



OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities and Human Rights Committee

Friday 15 March 2019

Session 5



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EQUALITIES AND HUMAN RIGHTS COMMITTEE
7th 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:

Mairi Campbell-Jack (Quakers in Britain)

James Gillies (The Christian Institute)

Gordon Lindhurst (Lothian) (Con)

The Rev Gordon Matheson (Evangelical Alliance)

The Rev Peter Nimmo (Church of Scotland)

The Rev Richard Ross (Free Church of Scotland (Continuing))

Fraser Sutherland (Humanist Society Scotland)

CLERK TO THE COMMITTEE

Claire Menzies

LOCATION

Fingal Centre/Ahrainn Fhinn, Portree, Skye

Scottish Parliament

Equalities and Human Rights Committee

Friday 15 March 2019

[The Convener opened the meeting at 16:00]

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

The Convener (Ruth Maguire): Good afternoon, everyone, and welcome to the seventh meeting in 2019 of the Equalities and Human Rights Committee. All mobile devices should be switched to silent.

I welcome Gordon Lindhurst MSP and John Finnie MSP, who are joining the committee this afternoon. We have received apologies from Oliver Mundell MSP and Annie Wells MSP.

I want to take a moment to acknowledge the tragic events in Christchurch, New Zealand, earlier today. The committee is joined this afternoon by a number of faith and belief groups. I am sure that we want to come together to condemn the cowardly attack in Christchurch, which was motivated by hate for a particular faith, and to send our thoughts, love and prayers to all those affected.

Agenda item 1 is the third evidence session on the Children (Equal Protection from Assault) (Scotland) Bill. I welcome James Gillies, public policy assistant from the Christian Institute; the Rev Gordon Matheson, a minister from the Evangelical Alliance; and the Rev Richard Ross, a minister of the Free Church of Scotland (Continuing).

I will open the questioning. Do you support the aim of the bill, which is to end the physical punishment of children?

James Gillies (The Christian Institute): The Christian Institute is opposed to the bill.

The Rev Richard Ross (Free Church of Scotland (Continuing)): The Free Church of Scotland (Continuing) is opposed to the bill.

The Rev Gordon Matheson (Evangelical Alliance): The Evangelical Alliance Scotland is also opposed to the bill.

Our public policy officer, Kieran Turner, was supposed to be sitting in this chair today, but he is unable to attend, so I have stepped in at short notice. I thank the committee for allowing that. I will endeavour to answer what I can.

The Convener: Thank you for joining us. You are very welcome.

Alex Cole-Hamilton (Edinburgh Western) (LD): Good afternoon, panel, and thank you very much for coming to see us. Your testimony will inform our consideration of the bill, and I am grateful to you for that.

I want to start by looking at the perception of a tension between children's rights and parents' rights, which we covered in the previous committee sessions—it is okay if you have not managed to see those sessions. From a lot of evidence that we have received on not just the Children (Equal Protection from Assault) (Scotland) Bill but other bills that we have taken through Parliament, we know about the international imperative of organisations such as the United Nations Committee on the Rights of the Child, which say that we are not meeting our United Nations Convention on the Rights of the Child obligations in as much as we still allow the physical punishment of children in the home. There are specific articles to which we are a signatory that are incompatible with the continuation of physical punishment in the home. That is not limited to the UNCRC; there are other conventions to which we are a signatory that are incompatible with physical punishment in the home. Is that tension real? Where in other international laws or treaties to which we are a signatory does that jar? What rights are given to parents that should allow them to continue to physically punish their children?

James Gillies: The fact that children, parents and adults have different legal standing in existing law was touched on before. Parents have authority over their own children, and the rights in law are slightly different because of that. It is often said that the obligation under the Declaration of the Rights of the Child is to ban smacking, but the declaration states that children should be protected from violence. We absolutely agree with that, but Christians would say that the current law already protects children from violence. Smacking, as used by many thousands of loving parents—Christians and others—across Scotland is not violence against children. It is not abusive. The obligation has therefore already been met under existing Scots law, and the bill is not necessary to add further protection to children. In fact, we would say that it would not enhance the protection of children but would distract the police, social workers and others from doing their very important work of identifying abuse under the law.

Alex Cole-Hamilton: It is important to be absolutely clear that the bill does not create a new offence by banning smacking. Smacking has always been assault, but parents have been able to use a legal defence to justify their actions. We

are talking only about removing that defence, so that the protections that children and adults have are equalised in the eyes of the law.

I extend my original question to Mr Ross and Mr Matheson.

The Rev Richard Ross: Perhaps I could bring in scriptural support. We, as a church, believe that scriptures are the word of God and the rule of life, as well as the rule for the church. Many scriptures speak of a child's responsibility to

"Honour thy father and thy mother".

There is also parents' responsibility not to provoke their children to wrath. If we look at the scriptures for authority, we can see that there is protection for the child and the parents, because God's standard is laid down. If we turn away from God's standard and replace it with a standard that is limited to mortal man, we will have nothing but trouble.

Alex Cole-Hamilton: Should we use scripture to define all human law? Should human law follow the word of God as it applies throughout the Bible? Should every aspect of the Bible be used to determine how we govern our country?

The Rev Richard Ross: As I understand it, Scots law is based on moral law, which is the word of God. The bill will move away from that, and it will allow Scots law to be defined by man himself. The authority will be man, rather than there being God-given authority. When we have God-given authority, we have real authority.

Alex Cole-Hamilton: Do you accept that we have laid aside aspects of scripture in recognition that they do not fit in with our modern world? We would not recognise certain parts of the Bible, particularly in the Old Testament, as representing a good way to live or to conduct our lives.

The Rev Richard Ross: The political elite might believe that that is the case, but I am talking about ordinary, law-abiding citizens in their day-to-day lives. Many thousands—perhaps millions—of Scots believe that the scriptures give a good, solid foundation for life, not only for children but for parents. As we understand it, the bill is an open attack on the authority of God to tell us how to live, and it will smash the very foundation of Scottish society.

Alex Cole-Hamilton: We will discuss scripture further later on. However, you say that the bill is an open attack on the authority of God. Where in the Bible does God tell us to physically punish our children?

The Rev Richard Ross: In Hebrews, chapter 12, it says:

"For whom the Lord loveth, He chastens them".

It says that God lovingly chastens his people.

Alex Cole-Hamilton: I chasten my children every day, but I do not do it physically; I do it through screen bans and time outs. Surely, God can find other ways to chasten his flock.

The Rev Richard Ross: I am not here to defend God. God has given us his word, and we either accept it or we do not. We might say that there are other ways, but what have the other ways produced so far? Look around the world. Think about the questions about the state of the world that were asked in the earlier session, which did not receive proper answers from the panel. Man does not have the answers to addressing the state of the world. Look at our nation at the moment. It is in a quagmire because we have turned our back on the Lord and his word. Although you say that the bill does not create a new offence, it does. Loving Christian parents who use smacking or other forms of parental discipline will have that right taken away. The scriptures teach that parents have that right. I know that it is something that some people do not accept, but that is what the scriptures teach. If we are going to take away the foundation of God's law from the nation, we are in serious trouble.

Alex Cole-Hamilton: I was raised in a home in which there was no physical punishment, and I think that I turned out okay.

Mr Matheson, what is your position on the conflict between children's rights and parents' rights?

The Rev Gordon Matheson: I have spent the past 48 hours trying to catch up with some of the committee's previous evidence sessions and reading around the subject. I genuinely feel unqualified to answer the specific question about compliance with international treaties. However, from reading the previous evidence and listening to the earlier session this morning, I understand that around 50 countries have already adopted the provisions that are requested in those treaties, using various instruments. What is interesting is that the method that has been chosen in Scotland involves amending criminal law rather than taking a civil law approach.

One of my concerns is that I am not sure how much we have scrutinised the issue. I had not picked up on this issue about New Zealand until the session this afternoon, but even the fact that there have been eight prosecutions arising there since New Zealand changed its criminal law in this regard—

The Convener: If I can just interrupt you briefly, today's session is part of the scrutiny. We are in the process of scrutinising the issue. We are taking it seriously.

The Rev Gordon Matheson: My point would be that, as we say in our submission, the Evangelical Alliance respectfully requests that the committee provide a heightened scrutiny of the proportionality of this particular method of achieving your stated goals. It might be worth looking at whether a civil instrument rather than a criminal instrument could be used.

Alex Cole-Hamilton: The reason why we are adopting this approach is that it is a road well travelled. This legal defence used to apply to the punishment of a wife by her husband. Thankfully, that was repealed and does not exist anymore. There are aspects of scripture that you could interpret as suggesting that men should have the right to physically punish their wives. Happily, we live in a society that utterly rejects that notion. I believe that progress dictates that this is a necessary part of the human journey in this country.

The Rev Richard Ross: Alex Cole-Hamilton just said that scripture supports husbands beating wives. Can he show me where it says that?

Alex Cole-Hamilton: I said that you could interpret—

The Rev Richard Ross: Can you show me?

Alex Cole-Hamilton: I said that you could—

The Rev Richard Ross: Can you show me?

The Convener: Folks, please.

The Rev Richard Ross: There is an open Bible here. Mr Cole-Hamilton is claiming to know what scripture teaches, but he cannot prove what he has just said.

Alex Cole-Hamilton: You are putting words in my mouth.

The Rev Richard Ross: I would also like to ask, who is actually the convener of this committee? It looks like Mr Cole-Hamilton is taking the chair. [*Interruption.*]

The Convener: Okay—a rousing round of applause for that.

The Rev Richard Ross: There is an open Bible here. After the session, show me where it says that, Mr Cole-Hamilton.

The Convener: Mr Ross, I think that it would be good for all of us if we conducted this meeting in a proper, mannerly and respectful way.

The Rev Richard Ross: I am not being aggressive.

The Convener: You are interrupting. I am not saying that you are being aggressive, and I am not saying that you are being disrespectful; I am reminding you that this is a meeting of the Scottish

Parliament. We have invited you here to give your views, and I want you to have the chance to give them a full airing so that we can question you on them. So, we will just conduct ourselves properly.

James Gillies wants to come in.

James Gillies: I think that the reverend is trying to communicate the fact that the vast majority of Christians would not state that scripture condones violence in the home.

On the defence that is in section 51 of the Criminal Justice (Scotland) Act 2003, our understanding is that it expressly outlaws the use of an implement, blows to the head and shaking, as has been stated already. However, the explanatory notes say that chastisement must be

“moderate and not inspired by vindictiveness”.

Really, what it is talking about is only the most mild tap on the hand or smack on the bottom. It is a defence in law that clarifies the law, and which is understood by prosecutors and the police. It makes a distinction between violence and smacking that is used by loving parents, which is light and moderate.

Some of the consultation responses that you have received from police officers and child protection specialists say that that section of the law is useful to them. It gives them the ability to make a distinction between those things and to make a judgment call. In one case, it might be just loving chastisement and, in another case, it might be abuse and should be pursued as a criminal case.

16:15

Police officers on the ground—including in one submission from an anonymous officer with 29 years' experience of child protection work—have said that it is a useful legal defence and the effect of removing it would be to make all physical discipline, no matter how mild, technically an assault under the law. That would lead to parents being arrested, prosecuted and perhaps even convicted, because the police would be compelled to investigate a report of smacking in the same way as they are currently compelled to investigate abuse.

Before the law in New Zealand changed, politicians said that the law would not result in parents being criminalised, but that is what has happened. A legal report that was released last year said that parents in New Zealand have, in effect, been criminalised. With respect, your assertion that good parents will not be criminalised has not been the case abroad. Looking at such examples, we argue that the same thing will happen here. Many of the parents in the audience today are concerned about that.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Mr Gillies, on the point that you just made, from your organisation's research, do you know how often the justifiable assault defence is used in court?

James Gillies: We—and, I think, this committee—have not come across any instances in which that defence has been used to allow unreasonable physical violence to take place. The defence is invoked rarely, which shows that it is well understood. It is a long-existing defence in law and is very clear, so it is not cited often in court, because the courts and police know the difference between violence and loving parental discipline.

Fulton MacGregor: So why would that change? I think that you are right. I should declare an interest—I was a child protection social worker for eight years and have been involved in a lot of joint investigative interviews. How would it change if the bill were passed? As I have said in previous committee meetings, if an allegation is made, it is not for a teacher, health visitor or anybody else to judge whether an allegation is minor or whether something is just a smack; it goes through a child protection process.

James Gillies: There was an anonymous submission from a police officer, which is listed as submission 349—I am not sure why it was anonymised. The officer has 29 years' experience, mainly as a detective; he spent 10 years working in the child protection department as a detective sergeant and worked in the national child abuse investigation unit. It is fair to say that he has a lot of experience. He explains the current process and says exactly what would happen in practice in the example of a young boy who tells his teacher that his mother has smacked him. He says that he is against the proposal because—on the point that I explained earlier about smacking being treated as abuse—for every allegation of smacking, the police would be compelled to launch a criminal investigation. He says:

"My experience of working in child protection shows that despite a massive injection of staff over the years, the current workload on investigators is virtually unmanageable. Should this law be passed, the workloads of both the police and social work would be massively impacted, meaning these already thinly spread groups would have to do much more. In my opinion, it is disproportionate and irresponsible to introduce legislation that is not deemed necessary or helpful by practitioners"

on the ground.

Fulton MacGregor: I appreciate that that was one individual's view, but the vast majority of the evidence that we have taken from agencies such as Police Scotland has suggested that that would not be the case. The agencies said that, under the current procedures, they do not think about

whether a parent will use justifiable assault as a defence before they decide whether to prosecute. The whole child protection system is about finding a balanced and measured approach to protecting children and safeguarding families, and we have not heard a lot of evidence to suggest that that would change.

Do you not agree that one of the major problems that we have in Scotland, and probably across the world, is not an increase in the criminalisation of parents but getting convictions of people who commit serious offences against children, and that the proposed new law could help to put that more at the forefront of people's minds?

James Gillies: Of course we agree that it is of fundamental importance that abuse is identified and the perpetrators are brought to justice, but we can only go by the evidence that we have seen, which we included in our submission, from people such as the officer I mentioned. Police Scotland talked about the cost and resource implications of the proposed law. We think that the best way to strengthen the arm of the police and others would be to strengthen the existing structures. If people are complaining that they are overworked and that their workload is unmanageable—we know that social workers and others are already under huge stress—the way to help them is to give them more resources and to help them to do their job under the existing law. Asking them to go after parents who have said that they smack their children who, in the vast majority of cases, are loving and reasonable ordinary parents will distract them and will have an implication for their workload—it will make it worse.

Therefore, we fear that, rather than helping children, the bill will distract the police and social work. Ultimately, the net could be spread so thinly that some of the extreme cases of abuse would be missed, which is a very sad prospect.

Fulton MacGregor: I will widen out my questions to the rest of the panel, because I appreciate that I have been focusing on you, Mr Gillies, for which I apologise.

James Gillies: That is all right.

Fulton MacGregor: Do you accept that, for the hypothetical examples that you have given, which relate to everyday situations, there are already child protection measures in place, which are being used, and that the bill would not alter that?

The Rev Gordon Matheson: I suspect that that is true at an investigative stage, but my concern would be about the next stage, when it comes to mounting prosecutions. I do not know whether there has been enough investigation and accumulation of data to support the notion that the removal of the reasonable chastisement defence

would result in a very low net increase in the number of prosecutions. I am simply not convinced that, in the evidence that the committee has received, that has been fully articulated. I would genuinely love that to be investigated further, and for the committee's resources to be devoted to looking into that in some detail.

The Rev Richard Ross: We are of the view that the Scottish Parliament ought to devote its efforts to tackling real harm and abuse of children. The bill will provide a net that will catch loving parents, because it will be spread so wide. It represents an intrusion into family life that does not belong to the state. Children are given to the parents to bring them up. It does not belong to the state to tell parents at what level they are to deal with their children. Parents are best suited to bringing up their children. I am a father, and we know that Mr Cole-Hamilton is a father. I presume that he would not like me to come and tell him how to bring his children up, so why should others have to be told by a parliamentary committee, the Scottish Parliament or anyone else how to bring up their children? We are talking about a God-given right. Parents—not somebody on the outside who is looking in—are best placed to decide how to bring up their children. I am sure that Mr Cole-Hamilton would agree that he is best placed to bring up his children in the way that he feels suitable.

Fulton MacGregor: I hear what you say about parents knowing best, but I come back to the point that, as Alex Cole-Hamilton said, smacking is already an offence. The bill seeks to remove the defence of justifiable assault. At the moment, prosecutors, police and other partners in the criminal justice system determine whether a case is taken forward, and, if it is, the defence of justifiable assault can be used. So far, we have not heard from anybody who has spoken to us how often the defence has been used.

The Rev Gordon Matheson: Does that point not apply if we look at the question from both angles? There is no clamour from Police Scotland or the prosecution service to remove the defence. If that was the case, there would perhaps be more sympathy for what is proposed. The fact is that the clamour for change is coming from within the political class rather than from those who are at the front line in dealing with prosecutions on the issue. Those people are not finding that the defence is a barrier or obstacle to taking forward prosecutions. If it is not providing a barrier at the moment, surely that is an argument against removing it.

Alex Cole-Hamilton: I want to address something that was said earlier, and put a question back to the panel. James Gillies mentioned the testimony of an unnamed police officer on his concerns about the bill. That officer

is absolutely entitled to those views, but what do the panel members think about the views of Police Scotland and, more notably, the Strathclyde violence reduction unit, which is broadly supportive of the aims of the bill, not least because the unit believes that, far from taking up more police time in prosecuting parents, it will help efforts to reduce violence on our streets by delegitimising the use of violence as a tool of sanction or anger?

James Gillies: I challenge your use of the word “violence”. Again, it goes back to the distinction between violence and the smacking that, to thousands of parents, is loving discipline. The central question on the bill is whether smacking is harmful to children, and the research evidence does not show that it is harmful. The policy memorandum to the bill cites reports that seem to imply that smacking is harmful and has effects on children, but the Welsh Government, which is consulting on a similar change to the law, stated in its consultation document that

“there is unlikely to be any research evidence which specifically shows the effects of a light and infrequent smack as being harmful to children.”

There is also a submission to the committee's consultation by Professor Larzelere, a US psychology professor who, along with Professors Ferguson and Gunnoe, has studied the major research on smacking and the methodology behind it. They fear that there is confirmation bias.

The indication from the Welsh Government in its honest assessment ahead of its legislative change and those academics is that the research evidence does not anywhere near conclusively show that a light smack, which many parents use in loving homes, harms the child.

Alex Cole-Hamilton: But the Strathclyde violence reduction unit's point is that children who receive a physical intervention believe that a physical intervention can be appropriate outside the home among their peers. Irrespective of whether we believe those interventions to be harmful or violent, such children believe that the connection of a hand to a body part is a legitimate tool of anger or sanction. Do you accept that?

James Gillies: I would have to see the research evidence behind that. I do not think that there is any research evidence to show a logical connection between a light smack used by parents and violence. I do not think that there is a link between smacking and violence in children. Since the change in the law in Sweden to ban smacking in the 1970s, there has been a huge rise of over 1,000 per cent in child-on-child violence. That is the opposite from what Mr Cole-Hamilton stated. Rather than causing or begetting violence, smacking is reducing it—some researchers would say that. We question the assertion that there is a

logical connection between smacking and violence.

The Rev Richard Ross: I agree with Mr Gillies. Smacking is not violence; it is discipline, and there is a difference between discipline and violence. Mr Cole-Hamilton, you said in the public question and answer session that you were smacked. Has that made you more violent?

Alex Cole-Hamilton: I was smacked once, and I turned round and bit my father in the face so, yes, it made me more violent, at the time.

The Rev Richard Ross: Yes, but you were two years old.

Alex Cole-Hamilton: Absolutely. He never hit me again.

The Rev Richard Ross: How many other members of the committee have been smacked?

The Convener: The committee members are here to ask the questions, Mr Ross. I will bring in the Rev Gordon Matheson.

The Rev Richard Ross: Can I just make the point, convener? I presume that most committee members have been smacked and maybe as parents they have smacked their children. It has not held any of you back—you are all members of Parliament. It has not psychologically damaged you or made you violent.

The Convener: You have made your point. Mr Matheson, you wanted to speak.

16:30

The Rev Gordon Matheson: With regard to the Strathclyde violence reduction unit, it is interesting to see the police's assessment against the public perception of where this is going. Around three quarters of Scots polled on this issue have indicated some opposition to removing this defence in law. Given that 74 per cent of people are against this measure, I have to wonder what the goal is of using a legislative change of this nature, which is a very blunt instrument. It can be set against the behavioural changes that we are already seeing. It is welcome that smacking as a wholesale pattern of behaviour in society has reduced. That is probably a good thing. It is great to have access to the whole range of parenting tools. When I was growing up, my mum did not have much of a notion about putting me on the naughty step or the sorts of steps that I take with my daughter and son at home. We are already seeing behavioural changes that are making aggressive and abusive smacking a thing of the past, and if that is the case, what we are left with is proportionate and reasonable.

The question that I come back to is this: is it reasonable for our society to prosecute a

reasonable level of smacking in homes, where we might be talking about a one-off incident or where such smacking happens not in anger but as a loving, careful and considered response to a very pressing situation that needs reinforcement? That is, I think, the experience of the 74 per cent of Scots who, when polled, said that the change was unnecessary.

Gail Ross (Caithness, Sutherland and Ross) (SNP): I just want to get the panel's opinion on a question. If a parent smacks a child, even if that smacking is proportionate and reasonable, what do you think is the end result that the parent expects?

The Rev Richard Ross: It depends entirely on the situation. If a child is going to run out on to a road, the end result will be to stop them from doing so. If they are going to pull a pan of hot water down on themselves, you will keep them from that danger. However, your question is like asking, "How long is a piece of string?" You need to know the context before you can say what the end result will be.

Gail Ross: So every instance of smacking is different in different circumstances, and the smacking can be at a different level. However, I think that James Gillies said that smacking is light and infrequent. If so, what is the point of it? Why do it at all?

James Gillies: It is one technique that parents use to discipline children and imbue them with a sense of right and wrong. The anecdotal evidence that we have heard suggests that smacking is light and infrequent. The Rev Richard Ross highlighted examples where a child was in immediate danger, but with regard to the use of smacking as a form of discipline—with, say, a light smack or tap on the hand—people will say that some children do not respond to verbal warnings. If they keep reaching out for a socket or something, a light tap on the hand will communicate the message at an age at which verbal communication might not be so effective.

Gail Ross: But in what way does it communicate?

James Gillies: I am sorry—I do not understand the question.

Gail Ross: Is it about inflicting fear or pain? In what way does what you have suggested communicate something to a child?

James Gillies: I suppose that it is a light and slightly painful thing that communicates danger or that the child is doing something wrong. However, what we are talking about is very light, mild and reasonable. Parents do not seek to harm their children when they smack them—it is just part of

loving parenting. They want what is best for their children.

Gail Ross: Absolutely.

The Rev Richard Ross: We have to bear in mind the nature of a child. There are different opinions about that: some think that they are innocent, while others see them as needing correction. The scriptures teach that we are all sinners, so we all need correction. A gentle smack, as well as a verbal rebuke, is part of the correction and the teaching process. If you get a question wrong at school but you are never told that you are wrong, you will never learn anything.

Gail Ross: But if you get a question wrong in school, you are told that you are wrong, and you are told the right answer and given an explanation. You are not given a light tap to correct you, thankfully.

The Rev Richard Ross: Perhaps when you were in school.

Gail Ross: How old do you think I am?

The Rev Richard Ross: The point is, how will the child know the difference between right and wrong if you do not have that opportunity to give the child a smack? If they are running out on the road—if they are running off on you—you need to do something in that instant. You cannot grab them back and start explaining to them, because they are off. You have to be able to communicate to the child that what they have done is wrong.

The Rev Gordon Matheson: It is interesting to note that, in these circumstances, it is very often an instinctive response on the part of the parent. I have been there myself. There is an element of alarm when your child runs out on to the road. Where we stay, there are tractors up and down all the time, and sometimes the gates are not locked. It is the same with a hot pan on the stove or tampering with an oven while it is open, or whatever else. The parental alarm says that this is a really dangerous situation, and no amount of explanation, in this context, at this moment, will reinforce in my child that this is a danger that they must be aware of.

The Convener: Mr Matheson, could I pause you for a second? One of the other people we took evidence from said something that resonated with me. A hot pan or the danger of running on to the road is often used as an explanation for loving smacks. It seems peculiar that, if your child was running towards a car, your instinct would be to hit them. Surely that would knock them over. If it is about keeping them safe, would your instinct not be to hold them?

The Rev Gordon Matheson: I can see the point that you are making. In that instance, when the child has run off in those circumstances, a

smack is not necessarily punitive. It is more to reinforce a sense of alarm in the child—a sense of alarm that you understand, as a parent, but which the child, because of their limited sense—

The Convener: So it is about communicating to the child your alarm at the situation, through light pain—loving pain.

The Rev Gordon Matheson: Through light pain. A light slap on the wrist in that circumstance says, “This is a very dangerous situation you find yourself in.” The purpose of that would be to remind the child in future that those are dangerous situations to find themselves in and that such situations have consequences. Children will remember that.

Mary Fee (West Scotland) (Lab): I, too, welcome the panel. In most of our other evidence sessions, we heard that although the bill removes the defence of reasonable chastisement, it does not define “reasonable”, and that it would be helpful if the bill explained in plain terms exactly what that meant and what classified reasonable chastisement. Do you agree with that?

James Gillies: Are you referring to this bill or to the Criminal Justice (Scotland) Act 2003?

Mary Fee: This bill.

James Gillies: Are you asking whether there should be something in the bill to determine what is reasonable chastisement?

Mary Fee: Yes.

James Gillies: We would say that the definitions under the 2003 act are good. The explanatory note on section 51 is particularly helpful where it says:

“moderate and not inspired by vindictiveness.”

Mary Fee: Do you think that more of an explanation is needed than “moderate”?

James Gillies: The evidence shows that parents and prosecutors understand that already. It is probably fine as it is.

The Rev Richard Ross: Obviously, previous generations understood what it meant. I find it strange that members of the Scottish Parliament think that modern generations are unfit to know what reasonable chastisement means and that there must be a blanket ban.

The Rev Gordon Matheson: I think that the changes as a result of the 2003 act were very welcome and have been well received. I remember my own experience growing up was to get a thick ear for doing things and I do not think that could happen now. I am glad of that.

At the same time, I have been trying to work out the balance of harm. Many of the submissions that

the committee has received have sought to assess the harm to the child and their experience of pain. However, from my experience as a minister working in pastoral environments and from speaking to a number of my colleagues, both in my own denomination and more widely in the Evangelical Alliance, I know that we have all seen the lasting harm that a criminal conviction has on parents and on families in different situations.

I heard committee members in previous evidence sessions repeatedly articulate the point that a dramatic increase in the number of convictions is not envisaged. However, at the end of the day, we are still talking about changing a defence in criminal law. Inevitably, there will be some impact. In my experience, such situations devastate family life. They have a remarkable impact on the experience of families. I therefore wonder about the balance of harm when mild chastisement, which is being exercised in a loving context, unfortunately results—perhaps without any deliberate desire on the part of our legislators—in a criminal conviction. Has the harm in such situations and the impact on families been taken into consideration? As a society, these are big questions for us to assess.

Mary Fee: Do you think that the bill will make any positive changes to how parents discipline their children or will it have a negative impact on that?

The Rev Richard Ross: I think that the bill will have a negative impact on parents. I agree with my colleague the Rev James MacInnes, who said in the earlier question-and-answer session that outlawing smacking would create greater tension in the family. His point was not answered.

We know that family life nowadays is quite stressful anyway. The bill will increase that stress and, as we said in our submission, it will

“disrupt and potentially ... harm ... families.”

As my colleague Gordon Matheson mentioned, a conviction will have a long-term effect. If children grew up with the knowledge that their mother or father had a criminal record, it would damage not only the family but the children themselves.

I think that the bill will have only a negative effect. The committee really has to think about this. If the bill becomes law, it will have a huge negative effect on families in Scotland, and families are under a lot of pressure as it is.

James Gillies: I would reiterate the breadth of public opposition to the bill: 75 per cent of people polled regularly state that they do not want this change in the law and recent polling showed that 68 per cent of parents think that it is sometimes necessary to use a light smack with a naughty child.

Smacking is very common; the majority of parents find it acceptable and reasonable. They are the people who could be arrested, prosecuted and convicted under this change to the law. It is not really the place of Parliament to get into the minutiae of family life in this way. If Parliament feels that smacking is not desirable, it could have an educational campaign, for example, to encourage parents not to smack. However, that is different from a change to the criminal law that will result in loving parents being criminalised, so we urge the committee not to make such a change.

Mary Fee: Mr Matheson, is there anything that you would like to add?

16:45

The Rev Gordon Matheson: One of our concerns is about where the change in the law may well have the most impact in the long run. The likelihood is that, if there was to be an increase in convictions, it would have a disproportionate impact on vulnerable families in areas of deprivation. Convictions are going to arise in areas where the police and social services are already present—not in middle-class areas where families have it together, the kids go off to school every day and everything seems fine, but in areas of our communities where, because of other factors of deprivation, there is already frequent intervention. The bill increases the scope of criminality in that environment, and I wonder whether that is something that we want to lump on areas of deprivation in our society today. We could take a more nuanced approach.

I always come back to thinking about how the Bible articulates this in the first place. The Bible, if anything, is the story of a family. If you ever open a bible and you read the first chapter, you will see that it is the story of God creating a family, and throughout scripture there is the unfolding and working out of God's purposes in families. As far as possible, as a society, those are the things that we want to reinforce. They are positive, good things, and churches and many others in society besides us recognise them as good, healthy and helpful. I fear that an unintended consequence of the approach in the bill will be to be disruptive to those things, rather than beneficial to them.

Mary Fee: I want to ask you about faith, because I am keen to hear your views on where the bill sits within the teachings of your church or your belief. Mr Ross, you spoke about the authority of God, the moral law and God's standards. Where does the bill sit within the teachings of each of your faiths?

The Rev Richard Ross: I think it would totally oppose what the scriptures teach. I could tell you many scriptures that support parents and the

parental right to discipline their children. There are also many scriptures that support the child's responsibility to give honour to their parents. I think the bill is going to remove that. We make it clear in our submission that it will potentially put those who hold to the scriptures in a position where they have to decide whether to obey man or obey God. It is not only going to criminalise parents, or catch parents; it might also have greater ramifications for those who hold to the scripture of Christian faith.

The Rev Gordon Matheson: In the Evangelical Alliance, we have a clearly articulated platform of Christian teaching built around notions of love, freedom, justice and truth, and I think that that is reflected generally across the teaching and preaching that is articulated in our member organisations and in their pulpits. The bill will impact on family life in a range of ways.

Have I ever gone near the subject from the pulpit? I have not. The specifics that the bill addresses are not an area that I have yet been able to come into contact with in working through preaching and scripture. However, we want to articulate reasonable, responsible parenting and to teach people in our churches to take seriously and proportionately their responsibilities as parents, and that includes each parent working out for themselves what an appropriate level in their own experience of smacking might be.

My feeling is that a lot of the problem can be identified by looking at the work of the Strathclyde violence reduction unit and considering where violent smacking is being done and where the use of smacking in a home environment goes beyond the very early years of a child's experience, once they have passed the level of being able to cognitively process things for themselves.

At that point, we are into the very dangerous territory of intervention in which smacking can and probably does have negative influences and impacts. However, I am speaking from personal experience of early years interventions with children; that is where I have to limit it.

Mary Fee: Mr Gillies, we might accept that the scriptures say that parents have the right to discipline children, but do they explicitly say that parents have the right to hit their children?

James Gillies: If by "hit" you mean violence, the answer is no. We would say that smacking is not violence. The Christian Institute represents many different Christian denominations. Like the Rev Gordon Matheson, we say that Christian parents use a range of techniques with their children—

Mary Fee: To discipline them.

James Gillies: Yes—and smacking is one of them. That is a concern to many of our supporters.

Not all our supporters would choose to smack, but many would. That is just one of the techniques that they use, and the bill would affect those people.

Mary Fee: If we want to stick to the letter of what the scriptures say, they say that parents have the ability to discipline their child. They do not say that parents have the right to hit their child.

James Gillies: No. The scriptures would never condone violence against children. We look to our heavenly father, God, as the example of parenting. As Christians, we should discipline our children—that is clear from scripture—but not by violence.

Mary Fee: Thank you.

Gail Ross: I have a point of clarification for the Evangelical Alliance. James Gillies talked about more resources going into an education campaign. I absolutely take that on board.

James Gillies: I am sorry to interrupt, but I want to clarify that that is instead of the legislation, not as well as it.

Gail Ross: I absolutely take that on board. Thank you.

The Evangelical Alliance has also talked about that. From the evidence so far, it seems that it believes that reasonable and proportionate smacking should be used in a loving parental home. Its written submission states:

"We believe investment in education would be a more proportionate way to tackle this issue as compared to potential criminalisation."

Will Mr Matheson clarify for the record what the Evangelical Alliance means by "this issue"? What is the issue that parents need to be educated about?

The Rev Gordon Matheson: I have to confess that I was not involved in drafting the written submission. I apologised for Kieran Turner not being here today—I think that he would have been able to give the committee more clarity on that. If you want me to, I can ask him to write to the committee with an answer to that question.

The Convener: It might be helpful if he could write to us with an answer to that question.

Gail Ross: I have one more question. I probably should not use the term "devil's advocate", but I will play the devil's advocate for a moment. If the bill is passed, the Parliament and the Government will need to have a big awareness-raising campaign. How would your organisations raise awareness of the new legislation or of the removal of the justification of assault from legislation among your supporters and congregations?

The Rev Gordon Matheson: Carefully, I think. I do not think that there would be a knee-jerk

reaction from the organisations that I am involved with—the Evangelical Alliance and the Free Church of Scotland. I think that we would have a careful and nuanced response.

The Rev Richard Ross: We would remind parents of their responsibility to God first.

James Gillies: Obviously, the Christian Institute would communicate the effect of the law, which would be that smacking would be a criminal offence.

The Convener: Okay. That draws our first panel session to a close. I thank the witnesses very much for their time and evidence. There will be a brief suspension while the panels swap over.

16:53

Meeting suspended.

16:58

On resuming—

The Convener: I welcome everyone back to our second panel session.

I welcome Peter Nimmo, the minister of old high St Stephen's church, Inverness, and a representative of the church and society council of the Church of Scotland; Mairi Campbell-Jack, the Scottish parliamentary engagement officer of the Quakers in Britain; and Fraser Sutherland, the campaigns and communications manager at the Humanist Society Scotland.

Do you support the aim of the bill, which is to end the physical punishment of children?

Fraser Sutherland (Humanist Society Scotland): Yes, the Humanist Society Scotland supports the bill. We believe very strongly in human rights, and we believe that the United Nations Universal Declaration of Human Rights, which states that

"All human beings are born free and equal",

applies equally to children as it does to adults and that the protections under that declaration should apply equally to children as they do to adults.

The Rev Peter Nimmo (Church of Scotland): Yes, the Church of Scotland supports the aims of the bill.

Mairi Campbell-Jack (Quakers in Britain): Quakers in Scotland support the bill.

Alex Cole-Hamilton: For the record, I should declare that I am a Quaker.

Thank you very much for coming to see us today. We look forward to hearing your evidence.

I will start where we started with the previous panel—the perceived conflict between parents' rights and children's rights. We know that, in international law, children have the right to be free from any form of physical punishment. Is there a real tension there? Where in international law would we find a commensurate right for parents to physically punish their children?

Mairi Campbell-Jack: I think that Quakers would say that seeing it as a children-versus-parents issue is not helpful, as that is very much a lose-lose situation. We do a lot of conflict resolution. We have worked in many communities internationally as well as domestically in an effort to help people to resolve conflicts. Generally, we try to look for a win-win situation. Rather than looking at parents' rights and children's rights as being separate, it might be better to include them all in the one group—that of human rights. All humans deserve to be free from violence.

I get that there is a tension. I understand why people are worried about that, and I think that it is very reasonable for people to have questions about it. We hope that, as the scrutiny of the bill proceeds, some of those questions will be answered, and we hope that, if the bill is passed, the Scottish Government will be able to do some education and awareness raising and help people to understand the issues a bit better.

The Rev Peter Nimmo: I agree that it looks as though there is a tension here. However, as a society, we have long accepted that parents' rights over their children do not exclude the involvement of the rest of the community. In listening to the discussion, I wonder whether we are framing it in terms of a slightly western way of thinking about the nuclear family, when we all have a responsibility to bring up children in a loving and caring environment. It is absolutely accepted that, when things go badly wrong in a family, the state and other actors have a role to play in protecting the most vulnerable in society—and children are among the most vulnerable in society.

Fraser Sutherland: I see no evidence of differences in international law such that we are dealing with some kind of battle between parents and children. Parents are guardians of their children's rights; they are not arbitrators of what rights those children should enjoy. Children can be among the most vulnerable people in society, and it is right that the state has a role in protecting them. The state also has a role in protecting people with disabilities and dementia. Should we hit those people, too, to help them to learn lessons? I do not think that that is an acceptable approach or that it would be acceptable in public life, so I do not think that it is acceptable that children should be hit in that way, either.

There is a wee bit of confusion in some of the evidence that has been submitted to the committee about the bill interfering with article 8 of the European convention on human rights, which is on family life. There is no clear right in the ECHR to use violence in relation to family life. That is not set out in the framework; it is a bit of red herring that has been deployed. The UNCRC states that parents have a clear role to play in protecting children from violence, not in inflicting it on them.

Alex Cole-Hamilton: That was very helpful. Thank you.

I think that you were present for the interesting discussion that we had with the previous panel about where what the bill proposes fits in the discussion about faith. Given what members of the previous panel said, what do you think that we base our human domestic laws on? Where is the link with faith and scripture? How closely should they mirror one another?

Mairi Campbell-Jack: Quakers are slightly unusual compared with some of the other churches, as we do not believe that the Bible is the infallible word of God that can never be wrong. We consider ourselves to have an orthopraxy rather than an orthodoxy, which means that we do not have some central document from which we take our rules for living our lives. That is not to say that the Bible is not helpful; it is more that we see it as the writings of ancient people who are trying their best to interpret the world, God and their understanding of God, given the knowledge that they have.

Having an orthopraxy gives Quakers flexibility. As we learn more about the world through science and understanding, we can absorb that into the way we choose to live our lives. We absorb what we learn through child psychology, science and the studies that have been done, and we will think about what all of that means for the practice of living our lives instead of having one document that tells us how to behave for ever.

That does not mean that we do not respect other churches' belief in the Bible or their faith. We very much do—we just choose to see things slightly differently.

Alex Cole-Hamilton: Reverend Nimmo, you are representing the Church of Scotland. Have there been times when you have felt that the Bible led to a basket of laws that we adopted as a society but that we have subsequently set aside because they no longer suit our times or our lives?

The Rev Peter Nimmo: It depends on what you mean about the Bible defining a set of laws. It is my understanding that the background of our own cultural experience is 2,000 years of interpreting the scriptures of the Old and New Testaments. To

that extent, there is a Judaeo-Christian undergirding of our society.

However, I think that, as a church, we would always have said that it would be very difficult to say that you had an infallible understanding of those ancient texts. Although we live within the spirit of what we believe to be the word of God as revealed in scripture, there are nevertheless instances throughout history of people making mistakes in their interpretations.

Does that make sense?

Alex Cole-Hamilton: Yes. That was very helpful.

Mr Sutherland, as a humanist you will have your own views about the scriptures. Can you tell us about them?

Fraser Sutherland: Yes. One view that humanists share is that no one faith or belief group should have ultimate authority over the laws of the land. In countries around the world where laws are dictated solely on the basis of legal interpretation, those laws can be really strict, and humanists will stand up for minority faith groups against, for example, blasphemy laws. Using religious texts as a core tenet for shaping human laws is not, I think, a good idea; indeed, a secular approach that divorces religion and belief from the law-making process allows for a society in which everyone, no matter what their religion or belief might be, can approach life in a fair and equal way.

Perhaps at this point I should set out what I mean by secularism, because sometimes there is a bit of deliberate myth making about what it is. People talk about it as if it means removing their right to practise their religion, but that is not what it is. It has three main factors, the first of which is separating religious institutions from the state to ensure that no one religious institution dominates the political sphere.

The second factor is defending people's freedom of thought, religion and conscience. I am a great defender of that, and I am really passionate about defending people's right to believe in whatever religion or faith they want to follow and to change their decisions in that respect as their life goes on. I have changed my point of view on these matters in the past, and there are others who have left us to join churches. That sort of thing is really important in an open and free society.

The third factor in secularism is that there be no discrimination of individuals on the basis of their faith or belief. People should not be denied access to services because they are, say, Muslim or Jewish, and they should not be dismissed from a job because their religion does not fit with their employer's views.

From a secular point of view, we need those three things if we are to have an open and free society. Religious groups should have a voice—and have a voice in Parliament—and should be able to bring forward their views, but that should not be the dominant way in which our laws are informed.

Alex Cole-Hamilton: Thank you.

Mary Fee: Do the witnesses think that the bill has the ability to change the way in which parents discipline their children?

Mairi Campbell-Jack: It is very hard to predict the future. However, after other countries have passed similar bills, there have been changes in how people have parented their children. In France, there has been a drop in the amount of smacking and in the amount of abuse. It seems as though such a bill sends quite a strong signal to people.

The Rev Peter Nimmo: The committee has been looking at the evidence, which suggests that such a legal change has had positive consequences for children and for society in general. If we are interested in ensuring the wellbeing of children, we need to take such evidence very seriously.

Fraser Sutherland: The bill will help with the challenge of violence breeding more violence, for example. The violence reduction unit's evidence to the committee, which referenced challenging views about violence in society, has been mentioned, and we all know the success that the unit has had in challenging knife crime in Glasgow over the past decade or so, for example. In previous sessions, the committee has heard about the overwhelming amount of published academic research that shows the clear association between harsh physical punishment in the home and negative behavioural outcomes. I encourage the committee to look seriously at the academic research that has been published in that area.

We often hear people claiming—we heard it during the previous session—that they were smacked but are not violent. That is a bit of a straw-man argument. The fact that some people smoke for their entire lives but do not get lung cancer does not mean that we should dismiss the evidence that shows that there is an increased risk of lung cancer among people who smoke. We should not dismiss the evidence just because one person has done something and there have not been negative outcomes. That does not mean that that will apply to everyone.

Mary Fee: Does the bill need to include a bit more clarity about the removal of the defence of reasonable chastisement? The key aim of the bill is to remove that defence. We need to be clear that we are not criminalising people who perhaps

give a child a light smack on the hand to protect them; the bill is concerned only with smacks that are given with the intent to cause harm. Does the bill need to include more clarity and more of an explanation of what is reasonable and what we are removing?

Mairi Campbell-Jack: It does. "Reasonable" is a really tricky word. Everyone thinks that they are reasonable, but not everybody is reasonable to everybody else. We can no longer say that the opinion of the man on the Clapham omnibus is everybody's opinion.

There are many different types of family out there. Families from different cultures might have a completely different idea of what "reasonable" means in relation to child chastisement. Some families will be dealing with children who have a lot of problem behaviours for different reasons, and those families might need to take a slightly different tack from the approach of the well-off, middle-class family down the road with only a couple of kids, who are very well behaved. A one-size-fits-all approach will not fit with modern family life, because we no longer have one type of family. From speaking to Quakers, I know that they are very concerned that parents who are struggling with very difficult circumstances might end up being stigmatised through the bill.

Mary Fee: If an investigation is carried out into the smacking of a child that involves, as you have described, a difficult child from a family with problems, is there a risk that those circumstances will not be taken into account?

Mairi Campbell-Jack: I am not an expert in how such cases are investigated, so I would not want to make a blanket statement about it. If the bill were passed, I hope that our police officers and our social workers would receive full training and that we would employ in those roles people who could make good judgments after considering all the different factors. To a certain extent, no law is perfect, so we need to trust the people in society who are the gatekeepers of our law to do a good job. In relation to the bill, we need to ensure that people receive the resources, the training and the education to enable them to make such decisions.

17:15

The Rev Peter Nimmo: I agree with all of what Mairi has just said. I would also say that putting this proposed law into action would require the resourcing of parents and families as well as helping the rest of us in the wider community to understand what the law means and that there are alternative types of discipline and punishment. That does not quite answer your question, but it seems to me that that is part of the broader

context of coming to a deeper understanding of what is required of us all.

Mary Fee: So, raising awareness of the legislation is key.

The Rev Peter Nimmo: We say in our submission that it is absolutely key. Parents need to understand how their responsibilities have changed in some ways. We need to strengthen family life and enable parents to ensure that children are still being brought up in a structured way—a disciplined way, if you want to call it that—because that is important and it helps children to flourish, but that must happen in a way that does not involve a recourse to physical punishment.

Fraser Sutherland: I do not have much to add to what has been said. I think that removing the defence helps to remove some of the confusion around what is reasonable. The 2003 changes were welcome, as far as they went, but they opened up bit of confusion about what is reasonable. It seemed that, if you really wanted to know what a reasonable chastisement would be, you had to become a legal expert and look at all the case law to decide. Removing the defence sends a clear message, which means that we do not have to define what is meant by reasonable punishment. Instead, we will need to explain the position and raise awareness among the public as a whole.

Fulton MacGregor: Earlier, we heard from the Christian Institute, which also made a written submission. It raised concerns that the removal of the defence of justifiable assault could lead to an increase in anxiety and other issues for children. Have you come across that in your research? What are your thoughts on that?

Mairi Campbell-Jack: Before I wrote our submission, I asked young Quakers in Scotland whether they wanted me to work on it. The answer that I got was a resounding yes. They made it absolutely clear that they wanted this to happen.

I cannot speak for all young people—that is not what I am here to do—but I can speak for the young Quakers in Scotland, who strongly feel that they want this law to be passed. They think that it will make children less anxious and that it might help them know what sort of punishment is wrong and where they can go for help, because that can be confusing for children.

Fulton MacGregor: When we were speaking to the previous panel, we heard about the example of Sweden. Although the evidence has been hard to work out, most of the other examples that we have had suggest that the change has been positive overall in various countries, such as France. Do you have any views in that regard?

The Rev Peter Nimmo: Again, I am not an expert on any of this research. However, in these discussions, we should keep in front of us the fact that we want children to flourish and develop into responsible adults, which means that it is incumbent on all of us to find the best ways to do that. If there is a body of evidence that says that not assaulting children as part of how we discipline them as we bring them up is something that leads to positive results for children and society in general, we should clearly be taking that into account. However, I am tempted to say that it is for legislators to weigh up the evidence around that and decide what to do with it.

Mairi Campbell-Jack: On the point about Sweden, I would want to see a bit more about the research that was referred to before I came to any conclusion, because correlation is not necessarily causality. In our experience, violence is often due to a number of factors, which can be personal, interpersonal, societal and even worldwide, so it is sometimes difficult to pick apart what has led to one act of violence. Some good and deep research would be needed to work out exactly what is going on in Sweden.

Fulton MacGregor: That leads nicely on to the other area that I want to ask about, which is the concern that the committee has heard about the possible criminalisation of loving parents who are just trying to do the best for their children. There is a concern that there could be a whole load of prosecutions. The vast majority of the evidence that we have heard from agencies is that that is unlikely to be the case and that there are already systems in place through the child protection and prosecution processes. Do you have any thoughts on that?

Fraser Sutherland: I do not have anything more than what you have said. Experts have given the committee evidence on where the approach has been trialled elsewhere and the results of lived experience. We cannot rely on pontification. When someone thinks that something will lead to something, we should not just listen to their pontification if the evidence shows completely the opposite. There is a strong line of argument that the bill will criminalise parents, but the bill is clear that it is not introducing a new criminal offence; it is removing a defence.

Fulton MacGregor: Thank you. To put it more simply for the other two panellists: are you concerned that the bill will criminalise parents unnecessarily?

The Rev Peter Nimmo: I am not an expert on the evidence, but I do not think that the evidence is pointing in that way.

The more basic issue is that because of what we have done on rights, children appear to have

fewer rights than adults. Because we allow the defence of reasonable chastisement, children are the only group in our society against whom we can use violence, certainly in the home, and have a defence. We do not use violence against criminals. I am old enough to remember when it was done to schoolchildren, but we do not do it to schoolchildren any longer. It seems wrong and strange that we still allow that defence when an act of violence is used against a child within a family.

Mairi Campbell-Jack: It is understandable that parents are concerned about criminalisation and that it is at the forefront of their minds in considering the bill. That is one reason why it would be good to have awareness raising and education. As Peter Nimmo said, work needs to be done with communities and parents to help them to understand what is happening.

We do not believe that we will see a huge rise in the criminalisation of parents. Again, it comes back to the fact that we need to have a certain amount of trust that our social workers and police officers are doing a good job.

Fulton MacGregor: Staying on that point, one issue that was raised by the previous panel—I took a note of which panellist it was at the time, but I cannot remember now—was that the law will perhaps impact mainly on more disadvantaged families. Clearly, the committee would not want that to be the case. Do you have any concerns that, if there is an increase in criminalisation or prosecution, it will most likely be among families who are already struggling? How could that come about?

Mairi Campbell-Jack: I must admit that I had not considered that before the panellist mentioned it but, as soon as he did, I thought, “That’s a really good point.” Sometimes, when laws and other things in society change, the poorest are the hardest and worst hit. That does not mean that they are the only people who are smacking their children; plenty of middle-class and upper-class families do it, too. However, we have an unequal society, and such things impact on people unequally. I understand that part of the scrutiny of the bill is to look at how it would affect people, and I suggest that it would be worth the committee looking into that aspect.

We also suggest looking at families who come to Scotland from different cultures who might find that they are brought to the attention of the authorities more often. Other families who might need extra help are those who are indigenous and are dealing with difficult circumstances—perhaps those with children with difficult behaviours.

Fraser Sutherland: I have nothing to add to that.

Alex Cole-Hamilton: Fraser Sutherland, at the start of your remarks, you made an interesting point about the fact that we do not allow the physical punishment of adults with learning disabilities or dementia who might have the mental age of a child.

We have heard a lot about the use of restraint or physical punishment to warn children about the dangers of hot pans or running out into traffic. Should we liberalise the laws around assault so that we can physically punish adults with dementia or learning disabilities who might put themselves in the same kind of danger?

Fraser Sutherland: No—absolutely not. When it comes to children, we have to follow the evidence. In the 54 other countries in which the law has been changed, has there all of a sudden been an increase in the number of scalds or children running out into the road and being run over by cars? There is no evidence that that has been the case.

We need to lead policy on evidence, not whataboutery. The bill does not class stopping danger as assault. If I saw an adult walking along the street playing a game or texting on their phone and about to walk out into the road, my initial reaction would not be to hit them, but to pull them back from the road. By doing that, I would not be assaulting them, so why would that not be the same for a child?

Once someone has saved a child from danger, can they not have a restorative conversation with them to make them aware of the danger, without using physical violence? I argue that that conversation can be had.

Teachers around Scotland have excellent restorative conversations with pupils every single day. They do not hit pupils—we do not let them do that anymore. That was a fantastic change in the law, which came about because a parent went all the way to the European Court of Human Rights. There is an argument—we heard it from the first panel of witnesses—that the political elite are not listening to the public, but when Grace Campbell started that legal case in 1983, the political elite were not listening to her or to the thoughts of children and other parents. She had to take the legal case all the way to Strasbourg to enforce human rights.

Perhaps one of the reasons why the politicians of the time did not change the law on physical punishment in schools was that opinion polls told them not to. That is another argument that is often used—the public does not want a change, so we should not do it. In 1983, the public did not support removing the belt from schools, but the courts forced schools to do so, because it was a fundamental breach of human rights.

Alex Cole-Hamilton: That is a really interesting point, which we touched on with the previous panel. Should Parliament always follow public opinion, or should it seek to lead and change it?

Fraser Sutherland: If you want to just follow public opinion, you might as well dissolve Parliament and have referendums every day.

The Rev Peter Nimmo: The Parliament is a deliberative assembly. We elect you to do exactly what you are doing now, which is to examine the evidence and hear various points of view. At times, Parliament leads public opinion, but sometimes it is behind it. In a democracy, we want to hear the voices of those who are saying what is perhaps radical now, but might eventually become something that the rest of us catch up with.

Mairi Campbell-Jack: I agree with my fellow panellists. The smoking ban is a good example. I worked on social research on the smoking ban and, at that time, people were saying all sorts of things, such as, “We will have Nazis coming into the country next,” and, “This is against my human rights.” However, the day that that law came into effect, nothing happened—everybody just obeyed it. We adapt very quickly. With that law, there was a lot of education and people really knew about it.

If you are leading, there is a job to lead in a way that is kind and compassionate. We cannot always go with public opinion, but it is really important to make sure that everybody is listened to.

Gail Ross: I thank the witnesses for their evidence.

We have received written evidence and heard from the first panel that legislation is unnecessary and that we should just run an education and awareness-raising campaign. What are your thoughts on that?

Mairi Campbell-Jack: We would probably go for both aspects. Legislation sends an incredibly strong message. In research that was done in Glasgow, about 66 per cent of parents said that, if the bill was passed, they would smack less. That shows that the bill is sending people the message that Scotland is considering the view that smacking is no longer acceptable. However, that must go hand in hand with education and awareness raising.

17:30

The Rev Peter Nimmo: I agree, and I strengthen the point by saying that legislation would signal that we find violence increasingly unacceptable. We are struggling with violence in our communities, although we have begun to see ways of addressing it—the violence reduction unit in Glasgow has been mentioned, and its approach is exciting and interesting. Changing the law would

reinforce the thought that, on the whole, violence is not a solution to anything. As Christian people, we agree with that.

Fraser Sutherland: I do not have a huge amount to add to what I said in answering a question from Mary Fee. If anything, changing the law would make the boundaries much clearer. Under the 2003 act, there is perhaps a bit of confusion about what is reasonable. The bill would send a strong message, although I do not disagree at all with the other panel members that education would be needed, as with any new legislation that is brought in. The smoking ban has been talked about; when that was to be introduced, a lot of awareness raising was done around the date when it would come in and what it would mean for pubs and clubs around the country. Any change in the law needs to be backed by education.

Gail Ross: I will dig into that a bit further. What would an education and awareness-raising campaign look like?

Mairi Campbell-Jack: The campaign would need to speak to several audiences. I would like a campaign that was aimed at children, but it would also be essential to have campaigns aimed at parents and grandparents and at carers who are not relatives. It would also be vital to involve organisations that work with children, such as Children 1st, the Children and Young People’s Commissioner Scotland and Young Scot.

The Rev Peter Nimmo: Faith communities would have a role to play. In our report to our General Assembly in 2016, in which we suggested that the General Assembly should support such a change in the law, we made it clear that our church would seek to promote resources to support the development of a non-violent approach to the upbringing of children. We might produce those resources ourselves or we might—this is probably the way that we would go, as we do not necessarily have the resources to produce our own resources—use resources from other denominations or other places.

To parents who worry that the approach might not be in parallel with their faith commitments, we say that our denomination thinks—and other faith communities could feel the same way—that it is possible to explain why the change and the promotion of a non-violent approach to parenting resonate with their values as part of a faith community. We certainly felt that such a change in the law would resonate in that way, and our General Assembly agreed with us. The approach is fine grained; there is the ability to say to people with different faith outlooks and philosophies that such a change would be in line with their most deeply held values.

Fraser Sutherland: I agree with Mairi Campbell-Jack. Some education resources or methods should be aimed at children and young people in particular. However, there are already a lot of support mechanisms for soon-to-be parents or people who have just had children—particularly young parents—and quite a lot of connections with health services and other groups. If you are trying to get the message out, you may want to do that through the networks that families already touch base with. Faith communities are an important part of that because a lot of people come into contact with them. Within the national health service, for example, there is already a really good connection with health workers that we could use to get the message out.

Gordon Lindhurst (Lothian) (Con): I think that all the panellists will be aware that the European Court of Human Rights and, indeed, the United Kingdom Supreme Court have confirmed that people have the right to live out their faith, religion or beliefs in a real way—not just to hold those beliefs and quietly think them but to live them out. Of course, that includes what happens in the family—in the home—which is particularly protected under the human rights convention. Unlike the smoking ban, which did not apply to private homes, the understanding is that the bill will.

There are different views within religion. Some Christians, such as the Rev Peter Nimmo, sincerely believe that smacking is not the right thing to do; other Christians, such as the Rev Richard Ross, take a different view. The courts have also indicated that it is an individual's right to live out their religion as they believe it, not as the majority of people who share their religion believe it.

I think that all three panellists agree with what they understand the bill is trying to do. Where is the protection in the bill for someone such as the Rev Richard Ross, who holds an equally sincere but different viewpoint? I am sure that the Rev Peter Nimmo will agree that Christians may hold different views on particular issues. Some, such as the Quakers, may be conscientious objectors, whereas others are not. Where is the protection in the bill and, if it is not there, should it be put in?

The Rev Peter Nimmo: It is not unusual for the state or wider society to put limits on how people express their religious beliefs. If, as a society, we think that certain practices that may seem to have a deep religious basis nevertheless do not promote the wellbeing of society as a whole, of course the state has a right to do something. In a democracy, we go about that in a democratic way.

Yes, we have rights but if I was to say that I had a conscientious objection to how the Government was spending my taxes and that I would therefore

not be paying my taxes, the state—correctly—would have something to say about that. There are limits on what we can do and that is because, as we try to live out whatever rights we think we have, we may well be impinging on the rights of others.

We are talking about children. Children are vulnerable and they need to be protected. If we have come to a view that violence of any kind against children, for whatever reason, is just not good for them, we should certainly legislate on that. That may impinge on what someone else thinks are their rights, but we are talking about the right of a child not to suffer something that might be quite traumatic, even if we did not mean it to be traumatic. We may think of a slap on the ear as not very important, but the research shows, and the experience is, that that is not good for the child or for society in general, so there is that conflict or tension. As a society, we must work our way around that tension, and we have been doing that for centuries.

Mairi Campbell-Jack: I agree with Mr Nimmo. As we develop our understanding of rights, there will be tricky questions and situations that we will have to tease out as a society, and we will have to work out how we are going to deal with them. The important point is that, as Mr Nimmo said, we are talking about children, and their vulnerability must be put at the centre of this.

To conflate the issue with something else and exaggerate it, I note that somebody might sincerely believe that their God tells them to kill people, but that does not mean that we would sit there and say, "You're right—your sincere religious belief trumps other people's right to life." When we are talking about actual harm that is being done—and there is quite a lot of evidence that smacking harms not only children, but parents and their relationship with their children—that must be the first consideration.

Fraser Sutherland: Mr Lindhurst is right to point out that there is a right to freedom of thought, religion and belief under European human rights law, but it is limited by the public order acts and the rights of others. Case law at the European Court of Human Rights shows that that right can be restricted where there is a need to protect others' rights and public order. The Parliament can decide that the physical punishment of children impacts on children's rights, so the defence that someone's religion tells them that it is okay does not stand up to scrutiny.

Gordon Lindhurst: However, it is not quite as simple as just saying that the child has rights, because one of those rights is their right to be raised in accordance with the religion of their family. There are rights and responsibilities on both sides—the parents' side and the children's

side. I hope that no one would disagree with that. If it is a question of belief, are you saying, ultimately, that there should be no protection for those who believe that the approach in the bill is incorrect? Is that not the real question? Should the child should have no right to be raised in accordance with their religious faith—or, it would be better to say, that of their family?

The Rev Peter Nimmo: I reiterate the general principle that everyone, including children, has a right to live out a particular religion or philosophy. That is a hard-won right and it is very important to religious communities. However, there is a tension between that, even in a situation where a child thought that smacking was good for them, and the body of evidence that smacking is harmful and that the harm outweighs the person's rights. I am not sure that it would be a very significant erosion of people's religious rights to take away from them the possibility of their using corporal punishment against their children. However, that may be a subjective view.

The Convener: Do the other panellists wish to add anything?

Mairi Campbell-Jack: I agree with Mr Nimmo.

Fraser Sutherland: All that I would say is that equalities and human rights legislation protects people from unfair treatment based on their age. We should not go down the road of saying that we should allow young people to be hit because they are young people and their parents have decided that that is within their faith protection so young people's other rights are eroded. I am afraid that there is no hierarchy of rights whereby freedom of religion and belief protects people and erodes young people's right to be free from violence, for example.

The Convener: I thank all the members of our panel for their time and their evidence, which has been very helpful to us in our considerations.

Our next meeting will be on 21 March, when we will continue to take evidence on the bill. I thank the people on Skye for their hospitality and their help today. We have had a very informative and interesting day.

Meeting closed at 17:45.

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