that convention might come in. We are in unknown territory just now.

The Convener: I am sure that you will keep us up to date on any developments.

Alexander Stewart: We touched on reforms earlier, but I would like to talk about the specific reforms to the regulation of legal services and some of the recommendations that came from the Robertson review. How do you plan to manage the relationships that are involved in this area as you go through the reviews that have been proposed?

Ash Denham: You have alluded to a certain issue. The Robertson report was published quite a few years ago—in 2018, I think. It was quite a wide-ranging report, and it suggested some quite revolutionary changes to the legal system. The idea would be that we would move to a different model. It is fair to say that the main recommendation of the report was not well received by many of the stakeholders—I think that that was clear.

We have consulted on the recommendations and have worked very hard to build consensus. We have worked with all the stakeholders to see where there might be a way forward. We will consult on a number of different models in the

autumn. That will give everyone an opportunity to see the kind of things that we are laying out and give their views on them.

We are trying to improve things for consumers. We want to give that issue a bit more focus. However, we also accept that members of the legal profession are important to what we are trying to do. We want to ensure that we put forward a system or model that everyone can work with and be happy with.

Denise Swanson can give a bit more information on that.

Denise Swanson: As the minister said, the report raised some challenging and polarised views. We want to get some kind of consensus points, so we established a working group that was made up of members of the Law Society, the Faculty of Advocates, the Scottish Legal Complaints Commission and consumer bodies to try to get an understanding of where the resistance lies to the report and its recommendations and why that resistance exists. We want to try to work out whether there are alternative ways of delivering on the key outcomes that Esther Robertson wanted to achieve.

That process worked well and the working group was a useful forum in which we could share views across the different viewpoints. We developed a paper that set out all the various issues, points of agreement and other models of delivery that might improve the regulation of legal services in the way that Esther Robertson wanted and which would meet the needs of consumers but which would not go down the quite revolutionary route that she suggested. That formed the basis of the consultation paper that the minister mentioned.

The recommendations of the Robertson review will still be there—we are not suggesting that they should not be consulted on—but we have some options in which we have tried to work our way through some of the more polarised views.

This is also quite a tricky issue on which to consult and take views from consumers, and we have been working quite steadily with consumer groups such as the Scottish Legal Complaints Commission consumer panel to find some way of developing an accessible means of consultation.

12:00

Alexander Stewart: As you have said, the range of views and opinions in the consultation was very mixed—the issue is about being able to see the wood for the trees so that you get the benefits indicated in the report and the views of the consumer and the legal profession can be married together to ensure that everyone feels that they have achieved something. If that does not

happen, the danger is that people will feel that they have missed out or have lost something in the process.

Denise Swanson: It is quite a challenge to get the whole range of views, given the technical nature of quite a lot of this work. We have to strike that balance between getting the views of the profession and getting the views of those who use the services, who represent consumer bodies and so on. It is challenging to manage that and ensure that everyone's voice is heard.

The Convener: I have a couple more quick questions. In the previous parliamentary session—or perhaps the session before that—there was a consultation on succession law and inheritance law, and the Government committed to legislating at the next available legislative opportunity. The Succession (Scotland) Act 2016 made some technical tweaks to the law, but it would be good to hear your thoughts on how we might take forward the commitment made in, I think, 2020 to introduce further legislation to deal with law that dates back to 1964.

Ash Denham: Attempts to reform succession law have been going on for about 35 years now. The situation is a bit like the one that we have just discussed, in that it is quite complicated and technical with not a lot of consensus on how we should proceed. In the last consultation, we noted a couple of areas of consensus, such as on prohibiting someone convicted of murder from acting as an executor of their victim's estate and reviewing the small estate limits. We are definitely considering such reforms and will perhaps progress them ahead of more fundamental reform, given the lack of consensus on the broader terms of that kind of reform.

We are doing further research on public attitudes to the matter, and perhaps Denise Swanson can say a little bit more about that. I cannot really give you a timescale, because we are still trying to find a legislative vehicle to take it forward, but that is where we are.

Denise Swanson: We have established a partnership with some universities to create a Scottish civil justice hub, and one of its first jobs will be research on succession. We are in the final stages of putting that together, getting it started and ensuring that it is the right kind of research project, what the topics will be, where data will be collected and so on.

The Convener: Minister, you mentioned in your opening remarks Scottish Law Commission bills, two of which—on trusts and moveable transactions—are on our radar. Clearly there is an interface in that respect between this committee and the Delegated Powers and Law Reform Committee, but it would be good to hear your

thoughts on timings in relation to those bills and whether there are any other bills to which we should be alerted.

Ash Denham: We value the SLC's important work in continually trying to update and modernise Scots law and in the reports that it publishes.

I do not know whether the committee is aware of this, but there was a working group involving the commission and parliamentary officials that looked at a more strategic way of progressing SLC bills through the Parliament. Traditionally the Minister for Community Safety would have done that, but there are, I think, some longer-term capacity issues with the committees. That said, we took forward five SLC bills in the previous five-year session, but we are looking at what more can be done in that respect. That work is on-going, but as there might be an announcement on the matter in the programme for government later today, I will not say anything more about it.

The referral of bills is not really a decision for a minister, but I know that the moveable transactions bill is certainly very important to stakeholders, who are keen for Scots law in that area to be modernised. We are very alive to the issue.

The Convener: As members have no further questions, I thank the minister and the cabinet secretary and their officials for their really helpful evidence. We will no doubt see the minister again, given that her portfolio covers a big chunk of the committee's remit.

I suspend the meeting very briefly.

12:06

Meeting suspended.

12:06

On resuming—

Work Programme

The Convener: The next item on the agenda is the committee's work programme. I refer members to paper 6 and ask them to note the decisions that were made at our business planning day. If members have any comments, they should email the clerks directly.

That concludes the public part of the meeting. Our next meeting will be on Tuesday 14 September, when we will continue to take evidence on the petition to end conversion therapy and hear from stakeholders representing the LGBTI community. We will also hear from the Cabinet Secretary for Social Security, Housing and Local Government on the Scottish Government's priorities in session 6.

12:07

Meeting continued in private until 12:25.

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