



OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities and Human Rights Committee

Thursday 28 February 2019

Session 5



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EQUALITIES AND HUMAN RIGHTS COMMITTEE
5th Meeting 2019, Session 5

CONVENER

*Ruth Maguire (Cunninghame South) (SNP)

DEPUTY CONVENER

*Alex Cole-Hamilton (Edinburgh Western) (LD)

COMMITTEE MEMBERS

- *Mary Fee (West Scotland) (Lab)
- *Fulton MacGregor (Coatbridge and Chryston) (SNP)
- *Oliver Mundell (Dumfriesshire) (Con)
- *Gail Ross (Caithness, Sutherland and Ross) (SNP)
- *Annie Wells (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

- Professor Jane Callaghan (University of Stirling)
- Cheryl-Ann Cruickshank (Who Cares? Scotland)
- John Finnie (Highlands and Islands) (Green)
- Dr Anja Heilmann (University College London)
- Dr Louise Hill (Centre for Excellence for Looked After Children in Scotland)
- Gordon Lindhurst (Lothian) (Con)
- Amy-Beth Miah (Who Cares? Scotland)
- Diego Quiroz (Scottish Human Rights Commission)
- Clare Simpson (Parenting Across Scotland)
- Dr Stuart Waiton (Abertay University)

CLERK TO THE COMMITTEE

Claire Menzies

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Equalities and Human Rights Committee

Thursday 28 February 2019

[The Convener opened the meeting at 09:00]

Children (Equal Protection from Assault) (Scotland) Bill: Stage 1

The Convener (Ruth Maguire): Good morning and welcome to the fifth meeting in 2019 of the Equalities and Human Rights Committee. I ask everyone to ensure that their mobile devices are switched to silent, and I welcome to the meeting John Finnie MSP and Gordon Lindhurst MSP.

Agenda item 1 is a report back on engagement undertaken on the Children (Equal Protection from Assault) (Scotland) Bill. The committee has had a number of engagement visits on the bill, and I ask members to feed back briefly on their visits.

Fulton MacGregor and Gail Ross visited Dads Rock in January. Do you want to tell us about that, Fulton?

Fulton MacGregor (Coatbridge and Chryston) (SNP): Thanks, convener. We had a really worthwhile and interesting visit to Dads Rock a month or so ago, but perhaps I can start by giving everyone a bit of background. The purpose of our visit to the Dads Rock academy, which provides weekly music tuition to children aged seven to 16 and their parents and carers, was to speak to a group of parents, carers and grandparents about the bill. We had a very good and open discussion; with such a diverse group, there was, as you might imagine, a mix of views, but my general feeling was that, although there was general support for the bill's principles, there was also a bit of concern about the bill's impact on family life. The people who spoke to us were looking for a bit of reassurance that folk would not find themselves falling foul of the law unnecessarily, but when we talked them through the bill's principles, they seemed quite reassured. As I have said, there was general support for the principle of not using physical chastisement, and it was a good visit.

The Convener: Thank you very much.

The deputy convener and I had a very nice morning with the grandparents and their children at Midlothian Sure Start grandparents group. Alex, do you want to feed back on that?

Alex Cole-Hamilton (Edinburgh Western) (LD): Yes, convener. I thoroughly enjoyed our

morning with the grandparents in Dalkeith, and it was particularly enhanced by the birthday cake that we were served.

We had a really interesting discussion. All the grandparents understood and were well sighted on what was being proposed in the bill, and despite any misapprehensions that I might have had before I went on, I found them largely supportive of its aims. We were interested to hear about the journey that some of the grandparents had been on, and there was a view that, although they had resisted change initially, the more that they had seen of children's rights and the international perspective, the more they had been persuaded. Of course, that view was not universally held, and there were a couple of voices of opposition to the suggestion that we change the law in this way. However, I want to put on record my thanks to the Sure Start staff and, indeed, the grandparents who entertained us and made us feel so very welcome.

The Convener: Absolutely. We now move to Mary Fee and Annie Wells, who visited the messy church in Pollokshields.

Annie Wells (Glasgow) (Con): Mary Fee and I visited the messy church in Mossspark on Monday night, and we joined the group for their evening meal. We, too, had birthday cake; it was my birthday the day before, and everyone sang "Happy Birthday". I thank them very much for that.

We had a really interesting discussion with parents, grandparents and carers. They had mixed views on the bill, with people perhaps leaning towards not supporting it, because they felt that such assault was already dealt with under common law. They felt that the term "assault" should be explained more, and that the bill's long title did not reflect what it was trying to achieve.

The group also wondered how the bill would deal with, say, someone restraining a child or grabbing them before they ran into the road, and they felt that the bill would put more pressure on people not to physically touch children. Again, the group was very open, and the discussion flowed, but people were not that supportive of the bill.

The Convener: The committee is committed to hearing children's views. On consideration, we did not feel that formal evidence-taking sessions in the Parliament were the best way of doing that, and instead we worked with a local YMCA group to hear the views of children and young people in a more child-friendly setting; Oliver Mundell and I made that visit, which took place on 26 February. We will also be meeting children and young people on Skye, and the findings from all these visits will be reflected in our stage 1 report.

Oliver, do you want to talk about our visit to the YMCA?

Oliver Mundell (Dumfriesshire) (Con): We had an excellent visit to the YMCA youth group in Kirkcaldy. Views on the bill were mixed, and we heard some very sophisticated arguments, with passionate advocates on both sides. The young people acted out a drama scenario that they had designed themselves about a young child trying to cross the road—an example that I believe was highlighted on one of the committee's other visits—and they worked through what could be done to prevent that sort of thing from happening. Certainly, some of the group thought that, in such a scenario, it was appropriate to use physical force, but I thought that the visit showed the importance of hearing from young people and I am interested in looking more at that side of things in our consideration of the bill.

The Convener: Thank you very much.

Agenda item 2 is two oral evidence-taking sessions on the bill, and I welcome to the meeting our first panel: Professor Jane Callaghan, director, child wellbeing and protection, University of Stirling; Dr Anja Heilmann, lead author of the report "Equally protected? A review of the evidence on the physical punishment of children"; and Diego Quiroz, policy officer, Scottish Human Rights Commission. Perhaps I can kick things off by asking each of you whether you support the bill's aim of helping to bring to an end the physical punishment of children.

Professor Jane Callaghan (University of Stirling): Yes, I support it. The ending of the reasonable chastisement justification is long overdue, and the balance of evidence in both psychological research and research on domestic abuse and other forms of family violence suggests that this is the right choice.

Dr Anja Heilmann (University College London): My co-authors and I very much support the proposed legislation. Our report on the evidence on physical punishment shows very clearly that such punishment has the potential to harm children; that it is not effective as a parenting strategy, because it tends to increase problem behaviour and children's socioemotional difficulties; and that it carries the risk of injurious abuse. As I have said, my co-authors and I very much welcome what we think is an important bill—indeed, the number 1 recommendation in our report was that the physical punishment of children be ended.

Diego Quiroz (Scottish Human Rights Commission): Good morning and thank you for the invitation to give evidence. Given our view that the defence of justifiable assault should be removed from Scots law, the Scottish Human Rights Commission supports the bill. National and international human rights bodies have called repeatedly for an end to corporal punishment.

When I was in Geneva two days ago, talking to the United Nations Committee on the Elimination of All Forms of Discrimination Against Women, it repeated that call to the United Kingdom and Scotland. As a result, the bill is very important.

The committee will be familiar with the call being made by all the treaty bodies for the ending of corporal punishment of children at home, so I will not expand on that point now. However, there is consensus internationally and certainly in Europe that the corporal punishment of children is unacceptable, and that view is supported by broad scientific and medical evidence. However, the rest of the panellists are perhaps more suited to responding to questions on that, and I will come back to the human rights issues when you feel that I should do so.

The Convener: We move to questions from members of the committee.

Alex Cole-Hamilton: Good morning. Thank you very much for coming to see us.

We have received a great deal of evidence in advance of our stage 1 consideration of the bill. That evidence has been mixed, with those who have offered evidence against the bill often citing a perceived tension between the rights of children and the rights of parents, or the right to family life, if you prefer. The committee is well versed in the international community's interventions in this country in relation to things such as the concluding observations of the United Nations Committee on the Rights of the Child, which have consistently suggested that we need to end the physical punishment of children. That is well documented in international treaties.

Is there a commensurate clause in international law on the rights of parents to parent their children, or the right to family life, that you consider to clash with the right of children not to be physically punished? To put it simply, is there a right in any international convention that gives parents the right to physically punish their children?

Diego Quiroz: For us, it is quite clear that the measure in the bill is not aimed at criminalising parents or interfering with family life. Rather, it sets a clear standard of care giving and redefines what is acceptable in terms of how we treat our children in Scotland.

There should be no concerns about safeguarding children's dignity and physical integrity by encouraging positive discipline and education of children through non-violent means. It is the duty of Governments and public bodies to take all appropriate legislative, administrative, social and educational measures to protect children from all forms of physical and mental violence. That has been reinforced by the

European Court of Human Rights and several UN bodies, as you mentioned. In a Swedish case, a German case and a Dutch case, the European Court of Human Rights has said that the right to family life is not interfered with by protecting the child from corporal punishment, which would clearly interfere with the child's right to dignity. There are several cases that support the prohibition of physical punishment of children and rebut the idea that that measure would interfere with family life and the right of parents to discipline their children.

Alex Cole-Hamilton: So that tension is based on a false prospectus, because there is no clause in international treaties that says that parents should have the right to physically punish their children.

Diego Quiroz: Absolutely.

The Convener: I welcome Dr Stuart Waiton, who has just arrived. By way of an opening question, we asked the other members of the panel whether they supported the bill's aim of bringing an end to the physical punishment of children. Do you wish to respond to that?

Dr Stuart Waiton (Abertay University): Yes. I think that it is a tragic, depressing bill and yet another one that appears to represent the aloof, elitist nature of politics and professional life that treats parents in a very patronising and degrading way. It uses all sorts of weird legalistic talk about violence that makes no sense at all to ordinary people, it equates children with adults and it criminalises parents, despite people claiming that it does not. The claim that all the evidence proves that any level of smacking of children damages them is absolutely untrue and the opposite of the truth, but I presume that I am just wasting my time, because the bill has already been passed.

The Convener: Thank you for that.

Alex Cole-Hamilton: For the benefit of Dr Waiton, I should say that before he came in, I mentioned the fact that we received a great deal of evidence in advance of stage 1 of the bill. There were two sides to that evidence, but those who offered evidence against the bill suggested that there was a tension between children's rights and parents' rights. I wanted to unpack that with the panel.

We are very well versed in where the right of children not to be physically punished is enshrined in international treaties and conventions. However, I want to know whether that tension is real and whether, within international treaties, there is a conflicting right of parents to physically punish their children. Would Dr Heilmann like to respond to that?

09:15

Dr Heilmann: My area is not international law, but I am not aware of any such treaty. Obviously, the United Kingdom has ratified the United Nations Convention on the Rights of the Child, which is very clear about the issue—there is no ambiguity. It has therefore been stated repeatedly that physical punishment of children in all its forms should be prohibited by law.

Alex Cole-Hamilton: Dr Waiton, would you like to respond?

Dr Waiton: I do not accept the concepts and I do not accept the people who are defining the concepts. The idea of children's rights is a bit of a nonsense concept. Children do not have rights. They do not have the same framework of rights as adults; they have protections. In essence, when we talk about children's rights, we are really talking about the right of professionals to make decisions on their behalf. It is a confused concept that goes against the framework of how we have thought historically about rights in terms of freedoms. It is a problem.

The problem that we have with the bill is, in essence, about a question of autonomy. You are undermining the autonomy of loving parents to decide how to raise their children with a sense of privacy and a sense of support from society. In that process, you are degrading something that is done as a form of discipline that should not be understood as a form of violence. Parents should be supported rather than undermined. For me, this is a question of autonomy and I think that you have to question the whole framework of how you think about children's rights.

Alex Cole-Hamilton: Before I bring in Professor Callaghan, I have a question for Dr Waiton. That defence of autonomy used to apply to the physical punishment of women by their husbands. Would you suggest that that should be brought back?

Dr Waiton: No, because I do not look at adults and children as the same, unlike the people who are supporting the bill, who seem to look at adults and children as the same and therefore degrade or confuse actions. If there are people here who defend the idea that adults and children should be treated the same in terms of violence, I assume that they see smacking a child and smacking a woman as the same thing, which I think is degrading to women because they are not the same thing. Adults and children are very different and we would not expect, for example, to ground our partners and refuse to let them leave the house. That would be seen as a criminal offence, whereas we ground our children—or perhaps in a few years' time you will be making that criminal as well.

Alex Cole-Hamilton: Professor Callaghan?

Professor Callaghan: Having done hundreds of interviews with children who have experienced domestic abuse, I would have to say that I cannot agree that children are a different order of human being from adults and I cannot agree that they do not have personhood, that they do not have a capacity to reflect on their experiences and that they are not harmed by those experiences.

On the loving parent defence, unfortunately there is reasonable international evidence—for instance, a study by Xing and Wang—that suggests that that defence does not function particularly well and that children experience the same level of harm as a consequence of smacking by parents regardless of whether it is loving or motivated positively or not.

Unfortunately, I also cannot agree that the balance of evidence does anything other than indicate that capital punishment—sorry, but I keep using the wrong words—corporal punishment has no positive consequences and has plenty of negative consequences in terms of mental health outcomes, exposure to risk of future physical harm and difficulties around issues like attainment. There is evidence, for instance, that children who have experienced corporal punishment at home are more likely to be disengaged from school and to experience educational difficulties.

Alex Cole-Hamilton: You mentioned the impact of violence on children. We have heard a lot of evidence on both sides of the argument and we recognise that there is a spectrum of physical punishment. Professor Larzelere from America is an outspoken critic of changes to the law such as the one that we are discussing and talks about back-up smacking—as he calls it—as a parenting tool that can be effective when other parenting techniques fall down. Are all parents capable of deploying physical punishment in that way, or is there a point at which some parents lose control and that is no longer a reasonable sanction or a useful and effective tool?

Professor Callaghan: The balance of evidence suggests that there is a strong correlation between parents who are willing to use smacking and who use smacking and parents who are likely to lose control in their disciplinary practices. I cannot agree with Professor Larzelere's premise, and it is not borne out particularly well by the international evidence base.

Alex Cole-Hamilton: I see you shaking your head, Dr Waiton.

Dr Waiton: It seems fairly clear to me that there is what we call advocacy research, which is where people have already made their minds up, and there is research where people are actually trying to look at the issue. As far as I can tell, Robert Larzelere actually tries to look at it. He says that

there have been nine studies that take an overview of all the research and that seven of them do not come to the conclusion that smacking—particularly back-up smacking—is harmful to children. He concludes that back-up smacking, which is something that is not used as a first or only resort—it involves parents generally not smacking, but occasionally doing so—ends up being the best form of discipline. The idea that there is proof or evidence that a light form of smacking damages children is not borne out.

I make a plea to your common sense. If you think that smacking a small child on the wrist is a form of violence that harms them, you are living on another planet.

Alex Cole-Hamilton: I attended a conference in 2007 on the physical punishment of children. It was addressed by John Carnochan, who was at that time a senior police officer and head of the Strathclyde violence reduction unit. He was there because he saw an empirical correlation between the use of physical punishment at home and violence on the streets. He said that any form of violence in the home that is used as a tool of sanction or in anger legitimises violence as a tool of sanction or anger between children and their peers as they grow up. Do you recognise that violence begets violence in that way?

Dr Waiton: I do not even accept that slapping a three, four or five-year-old child on the wrist should be understood as violence. That is completely confused. Why not ask my daughter, who is sitting over there? I smacked her occasionally when she was a child. I will ask her. Have you been violent recently? Are you going to beget violence?

The Convener: Dr Waiton, that is anecdotal—

Dr Waiton: Yeah, and John Carnochan is really scientific.

Professor Callaghan: I am.

Dr Waiton: Yeah, that's right.

You just have to be honest with yourself. Do you think that smacking a three, four or five-year-old child on the wrist begets violence? If you think that it does, you really are on another planet.

If you are politicians, why do you not try to persuade the public? Some 75 per cent of people do not think that physical punishment of a child should be made criminal. Why not try to persuade them instead of beating them? You are doing the equivalent of what you are trying to ban. Stop beating parents by criminalising them. Go out there, have public meetings, bring your professors who can say to them, "Oh, if you smack a child on the wrist, that is a form of violence that begets violence," and see what the public think of you. You are meant to be their representatives, after all, are you not?

The Convener: Dr Waiton, I know that you arrived at the meeting a little late, but we spent some time at the beginning talking about how we had gone out to speak to parents and grandparents groups. The committee is very well aware of our responsibilities to the public and our constituents.

Dr Waiton: Well, it is a shame that you are not listening to them.

Alex Cole-Hamilton: I do not think that that is entirely fair.

Dr Waiton: Do you accept that the majority of parents would not support the criminalisation of parenting?

The Convener: I am going to pause the discussion for a second. I know that everyone cares deeply about this issue, but we are going to run this committee in the normal manner, which means speaking through the chair and letting folk answer.

Alex Cole-Hamilton: Dr Waiton described physical chastisement such as a slap on the wrist. In 2003, when Parliament previously legislated in this area, we introduced restrictions on physical punishment. They were that there must be no shaking, no head shots and no use of implements. That is it—that is the extent of the limits on physical punishment in this country. Anything below the neck and even anything to the point of pain and harm is legitimate. Where do you get the idea that a slap on the wrist is the sum total of the physical punishment that goes on in homes in Scotland?

Dr Waiton: It is not necessarily the sum total, but the bill would criminalise what is done. As far as I understand it, the concept “reasonable chastisement” still exists, so if you are unreasonable, you can be taken to court and challenged on that ground. There are lots of people who would think, if they saw a child being strongly beaten by their parent, that that was unreasonable and would challenge it.

The committee could go back and think about whether you want to use different words in the bill: as it stands, you will be criminalising somebody who smacks a child on the bottom or smacks the child’s hand.

Alex Cole-Hamilton: There are many parents in this room, all of whom could attest to the feeling of losing control when disciplining their children, whether it involves time out, shouting or even, perhaps, smacking. Do you think that every member of every family in this country who uses physical punishment always retains control when they are deploying physical punishment?

Dr Waiton: No, but nor do I think that you would be helping that family by arresting the person.

Dr Heilmann: I would very much like to respond to that. I reject the notion that what we have done in our review, for example, is “advocacy research”. We did a systematic search of the literature that fit our inclusion criteria and we have included only studies that looked at the impact on children prospectively—that is, the ones that followed the same children over time and had measures at at least two time points. That is important, because that enables us to be sure that the physical punishment has occurred before we measure the outcome.

Furthermore, most of the studies have adjusted for the initial level of problem behaviour in order to minimise or rule out the risk of reverse causation. The overwhelming majority of the studies on problem behaviour and aggression have found that children who had been subjected to physical punishment had an increased risk of problem behaviour down the line. That means that physical punishment does not work; it makes the problem behaviour worse.

We also found studies that followed children over several time points and considered how physical punishment and difficult behaviour reinforce each other. It seems to be the case that physical punishment makes the behaviour worse, and that worse behaviour elicits harsher punishment, so they end up in a vicious circle.

We also considered the relationship between physical punishment and abuse. Over the timeframe that we examined, we did six individual studies on that relationship and one review: all of them found consistently that there was a link between physical punishment and abuse. It also makes intuitive sense that people do not start out abusing their child but instead start by trying to punish their child, which escalates to abuse.

I would like to ask Dr Waiton whether he accepts that there is any—

The Convener: Committee members will ask the questions, Dr Heilmann.

Dr Heilmann: Of course.

Diego Quiroz: The arguments that have been made about children not having inherent rights and being treated as property, as wives were treated a century ago, or as slaves even, are shocking. That is quite appalling.

Dr Waiton: But who—

The Convener: Dr Waiton, please. If I can pause the discussion for a minute, I would like to say that this is an important topic, and we cannot let the session degenerate into conversations across the table.

Dr Waiton: Well, it should not degenerate into people putting words in my mouth and saying that

I am treating children like slaves, either. I am sorry, but that was quite despicable. Carry on.

09:30

Diego Quiroz: Because children are vulnerable as a result of their mental and physical immaturity, they should be afforded not less protection but more protection. The state has a duty to afford them at least equal protection; otherwise, the principle of equality before the law is being violated.

Smacking is not just ill treatment. It has an impact on other rights. It has a long-term impact on health and it has an impact on the child's development, the child's understanding of the world and the message that we as a society in Scotland want to send.

Another member of the panel gave an example in relation to his child. Last night, I asked my six-year-old child, "Why should the Parliament prohibit hitting or smacking you?" She talked about herself and said, "Because it's bad." I said, "What do you mean by that?" She said, "If you hit me, I can go and hit other people." Her point was that it sends the wrong message. I am amazed by the simplicity and accuracy of children's thinking, which is sometimes lost when we grow up into adults.

The European Court of Human Rights revisited and discussed the approach in the recent case of *Wetjen v Germany*. It found that the German Government had not violated the applicants' right to respect for their private and family life under article 8 of the European convention on human rights. The case involved children who had been removed from parental authority and care in a Christian community because caning children was common practice there. The court said that the German Government had struck a fair balance between the parents' interests and the children's best interests, which should be primary. It said that the parents'

"right to communicate and promote their religious convictions in bringing up their children"

should

"not expose children to dangerous practices or to physical or psychological harm".

The court also declared that it is

"commendable"

for states to

"prohibit in law all forms of corporal punishment of children",

in order to avoid any risk of ill treatment.

Oliver Mundell: Does anyone on the panel think that it is ever acceptable to use physical force to regulate or manage behaviour?

Dr Heilmann: Physical force is not acceptable as a way of managing behaviour. I do not know whether you are talking about restraint that is needed to ensure that a child does not come to harm. Inflicting pain to manage behaviour is unacceptable.

Diego Quiroz: I agree.

Professor Callaghan: I agree.

Oliver Mundell: Excellent. To follow on from that, is it ever acceptable to restrict a child's rights in order to regulate or manage their behaviour?

Dr Heilmann: What do you mean? Will you give an example?

Oliver Mundell: I do not know. As an adult, I enjoy freedoms to choose what I want to do. Is it acceptable for a parent to interfere in a child's right to choose what they want to do?

Dr Heilmann: Yes, but it depends on the circumstances.

Oliver Mundell: You recognise that a child does not always have the same rights as an adult.

Dr Heilmann: Yes.

Oliver Mundell: Do all the panel members take that view?

Professor Callaghan: Yes, but I also substantially distinguish the two conditions from each other. There is no evidence that restraint causes negative health or other developmental outcomes, whereas there is evidence that hitting a child has such effects. The two situations are substantially different. The question of rights is separate from the question of consequences.

Dr Waiton: I dispute that. If you look at Mr Larzelere's work reviewing all of that, you will see that that does not bear out. How can you differentiate between the upset that a child feels from being grounded for a week, for example, and their having their bottom or hand smacked? If you are going to be logically consistent, I cannot see how, in the future, you will not eventually say that grounding should be banned, as well. The level of vulnerability that you understand children to have is so high and the lack of resilience that you understand them to have is so profound that I cannot see how eventually—in five or 10 years' time—the approach cannot end up problematising almost any form of discipline whatsoever.

I would like to raise a question about children's rights.

The Convener: No, Dr Waiton. You are not here to ask questions. I am sorry to be direct with you.

Dr Waiton: They are not really questions, obviously; they are rhetorical.

The Convener: Okay—they are speeches. Does Oliver Mundell wish to pursue the issue?

Oliver Mundell: Do you see any circumstance in which it might be in a child's best interests to be physically punished?

Dr Heilmann: No.

Diego Quiroz: No. To go back to the previous question, of course discipline is important, but a non-violent form of discipline should be applied. There is no distinction between adults and children in respect of the punishment or discipline that has been spoken about, because adults are constantly restricted and are disciplined, as well. Therefore, I do not accept the principle of the question. That is why we have a criminal justice system, prisons and punishment. Rehabilitation is a very important part of that.

Oliver Mundell: In that case, do you think that parents are responsible for the safety and wellbeing of their children?

Diego Quiroz: Yes.

Oliver Mundell: So who is responsible for my safety and wellbeing?

Dr Waiton: You are.

Oliver Mundell: I am over the age of 18. Who is responsible for my safety and wellbeing?

Professor Callaghan: I am sorry, but you appear to be blurring the boundaries around protection from harm and other kinds of children's rights. I am not sure that that is defensible logically.

Oliver Mundell: I am trying to draw out a nuanced point about where the legislation could go wrong—for example, when parents have to physically restrain their children for their own safety. We saw an example of that being worked through by children in a YMCA group in Kirkcaldy this week. The situation was a young child repeatedly running across the road to try to get to a Mr Whippy ice cream van. Children thought that, in that circumstance, hitting the child was maybe not the best thing to do, but they could see how, in order to prevent that from happening and the child being hit by a car, it would be better for the child to be smacked.

I am thinking about parents who have to manage very difficult behaviour by their children. Rather than letting that behaviour escalate, it might be better to smack them. I have heard that from at least some children and from some families that I have to deal with in my constituency work.

I am trying to draw out whether there is a distinction between certain uses of physical force

and the use of physical punishment. I did not come in with a preconceived view.

Professor Callaghan: I am not sure why it would be necessary to hit a child in that circumstance.

Oliver Mundell: Can you understand how that might come about?

Professor Callaghan: I can understand how it can come about, but I do not see how that is a defence for hitting a child. The child could certainly be held back, but how would hitting them prevent them from running in front of a car? That is not a logical consequence of the child running in front of the car. The two things are not connected. There is an argument around the use of physical restraint, if necessary, but I do not see how that equates to being smacked.

Oliver Mundell: Can you understand why people might see a smack as a response in a situation where they perceive a child's safety to be at risk or they feel under pressure?

Professor Callaghan: I can understand why they might feel that way, but I do not feel that their view is justified.

Oliver Mundell: Do you think that they deserve to be criminalised for that decision?

Professor Callaghan: There is a degree of artificiality in the way that the notion of criminalisation is playing out.

Oliver Mundell: It is not artificial if someone is in court facing those difficult questions.

Professor Callaghan: Realistically, how likely is that? There are all sorts of things around child abuse that does not result in people being in court.

Oliver Mundell: People go to court—

Professor Callaghan: There are nuanced levels of response.

The Convener: Professor Callaghan, it is good for the discussion to be free-flowing, but could we—

Professor Callaghan: Of course.

Oliver Mundell: I have a final question on this issue. Do you think that it is positive for families to interact with the criminal justice system when those difficulties arise? You spoke about the damage that physical punishment does to children. Do you recognise that there is also a damage in being involved in the criminal justice system?

Professor Callaghan: That depends on how we see the role of the criminal justice system and what the consequences of that involvement might be. For instance, it has been evidenced that

supporting parents who are struggling through access to positive parenting and particularly empowerment-oriented interventions can be a useful way of helping them to find other ways of managing their children. If interaction with the criminal justice system produces that, I see that as positive.

If the interaction results in the person going to prison or being fined, I do not think that that is positive. It is not necessarily about the act of criminalising child abuse, but about the realities of the way that we manage that. We do that in a nuanced way across the child protection system. It is not simply the case that smacking a child will necessarily produce the outcome of a police officer coming and taking the person to court. It is much more subtle than that.

Oliver Mundell: In the context of our criminal justice system as it exists, where families do end up having to use the current defence in court, do you think that going through the process is a positive experience for those families?

Professor Callaghan: I do not think that it is a positive experience for anybody to have to go to court to defend their behaviours. There can, however, be positive consequences.

Oliver Mundell: Thank you.

Dr Waiton: People who are against smacking think that they are progressive and do not like the idea that they are criminalising people. To clarify the issue of criminalisation, when a law is passed, we make something criminal. Therefore, smacking a child will be a criminal offence. Not every parent may end up being locked up for five years, but Professor Callaghan is supporting the criminalisation of smacking and supporting the idea that a child being smacked on the bottom by a parent because they are going to run across the road should become a crime.

The Convener: Thank you. We are all clear on what we are doing here.

Dr Heilmann: Physical punishment is now banned in 54 countries around the world. Within the European Union, the UK is an outlier. The UK is one of only three countries where it has not been banned and no legislation has yet been brought forward. The argument of criminalisation holds less strongly the more countries legislate and we see no evidence that such legislation leads to an increase in prosecutions. The police will use discretion. I am aware that the results have been looked at in New Zealand. In Ireland, there is at least anecdotal evidence that the legislation has not led to an increase in prosecutions of parents.

The Convener: Thank you.

Mary Fee (West Scotland) (Lab): A number of the areas that I wanted to ask questions about have already been covered. I will pick up on the point that Dr Heilmann has just made about the UK being an outlier in introducing legislation. What are the panel's views on why that is?

09:45

Dr Heilmann: I do not have an answer to that and do not want to speculate.

Diego Quiroz: It is about entrenched ideas. However, the majority of individuals are not pro-smacking—to the contrary. Apart from Scotland—leaving aside the different jurisdictions of England and Northern Ireland—only three other countries in Europe still have the defence of justifiable assault: Belgium, France and the Czech Republic. The German family and religious community that I talked about moved to the Czech Republic because they were allowed to hit their children there. It is good that we are not so close to Germany.

Mary Fee: I have a question for the panel about the issue of restraint, which was touched on in Oliver Mundell's questions. However, I am specifically interested in restraint in a residential care setting. To give a bit of helpful background, before I became a member of the Scottish Parliament I was a local authority councillor and was on an adoption and fostering panel. I visited all the residential care homes in my council area and saw restraint being used on more than one occasion. Frankly, the first time I saw restraint being used on a young person, I found it shocking and horrifying, specifically the level of restraint that was used. I understand that restraint, particularly in residential care settings, is used as a last resort. However, I am interested in the panel's views on whether the bill would be an appropriate place to deal with the issue of restraint in care settings, because there is a very fine line between restraint and restraint that causes harm. A number of young people who are in residential care have come from very traumatic, damaged backgrounds and have perhaps been subjected to violence before they were moved into care. I wonder what message restraining them gives young people. I am interested in the panel's views on restraint.

Professor Callaghan: To clarify, do you mean bodily restraint or someone being closed in a room, for example?

Mary Fee: I mean someone being physically touched. The first time I saw it, I witnessed a child of 13 or 14 being physically held on the ground by three adults.

The Convener: Does anyone have a view on that that they wish to share?

Dr Heilmann: I would find it difficult to answer that because I am speaking about my review and that aspect was not part of the evidence that we looked at, as we looked at physical punishment. I therefore do not feel qualified to answer that.

Mary Fee: I suppose that I could expand the reference by saying that it is not solely about restraint in residential care settings, because there are young people who have quite significant behavioural problems who are cared for and looked after by their parents at home. There might be occasions when those young people are out with their parents and the question of restraining them could come into play.

The Convener: I wonder whether the second panel might be better placed to comment on that question.

Mary Fee: I am happy to ask it later.

Fulton MacGregor: Good morning, panel. I agree with the bill's principles but, obviously, we take evidence to hear the different views. The bill deals with a point that is important for the Scottish Parliament and the country as a whole. If we go back a couple of generations, people in Scotland were quite familiar with the expression, "Kids should be seen and not heard"—I certainly was, when I was growing up. Thankfully, we have moved on from that now. I wonder whether the current debate touches on that. There were strong advocates at the time for that approach. I will not speak disrespectfully of those people, as they were of their own generation and they are no longer here. My grandparents, for example, would have been strong advocates of that line, and I loved them dearly.

Dr Waiton made a good point about taking the public with us and, from my experience of outreach work at Dads Rock and from discussions with parents and other people, I feel that there is a mood to move. Nobody who I have spoken to wants to be seen as somebody who smacks their children, but there is an issue with criminalisation. For example, would a parent be criminalised if they were to give their child a slight smack?

I have a question, although I understand that this panel might not be the best one to answer it and it might be a question for a panel of representatives from the criminal justice agencies. I worked in child protection for eight years as a social worker. How would things differ under the bill from how they are now if—to give a concrete, everyday example—a child went to school and said that their dad smacked them, the school reported that to social work and social work investigated it?

Dr Waiton: That is one of my concerns. I assume that the police would not run around arresting everyone for smacking their children,

although that is a possibility and the police have asked what they would be meant to do if that were brought to their attention. What would social workers or teachers be meant to do if it were brought to their attention? If smacking were made criminal, they would have to do something. They would not be able to use their judgment, come to understand the circumstances or recognise the reason for the smacking, as there would have to be a level of intervention.

More to the point, parents would know that they had to be frightened about their children talking to teachers. That is developing, anyway—ordinary people are becoming even more separate from professionals. They would become nervous or frightened about things that happened in the house being reported and possibly ending up in some form of investigation.

Fulton MacGregor: I will interject because, under the current guidelines and procedures, if an allegation is made or, as you described it, brought to someone's attention, action already has to be taken.

As I said at the outset, I know that criminal justice agencies will be better placed to answer my question, but I am interested to hear the panellists' responses.

It is already the case that a process would kick in. Would the police or other criminal justice agencies make different decisions if the defence of reasonable chastisement, which parents now have, went away? In the eight years that I worked in social work, I never came across a joint procedure with the police in which they took that into account. They took into account the circumstances, as they would in any case, and if a case had to be prosecuted, it would be. That would be based on the severity of the case, a commonsense approach and so on.

Dr Heilmann: The important issue is that the bill will bring clarity about what is and is not okay. The social worker or police officer could therefore start the conversation at a different point and say that physical punishment is not acceptable. They could then find different ways. I do not think that that would mean that trivial physical punishment would be prosecuted, but there would be a different conversation.

We also looked at the introduction of bans on physical punishment in different countries and how they affected the prevalence of physical punishment and attitudes in those countries. There was a systematic review of legislation in 24 countries, which found that there was a decline in the prevalence of physical punishment in most countries anyway, but where there was relevant legislation, it declined faster. Public attitudes will be influenced by the legislation. In most of those

countries, the legislation was introduced while the majority of parents were still against the ban, but you bring the public with you with a ban. Another good explanation of how that can work is smoking legislation. Attitudes shift because we have changed what is acceptable and should be the norm. This kind of ban and this kind of legislation have a symbolic value.

Diego Quiroz: There is an important distinction. We are not criminalising any conduct; what we are doing is removing a defence for not treating children equally to other groups. That is quite an important and significant difference.

There is a difference between restraint for medical reasons or physical punishment, and deliberately causing suffering to a person either physically or by humiliating that person. There are differences in conduct.

The point that you raise is very important. That is why guidance and advice should be paramount. I am a parent, as are many of you, and it is one of the most beautiful and challenging things that you can do in life. I would welcome any guidance to improve my parenting and for the benefit of the child in society. One is provided with a scientific evidence base and I would not find any guidance patronising in that respect.

Mary Fee: One of the questions that we were asked when we did our outreach engagement this week was whether the bill will criminalise parents who love their children, while parents who abuse and assault their children will continue to do that behind closed doors. Do you agree with that?

Dr Waiton: One of my concerns is the confusion that we seem to have. We seem to accept that we are criminalising behaviour, and then we say that we will be sensible if there is trivial physical punishment. I do not think that we would talk about trivial physical punishment if we were talking about domestic violence against a woman, but when we talk about children, we say that, if it is trivial, it is different. We appear to be treating children and adults differently. Can we at least accept that, because one of the arguments is that we treat the two things differently?

I come back to the point about whether it is legitimate to use the law to change attitudes. I am a criminologist, and I am trying to write a book about this type of issue. Increasingly in the past 20 years, there have been more and more laws on more and more things where we have talked about trying to change people's behaviour. As far as I understand, parliamentarians are meant to be representatives of people to some extent, not their teachers—

The Convener: Dr Waiton, Mary Fee is looking puzzled.

Dr Waiton: I was trying to answer questions in the previous discussion.

Mary Fee: I am not sure whether I have misunderstood you or you have misunderstood me, but the point that was made at the event that I attended was that there are loving parents who will give their children a quick smack on the hand who feel that they will be criminalised. The point that was made to me was that parents who regularly assault and abuse their children behind closed doors will continue to do that. The bill will have no impact on that.

Dr Waiton: That is borne out by evidence on smacking, apparently. The parents who did light smacking no longer do that, while the law has very little impact on the parents who use much heavier smacking, so I suspect that you are right. I also suspect that children who are being seriously abused and battered might get lost in a sea of complaints by caring professionals who are now reporting every smacking incident.

10:00

Professor Callaghan: I will make a couple of points. The first is that the notion that we do not have a nuanced response to women who experience domestic abuse or to other experiences of child abuse is fallacious; we have a very textured response. It is very unlikely that a police response to a woman being smacked would be the same as the response to someone being severely beaten, so that view is erroneous.

In relation to the query on degrees of abuse within families, one of the advantages of the legislation is that it gives a clear message to children about the status of physical violence. In families in which violence is used routinely, the issue is that it becomes normalised. It can be very difficult for children to make sense of the violence that they are experiencing, and what is and is not acceptable. Giving a clear message that it is never acceptable is more helpful to such children. I am not sure what evidence Dr Waiton is referring to, but I am not aware of any that suggests that abuse that takes place behind closed doors either intensifies or does not come to the attention of the authorities as regularly in the manner that he has just suggested. Making a clear message that abuse is never acceptable can only be positive for children who experience it.

The Convener: Dr Heilmann, do you want to come back in on that?

Dr Heilmann: I very much second what Professor Callaghan has said. The review that I have just mentioned, which looked at the impact of the legislation, also found that instances of severe abuse reduced in countries that had implemented a ban on physical punishment.

The Convener: Gail Ross would like to come in.

Gail Ross (Caithness, Sutherland and Ross) (SNP): Thank you, convener, and I apologise for being late. I am very disappointed to have missed the first part of the session.

I am not sure whether it is correct, but one concern that we heard was about the increased burden that there might be on public services if more cases were to emerge and more prosecutions brought. If the bill is passed and the law is changed in this way, there will have to be an awareness-raising campaign. How should we go about that? Indeed, will there be additional burdens on public services?

Dr Heilmann: According to studies that compared countries that simply changed the law and others that did so while running an awareness-raising campaign, it is much more effective if both happen at the same time. It is important that people are told about any such legislation that is being introduced, so resources will have to be spent on such a campaign.

Another of our recommendations in “Equally Protected?” is that parents should be supported in the use of positive parenting strategies. Resources will probably be needed for that, too, but as we did not carry out an economic evaluation, I cannot say how much might be needed.

Diego Quiroz: Yes, there will be an impact. If the bill goes ahead, there will have to be a public discussion. The removal of the defence will have to go hand in hand not only with awareness of the change in the law, which is very important, but with promotion of positive, non-violent and respectful approaches to child discipline, which is equally important. Children should participate in the design of such approaches, and there must be greater dissemination of them in all of those places—from libraries to schools—where families and children go. Training and guidance will be crucial.

Gail Ross: Parents who gave feedback at an external meeting that we held felt that physical forms of punishment such as smacking were a last resort or happened because they felt frustrated. Sometimes it had nothing to do with the child’s behaviour—it just reflected their frustration—and their desire for more positive parenting courses and support to enable them to talk to their children without having to hit them came across very strongly.

The Convener: Fulton MacGregor has a supplementary question.

Fulton MacGregor: Does any of your research or experience indicate how often the defence of justifiable assault has been used? I know that we are in the early stages of our consideration of the

bill, but I am finding it quite difficult to establish a figure for that.

Dr Heilmann: We have not looked at that. We looked at the impact of physical punishment on children.

Dr Waiton: As far as I am aware, it has hardly ever been used, which suggests that that is not why the bill has been introduced.

There is a point that I would like to make about resources, which is that they should not matter. If we take seriously the argument that smacking a child is an act of violence that we should treat in the same way as an act of violence against another adult, such as an act of violence against a woman—or an act that should be equated with the treatment of slaves, as some have done—we should use all the resources that there are to stop it. However, the reason that we are asking this question and scratching our heads a bit is because we do not think that that is what people—most people—smacking their children is. It is just not a form of violence in the way that we think of violence against adults. That is why we are thinking about the issue a little bit differently and why, again, I suggest that you think again before making smacking a child a criminal offence.

The Convener: Annie Wells has not had a chance to come in yet.

Annie Wells: Good morning, panel. I visited a church in Glasgow to talk about the bill. It appears from public opinion as expressed in various polls—there were YouGov, Panelbase and ComRes polls on the issue in 2017 and 2018—that we do not have public support for the bill. As parliamentarians, we try to represent the people who elected us to be here, and we do that by representing public opinion. How do you suggest that we bring the public with us on this journey? I see us doing that through educating parents on how to discipline their children. I do not believe that we should make parents, grandparents and carers feel that they are criminals. That is my opinion—and I would point out that opinion polls say that 74 per cent of the public believe that smacking should not be a criminal offence and that 54 per cent believe that it should not be banned. How do we bring the public with us on this journey?

Professor Callaghan: As I have said, one of the key issues for me is the prevention of child abuse, and I think that most reasonable people—

Annie Wells: Sorry, can I just—

The Convener: I would like you to let the panel answer.

Professor Callaghan: Most reasonable people would agree that the prevention of child abuse is incredibly important.

Annie Wells: I am sorry, convener, but I am not talking about child abuse—I am talking about smacking.

Professor Callaghan: I know that. If you will allow me to finish my thought, it will become clear how I am answering your question.

The question of child abuse is extremely serious in our culture, and the confusion about what is and what is not justified in parenting practice feeds into it. If we make it clear to members of the public that we are attempting to protect children, I cannot see how there will be any reasonable opposition to that.

There was also significant resistance to the introduction of legislation on coercive control, but we went with the evidence base on that, which suggests that coercive control sustains family violence. The evidence suggests that smacking sustains family violence, so it does not have a place in a civilised culture.

Dr Heilmann: I think that I answered Ms Wells's question earlier when I said that the evidence shows that attitudes change more quickly in those countries where legislation has been introduced. By legislating, the Parliament will influence social norms on what is and what is not acceptable. The introduction of legislation will influence attitudes. In most countries in which such legislation has been introduced, that has happened without a majority of the public supporting it at the time when it was introduced. It is the right thing to do.

Diego Quiroz: Ms Wells, you are right to say that you represent people but, as Dr Heilmann has just said, this is the right thing to do. Moreover, under articles 2 and 3 of the United Nations Convention on the Rights of the Child, you also have the obligation to take measures to protect the child's best interests and dignity. You do not have only one task as legislators. Sometimes it is difficult, but you have to do the right thing—and, in a legal context, you have that obligation.

Dr Waiton: You have asked a very good question, and the answer can be found, in part, in the response that you have received. If you, in essence, tell parents, "When you smack your child, you are on the trail to child abuse," they will look at you with horror and disgust; they will think that you are living on another planet and that you are being contemptuous of them. Many will have smacked their children, will love their children and would never abuse their children, and they live among people who will have done likewise. They will know that what is being said is not the reality for the vast majority of people, who do not abuse their children.

Unfortunately, that degraded view of people seems to underpin what appears on the surface to be a progressive approach but which is actually a

very anti-human, negative, patronising and elitist outlook with regard to ordinary parents who smack their children, love their children and would never abuse their children.

The Convener: I invite Gordon Lindhurst MSP, who is visiting the committee, to ask a question.

Gordon Lindhurst (Lothian) (Con): Thank you, convener. I do not entirely agree or disagree with what has been said by anyone, but as we have limited time, I will address my questions, which are on aspects of law, to Diego Quiroz.

In my previous job as an advocate, I prosecuted parents in court for smacking their children. That is what happens at present. The police look at all the issues—including social work, as Fulton MacGregor has correctly pointed out—but a decision whether prosecution happens is taken not by the police but by the procurator fiscal.

I disagree with Diego Quiroz that the bill does not change the criminal law that parents would face, because the bill as currently drafted—there is, of course, the possibility of amendments at stage 2—removes the defence that is open to parents who are charged with assault of their child and makes this the common-law offence of assault. The reasons for people's concerns about that are valid in law.

I am interested in finding out whether you agree with this, but I note that other countries have not made this a common-law offence. In Germany, for example, it is set in the criminal code, and it is defined in Sweden and New Zealand. Dr Heilmann talked about the police deciding whether a prosecution should proceed. In New Zealand, section 59(4) of the Crimes Act 1961 provides that the police "have the discretion" not to take matters further. However, the difficulty with taking that approach in Scotland is that it is not the police but the prosecution service that decides whether to prosecute the matter.

Looking beyond that, the approach to crimes—

The Convener: It would be helpful if you could come to a question.

Gordon Lindhurst: I am sorry, convener—I will try to summarise. If we move on from disagreeing over whether the law should be changed, I think that the question is whether, if the law is changed, other matters might need to be looked at. I think that other things would need to be addressed in the law as it stands, because, unlike in Germany, Sweden and New Zealand, this would be just a common-law offence with no statute of limitations.

Diego Quiroz: I have not looked into the matter to that extent—I will take some time to do so and will get back to you with an answer. Given the time that we have, I will just be brief and say that I will have to think about that.

Gordon Lindhurst: Do you accept that it should be looked into?

Diego Quiroz: I agree that the situation is different, because there is no codified civil law in Scotland, but I do not know whether the consequences will be different. I will have to look into that.

The Convener: I thank the members of the panel for sharing their opinions with us this morning, and I suspend the meeting to let the panels change over.

10:15

Meeting suspended.

10:22

On resuming—

The Convener: Welcome back, everybody. I welcome our second panel to give evidence this morning on the Children (Equal Protection from Assault) (Scotland) Bill. We are joined by Clare Simpson, who is the manager of Parenting Across Scotland; Dr Louise Hill, who is the policy implementation lead at the centre for excellence for looked after children in Scotland; Amy-Beth Miah, who is a member of the Who Cares? Scotland collective; and Cheryl-Ann Cruickshank, who is the director of operations at Who Cares? Scotland.

I put the same opening question to you that I put to the first panel: do you support the bill's aim of helping to bring an end to the physical punishment of children?

Clare Simpson (Parenting Across Scotland): Yes. We are a partnership of different children's and family organisations. PAS's eight members are in complete agreement: it is unfathomable that, in the 21st century, it is defensible to hit a child. If I was to hit one of you today, I would have no defence; if I was to hit my child—he is beyond that age now—there would be a defence for that. That does not seem right to us.

Dr Louise Hill (Centre for Excellence for Looked After Children in Scotland): Thank you for the invitation to come this morning—I am delighted to be here. Yes, we welcome the bill. It is overdue, but we are delighted to support it in any way that we can. It would modernise the law to reflect the strong value base that we have towards children's rights. Over the past decade or so, the progression that we have made in the political landscape for children has been significant. The bill is a natural next step for us.

Amy-Beth Miah (Who Cares? Scotland): Thank you for allowing me to be in this space today. I will give you a bit of background about

myself. I have had social work involvement for as long as I can remember. I have had a lot of different placements throughout my life. I cannot give you a number—there have been so many that I do not remember how many I have had. The longest placement that I have had was for four and a half years, and the shortest was for about four hours, as I was placed in the wrong local authority area.

I am a big supporter of the bill, but it raises a grey area. When a child is removed from their family home to be placed in care, the state becomes the child's corporate parent, and it is suddenly okay for the state to restrain the child and to act in an almost assault-like manner that breaches human rights. However, the bill wants to take away parents' ability to smack children. We should encourage such an approach and pass the bill, but we have left out a grey area.

The Convener: Committee members will ask about that later.

Cheryl-Ann Cruickshank (Who Cares? Scotland): Who Cares? Scotland welcomes the bill's intent and fully supports its aim of ending the physical punishment of children by parents and carers through abolishing the defence of reasonable chastisement. Diego Quiroz talked helpfully about the bill redefining what is acceptable in order to protect a child's right to dignity. We would like the redefinition to be extended to protect the dignity of all children, including those who are looked after, by protecting them from all physical punishment and assault. We heard earlier that no international treaty supports a parent's right to punish their child physically.

In the interests of full disclosure, I say that, before joining Who Cares? Scotland, I worked as an independent advocate in residential childcare in 2001 and I was trained in restraint. Like Mary Fee, I have witnessed restraint—as a residential childcare worker and as an advocate. I hear regularly from our advocacy practitioners about their experience of witnessing restraint. We want to discuss that with the committee today.

Alex Cole-Hamilton: I thank the witnesses for coming and for their written evidence. A number of you heard the evidence from the previous panel, which Annie Wells asked about the controversy over the bill. At present, public opinion is not in favour of the change that we seek to implement. Should we as politicians always follow public opinion? I am reminded that the abolition of the death penalty did not command public support at the time, but public opinion has since changed. Should we always follow public opinion as described in opinion polls?

Clare Simpson: Legislation should be evidence informed. My understanding of a representative

democracy is that you represent the people in your constituencies and you represent their best interests. Given what we know and given the compelling evidence that we heard from Dr Heilmann about the harm that physical punishment causes, it is entirely fitting and appropriate to legislate to prevent harm and send a clear message to parents.

The vast majority of parents want to do the best for their child. Quite a lot of parents do not know the evidence that Dr Heilmann came up with—I do not think that many of them will sit and read a long evidence review. However, in the information that we provide for parents through our website, the Scottish Government's parent club and health visiting, for example, it is our duty to educate parents about the best methods and about what causes harm.

If the bill is passed, we need to implement it with a good public education and information campaign and we must ensure that there is family support. Professionals in Sweden told me that the clarity in the law there meant that parents said, "I know this is against the law, but I've been driven to the end of my tether and I don't know what to do." That offered opportunities for dialogue and support, which we will need to create.

We also need to ensure that we put proper resources into a public information campaign. When the smoking ban was introduced, we allocated £3 million for publicity for the first year and £1 million for each of the subsequent years. I am not advocating something on that scale, but we have to adequately assess what we need. As a country, we were able to divert people from the harmful behaviour of smoking. We need to do the same thing with this bill and offer proper support to parents.

10:30

Amy-Beth Miah: We also need to highlight that children do not know about their rights. For example, I realised yesterday that a lot of the restraint that I went through was actually an invasion of my human rights. I did not know that until I sat down and prepared my notes for today. The woman who sat earlier where I am sitting said that the bill is important because we need to send out a clear message to children that such behaviour is not okay. Going back to what was just said about publicity, the public probably do not have enough knowledge about the issue and children are not aware either of it either. If we are polling children about the issue but they do not have the knowledge and education to back up their view, how can they make an informed decision about it and say whether it is not okay? It is about informing them.

Cheryl-Ann Cruickshank: Professor Callaghan talked earlier about the normalisation of violence. The bill sends to children a clear message, which we fully support, that physical abuse of them is never acceptable. Our members talk similarly about physical restraint and how it quickly became an accepted part of their experience of care, despite the law being quite clear that it should be used only in exceptional circumstances and if it is the only practical means of securing the child's or another person's welfare. However, we hear regularly from young people that restraint is used for behavioural management and to compel a child to comply. We support having a universal public education campaign around how we care for our children, and it should include how we care for children who are looked after by the state.

Dr Hill: One of the important and symbolic things about legislation like this is around how we value and respect children and young people in our society. Politicians can listen to their constituents' and the public's opinions on the legislation, but for some parents and carers it is about knowledge about what to do. They will say "What else do I do? This is the last resort." The state, elected members and local authorities should support them to understand what a different parenting strategy is, because they do not know that and perhaps do not have the access to knowledge that some of us have. The good work that was done in the national parenting strategy was underpinned by a great ethos and great values. There should be a campaign to raise awareness of the different approaches that families can take to engage with children and to parent in different ways.

I will pick up on some comments that were made earlier about carers. It is important to know that physical punishment of children who are cared for in foster care and kinship care has not been allowed for a long time. The Looked After Children (Scotland) Regulations 2009 state that children growing up in foster care and formal kinship care should not have any form of corporal punishment used against them. In addition, where there is any engagement from social work, no level of physical punishment of children is allowed.

Amy-Beth Miah: You mentioned kinship care and foster care. I was confused about where the line was for using restraint, which is one reason why I think that we should abolish restraint altogether. I was in foster care and was then moved into residential care, where suddenly it became okay to restrain me. It was never explained to me why it was okay to use that restraint. I had never witnessed restraint, but suddenly I had four people sat on top of me: one was a sergeant in the army, one was a bouncer in a nightclub and one was a female over 6ft tall. Those people were suddenly sat on top of me, but

I had no idea what restraint was. Where is the line that allows children who are no longer in foster care to be restrained? Why are we allowing that to happen?

Alex Cole-Hamilton: I would like to unpack some of your answer, Dr Hill. We discussed the issue of “best interests” with the previous panel, and you talked about a discussion between a constituent and an MSP, with the constituent asking how they should parent in the best interests of their child when they are at the end of their tether. That also speaks to the perceived tension that I referred to between children’s rights and parents’ rights.

It is advantageous that 54 countries have been down this road before us. In those circumstances, what has the state done to provide alternatives for parents?

Dr Hill: What is critically important is that the legislation can only ever be seen as one small part of the culture change that is required—I note that it does not feel like a small part at this stage of the debate, obviously.

Aside from the public awareness campaigns at the time of legislation, there must also be a recognition that, because people are becoming parents all the time, there must be an on-going commitment to campaigning around awareness.

Also important is a requirement to invest in the family support programmes that are required. There is a lot of evidence about different kinds of family support and particular parenting programmes, but what is more important is the ability to share all the different kinds of support that there can be for families. Some great information is provided in the “Ready, Steady, Baby!” materials, and more clarity could be provided in that way. I am fresh to these issues, because I have a two-year-old and a four-year-old. There needs to be some thinking around all the ways in which people access those materials and what becomes normalised through the baby box and so on. It is strange that, given all of those great endeavours, we still have this anomaly in our legislation that means that we are accepting the justifiable assault of children.

Some great work is being done and it is about how we build on all of that in some gentle ways, and build up some more parenting programmes. *[Interruption.]*

Alex Cole-Hamilton: How timely.

Dr Hill: That is my youngest.

Alex Cole-Hamilton: Hello.

With regard to the efficacy of the approaches, if we take the example that Oliver Mundell gave of the child running into traffic, has there been a

dramatic upsurge in children running into traffic in the 54 countries that have already adopted the change that is being proposed?

Dr Hill: I do not have any evidence of that, but I do not think so. I would say that, as a parent of young children, if they run into traffic, my immediate response is to hold them. I get hold of my children and I keep them safe. A lot of the really good guidance and policy around children recognises the fact that we want to hold them, care for them and look after them. My immediate response to a child running across the road to an ice cream van would not be to hit them; it would be to hold them and then talk to them. I would get down alongside my child and point out to them why what they had done was dangerous.

Clare Simpson: There has been quite a bit of discussion about the UNCRC. Obviously, this issue is about the rights of the child, but, often, people see the issue in an oppositional way, with the rights of the child being pitched against the rights of families. In fact, the UNCRC places the child very firmly in the context of the family and says that family is the best place for the child. It goes on to say that the state has a responsibility to provide help and support to parents in that role. The Scottish Government has talked about putting the principles of the UNCRC into law, and I think that the legislation that we are discussing is the first step on the way to that.

Earlier, I surprised myself by agreeing with one of the things that Dr Waiton said. The point that I agreed with was his view that parents should be supported and not undermined. I see this bill as an opportunity to do that. It will send a clear message to parents about what is harmful. Once we have done that, as Louise Hill said, we need to offer them support to enable them not to do the things that are harmful.

Mary Fee: I will follow up the points about restraint. As I said to the first panel, the first time that I saw restraint being used I found it quite shocking. It is used in both residential and secure care settings, and I am aware that, on occasion, it is also used in specialised schools that support young people with severe behavioural problems. The explanation that I was given was that restraint was used not to discipline people but to protect them. I am interested to hear the views of panel members on that, especially those of the representatives of Who Cares? Scotland. Does it actually protect people?

There is a very fine line between restraint and assault. If provisions on restraint were to be included in the bill, would we then need to look at the issue of parents who care for children with significant behaviour problems? In a public setting, they might need to use restraint on their children in order to protect them.

Amy-Beth Miah: I will make two points, convener. I do a lot of work with Who Cares? Scotland and I am on the collective. I did research in which I asked 40 care-experienced people for their views on the use of restraint and whether they had found it to be safe. While the things that I have to say might be important, it is important to know that there is plenty of other evidence out there. I have here a quote from my research that might be helpful. One person said:

“Four guys lying on top of you ... if it’s not done right it doesn’t help you—it only makes matters worse. You’re in your room after, raging to get back out there and start all over again. Sometimes they take you down wrongly and it hurts you. It also means that you can have carpet burns on your face and the staff can then use that as an excuse to say that you are self-harming, but you are not.”

It is important to put out there the fact that restraint can cause injury.

You mentioned restraint being used in public. I used to go to child and adolescent mental health services, where I was told that if there were times when I felt myself getting to the point where I might end up being restrained, I should remove myself from the situation, take myself away from it and recognise that I was in control of my behaviour. I tried to do that but, on one occasion, I left the children’s unit only to be followed out of the door by three members of staff who chased me down the street and pinned me to the ground while people were passing by, going about their daily business. For me, that was dehumanising. People who were walking by witnessed me going through that. Some people actually picked up the phone to call the very people who were looking after me—social services—to report that a girl was being pinned down by three people. The very people who are supposed to be providing care are the ones who are doing this. We need to keep that in our minds when we consider restraint.

Cheryl-Ann Cruickshank: Amy-Beth Miah has made a very powerful point. It is important to recognise—as I am sure that committee members are aware—that the vast majority of children enter the care and protection system because they have experienced abuse or neglect, the impact of which can be lifelong. Our members have told us that, in order to recover, they need to feel safe, respected and loved. We know that both feeling safe and having at least one loving, stable relationship are crucial to enable children to heal from past trauma and build trusting, safe and caring relationships.

Restraining children is legally permitted in residential childcare settings, under the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002. However, it should not be used unless it is

“the only practicable means of securing the welfare”

of a child or another person. The “Holding Safely” guidance document, which was commissioned by the Scottish Government, produced in 2005 and updated in 2013, states that restraint should be used “as a last resort”. A number of reports and inquiries that pre-date the 2002 regulations have highlighted concerns about the use of restraint, including “The Pindown Experience and the Protection of Children: The Report of the Staffordshire Child Care Inquiry 1990”, which was published in 1991; the Kent report of 1997; the Edinburgh inquiry of 1999; and the Fife Council independent inquiry of 2002.

Post the introduction of the regulations, there was the Kerelaw inquiry in 2009, which identified inappropriate and excessive use of restraint as contributing factors in an abusive care environment that not only failed to protect the children and young people in their care but further exacerbated their trauma and exclusion. The allegations constituted a substantial list, and included physical assault, some of it arising from the inappropriate use of restraint, including making children compliant through causing pain. There is a very fine line between restraint and physical assault.

10:45

Mary Fee: Do you have any evidence that, when restraint is used, it is used as a last resort? In your experience, is there an escalation until a situation gets to the point where restraint is used? Certainly, when I saw restraint being used, there appeared to be no escalation.

Amy-Beth Miah: For me, that is what we are missing out of the picture. People do not just go from zero to 100 in no time—a process normally happens. When professionals go on courses to learn about restraint, they are supposed to be taught that it is a last resort, but the evidence that we have shows that it is not being used in that way. Young people do not know, first, why they are being restrained and, secondly, who makes that call and where the line is. A young person of 14 said that she was restrained for simply throwing a feather pillow. What damage was she going to do with a feather pillow? She was not putting anyone in any sort of immediate danger. We find that there is a very fine line, and there is an issue about who is dictating the use of restraint.

It is important to mention the threat. For a lot of young people, the issue is not just the restraint itself; there is that looming threat all the time, which in my opinion is emotional abuse. It is a way to regulate and control behaviour. In my experience, and that of many others who we hear from, restraint is not being used as a last resort.

Cheryl-Ann Cruickshank: We provide advocacy services in 30 of the 32 local authorities in Scotland. Some of those services have agreements whereby we are notified when a child has been injured in a restraint situation and we then have an opportunity to go and talk to the child. Practice in the area varies widely. Evidence from research that we have conducted as far back as 1997 shows that physical restraint can sometimes be the first resort—it is not always used as a last resort and is sometimes used for behaviour management. For us, that is hugely concerning. In a number of reports that we have produced over the years, we have highlighted the impact of restraint on children and young people's emotional wellbeing.

One of the challenges is that there is no nationally collected data on restraint in residential care settings. There is no authorised methodology of restraint. Local authorities are required to define for themselves the appropriate training for their staff and to record incidents of restraint and have them independently reviewed. However, we have not seen any recent evidence or research into that or the efficacy of restraint in the care setting.

The Convener: I will move us on, although we can come back to that if there is time.

Fulton MacGregor: I will ask the same question that I asked the previous panel. This is definitely not a trick question, by any means. Is any of the panellists aware, through their research or work in the area, how often the defence of justifiable assault has been used?

Clare Simpson: To be completely honest, I am not aware of that. The defence is there to be used, but I believe that it is not often used. When we have looked at criminalisation in other countries such as Éire, we have found that the removal of such a defence has not increased the criminalisation of parents. In New Zealand, in a report to the Minister for Social Development and Employment on the effects of legislative reform in 2007, the author said:

"In summary, I have not been able to find evidence to show that parents are being subject to unnecessary state intervention for occasionally lightly smacking their children or of any other unintended consequences".

There were eight extra prosecutions in New Zealand over the period, rather than the hundreds of thousands that we have been led to believe might occur.

I am sorry, that does not totally answer your question and slightly goes off in another direction.

Fulton MacGregor: You have answered my question, because I am looking at the aspect to do with criminalising parents. You have summarised the position really well.

I appreciate what Gordon Lindhurst said to the previous panel at the end of that evidence session. I think that there is a technical issue for the bill in that regard. However—to get to what I think is the nub of the bill, although John Finnie can correct me on that—the bill is not about criminalising parents; it is about sending a strong message and making the law clearer to everyone.

Clare Simpson: I sit on an implementation group that the Scottish Government has set up to look at issues that might arise if the bill is passed. The police and the Crown Office and Procurator Fiscal Service are represented on the group—there have been only two meetings, and unfortunately I have not yet been in the room with those people at the same time. However, I understand that the police say that there would still be a screening mechanism and an assessment, as happens in any case. They say that sometimes a case would be referred to the fiscal's office and sometimes it would not be.

The scenario of a child running into the road always seems to be cited. As Louise Hill said, most of us would pull someone back from the road, whether they were a child or an adult. The police said that a light smack in the heat of the moment would not generally be considered to be an assault, whereas the parent saying, "Right, you", and really assaulting their child after the event would be regarded as assault. There is a clear distinction between that and the kind of heat-of-the-moment action that would not be assessed as a method of physical punishment and assault.

Dr Hill: I support what Clare Simpson said. The international research indicates that there is no increase in prosecutions as a result of a change in legislation. There is, however—and we think that this is a huge positive—a decrease in the use of physical punishment for children and a decrease in physical abuse.

It is all about a culture change happening as part of the process. I understand people's concerns about rising prosecution rates, but those concerns are certainly not founded in any international evidence so far.

It might be useful to talk about resources at this point, or I can come on to that later.

Fulton MacGregor: May I clarify your point? Are you saying that if the bill is passed, it will not have the effect of there being more prosecutions of parents and that it might act as a huge influencer? In effect, it will take Scotland out of the Victorian era.

Dr Hill: I think so. If we think about a bell-curve approach and a public health model in relation to how we respect our children and young people, we think that there could be a reduction in

prosecutions as a result of the bill, because of the culture change that will happen.

We talked about the continuum of child abuse and neglect. If we start to shift attitudes to children and young people in the direction of respect, prosecutions for abuse and neglect could reduce, because parenting, and the support that comes with it, will have evolved and changed.

Clare Simpson: Fulton MacGregor's question is linked to the issue to do with public opinion. Opinion polls are quite a blunt tool, and quite often when we see them we start asking other questions. Some of the public concern is about fear of criminalisation. We have to get the message over that that is not the intent; the bill is about support, not criminalisation.

On parents' attitudes to smacking, we find that quite a number of the parents who call parentline do so because they have smacked their child and they are concerned about it. They regret doing so and recognise that it is not a useful method of behaviour management.

When we consider the data from, for example, the growing up in Scotland study, Ipsos MORI polls that we have done and the millennium cohort study, we find that a declining number of parents say that they have smacked their child, with the younger population group more in favour of abandoning smacking than the older cohort; the current cohort of parents are less likely to smack.

Another disparity is that people who have smacked say that it is not an effective method of parenting—it is not used to achieve behaviour change, but because people have lost control. I am not sure what that teaches a child. Smacking is used predominantly on children of three to five years old, and surprisingly—and it always surprises me—on disabled children.

Those groups make up the majority of the children who are smacked. That is about communication; it involves the frustration of young children who cannot communicate, and so may lash out, perhaps causing frustration in their parents who lash out in turn. We have to get over that and find ways to inform parents on how to communicate with their children at that stage and how to employ positive parenting strategies.

Gail Ross: You will be glad to hear that we have come to the resources question. It was interesting to hear that there has been no increase in prosecutions in other countries. If, as Dr Hill has suggested, a good awareness campaign might decrease smacking rates, what level of resources should we put into that?

Dr Hill: We were reflecting on the resources invested around the smoking ban and the changes that were needed in public opinion for its

implementation: Clare Simpson cited the £3 million investment in public awareness-raising and public health messaging. I think that there is £20,000 for the public awareness element associated with the bill. If you are looking to achieve culture change, that is a very small sum. I worry that the bill's aim and aspiration, which are in its policy memorandum, will not have the success that we would all hope for, because it cannot lead to that level of culture change without all the other necessary parts. Legislation is only one part of achieving that big picture. That is one of my concerns.

Gail Ross: I have one more question before I move on to the public awareness campaign and how that might look. Would you see the money that is proposed for the campaign as preventative spend? If, by introducing this measure, we stop future adults from having chaotic lifestyles, it is almost preventative spend.

Dr Hill: I am absolutely of that opinion. Professor Callaghan's evidence shows the impact that smacking has on children and young people into their futures—including on their mental health. If the spending is framed in the way that you describe, it is an excellent example of preventative spend.

Clare Simpson: Gail Ross said that it was "almost" preventative spend. It absolutely is preventative spend. It is about public awareness and public information, but it also has to be about family support services. Parenting Across Scotland is a coalition and a partnership of charities. At the moment, we see budget cuts in family support services all over Scotland. At a time of austerity and poverty, when the services are needed more than ever, there are fewer resources. We have to guard against that now and in the future, because it is those support services, working with families, that achieve the good results that we need for children and for whole families. There have to be public information resources for the bill, and it has to be accompanied by family support.

11:00

Gail Ross: Written evidence that we have received from the Evangelical Alliance says that investment in education would be a more proportionate way to tackle the issue than legislation. What is your opinion on that?

Dr Hill: We need to use lots of pieces of the jigsaw to tackle the issue. We know that legislation is critical for clarity, particularly regarding social work engagement and service provision, which I will speak about later. Having legislation, which enables parliamentarians to have a debate about the issues, allows us to have a necessary national

conversation, too. It is great that you are doing what you are doing, because the issue has been around for a long time and has been ducked. We have not been bold enough to have the necessary conversation. We have found that people have personal opinions on the issue that they hold strongly, and they want to fight for them. That is fine—we live in a democracy and we must have that debate.

Legislation is one of the things that enables culture change to happen. However, it can achieve relatively little in itself. I am sorry to have said that in Parliament, but legislation needs all the other factors around it, such as policy guidance, coaching, support services and so on. It can achieve some things in itself, but it is also important that it allows us to have this national conversation, which is a great thing. That will allow us to make progress.

Alex Cole-Hamilton: I have a supplementary question for Dr Hill. Clare Simpson can answer both questions when Dr Hill has finished.

Clare Simpson: I am not sure that I will remember them.

Alex Cole-Hamilton: Dr Hill, you are right to say that this Parliament has ducked the issue several times. As I mentioned when I was speaking to the earlier panel, the last time that any legislation was passed on the issue was in 2003. That legislation outlawed the use of head shots, implements and shaking, but that was all. Do you think that that was enough? Did it make any difference?

Dr Hill: I do not think that it was enough, but I think that that was a reflection of the political climate at the time. That is the context in which change happens—we sometimes need to take smaller steps. Today, your committee has spoken to people who represent a continuum of beliefs and values.

We take small steps and we make progress. The bill is an important opportunity to turn some of the policy rhetoric that we hear around children's rights into reality. That is a tangible way in which the Scottish Parliament can show that we value our children and young people. It is a powerful message to send.

Clare Simpson: To answer Gail Ross's question, of course we must have education, but we must have legislation, too. I do not see that the two things are mutually exclusive. Earlier, Professor Heilmann spoke about how, in various countries, legislation has led the way and has made education and change possible.

To answer Alex Cole-Hamilton's question, I do not think that the previous legislation was enough.

Further, I think that it created confusion for families.

We conducted a poll—I can send you the data table. It is a little bit old now, but, given that nobody else has conducted such research, it is the most recent evidence that is available. We asked parents what they thought the law said and whether they thought that the behaviour that we are discussing was illegal. We asked them whether it was illegal to hit a child around the head, whether it was illegal to use an implement and so on, and there was a hugely confused response. I do not think that that is helpful with regard to how we live our lives and how parents negotiate the law. We need clarity.

Annie Wells: It is not just through opinion polls that the public is communicating with us about the issue. The committee received more than 400 written submissions, and the majority of the individual responses that we received did not support the bill.

I listened to Clare Simpson talk about the implementation group, and I know that the police will continue to use the idea of reasonable chastisement as a reason not to progress issues around smacking in circumstances in which something is done in the heat of the moment. I wonder whether, if we take away the bit about reasonable chastisement, the police will not be able to do that and will need to progress the complaint. If we were to put more resource into the information and education around parenting, might that be a better way of changing the culture as well as public opinion and people's perceptions?

Clare Simpson: The issue of organisational responses versus individual responses is quite difficult, because you do not know where the individuals are coming from. Going back to what I said about the fact that there is quite a lot of misunderstanding about the law as it stands and the law that is proposed, I think that there is a great fear of criminalisation. I have not read all the individual responses, but I had a look through them and saw that a lot of them refer to the criminalisation of parents. As I said before, that has not gone up in other countries—they have not been awash with prosecutions of parents. Given the fact that that has not happened, we should reassure parents that it is not going to happen. That will address some of the concerns that exist.

Dr Hill: It is a feature of a democracy that people have lots of different views and take the opportunity to share them. We should listen to the range of views that exist and try to understand what people are really saying—what their anxieties are and where they are coming from. Some parents say, "If I can't smack, I just don't know what to do." There is another issue around supporting parents with learning disabilities at all

stages so that they know what different strategies they can use, and that involves the family support side. We need to ensure that all parents feel that they are in a place where smacking is not the only option that they have. We need to go deeper into those issues and understand what they are about.

For other people, the issue will come down to political opinion. For example, they will feel that the legislation represents the state interfering in private family life. There is always a huge tension in the world of child welfare around the role of the state, the issue of private family life and how those things rub together. Particularly with regard to our work in protecting children, there is always decision making involved, and, in the small number of cases involving children who have experienced abuse and neglect, there is not only one person involved in decisions about whether to pursue a criminal case or whether to opt for other measures. Those are multiagency decisions, and police will be involved in those conversations.

The issue is presented a little more starkly than it really is. Within that world, there is the issue of collaborative decision making. However, the issue is principally about looking at the strengths of families and working with them in a way that enables us to understand what pressure the families are under and what else is going on in the families. We try to understand the issues that mean that somebody's parenting is not as good as it could be, and we ask how we can help them to be a better parent.

Amy-Beth Miah: I would like to add to that, because this is a real-life issue for me just now. I am 23, and I have just had my first baby—you probably heard him screaming just then. He will be 23 weeks old on Monday. One of my big fears is based on the fact that the state intervened in my life. The state deemed that my mum was not fit to parent me, due to the abuse that I was suffering in my private family life. I did not want that to be an issue, and I am determined not to allow that to be an issue for my son in our life. Because of that, there is not a parenting book out there that I have not read.

At the end of the day, we are talking about learned behaviour. We learn from, and are conditioned by, the repeated behaviour that we are subjected to. When we restrain, hit and assault children, we are not allowing children and young people to self-regulate and develop into people who will be good members of society; we are pinning them down, sitting on top of them and not allowing them to make sense of their feelings and emotions. That is why we must make it clear that it is not okay to do those things. We should not have a grey area about what is okay and what is not okay; we should abolish that behaviour. There is no place in a modern Scotland for smacking kids

or for restraint at all. We need to make that clear—it is fundamentally important that we do.

Annie Wells: I have another quick question. On Monday, Mary Fee and I visited a church in Glasgow and spoke to people who were concerned about the name of the bill. Under common law, an attack on one person by another is an assault, whether that person happens to be an adult or a child, which means that there is already a provision in law for assault on children. Calling it the Children (Equal Protection from Assault) (Scotland) Bill might make it sound as though there is no protection for children from assault at the moment. What are your thoughts on the name of the bill?

You look concerned, convener. Can I ask that question?

The Convener: The bill is removing a defence rather than anything else. However, people can answer the question.

Annie Wells: I am just interested in hearing the thoughts of the panel on the issue, because it was raised with me.

Clare Simpson: It is tricky, is it not? Quite often, laws are incomprehensible to the public, which I am not sure is necessarily a good thing. I suppose that a bill's title conveys its intent, and the intent of this bill is to provide equal protection for children and adults. As you say, there is currently a ground of assault, whether the offence concerns adults or children. I suppose that the difference is that, if I were to assault my child, there would be a defence—even though, to me, such action would be indefensible—whereas there would be no defence if I assaulted an adult.

The Convener: We are drawing to the end of our meeting, and Mr Lindhurst—I was about to call you a visiting MSP, Gordon—would like to ask a quick question.

Gordon Lindhurst: Professor Jane Callaghan said that, if the bill resulted in more parents being fined or going to prison, that would not be a positive outcome. Do you agree with that?

Clare Simpson: Yes, I suppose I do, although, obviously, when there is severe assault of a child or an adult, there is a case for going to court. I note that there has not been an increase in the number of parents going to court in other countries. What there has been an increase in is the diversionary work and the support that is offered to families around alternative parenting strategies. I would not see it as beneficial if the bill resulted in parents going to prison, but neither do I anticipate that happening as a consequence of the bill.

Gordon Lindhurst: I want to come on to that point on the back of the evidence that you and Dr Hill have given us.

I take on board what Fulton MacGregor said, but the issue that I want to raise is not a technicality. The way in which the bill is framed is a serious matter for people who might go to court or parents who might find the police knocking at their door. I would not say that the current situation could be described as Victorian, but the bill will take us even further backwards—it is medieval in that it falls back on the common law. New Zealand, Sweden and Germany did not deal with the issue via the common law. We do not have time to look at the detail of the New Zealand act, but New Zealand brought in clearly defined legislation—I note that you have talked about the need for the law to be clear.

Do you agree with the view that the committee has heard today, that the issue of what the bill actually says needs to be considered further, putting aside for one moment the issue of whether the state should decide whether parents should smack children?

Clare Simpson: Are you asking whether I agree that there should be clarity? I think that I have missed your point.

Gordon Lindhurst: Sorry. Perhaps I have made it confusing in my attempt to shorten the question.

Putting to one side the arguments about the rights and wrongs of smacking and looking only at the intentions of the bill, do you agree that we need to look carefully at what the bill provides in law, particularly given that it does not relate in any way to what has been done in other countries?

Clare Simpson: I am not entirely clear on the legal processes—I want to make that absolutely clear. I am here to talk about parenting interests.

Annie Wells talked about responsibility in a parliamentary democracy and what MSPs are elected to do. I would hand the question back to you and say that that is the responsibility of this committee. I do not have the expertise to answer the question, but I am sure that you will be calling other witnesses who will consider that issue.

Dr Hill: That would be my opinion, too. I think that you should ask such questions of legal experts during the process of parliamentary scrutiny. I am not sure that we are the right panel for that question.

The Convener: As the convener, I can say that that is exactly what the committee will do.

John Finnie MSP is with us. Do you wish to ask any questions?

John Finnie (Highlands and Islands) (Green): I have no questions.

The Convener: In that case, I thank everyone for coming this morning and for sharing their experience and evidence with us.

11:16

Meeting continued in private until 11:31.

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