



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Equalities, Human Rights and Civil Justice Committee

**Tuesday 13 December 2022**

**Session 6**



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**EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE**

**32<sup>nd</sup> Meeting 2022, 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)

Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con)

\*Fulton MacGregor (Coatbridge and Chryston) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

David Bain

Dr Paul Behrens (Independent Expert Advisory Group on Ending Conversion Practices)

Nick Bland (Independent Expert Advisory Group on Ending Conversion Practices)

Dr Rebecca Crowther (Independent Expert Advisory Group on Ending Conversion Practices)

Sandra Docherty

Richy Edwards (Independent Expert Advisory Group on Ending Conversion Practices)

Elena Whitham (Minister for Community Safety)

**LOCATION**

The James Clerk Maxwell Room (CR4)



# Scottish Parliament

## Equalities, Human Rights and Civil Justice Committee

Tuesday 13 December 2022

[The Convener opened the meeting at 10:00]

### Subordinate Legislation

#### Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) Regulations 2023 [Draft]

**The Convener (Joe FitzPatrick):** Good morning, and welcome to the 32nd meeting in 2022 of the Equalities, Human Rights and Civil Justice Committee. Apologies have been received from Rachael Hamilton.

Our first agenda item is consideration of an affirmative instrument. I welcome to the meeting the Minister for Community Safety, Elena Whitham MSP, and her officials. Kieran Burke is from the access to justice branch of the Scottish Government, and Emma Thomson is a solicitor in the Scottish Government legal directorate.

I refer members to paper 1 and invite the minister to speak about the draft regulations.

**The Minister for Community Safety (Elena Whitham):** Thank you, convener, and good morning to you and fellow members. Thank you for the opportunity to speak to the committee about the draft Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) Regulations 2023.

The regulations have been introduced to deliver changes to legal aid regulations, and primarily to ensure continuing access to justice for vulnerable people in our society. My first point is that they will do that by supporting the response to the cost of living crisis through enabling the Scottish Legal Aid Board to disregard for means assessment additional state benefit payments that have been made in recognition of the increased economic hardship that is currently being suffered by households that are reliant on social security support. If the regulations are not approved, the Scottish Legal Aid Board will be unable to disregard such payments across all aid types. That will mean that, for example, additional money that is paid to recipients of disability benefits could form part of an assessment, should publicly funded legal assistance be sought.

Secondly, the regulations will enable the Scottish Legal Aid Board to disregard for means

assessments compensatory awards made by the state arising from a person receiving contaminated blood or blood products from the national health service prior to September 1991. Again, those payments by the state, which recognise a wrong against a person, can be disregarded for all types of legal aid only if the regulations are approved.

Finally, the regulations will also extend the provision of a type of legal aid that is known as assistance by way of representation—ABWOR—so that it may be available to siblings of a child who is subject to children’s hearings proceedings and who either have or are seeking rights to participate in those proceedings. Under the current legislation, ABWOR provision is available only to a child who is subject to the proceedings, relevant persons or a person seeking to be deemed a relevant person in relation to that child.

The availability of ABWOR to siblings will not be means tested and subject to an effective participation test that is approved by the Scottish Legal Aid Board. That recognises that, although the role of siblings in the children’s hearings system is important, it is limited, and other procedural safeguards are in place that can facilitate regard being had to their views.

That is a brief overview of the regulations and their context. I am happy to answer any questions.

**The Convener:** Thank you very much, minister.

There are no questions or comments, so we will move straight on to agenda item 2. I invite the minister to move motion S6M-06777.

*Motion moved,*

That the Equalities, Human Rights and Civil Justice Committee recommends that the Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) Regulations 2023 be approved.—[*Elena Whitham.*]

*Motion agreed to.*

**The Convener:** I invite the committee to agree to delegate to me the publication of a short, factual report on our deliberations on the affirmative instrument that we have just considered. Is that agreed?

**Members indicated agreement.**

**The Convener:** That completes consideration of the affirmative instrument. I thank the minister and her officials for attending the meeting, and I suspend the meeting briefly to allow for a change of witnesses.

10:04

*Meeting suspended.*

10:06

*On resuming—*

## Petitions

### Conversion Therapy (PE1817)

**The Convener:** Under the next agenda item, we will hear from members of the independent expert advisory group on ending conversion practices. I welcome to the meeting our panel of witnesses: Nick Bland, the chair of the group; Dr Rebecca Crowther; Dr Paul Behrens; and Richy Edwards. Thank you for taking the time to speak to us today.

I refer members to papers 2 and 3, and invite each of our witnesses to make a short opening statement.

**Nick Bland (Independent Expert Advisory Group on Ending Conversion Practices):** I thank the committee for inviting members of the expert advisory group on ending conversion practices to give evidence today. As chair of the group, I welcome the opportunity to make some brief opening remarks. I will use that opportunity to provide some background information on the establishment of the group by the Scottish Government, to describe its purpose, and to summarise the work that the group undertook, which was reflected in the final published report.

The Scottish Government has committed to introducing by the end of 2023 legislation that will be comprehensive in banning conversion therapy practices as far as possible within our devolved competences. As a first step, the Cabinet Secretary for Social Justice, Housing and Local Government, Shona Robison, announced in Parliament in November last year the Government's intention to establish an expert advisory group on ending conversion practices to inform the approach to ending conversion practices in Scotland, covering sexual orientation and gender identity.

Given the far-reaching impact of conversion practices in society, it was essential to secure a diverse group of individuals who could provide their expertise to develop broad, action-based recommendations, with a focus on the end goal of introducing legislative and non-legislative measures to ban conversion practices in Scotland. The group's membership included individuals who are experts in their field. They were from LGBTI organisations, faith and belief organisations and communities, and organisations in the fields of mental health, the law, human rights and academia; further—this is important—the group included people with personal lived experience of conversion practices.

The group was time limited. The terms of reference defined its purpose as

“to consider and advise on proposed actions to ban conversion practices in Scotland. Its scope will be to explore both legislative and non-legislative measures, which would ensure protection and support is given to those who need it, and freedoms—including freedoms of speech, religion, and belief—are safeguarded.”

The Scottish Government supported the group through my role as chair and through providing secretariat support.

The group met for the first time in March 2022 and held eight meetings in total—the final one was held in August. During the early meetings, the group discussed core issues, such as initial thoughts on the definition of conversion practices and how to support victims and survivors. As the meetings progressed, members worked collaboratively to lead discussions on human rights implications and how criminal and civil measures could work in practice. The group also heard directly from members about their lived experience of conversion practices and its impact on their lives.

Additionally, it was clear that deeper insight into the specific impact of the experience of conversion practices on minority ethnic faith communities and communities of colour was necessary. That work was taken forward by a member-led subgroup, and it involved wider engagement with a range of organisations and a literature review. The work was considered at a later meeting in which key themes and recommendations were identified for the overall group to consider to ensure that all victims of conversion practices are sufficiently protected.

The expert advisory group also sought to better understand how conversion practice legislation has worked in other jurisdictions. For example, the group heard from Inclusion Melbourne, which provided useful insight into the development of conversion practice legislation in the state of Victoria in Australia.

The group's report was published on 4 October 2022. It includes 32 guiding principles that offer a framework to guide the Scottish Government in its approach to developing criminal and non-criminal measures to end conversion practices. Those principles are supported by specific recommendations that specify how the group sees the guiding principles taking shape in legislation and in other measures.

I again thank the group's members for their knowledge, expertise, experience and absolute commitment to the group's work.

**The Convener:** Thank you very much. Can we now hear from Rebecca Crowther, please?

**Dr Rebecca Crowther (Independent Expert Advisory Group on Ending Conversion Practices):** We thank the committee for inviting us to discuss the work of the expert advisory group on ending conversion practices. We understand that we have been invited to the meeting so that the committee can formally close the petition on ending those practices. We hope that space will be given to fruitful and constructive feedback on the extensive work of the group following the committee's recommendations, and on moving towards a bill and a series of civil measures that will finally mean the end of conversion practices in Scotland. We are grateful for this opportunity.

I remind members that we are here to share the work of the group on behalf of the group and that we cannot speak about the continuing work of, or decisions made by, the Scottish Government. Each of us here comes to the work with different expertise, and we hope that we will be able to enlighten you on the many principles in the main report from the group, as well as on the additional report that looks at the experiences of conversion practices in minority ethnic faith groups and in communities of colour.

It was and is vital to understand the relationship between an overarching culture and an environment of anti-LGBT+ sentiment in some communities. It is also important to understand the desire of individuals to be accepted and to fit into societal norms, whereby family, faith and community are integral parts of life and self-identity.

As the policy co-ordinator of the Equality Network, my focus as a member of the expert advisory group was always on ensuring that the voices of diverse LGBT people with intersecting identities and those who are multiply marginalised, survivors and LGBT people of faith in all their diversity were placed front and centre. Of course, I also wanted to challenge pervasive and harmful anti-LGBT ideologies and, in turn, conversion practice ideology that leads to those harmful practices.

Sadly, tackling conversion ideology in Scotland is still necessary. We need a bill that will finally and permanently tackle the still pervasive idea that to be lesbian, gay, bisexual or trans, or to have a gender expression or expression of sexual orientation that does not fall within the normative or heteronormative societal gender binary, is a problem that needs to be fixed, suppressed, inhibited or changed. We need a bill that will finally bring an absolute end to conversion practices, which cause mental, emotional, psychological and physical harm in Scotland. That work needs criminal and civil measures in order to succeed.

I will now pass over to Richy Edwards.

**Richy Edwards (Independent Expert Advisory Group on Ending Conversion Practices):** It has been absolutely imperative to hear the voices of survivors in this work. Within the work and the principles and recommendations of the group, autonomy for survivors and potential victims was central.

As a survivor of so-called conversion therapy—for the avoidance of doubt, that is absolutely not what we all know as therapy, which is why we now rightly refer to it as conversion practices—I am here in my capacity as a person in the advisory group with lived experience of that abhorrent practice. However, I am only one voice out of far too many who have endured that. I put on record my thanks to not only the committee and the Scottish Government for ensuring that survivors have had an integral role to play throughout the process but to the other members of the advisory group with lived experience as well as those in the survivors subgroup that we established. None of the work would have been possible without their collective voices.

The process has not always been easy; at times, it has been retraumatising. Sadly, that is all too often the reality, but we must not forget the why and what we are doing here. I believe that the committee and the Scottish Government get it, and our inclusion throughout has not gone unnoticed. That has sometimes been just a little foreign when you are used to a certain level of pushback and broken promises.

10:15

I speak from experience when I tell members that conversion practices robbed me of so much. They robbed me of love because, when you are told over and over again that who you are is inherently wrong, you cannot be surprised that you cannot love yourself or other people, and that you also struggle to truly accept the love of others. I am ashamed to admit that that sometimes comes at a cost to other people's feelings. It has a ripple effect that goes beyond just yourself.

The practices rob you of joy. The effects of such experiences do not stop when the abuse stops; they permeate your whole life for the rest of your life, and cause a destructive path of poor mental health that we do not have time to talk about today. The deep psychological and mental trauma that is associated with those practices cannot be overestimated. I am one of the lucky ones, because I am still here to tell my story—even if only just.

The practices rob you of joy, and you had better believe that they also rob you of opportunity. Any logical path to the hopes and dreams that everyone around you is embarking on is soon

destroyed, because you just do not have the capacity to breathe, let alone function. When you are in survival mode 24/7, your normal is not that of your peers. That holds you back. So much potential out there is not being fulfilled because of the practices.

The final thing that the practices rob you of is your voice. I do not mean that just figuratively, although that is also true; I mean it literally. Before you know it, you are speaking quietly, if you speak at all, and you are living small. You are constantly cautious when it really matters, just in case you run the risk of having to muster what little fight you might have left in you. Who knows when you will need those reserves next?

Frankly, I am done. I am done with being voiceless. I want my voice back. I want to fully realise my potential, as it always should have been realised, and I want to grasp opportunities with the fullness of joy, without living in fear that I am destined only to live small. Of course, I would love nothing more than to love myself unreservedly and others unashamedly.

Trust me: should the bill pass, it will not just make a difference to my life or the lives of the other survivors who have been represented throughout the process; it will make a difference to the generations of LGBTQ+ people to come in Scotland and, I hope, one day soon, people across the United Kingdom and the rest of the world.

It is a fact that conversion practices result in psychological harm to the victim. Our report makes it absolutely clear that, alongside criminal and civil measures, survivor support measures are essential. They should be holistic, person centred and trauma informed. Therapeutic professionals must be specialists and, crucially, informed by those with lived experience. Support must be free and available across Scotland to anyone who needs it. Mental health services, religious bodies, services for children and young people, and other professional bodies must also be supported to provide appropriate services, with emergency support services for survivors being made available where necessary.

Medical institutions must be trauma informed and, of course, they must create a safe space for survivors. They must encourage trust and provide choices for survivors by providing clear and consistent information as well as options for treatment and care. They must work with and empower survivors while taking into account and respecting all aspects of a person's life experience and identity.

With regard to civil and legislative measures, the group recommends that any person, including victims and potential victims, should be able to

report conversion practices so that an investigation can follow. That would remove the onus from survivors and put it on to a public body.

A wide range of options to enforce change should be available. They could include targeted education, written notice from the perpetrator agreeing to cease the practice, a compulsory notice from the authority, or a voluntary written agreement agreed by all parties involved.

I look forward to the conversation with the committee about why the issue is important and the principles and recommendations that we included in our report to ensure the autonomy of survivors and potential victims.

**The Convener:** Thank you, Richy. We will now hear from Paul.

**Dr Paul Behrens (Independent Expert Advisory Group on Ending Conversion Practices):** I teach international law at the University of Edinburgh and, among other things, I do research into LGBT rights.

My access point to conversion practices is more from the field of comparative criminal law, so I looked at various jurisdictions that have already enacted laws on conversion practices. You have heard of Malta, Victoria and Germany, and Ireland is also preparing a bill.

I want to say a few words about why it is necessary to have a law on conversion practices in the first place. We always take the reasons for granted, but it is quite useful to state them because they inform our view of the details of the proposed legislation.

At least three points can be identified, the first of which is the societal dimension. Richy has just referred to the fact that the expert advisory group used the term "practices" and not "therapy", but these practices are still offered as therapy. Society, as a whole, has a legitimate interest in the fact that practices that are offered that appear to have a medical basis really have a scientific basis, and that is clearly not the case when we are talking about conversion practices. Other points fit with that, such as the reputation of the healthcare profession, the public's trust in the medical profession and so on.

The second point is the fact that conversion practices send out an inevitably discriminatory message about the LGBT community. That is not often discussed in much detail, but it is helpful to look at the realities of that. It is not just about the fact that the providers of conversion practices send out a homophobic, transphobic and biphobic message, although that would be bad enough. The United Nations independent expert on protection against violence and discrimination based on sexual orientation and gender identity

has referred to the fact that conversion practices also send out the implication that LGBT people fall short of a particular standard of the perpetrators. That would be bad enough by itself, but they go a step further and engage in active efforts to remove all the features that characterise LGBT persons as such. In other words, far from appreciating that the LGBT community has an important role to play in society and that LGBT people are important members of society, they are saying that it would be better if LGBT people did not exist. That is the heinous and offensive message of conversion practices.

The third point, which should really have been the first point, is about the interests of the victims who have been directly affected. Here too it is helpful to look at the realities of the situation. Conversion practices are hardly ever offered to the 50-year-old guy who has lived happily with his same-sex partner for 30 years—they are offered to young people and children. In 2019, a global survey found that more than 80 per cent of those who participated in the survey and had to undergo conversion practices were under the age of 25. Those people were at a vulnerable stage in their development.

Of course, human rights also come into play. Everybody has the right to have their own sexual orientation and gender identity. Those rights correspond to long-settled case law in the European Court of Human Rights. Where children are concerned, additional rights come into play, such as the right to their emerging autonomy and the right to live a childhood free of abuse. I would be happy to say a bit more about that if it comes up later in the questions.

It is interesting to note that when I listen to those who are critical of laws against conversion practices, they tend to refer to their own rights that apparently give them a basis for carrying out these practices. That seems to be a reversal of the perpetrator-victim role. It is not the lesbian, gay, bisexual and transgender people who are causing the problem. They just want to exist. It is not the children who are causing the problem. They just want to develop freely, which is a right that we accept without any questioning where their cisgender or heterosexual peers are concerned. It is the providers of conversion practices who interfere with the established rights of the victims and, to a certain degree, even say that certain rights are not supposed to exist. It is for that reason that law against conversion practices is indicated and necessary.

**The Convener:** Thank you very much. That was a really good summary of the issues.

The committee members were unanimous in their view that the law needed to change when we took evidence. We were keen to do something that

Richy Edwards mentioned, which was to make sure that, as we went through the parliamentary process, we did not retraumatise people who gave evidence or even folk who were watching the committee. That was a really important point that you raised, Richy.

Do you think that we have managed to work out a way of doing that? We have heard from the bill team that it felt like progress had been made in doing the bill a little bit differently, but it would be good to hear from Richy Edwards, and anybody else, on that.

**Richy Edwards:** The fact is that we were invited in at every stage. I first gave evidence to the committee a year ago during a private session and was also included in the expert advisory group. Along the way, we have also been offered support through LGBT Health and Wellbeing. Just knowing that that help was there should we need it has been reassuring. That just goes to show why we have said in our report that on-going support for survivors and potential victims is important, because the problem does not stop when the abuse stops, as I said. The process has been really good.

**Dr Crowther:** Trauma-informed awareness and practice did not just sit at the heart of the work of the expert advisory group and the survivors subgroup; they also sat at the heart of all the work that we were doing. Ultimately, we are talking about abuse and traumatic life events. All the survivors and experts in human rights, law and LGBT organisations, such as myself, came at the issue from that trauma-informed space, which really helped. It is vital to continue in that vein and I know that the Scottish Government and Scottish Parliament are open to that. When we were starting the expert advisory group's work, the Scottish Government was really helpful in setting up extra space for Claire from LGBT Health and Wellbeing to be there as a counsellor and making sure that that worked online. When all these meetings were online, people were at home on their own, so it was really important that that happened.

Claire is here today and the Parliament has made allowances for that to work. We will do a debrief afterwards. That mindset for this work in future is really important, particularly as we know that it will be covered by the media, as everything to do with LGBT rights is at the moment. We need to be cognisant that, as we move further on with the bill, people are likely to be retraumatized and we need to minimise that if we can.

**Nick Bland:** To be explicit, support from LGBT Health and Wellbeing was available at every formal meeting of the expert advisory group. Richy Edwards reflected that its availability, whether or not it was drawn on, was a source of support. It

was there if it was needed. It did not have to be asked for; it was sitting and waiting, so to speak. That was really important for us when we were establishing the group.

A lot of the group's work in relation to human rights and criminal law was highly technical, as Paul Behrens mentioned. It felt really important to bring the voice of experience into the group as equal members of the group and play a role in that technical element, while also making sure that people had the time to speak to their personal experience.

**Maggie Chapman (North East Scotland) (Green):** I thank you all for joining us and for your opening statements. Richy, I especially thank you for sharing your story with us. I am really sorry that you have been through that. Thank you for being here and helping us to understand why this is so important.

10:30

I have two questions, the first of which relates to the definition of conversion practices, which the committee has spoken about before. We made it clear in our report that we wanted to draw the definition of conversion practices as widely as possible. Issues around consent and intention to harm were part of that. The advisory group came up with a very clear definition of what conversion practices are. Why was it so important to draw that definition as widely as you did? How can we ensure that affirmative care—which we all recognise is important—is still okay?

**Dr Crowther:** There is a lot to say. On the wider definition of what conversion practices are, we say that such a practice is any directive effort on an individual or group to change, suppress or inhibit who they are.

We use the word “practices” for two reasons: the first is that they are not therapeutic—we know that they cause significant harm; and the second is that we do not know what shape they take across all cultures and communities. To refer to them by anything other than the broad term “practices” would mean that there would be a danger of missing things out. The term “conversion practices” covers anything that somebody does that intends to change, suppress or inhibit a person's sexual orientation, gender identity, gender expression or expression of sexual orientation.

Those last two items—the ones related to expression—are included to prevent any loopholes that might allow for somebody to be encouraged to suppress who they are—for example, to be encouraged to be celibate, to not express their gender outwardly or to not act on their sexual orientation. It was important to include those.

Including the lack of ability to consent has three aspects to it. The first is that we are very aware that, in many situations, coercive control comes into play. Those are abusive situations in which there are power dynamics. Depending on the situation, those could be family or community leadership power dynamics, but in a lot of cases it happens in religious settings, where the ultimate power is God. That is quite a significant power dynamic, which can lead to coercion. If somebody is told by their community that they are inherently wrong—that their sense of self is inherently wrong—and they are told that by a figure of authority, that is coercive and abusive.

The second reason is that a person cannot consent without having a full understanding of what they are putting themselves up for, and we can be pretty sure that people are not told that conversion practices do not work or that they will cause them a lifetime of psychological damage and affect the rest of their lives negatively. People are not told that, so they cannot give informed consent.

The third reason is that, as Victor Madrigal-Borloz, the UN expert on sexual orientation and gender identity, says, a person cannot consent to torture, and abuse is torture, whether that abuse is emotional, psychological or physical. Any guise of conversion practice can amount to torture. Those are the reasons that lack of ability to consent is included.

In answer to the last part of your question, affirmative care does not fall within the definition of a conversion practice simply because it is non-directive and it does not seek to change or suppress a person, or to inhibit who they are. Instead, it allows for exploration. In healthcare, affirmative care refers to an approach that validates and supports the identity and lived experience that is expressed and stated by an individual. As I said, it is not directive, because healthcare professionals will take an unobtrusive role so that free expression is encouraged.

Importantly, affirmative care also covers providing a safe space for someone to explore their sexual orientation, expression of sexual orientation, gender identity and gender expression in a safe and non-judgmental way. That is a counter argument to the opinion that is voiced at times that a ban on conversion practice would ban talking about sexual orientation and gender identity, which is far from the truth. Indeed, many LGBT+ people need to talk about it, and if that is the case, we encourage them to talk about it, as many who are uncertain of their sexual orientation or gender identity do.

As part of that, affirmative healthcare, affirmative support and supportive pastoral care are also not conversion practices; they just allow

people to openly reflect on where they are at and how they feel.

**Maggie Chapman:** That was clear and helpful. It is important to outline the issues with that wide definition and the importance of enabling, supporting and encouraging affirmative care.

Paul Behrens, the way in which you laid out the societal context of the need for such legislation was clear and incisive. You started talking about the human rights context. Because you offered, I will ask you to say a little more about some of the specific issues that may be discussed or questioned around potential conflicts or tensions. What are the important provisions for younger people in a human rights context? It would be helpful to hear about that.

**Dr Behrens:** I am happy to talk about that. I have a little point to add on the question of consent. I very much underline the point that it can be difficult to establish the victim's autonomy. I found it interesting that, during a meeting of this committee in November last year, Pam Duncan-Glancy made the point that someone can have internalised stereotypes and can grow up with stereotypes that are directed against themselves. The reality is that conversion practices are often carried out by communities in which the victims have grown up and spent their whole lives. That is one of the difficulties.

The other difficulty goes back to one of the points that I tried to outline in my opening statement, which is that the discriminatory message against LGBT people has not gone away, even if someone has given consent in such a situation.

I have already outlined some of the human rights that exist on the side of victims, and Becky Crowther has added the right to freedom from torture, which is an important right in cases where that applies. The state might also have a duty to intervene when there is a danger that a person subjected to conversion practices might commit suicide, so the right to life has a positive aspect.

On the other side of the divide, the right that is most often brought forward by critics of laws against conversion practices is the right to freedom of religion, which the committee has heard about. The first thing that we should say about that is that religion is not a monolithic block. We had no fewer than four members and representatives of faith communities among the 15 members of our expert advisory group. We have had messages from Christianity, Judaism, Islam, the Sikh religion and Buddhism, all supporting a ban on conversion practices.

The right to freedom of religion is not in itself an absolute right. There are two dimensions to it. One is the internal dimension, as established by the

European Court of Human Rights. In other words, you can believe whatever you want to believe and that is not something that the law can interfere with. That can be a problem in itself: when we talk about homophobic or transphobic beliefs, a lot can grow from that internal dimension, but it is outside the reach of the law.

Things are different when we talk about the manifestation of belief. That brings us into an external dimension, where it must be possible to have limitations and the state must be able to impose restrictions. I would put it like this: you can hold whatever personal belief you want to, but as soon as you send your beliefs into the marketplace of ideas, you must be aware that there are other stallholders there, too. If you believe that they do not even have the right to exist, the state is perfectly entitled to come in and say that that is not acceptable and that the market must be regulated.

That is where the limitations come in. In legal terms, we have article 9 of the European convention on human rights, which talks, in the first paragraph, about the rights that exist and, in the second paragraph, about the limitations that come in when they are required. We feel that they are required in this case.

**Maggie Chapman:** Thank you—that was really helpful. I will leave it there for now, convener.

**Karen Adam (Banffshire and Buchan Coast) (SNP):** I thank the panel for coming along. Richy Edwards's witness statement in particular was extremely powerful and really helpful. We cannot overestimate the power of lived experience in making and shaping law.

In determining how all this might fit with the criminal law in Scotland, you recommended criminalisation, which you have spoken about. How do you see that working in practice in relation to parents, medical professionals and faith leaders?

**Dr Crowther:** We make recommendations on both the criminal and civil aspects. Paul Behrens is probably the best person to speak about criminalisation and to speak directly on the suggestions for leaders and parents.

It is important to say that, first and foremost, the autonomy of the victim comes into play. Our idea is that, if someone reports conversion practices, they will be supported and helped to make their report. That does not necessarily mean that the perpetrator will be criminalised, or indeed that they have carried out any criminal act, but it should mean that such autonomy comes first and foremost.

The report contains suggestions and recommendations for what we would like to see in

legislation and how people might be penalised for conversion practices. Penalties might be different across the board, depending on whether they applied to a faith leader, a parent or otherwise. As he is a lawyer, Paul Behrens is definitely best placed to talk about that in more detail.

**Dr Behrens:** In large part, we followed existing laws from jurisdictions around the world. All the aspects that we outlined in our recommendations—on offering or carrying out conversion practices; on referring a person to someone who offers such practices; and on the removal of a person from Scotland to another jurisdiction—can be found in various jurisdictions around the world, such as Malta, Victoria, Germany and Ireland. I can provide further references for the committee if it is interested in having those.

Therefore, in themselves, our proposals are nothing new apart from on certain aspects, such as the adoption of an aggravated crime where children are the victims of conversion practices. There, too, in Scotland we have a precedent in the Domestic Abuse (Scotland) Act 2018, the proponents of which independently came to the same solution as us: that children should be considered to be in an especially protected position.

You mentioned the question of parents' rights. It might be useful to say a word or two about those as well. Rebecca Crowther was quite right to stress the autonomy of the victim: it is like a golden thread that runs through our report. We listened very carefully to the concerns of victims. It is true—and we acknowledge—that conversion practices can be carried out in many different ways. There may be situations in which parents are not even aware that what they are doing amounts to conversion practices or aware of the consequences for children. That is why education plays such an important part in our recommendations.

We also listened to victims on the question of criminal prosecution. I would phrase it a bit differently from Becky Crowther. I would not say that conversion practices are not criminal in such situations; rather, criminalisation does not necessarily mean criminal prosecution. That is why we offer a whole range of options below that level, which are particularly helpful when a victim is still in a relationship with a perpetrator and wants to continue the relationship with those who have carried out conversion practices. For instance, targeted education could be given to providers of such practices, or an arbitration-like procedure could be brought in with the help of the commission that we are proposing. A written undertaking could be taken from a provider of

conversion practices that they would no longer engage in them.

Having said that, we have also heard from survivors who, over years and years, had been subjected to what can only be described as psychological terror by their parents—the people who were supposed to have their best interests at heart, but instead put their particular belief system above the free development of their children. In such situations it cannot be right for the state to stand aside and still say that it is dealing with parents who are fit for the job of bringing up their children.

10:45

**Dr Crowther:** I will add to that. Clearly, if a child is being abused, we would hope that people would want to step in. In many cases, conversion practices amount to such abuse.

I also want to highlight the importance of offering options for people who are in our communities. We do not want to put them at risk by there automatically being a criminal prosecution. That is why it is so important that the direction should come from the autonomy of the victim. Both at the expert advisory group and in the lead-up to it in other work, we heard from survivors that, quite often, their parents, church members or family members meant them no harm; rather, they meant to do what they thought was good, or the right thing, and to protect them. However, that does not mean that their actions were not wrong or harmful.

One reason for those options being so important is that we need to keep communities together and have people able to stay there and help others through the process. It is also important in minority ethnic and marginalised communities where there has been historical criminalisation. We heard clearly that such an approach is not what people need; they need conversations, awareness raising, support and not to be put at risk of complete isolation from their religious or faith community because they have made a report. It is important that victims and survivors are not put at further risk by our not providing non-criminal options.

I have touched on the idea of intent to cause harm, but if that is of interest to the committee I will pass that back to others to expand on.

**Karen Adam:** That is really helpful—thank you.

I would like to add to my initial question. Dr Crowther, you spoke earlier about how we are still very much in a society where being cisgendered and heteronormative is seen as the default setting for human beings. It is quite hard for people to break through that narrative. Richy Edwards spoke

about there being a ripple effect, which harms not only the individual concerned but the whole of society. If conversion practices were to be made a criminal offence, would it be helpful in changing such mindsets so that there could be good, positive ripple effects?

**Dr Crowther:** Absolutely. Of course it would. If we have it in legislation that it is wrong to do those things and that being LGBTI+ is a perfectly healthy, beautiful and diverse way to be, which we should celebrate, and that trying to squash that is wrong and illegal, of course that would have a positive effect, in the same way as bringing in inclusive education and equal marriage had. It is a clear message of acceptance and understanding of the diversity of humanity. In no circumstances should a person be suppressed, inhibited or forced to change who they are when that is an inherent part of them. For all LGBT+ people, it is extremely powerful to see the Scottish Government and the Scottish Parliament not only making a commitment to that but seeking to get it right for every person, which means working within diverse or marginalised communities and those of colour and faith. It is powerful for them to see that an effort is being made not only to do it but to do it right and ensure that everyone is helped by that legislation rather than potentially being harmed.

**Richy Edwards:** I add that that is why it is so important to say that we are not here just because we want to criminalise conversion practices. We have made recommendations for civil measures, too. Ultimately, as a person with lived experience of such practices, I am not just interested in seeing people being criminalised for them; I want them to end. The only way that that is gonnae happen is if we all work together. Whether through education or in other ways, we need to see a culture shift, in religious settings, the healthcare community and so on.

The ultimate goal is to end the practice so that it is consigned to history and we do not need to criminalise people for it anymore because it just does not exist. I am confident that we can get there.

**Dr Crowther:** I am sure that you are all very aware of the realities in life for LGBT+ people at the moment—the rhetoric around LGBT identities and orientations, who we are, what we do, how we should be protected, whether we are equal or deserve human rights. A kickback against us is very much on the rise; we see it in social media and the mainstream media. It is not like conversion ideology or anti-LGBT ideology is something of the past. It is very much here and it is getting worse.

We need this. People are still being subjected to these practices, and it will get worse if nothing is done about it. That is important.

**Dr Behrens:** I will add to that, because I think the question was also about whether the law helps to address the problems that we have. I very much agree with Becky and Richy that we hope and believe that the law will do that. There are things that we can do at the level of the law, in the drafting of the law, to ensure that it is a particularly clear law with clear definitions and so forth.

However, the important thing is that the message is brought across. In criminal law, there is an on-going discussion about whether the law still fulfils its communicative function. That is why we have included recommendations, and recommendation 12 in particular is aimed at raising awareness of the law and giving publicity to the law. Ultimately, points of wider education come and filter into this point as well.

**Dr Crowther:** Yes, and that has to have diverse messaging. That publicity needs to reach everywhere and not just the usual suspects—not those who are already on board, but deeper than that, because this is quite insidious.

**Karen Adam:** That is helpful—thank you.

**Pam Gosal (West Scotland) (Con):** Thank you all for your opening statements and the briefings that you have provided, and a special thank you to Richy Edwards for sharing his story.

Nick Bland mentioned—this is also in our briefing—that the expert advisory group included a diverse group of individuals from a range of faith and belief organisations and communities, and included mental health and legal professionals. Can you tell the committee whether you felt that there were any gaps in expertise in the group? Were there any areas of conflict or disagreement? If so, what were they, and how did you reach a consensus?

**Nick Bland:** The make-up and size of the group reflected the importance that the Government placed on ensuring a diversity of perspective and that the range of expertise that you have just described and that I set out in my opening statement was present. So, the short answer is yes, I think that we had the necessary expertise.

The additional work that we did with minority ethnic faith communities and communities of colour—Becky Crowther took that forward, along with another member, Pritpal Bhullar—was an extension of the expert advisory group's work. The group identified a need for that work to be done, so it was an extension in the group's terms of reference, in a sense. That work was done and then brought back to the whole group, so that we were able to hear the results towards the latter stages of the process.

I would say that there were not really differences in the group. As chair, I was very keen that we

would be able to reflect a consensus in the final report but, if there was not a consensus, we would want to reflect where there was disagreement. The fact that the report does not reflect that is a demonstration of the clear sense of a collective view of the expert advisory group.

**Dr Crowther:** Quite early in the process, very soon after being invited to be part of the expert advisory group, we decided that we wanted a few more voices to be heard, so we set up two subgroups. One was a survivors subgroup, led by Richy Edwards. There were 14 survivors on that group, some of whom had previously given oral evidence, some of whom had heard of the work now that it was more out there in public and some who had begun to feel that they needed support, because the subject was in the media and things were happening, which can be retraumatising. The group was set up not only to hear from a wider diversity of voices about the practices that they had experienced and where, but to provide a space for support for those people.

We also pushed for the creation of an additional subgroup to the expert advisory group to look specifically at the experiences of LGBT people from minority ethnic faith groups and communities of colour. Pritpal Bhullar from Sarbat Sikhs and I took the lead in establishing that sub-group and facilitating stakeholder engagement. I also wrote a secondary report on those issues: group members took it upon ourselves to write an entirely separate report to look specifically at the experiences of minority ethnic groups and faith groups.

We did that because we recognised that there was a lack of wider representation on the expert advisory group, although there were members from diverse demographics. Those included Rev Jide Macaulay from House of Rainbow, who is an expert in the faith experience of LGBT people of colour in the UK, and Pritpal Bhullar from Sarbat Sikhs, who speaks mostly on the experiences of south Asian LGBT people in the UK. Although Sarbat Sikhs is a Sikh organisation, it includes many people from other south Asian faiths and offers support to many people who have experienced conversion practices. We are also aware that, at the committee's initial oral evidence session, a Muslim LGBT person gave evidence about their experience.

As part of that additional work, we took evidence from stakeholders and gathered evidence via what I think was a quite reasonable literature review, considering the time that we had. We looked at the experiences of Muslim, Sikh, south Asian and Jewish people and people of colour, including survivors.

To do that, we worked with the Naz and Matt Foundation, which supports Muslim LGBT people. We also worked with Shakti Women's Aid, which

is right here and supports mostly south Asian women. That group has experience in female genital mutilation, honour abuse and forced marriage and works with legislation around that, as well as having a very strong understanding of how those practices can happen. We worked with Keshet, which is an organisation for Jewish LGBT people, with Sarbat Sikhs and with Circular3, which is an organisation from down south that tries specifically to represent the voices of black people and people of colour living in the UK and experiencing conversion. It was very important to engage with that organisation, because we are not talking only about faith cultures, but about cultures. We know from Patrick Ogunmuyiwa's work that there are cultures within the black community that perpetuate a conversion ideology, so that was really important.

We used extensive evidence from the honour abuse research matrix to inform our thinking. HARM is a multidisciplinary research network focusing on so-called honour-based abuse, violence and killing, forced marriage, female genital mutilation and other underresearched and often misunderstood forms of domestic abuse. Conversion practice is seen as honour abuse in those situations; it can lead to forced marriage and is considered to be a form of coercive abuse.

We also looked to the expertise of academics whose work highlights the specific needs of LGBT people from minority ethnic and minority faith communities who have the authority to speak on those experiences. It is important to note that many people in those communities simply cannot speak about the subject, because to do so would put them at such risk. It is extremely hard to find individuals to enable diverse representation and will continue to be so until legislation comes into place.

We have done really well to represent as many people as we have been able to. It was important to hear from LGBT people of diverse faith, whom the bill would actually affect and, more importantly, protect. We have a clearer picture of the shape that those practices take and the effect that they have had on those communities. Since we finished our work, I have also been aiding Tara Lyle from the Scottish Government bill team to find further voices to speak here as we progress towards the consultation.

11:00

This is not a matter of finding more people to talk about whether conversion practices should be banned and ended; it is about giving more LGBT people from diverse faiths a chance to speak about their experiences and how the bill can be shaped. We do not want to give a further platform to people who want to continue abuse; that is not

the plan. The plan is to hear from more LGBT people of faith.

Through research conducted by the group, it is clear that there are feelings of apprehension around the reporting of conversion practices in ethnic minority communities who have experienced historical prejudice and discrimination within the criminal justice system. The majority of conversion practices happen within domestic settings in these communities, so there needs to be visible support and, as we have said, that support needs to be intersectional and culturally competent. That was one of the most important things that came out of the research. It is a problem across the board for LGBT people—competent mental health support is hard to find, for example—but, for people of colour and minority ethnic people who are also LGBT, it is even harder.

The services need to understand the structures and governance in diverse faith institutions and the significance of the potential danger of the abuse of honour and shame within those communities. It is well established that this is a human rights issue, as Paul Behrens has said, for all LGBT people, and freedom of religious expression is not challenged in ending those practices.

**Pam Gosal:** Thank you. You said that sometimes there can be difficult conversations with certain religious groups. We heard concerns throughout the previous evidence session that the ban would restrict religious freedoms. I will just tack on a little bit to that.

You have mentioned many organisations; they are all organisations that are very worthy and do a great job, but I did not hear you mention any of the Jewish, Muslim, Sikh, or Christian faith organisations. What was it like for you to reach out to them? What I am trying to get at here is what Richy Edwards said earlier. It is not about punishing people; we need to educate people. I know, coming from a Sikh background, that in such faith groups, much education is needed so that people can start accepting that this is normality, that these people are around and we all live together and that is the way that it should be. It is about educating people a little bit more, so you need to reach into the faith groups to educate them. Have they allowed your voice to be heard in those faith groups?

**Dr Crowther:** There are a few things to cover there. First, on working within communities to raise awareness and to educate and support people, that happens after the bill—and after, we hope, those measures are factored into the writing of the bill. That is one point, and we really hope that that happens.

On faith communities being heard, of course the petition went out to consultation and it was open to anybody to respond. A significant number from faith communities responded, and there will be another consultation on the content of the bill. That is not for me to comment on, though.

In terms of representation on the expert advisory group and making sure that those voices were heard, our number 1 priority is LGBT people of faith. If they are not LGBT people, this bill does not affect them. As Paul Behrens has said, religious freedom and freedom of expression are not absolute rights. If they harm others, that is where there is a crossover.

Religious people, regardless of what faith they are from, whether they are Muslim, Sikh or Hindu, are still free to believe whatever they would like to believe and they are free to talk about whatever they would like to talk about. However, they should not be free to directly subject others to practices that intend to change who those people are.

I guess that a simple way to answer the question is that the consultation is open to everybody and we hope that people respond to it and have their voices heard. In terms of the work of the expert advisory group, our primary aim was to gather the understanding and experiences of those who support LGBT people and those whom the practices could harm. I think that that will remain the case.

**Pam Gosal:** I look forward to the education part when the bill is introduced. There is no use in listening to people's lived experiences and punishing those who have done wrong if we cannot also educate people, because education is very important. I know that you mentioned that, but it is very important.

**Dr Crowther:** I can say, mostly based on speaking to Shakti Women's Aid and the Naz and Matt Foundation, that it is absolutely vital that those civil measures come in, otherwise the bill just will not work. We have said from the beginning that, if we only legislate and criminalise, and we do not do any of the other work, we may as well not do anything, because if the base-level work has not been done, it will only put certain people and communities at further risk. So, I agree with you.

**Richy Edwards:** We cannot forget that, in many cases, victims of conversion practices still have a faith or are still grappling with it, so it is not a them-versus-us sort of thing; it is about educating and working together. It is in everybody's best interest for education to coincide with the bill.

**Dr Crowther:** Most of the people on the independent advisory group and in the survivor groups who have experienced conversion practices are still of faith, and not just of Christian

faith or denominations of that—there is a wide representation. Of course, people should be supported to maintain their faith and be within their community if that is what they want.

**Pam Duncan-Glancy (Glasgow) (Lab):** Good morning, witnesses, and thank you very much for everything that you have shared. Thanks to Richy Edwards, in particular. Your testimony was much appreciated. I can imagine that it must have been very difficult to share that, especially since you have had to do so time and time again, so thank you.

I will pick up on part of the discussion that we just had, and then I have another couple of questions. We have already discussed the importance of education after the bill is introduced. That will be an absolutely essential non-legislative measure, but we also need to reach into various communities before the bill is introduced, given the context—which some of you have mentioned—of LGBT people's rights and the pushback that there is. I hope that there is room to do that, so that we can try our best to take people with us. Do you agree that that is quite important?

**Dr Crowther:** Yes, within reason. We are not going back to the drawing board, but as I said, I have been working with and will continue to work with the Scottish Government and Tara Lyle, who is leading on the bill, to ensure that that work is done as best as it can be.

We are talking about a really tight timeframe—I believe that the consultation will open early next year—but I am aware that the Scottish Government is already doing some of that work. Maybe Nick Bland can say more about that. I gave Tara Lyle a list and put her in contact with many different faith leaders, community leaders and people who have influence in certain communities, so that she might be able to get in touch with them and start conversations ahead of the consultation.

I probably should not name those people during this meeting, but I am talking about people who are considered highly within the Muslim and Sikh communities and in Christian denominations. We have a list of people across the board in religions, as that is the area where there is big concern. As far as I know, the Scottish Government will do that work.

**Nick Bland:** I do not want to stray too far, as I am here as the chair of the expert advisory group, but we are still up to 12 months from the introduction of any bill, and during that period there will be a planned public formal consultation.

As Rebecca Crowther said, there has already been engagement between the policy and bill teams and a range of organisations as part of the policy development process. There will be the formality of the public consultation, and some

proactive engagement will take place through that process. There is a lot of time and a lot of work still to be done, and the kind of engagement that you highlighted will be to the fore of that work.

**Pam Duncan-Glancy:** The question that I was going to ask before I heard some of the conversation was whether, in your view, the Scottish Government has the power under devolved legislation to deliver the full and comprehensive ban that is needed.

**Dr Crowther:** Yes.

**Dr Behrens:** Yes. I say that because I think that it falls within health measures, and because the Scottish Government has made it clear that gender recognition falls squarely within its competence.

**Nick Bland:** I would also add that, as other panel members have mentioned, there are other examples to draw on; indeed, there are direct analogies with existing legislation on domestic abuse, forced marriage and so on. Obviously, we are talking about a distinct set of practices, but there are definitely analogies and similarities that can be drawn. I do not want to give some blanket statement in response to your question, but I would point out that it is the Government's intention to work to the maximum of its competences in the space.

**Pam Duncan-Glancy:** Dr Behrens made a point about gender identity. The United Kingdom Government has made some comments about a ban on conversion practices covering only sexual orientation, not gender identity, saying that such a move would be too complicated at this time. What is your view on that statement?

**Dr Behrens:** That is a really important point, because it is probably where there is divergence between the situation in Scotland and at Westminster. It is quite strange to see such divergences, though, because from a human rights point of view, it has been clear for more than 20 years that gender identity is as well protected as sexual orientation under article 8 of the European convention on human rights. That protection goes back to the Christine Goodwin case and goes back to cases reaching back before 2002.

When you look at laws on conversion practices around the world—especially in Europe, but also in the state of Victoria in Australia—you will see that the distinction between sexual orientation and gender identity is not a matter that comes up. Of course, the issue of gender identity is also embraced by the same laws, so I see no reason to make any artificial differentiation in this respect.

**Pam Duncan-Glancy:** That was really clear. Thank you.

**Dr Crowther:** You should also know that, in the UK and in Scotland, trans people are as likely, if not more likely, to experience conversion practices. Both gender identity and sexual orientation are inherent in who you are, and that cannot be changed. The idea of protecting one group over another from essentially the same thing comes from the same place of anti-LGBT conversion ideology—that is, the idea that we are all cis and heteronormative. Ultimately, whether it relates to gender identity or sexual orientation, the push towards conversion practices comes from the same place, and it is abuse.

**Richy Edwards:** As someone who has been through this, I would just add that I should not be any more protected than a trans person. The experience and the lifelong psychological trauma damage everyone. As a cis white gay man, it would not sit comfortably with me to be more protected than a trans person, who is more likely to have experienced what we are discussing. I am not worth any more than anyone else who has experienced that.

**Dr Behrens:** That is an important point. Richy Edwards has touched on the question of vulnerability, especially of trans children. There is evidence—and, indeed, we are aware of such cases—of trans children suffering greatly as a result of being misunderstood and misgendered by their parents. In one famous case that made it to the High Court, a boy who had been consistently misgendered by his parents for years tried to commit suicide on two occasions. We are talking about very grave situations that can cause children considerable harm.

**Dr Crowther:** Before this gets misinterpreted somewhere, I should probably add that we would not say that it is necessarily a conversion practice to misgender someone. However, an accumulative belittling, undermining and demeaning of who someone is over a period of time can amount, as Dr Behrens has said, to significant harm. We have thought quite a lot about accumulative practices and how they might amount to crossing a threshold into conversion, although we have not suggested a threshold.

11:15

**Dr Behrens:** A lot depends on the context of the words that are said and the practices that are carried out. Our question is always: does this constitute an effort to suppress the self-felt gender identity of a person? If it does, it falls under conversion practices as we have defined them.

**Pam Duncan-Glancy:** Thank you. That was really clear.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** Good morning, panel and

colleagues, from a sunny but very cold Coatbridge.

I have a question for Nick Bland, but first of all, I want to thank all the witnesses—as colleagues have done—for their evidence so far. Richy, I thank you in particular; I know that it must be difficult to talk about your experience again, but I want to put on record my thanks to you for doing so and, indeed, for continuing to do it in the hope that it will help others.

My question is on one of the advisory group's recommendations, which is for

“a Commission”,

whether it is

“a single commission ... or another body”,

to be

“given a specific responsibility”.

It comes out of the example of a model in Victoria in Australia, from which we have also heard.

Could that work be undertaken by an existing body, or will it require a new body to be created? What new powers and responsibilities should that body have? As I have said, that question is probably for Nick Bland.

**Nick Bland:** I think that it might be for Paul Behrens.

**Fulton MacGregor:** I am happy with that.

**Dr Behrens:** Perhaps Rebecca Crowther can come in, too, because it is a very interesting question that we discussed in the expert advisory group. It is tempting to say that certain bodies that already exist in Scotland could take on some of those functions.

You are right to point out that, as far as the commission is concerned, we were inspired largely by the law of Victoria; for other areas of our report, we took inspiration from other laws. In Victoria, all the functions were simply given to the Equal Opportunity and Human Rights Commission there. We discussed a range of possible bodies without coming to a conclusion, but the Scottish Human Rights Commission would be an obvious candidate for taking on some of those functions.

We talked about the Children and Young People's Commissioner Scotland at some stage, too. I have not heard a persuasive argument for the Scottish Human Rights Commission not taking on these functions, but certain conditions might have to be fulfilled. For instance, the SHRC itself would have to agree to take on what would be additional functions.

There are different views on whether it would make sense for all the functions to be given to one particular body or for them to be left to existing

bodies. The latter approach has the advantage of making it structurally easier, perhaps, to deal with that particular recommendation, but there are some disadvantages, which we have outlined in the report, to scattering the functions all over various authorities.

One point that I would make is more of an organic question. Because we want to avoid the duplication of work, it might be useful to have two related functions in the same hands. For example, it might not make much sense to have a body in Aberdeen dealing with research and a body in Glasgow dealing with the creation of outreach and education programmes, given that both functions are closely linked.

Another issue is that, from the point of view of the victims, it is important to have clear guidance on whom they can access if they want to complain about conversion practices or stop such practices happening. That, too, can be weighed in the consideration whether all the functions should be given to one body—which would probably make it easier to identify that body—or whether they should be distributed across the board.

Again, I am not necessarily speaking on behalf of the advisory group. I am putting forward my own position, but there are different positions that can be held on that particular question.

**Dr Crowther:** In its recommendations, the group called for a commission that could carry out those functions, but we also recognise that, as long as the functions are carried out, the work can still be done.

I would point out that some of the functions fall outside the remit of any commission, public body or legal body, because they lie within grass-roots community organisations. That is partly to do with the work, which we have talked about, of specialist support organisations. I am referring not only to LGBTI organisations but support organisations that work with specific faith communities and communities of colour. Given that some of the work would fall on them, it is imperative to give them capacity—and when I say “capacity”, I mean support and funding—and to make it clear that they can continue to do the good work that they are already doing within communities to make what we propose work. The fact is that, apart from those grass-roots organisations that can tap into communities, there is no body that can do that specific work. However, that is just one of the functions that we are talking about here.

**Fulton MacGregor:** A range of civil measures have been proposed, including outreach and education programmes, survivor support measures and a commission to undertake investigations. Could any of the measures be put in place without the need for legislative change?

**Dr Behrens:** I know that it sounds technical but, in asking the Scottish Government to implement recommendations, I would also say that there ought—technically—to be a legal basis for everything that it does. However, that does not mean that all the functions need to be carried out by the Scottish Government itself or by state authorities.

I would just highlight two examples in that field. The first is the academic project that we have also recommended, the purpose of which would be to evaluate existing laws against conversion practices in other countries and to engage with stakeholders and legislators in those countries. Such a project might be able to fulfil functions that the Scottish Government might find more difficult such as, for instance, being critical of laws abroad, saying what does not work well and highlighting the weaknesses of particular approaches. That would be an academic-led project rather than something carried out by state authorities.

The other example is education and outreach programmes, which would involve not only people in communities but people from faith organisations and medical organisations, too. In other words, private parties would play an important role in that regard, apart from state authorities.

**Dr Crowther:** As a representative of the expert advisory group, I would say that we believe that the legislation has to come first because, as we have said before, there needs to be the clear message that conversion practices are wrong, harmful and, in fact, potentially criminal. There has been a lot of conversation in the group about how we ensure that the civil or non-legal measures—that is, the support, the awareness raising, the academic project and so on—happen. Whether that means that they need to be named in legislation, which would be contentious, or whether there needs to be some kind of formal commitment to building the capacity to do that work, the fact is that these things go hand in hand. Indeed, they have to.

**The Convener:** That ends our questions. I thank the witnesses hugely for their evidence.

It is now up to the committee to decide what to do with the petition. Given that the Government is committed to introducing legislation relatively quickly, I suggest that we close it. Do members agree?

**Members indicated agreement.**

**The Convener:** The committee has agreed under rule 15.7 of standing orders to close the petition on the basis that the Scottish Government has committed to introducing legislation on the matter.

I give a huge thank you to all our witnesses for what has been an informative session. We look forward to continuing to work with the Government as the proposed bill moves forward at pace.

I suspend the meeting for about 15 minutes.

11:24

*Meeting suspended.*

11:39

*On resuming—*

### **Makaton Sign Language (Legal System) (PE1787)**

**The Convener:** Welcome back. Our next agenda item is to hear more about a petition on Makaton sign language. Our predecessor committee kept the petition open and included it in its legacy paper for us to consider. I welcome to the meeting the petitioner, Sandra Docherty, who is accompanied by David Bain, and I invite Sandra to speak to the petition.

**Sandra Docherty:** Good morning. I will start with what I have written down on paper. Please excuse my nervousness.

**The Convener:** Take your time.

**Sandra Docherty:** Makaton was created more than 40 years ago by Margaret Walker, who now has an MBE. She is a trained speech therapist and founded Makaton sign language back in the 1970s. Little did she know that it would become so widely known by children and adults with severe communication and learning disabilities all over the United Kingdom. It is used at home, in schools and colleges, within the community and at work. No one thought that it could or would be used in 40 countries, from Kuwait to Japan, and from France to India.

How did Margaret Walker come up with the idea of Makaton? In 1968, she was working in a large hospital in the south of England called Botleys Park hospital. It was not a hospital for people who were medically sick; it was for children and adults who were severely disabled. There were 1,100 adults and children in the hospital, and they were all classified as patients, although it was a huge institution for children with learning disabilities. Expectations for those patients were low; they were not expected to be able to communicate, and it was thought that they would not have anything beneficial to say. Education, social interaction and activities were on a very low level.

The staff communicated only with patients with speech, so many patients could not even express their thoughts and feelings, which led to frustration. One day, that was brought to

Margaret's attention when working with one of her boys. He turned round and bit her on the arm through frustration. From that, she decided to start an assessment of all 1,100 people in Botleys Park in order to get a better understanding of their communication problems. Such an assessment had never been done before. Margaret discovered that 60 per cent of patients had severe communication problems and 50 per cent had additional problems such as hearing impairments, visual impairments, physical disability and autism.

As a speech therapy student, Margaret worked with profoundly deaf children, so she knew the importance—

Do you mind if I get a drink of water?

**The Convener:** No; take your time.

**Sandra Docherty:** She knew the importance of the many basic signs for everyday life experiences. Margaret wondered whether adding signs from British Sign Language using only the key words in speech might help patients' understanding—for example, asking "Do you want a drink?" by signing "you" and "drink". Margaret went on to create a vocabulary of signs that reflected patients' everyday lives. She spent six months talking to staff and patients and listening to patients attempting to respond. Margaret ended up with thousands of pages of results, which gave her around 350 signs, ranging from simple ones such as "you", "me", "eat", "sleep", "good" and "bad", to more difficult ones such as "to think", "to understand", "to ask why" and "because".

Linguistics shows that there is a pattern in every spoken language, and that there is a small range of vocabulary of essential words called a threshold or core vocabulary, which was compiled by the Oxford University Press. In 1976, Margaret held the first-ever Makaton workshop, for 40 people, which was instantly a huge success. A book with pictures of signs using hands and arrows was created, and more workshops quickly followed as a result of the growing interest from all over the UK.

11:45

Margaret established the Makaton vocabulary development project, which later became a charitable trust called the Makaton Charity. Following the original success with signing, they noticed that some patients with severe physical disability who were unable to make the signs and clearly express themselves needed a symbol system to match the words and the signs in the core vocabulary. That was another huge task for Margaret. It took about five years to research and to design symbols for dramatic elements such as sounds, verbs, prepositions and so on. Makaton

signs are now an integrated part of the Makaton language programme.

Thankfully, in the 1970s, 1980s and 1990s, attitudes changed and institutions such as Botleys Park started to close. The patients were recognised as children and adults, entitled to have normal lives in the community like the rest of us. With the help of others, they produced a large resource vocabulary library of additional signs and symbols arranged around topics, which would be used as core vocabulary. At present, we have more than 7,500 signs in the Makaton resource vocabulary. It seems that Margaret had, unintentionally, produced a threshold core vocabulary. Now, there is a broadening vocabulary experience through a staged approach to learning Makaton vocabulary.

Margaret needed to know whether the patients could learn signs and, if so, how many signs could they learn and would they be able to use the signs to communicate with others? Margaret started her research evaluation in 1972 and it lasted nine months. She found that the patients could learn signs: 50 per cent of the group learned 90 per cent of the signs, but even those with lower scores learned about 60 per cent of the signs. Margaret also found that some patients were attempting to sign to each other, which made a huge improvement to their lives and understanding.

What was most noticeable was that all the patients became more alert, attentive and sociable and, to Margaret's surprise, some patients tried speech, something that was never expected. No one had tried to speak to those patients before. Soon after that, Margaret repeated the same evaluation with children between the ages of three and seven, all of whom had similar disabilities to the adults but were living at home and in the community, not in an institution. The results showed similar positive outcomes but extra vocabulary was needed to cover community life, so Margaret enlarged the core vocabulary. It was then that she named it Makaton: "Ma" for Margaret, "Ka" for Kathy, and "Ton" for Tony—Kathy Johnston and Tony Cornforth were two BSL signers who were working alongside Margaret. It used to be pronounced "Mak-ton", but "Mak-a-ton" is how it is said nowadays.

Makaton entered mainstream education as professionals working in mainstream education and training began to see the potential of using Makaton signs and symbols for the development of literacy and number skills.

The creation of Makaton was very challenging and it was a lot of work for Margaret, Kathy and Tony but—excuse me; I need a drink of water—it must have been an incredible experience, and can only have been rewarding to see how it can change the lives of users and their families and

carers, and of professionals. My sister signs Makaton, and she amazes me every day. She uses Makaton signs every day: polite ones and a few that she has created herself—they might not be quite so polite, but they are her signs and she uses them, and she is amazing.

It is amazing to see how others have expanded on Margaret Walker's work in ways that she would never have thought that it could have gone. There are new and exciting resources, which are all different: from the smile with baby resource and Makaton nursery rhymes to the award-winning BBC children's series "Something Special", which uses Makaton signs and symbols. On YouTube, there is "Makaton CarPark Karaoke", along with "Makaton Topic" videos—for example, on feelings and emotions—and many more videos that use signs, symbols and speech. There are also connections on the computer in order to see different things.

Margaret has said that she felt that she was privileged to work with professionals in many different countries, adapting the British Makaton programme to different cultures and providing essential training. Tens of thousands of people have now been trained to use the Makaton language programme through the network of tutors.

Finally, Margaret is grateful for the commitment and interest of people who have given hope for improving the lives, chances and opportunities of those with disabilities from all over the world.

**The Convener:** Brilliant—thank you so much, Sandra. That was really good. If we were to stop now and do nothing more on the petition, you should know that you have already achieved a significant raising of awareness in this place and probably further afield. I thank you for that, because it is really important.

We will now go round the committee and ask a few questions. I will start. The petition talks specifically about the use of Makaton in the legal system. I wonder whether you might want to talk a little about that and about whether, if we are going to look at this issue, we should look more widely than the legal system. We are the civil justice committee, but we are also the equalities and human rights committee, so we span all those areas.

**Sandra Docherty:** I have outlined the history of Makaton and set out how it started. There is no doubt that it has benefited many people through the years, but there is a problem for people who sign Makaton. Four things are always required for anything in life: who, what, where and when. People who sign Makaton might not be able to do "where" and "when", but they might be able to do "who" and "what".

If a situation was to arise in which the police were involved, they would need information on who, what, where and when. Personally, I can say that my sister could tell you who and what, but she does not have the capacity to tell you where or when. That does not affect only my sister—it will affect thousands of people all around the UK, in Europe and even further afield. If these people cannot get those two bits of information out, the police—as great as they are; they are supportive of and understand Makaton—can only go so far to check what is going on. They cannot take a matter to any level of criminal investigation, because they do not have the four bits of information that they need. They can look into it, but I have spoken to quite a few police officers, and they say, “We can’t take it any further if we don’t have the where or the when.”

That is what we need, and that is where Makaton is not really able to push things forward because of how the justice system currently sits.

I do not know how to change the justice system, or what kind of law or change in the wording would be needed. However, the issue needs to be looked at and the situation needs to be changed—we would hope—for people with disabilities who use Makaton. People who sign BSL are a lot more capable of signing and communication, whereas Makaton is much easier and simpler—for example, as I said, Makaton uses the signs for “you” and “drink” to say “Do you want a drink?”, and there is no extra signing from BSL that would be involved in that.

I believe that people who sign Makaton should be helped, and the legal system should be made aware of people who use it and who do not have the capacity to say where or when something happened or whatever else is involved.

**The Convener:** I suppose one of the questions is how often people who communicate using Makaton will come across people in the legal system and elsewhere who can understand them and communicate back in Makaton. We may want to look at that to ensure that, whatever information people have, or even if they sign, “I want a glass of water before I go any further”, they can communicate that, be understood and get a response.

**Sandra Docherty:** The police have to get a specialist in, which takes time. Also, when an interpreter comes in, the person who uses Makaton has to make a connection with them. It does not matter how good or how kind the interpreter is; the person will be feeling apprehensive and, if they and the interpreter do not know each other, they will find it harder to get the information over. Even people who do not have problems can feel a bit tense or nervous when they go to give information—as I do now—

and it can be difficult to deal with that. When disability and incapacity are thrown in as well, it becomes a lot harder for people. Hundreds or thousands of people across the UK are probably in that situation right now, unfortunately. It would be nice to know that the justice system will cover the Makaton side and help things to get to court.

**Fulton MacGregor:** Good morning, Sandra, and thanks for your presentation on the history of Makaton. I found it very interesting and helpful. You apologised to the committee a couple of times during your presentation, but there is absolutely no need to apologise. You gave a very clear and concise history, and I thank you for that.

My questions follow on from the convener’s question about how Makaton fits into the legal system. You have spoken a wee bit about the police. Do you have any information—I would not expect you to have data—on how often Makaton is used in court settings, be they civil or criminal? Is that something that you have heard about? Have people asked for Makaton to be used in court settings? If so, is it made available to them?

**Sandra Docherty:** Makaton is used in the legal system, although BSL is a lot more to the fore. The problem with Makaton is that it is very basic. Somebody who signs Makaton may have real incapacity problems with speech and communication skills, which makes things 10 or 12 times harder.

I had a situation where I had to see the police to discuss a situation that had arisen and I had to explain to them that the person I was with could sign “who” and “what”, but not “where” and “when”, and that she did not have the capacity to give them that information. They could not get a Makaton signer to come in and help the person to put the information forward. The police did checks on what had happened, but because they only had the who and the what, not the where or the when, they could not take it any further.

The justice system needs to change to open the door for people who cannot give that information. It may be that they have witnessed something but they cannot give the where or the when. That is hard. The thought that those people are not getting the opportunity to have the legal system protect them is upsetting. We do not see them getting something back from a situation that was negative in their lives, whatever the area. Does that make sense?

12:00

**Fulton MacGregor:** It does, thank you.

Have you come across any examples of an individual—perhaps an advocate—having requested that Makaton be used during court

proceedings, where that has not been provided for? We may need to ask the Government or someone who would keep records about that.

**Sandra Docherty:** I have never found anything in the legal system that has got that far. I could not find any particular cases where Makaton has been used throughout court proceedings. We are getting stuck at the starting block. The police have not been able to progress the issue; unfortunately, we have not been able to get to the stage of having evidence in Makaton and being able to go to court with it, as far as I am aware. However—this might sound strange—it would be good to find a way of being able to do that for someone who has disabilities that require them to use Makaton, as they would then be able to go to court and get fairness and justice for themselves.

Everyone is entitled to justice and to being able to speak, communicate and be part of the world. If they are not happy with what is happening, they should be able to speak out—or sign out—and the legal system should be able to pick up on that and pursue the issue they have raised. People who use Makaton are human beings, just like everyone else. I regularly hear the word “normal” being used. I am sorry, but what is normal in this world? Normal is a hard thing to describe when someone who is in front of you has problems with speech and understanding. In their world, they are normal, but there is a great big jump between them and the legal system. That gap has to be filled. There is still a perceived line between them and normality, which is such a shame.

The people in Botleys Park hospital were not called adults and children; they were classified as patients. That type of hospital did not shut until the late 1990s. There is still a perceived line today between disability and normality, and I think that that is unfair.

**Fulton MacGregor:** I could not agree more with what you have said. That shows the importance of the petition.

**David Bain:** As Sandra Docherty has said, it is hard for people to express themselves. Usually, the people who use Makaton as opposed to BSL also have learning difficulties. In the situation that Sandra referred to, there had been an assault. Even though that person’s face was visibly marked down one side, the police could not do anything about it. Seven different stories were told about how the mark on the person’s face came about. No one believed the person, because she could not explain fully what had happened to them.

You were talking about Makaton interpreters, but different people have different interpretations of Makaton, which is a big problem. For example, we were at an adult protection event, where a group of people, some with responsibility for

others, were sitting around a table, and one person was using a sign that, to them, meant “That was bad”, but someone else at the table was from an organisation that used that sign for “bold”. Their meaning was manipulated, because the organisation tried to say that the person was signing the word “bold”, but they were not. It is very easy to abuse Makaton, and we have found that people do, so we need a voice for people. We need the police to try and get around the communication issues and find another way to gather evidence so that people can be brought to justice.

**The Convener:** That is a good point, and that was a helpful intervention, David.

**Pam Duncan-Glancy:** Thank you, Sandra, for everything that you said. I was not aware of the detail of the history of Makaton that you shared, which was fascinating. I was aware of what it is, but I did not understand its history. Thank you for telling us about that and for answering our questions.

David, your point about justice really got to the heart of what this is about, which is justice for disabled people, as you both described. Many of those who are in the circumstances that you described are people with learning disabilities.

Sandra, you made a point about the need for the person to connect with the interpreter. Are you aware of any situation where somebody who already has a connection with the person who uses Makaton—a member of their family or friendship group, or a person who provides interpretation in another context, for example—has been allowed to support them in a legal situation? If so, has that carried any weight?

**Sandra Docherty:** I do not know of any situation like that. I have never found a case that has got to court where Makaton has been used. I have seen a lot of interpreters meet people who sign in Makaton. They can go in and start signing, and it is great to see two people sign away in Makaton and be able to understand each other.

Another important thing about Makaton is that, when you sign, you speak at the same time. For example, if you use the sign for the word “coffee” or the word “drink”, you would speak the word “coffee” or “drink” at the same time. Some people believe that, if a person cannot speak, they cannot hear, but that is not the case. Susie, my sister, might not be able to speak, but she can certainly hear a pin drop, and I assure you that she does not miss a lot. That is just another example of how things are different on the disability side of the fence and—I am going to use this word again—the normal side of the fence.

It is unfortunate that I have not found a case that has gone to court where an interpreter has been

there and that has worked. If that ever happens, it will be good to see people being supported in court by an interpreter. As yet, I have not heard of a case where that has happened.

**Pam Duncan-Glancy:** Have you heard of anyone who got support before a case went to court?

**Sandra Docherty:** I have heard of a lot of people who have been able to get support from a Makaton signer, but I have not heard of anyone who has had that support in the legal system.

If a person wants to do sport or another activity that they are interested in, interpreters allow them to make connections with people so that they can start going and getting involved in sport, cooking or arts and crafts—whatever it is that they want to do. Makaton can link into different areas when a person shows a sign that they want to do something. However, as I said, I have unfortunately not heard of it being used in court.

**Pam Duncan-Glancy:** Do you mean that people report crimes to the police but they do not get support to use Makaton or to express themselves so their cases never reach court because they do not quite reach the bar for the amount of evidence that is needed?

**Sandra Docherty:** That is right. A lot of people go to the police, but the police say that they need four bits of information: the who, the what, the where and the when. If the police do not have that information, they have nothing to start on. I have spoken to quite a few officers and they all told me that they need to know who did it; where it was, whether it was in the house or in a street; and when it happened, whether it was in the morning or the afternoon, so that they can do a criminal investigation by looking at closed-circuit television, talking to people and all of the rest of it.

As far as I am aware, nothing has got that far. Cases may have gone to the police, but they have said that they cannot pick them up or take them any further because they have nothing to work on as they need those four bits of information. I think that that, in itself, is a crime against people who need to use Makaton.

**Pam Gosal:** Thank you for your presentation, Sandra. Like my colleague Pam Duncan-Glancy, I did not know much about Makaton, so it was really useful to hear about that and about the great work that Margaret Walker has done.

Our briefing for the meeting highlights a

“lack of a routine procedure for identifying individuals with a learning disability”

and a lack of intersectional data. If there was more in-depth data collection about different types of physical and learning disabilities, would that help

to identify where Makaton would be most useful and how best it could be delivered in certain services? Which services should it be used in?

**Sandra Docherty:** It is important to get it out there that Makaton is now a huge and vitally important thing. Social workers in all areas, the police and those who work in adult protection are aware of Makaton, but I have never found a social worker or a police officer who was able to sign Makaton back to a person. That needs to be put in place. The data needs to be shaken up and looked at again. Everything in the world is moving forward, so I feel that Makaton should be right up there, and if data needs to be updated, that should be done.

It is vital to get the whole legal system involved, but I have not found an example of something going right through to the court process with a result at the end. I have not found anything like that. I believe that a lot of work needs to be done and that there is data out there that needs to be looked at and reviewed. Whatever is not up to scratch, as we might put it, should be looked at again and refreshed or restarted. I am not sure which word I am trying to find. We need to give this more life again so that more people have a chance to understand exactly where Makaton is in the legal system—and in every other system. Updates are important and the data is important.

**Karen Adam:** Thank you for bringing the petition to the committee. I am excited about being able to talk about a sign language. It is really important to note that, as you stressed, BSL is different from Makaton. I was brought up bilingual, so to speak, because my dad was deaf. I was brought up to be quite fluent in BSL, so I know the difference. BSL is a full and complete language in itself, whereas Makaton has a sign per word for someone who may already understand English or spoken language.

I have seen the communication difficulties for people who use sign language in any form and I know how incredibly frustrating they can be. There are different signs for different words, which is why it is important to have an interpreter who knows how someone uses the signs. There is some crossover with the idea of understanding. I completely get where you are coming from: communication is vitally important.

It was interesting that you brought up the signs for who, what, where and when. I always add why and how. We have who, what, where, when, why and how. When someone can make the signs for those words, as I have just done, they can begin to open up and really communicate with another individual.

The point about communication is key to the evidence that you are giving today, particularly

when it comes to the justice system, because in that case we are talking about people who are already in a vulnerable position. Statistically, they are more likely to be taken advantage of, which is why it is so important that we get the communication right.

12:15

I am saying all this because I want you to know that I really understand where you are coming from. I have seen somebody with a learning difficulty start to use Makaton and it made a massive difference in their life. I could see it in their demeanour and how they could express themselves. Just to be able to show that they wanted something to eat, for example, made a massive difference.

We are focusing on communication in the justice system. Are there any other areas that you think should be opened up through use of Makaton or do you want to focus only on the justice aspect?

**Sandra Docherty:** It should be opened up across the board. However, it was the justice side of things that really made me aware of the issue. I spoke to a police officer who said that two bits of information were not enough and that they needed the four bits of information. That made me stop and think that hundreds or thousands of people out there could be going through the same things as Sue and not getting any further because the police need those four bits of information.

I thought about the issue in relation to the justice system in the first place but, as you said, there are so many signs that can get mixed up, which means that people do not understand. For the people out there who use Makaton, it is their way of speaking to the world and to everybody around them, and they can express their feelings and their emotions using it, so I think that it should be included in other areas.

If someone is unwell and they go to a hospital, as great as the staff and doctors are at their jobs, there is a problem. Sometimes you will find doctors who can do some BSL, but either they have not heard of Makaton or they do not know how to use it to benefit the person and to understand them.

Also, as you said, everybody has their own signs and their own ways of signing. Susie has a certain set of words that she will sign to me and I will know exactly what she is saying—sometimes they are rude words. It is a case of using signs that we both know. There are other people around Susie that she will sign slightly differently to. She has the capacity to sign in one way to one person and in another way to somebody else.

This whole area really needs to get opened up.

**Karen Adam:** That is really helpful. What you have said makes me think that it would be good to keep some documentation of the signs that a person uses. We had a wee document passed to us today that shows us some signs. I was just thinking that I sign my name by pointing to my cheek, because I have a dimple, but those things are quite individual even in families or households. We also have regional sign language—I talk mostly Doric BSL—so I completely get your point, and that has opened up another aspect.

**Sandra Docherty:** We were lucky in that Susie's speech therapist created a folder for Makaton that is full of pictures. When Susie comes out to stay with us for holidays and things, she can use that folder if she is trying to tell me something and I am not getting it. She will keep going back and forward through it until she finds the sign, and then she will point at it and sign it. There is that help from speech therapists. I think that many speech therapists have done that for people who use Makaton, because it is a vital stepping stone for them.

It is also about the act of using your hands and signing. There are disabilities that mean that people cannot make a Makaton sign clear. They need to use something that is called a talking mat, which is literally just a board that has pictures of whatever we are trying to discuss on one side and, on the other side, a happy face or a sad face. It can be easy enough for the person to tell you "football—sad face" or "swimming—happy face", which means that they want to do that. In that way, you can get that connection with them. That is something else that needs to be pushed out there.

**David Bain:** As Sandra Docherty said, Makaton is a wonderful thing for the people who use it. It has given them the freedom to express themselves, yet when it comes to the justice system, they can be let down and made more vulnerable. It has enhanced people's lives, but they are let down by the justice system.

**Karen Adam:** That is really helpful—thank you.

**Maggie Chapman:** Sandra and David, I have learned so much from you this morning, so I thank you both for what you have said so far. I also thank you for bringing in the point about health settings, because I was going to ask about widening our consideration of the issue. However, I know that you are focused on the justice issue and the question of vulnerability, which David has just mentioned.

I will play devil's advocate a little. I should say straight up that there is definitely something here for us to explore, although we will need to consider in more detail exactly what route we might take. One of the challenges that we might encounter as we pursue this work is the argument that there are

already facilities for when somebody does not have “normal” mental capacity. For example, there are mental health provisions and learning disability provisions for those people. It could be argued that those should be the routes that we use to enable their involvement in and engagement with the justice system.

One of the challenges that I expect will come along with that is that legislation on mental capacity, for example, comes with measures to safeguard the best interests of the person who lacks capacity. What is your response to such challenges? It would be useful for us to hear from you, given your personal experience with your sister, how that wider legal framework supports her—or not, as the case may be.

**Sandra Docherty:** If my sister needed to go and speak to the police, she would now happily do that. She thinks that the police are great and they are friends, which is all positive. Under the legal system as it stands, the police can deal with “normal”—there is that word again—day-to-day incidents. However, when somebody has incapacity problems and they require BSL, Makaton or any other form of help with communication, that is pushed through the social worker or whoever. They might be able to help a bit, but there is still the legal bit where the person has to come back into the legal system, and the facility is not fully in place to pick that up and take it forward. A stepping stone is required.

I could take the matter to the police, but then the police, or whoever else, would need to speak to Susie anyway so that she could take it forward. However, her capacity covers only the who and the what, and not the where or the when, so she cannot give all four bits of information. She could give you the where and the when by putting somebody else in the picture, because they may have thought of something else, or she may think of something else.

It can be difficult, in certain respects, to get people like my sister to concentrate on one thing. It is sad, but it is just part of their condition and their incapacity, whatever level that is at. With Susie, it is cerebral palsy—that is why she cannot talk. Nonetheless, she knows how she wants to live her life and how she can do that. She loves life, and I am a proud big sister, but I wish that the legal system was a bit more bendable and ready for Makaton, if you understand what I mean.

**Maggie Chapman:** I think that I do. Thank you—that is really helpful. Some of the challenges that I think might come at us exist because there is a rigid, inflexible justice system. You made the point that social workers and support workers can help up to a point but there is nothing that connects across the gap.

You have both given us a lot to think about and pursue, so I thank you for coming along this morning. I really appreciate it.

**The Convener:** A huge thank you to Sandra and David, who have raised a huge number of issues, some of which I do not think we were expecting. I had an expectation about where our discussion would go, but they have raised more issues for us to consider. As Maggie Chapman suggested, we will want to take a bit of time to do that and work out our approach.

I suggest to members that, for now, we make a formal decision to keep the petition open and write to the Scottish Government for its initial thoughts on the evidence that Sandra and David have presented today. Are members agreed?

**Members indicated agreement.**

**The Convener:** Brilliant—we will keep the petition open, write to the Government and decide in a future work programme discussion how we will take the matter forward. I thank Sandra and David again. We will now move into private session.

12:26

*Meeting continued in private until 13:05.*



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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