



OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities and Human Rights Committee

Thursday 10 October 2019

Session 5



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FEMALE GENITAL MUTILATION (PROTECTION AND GUIDANCE) (SCOTLAND) BILL: STAGE 1 1

EQUALITIES AND HUMAN RIGHTS COMMITTEE

24th Meeting 2019, Session 5

CONVENER

*Ruth Maguire (Cunninghame South) (SNP)

DEPUTY CONVENER

Alex Cole-Hamilton (Edinburgh Western) (LD)

COMMITTEE MEMBERS

Angela Constance (Almond Valley) (SNP)

*Mary Fee (West Scotland) (Lab)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Oliver Mundell (Dumfriesshire) (Con)

*Annie Wells (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Andrea Bradley (Educational Institute of Scotland)

Detective Superintendent Elaine Galbraith (Police Scotland)

Suzanne Hargreaves (Education Scotland)

Anne Marie Hicks (Crown Office and Procurator Fiscal Service)

Neil Hunter (Scottish Children's Reporter Administration)

Gillian Mawdsley (Law Society of Scotland)

Liz Owens (Social Work Scotland)

Beatrice Wishart (Shetland Islands) (LD) (Committee Substitute)

CLERK TO THE COMMITTEE

Claire Menzies

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Equalities and Human Rights Committee

Thursday 10 October 2019

[The Convener opened the meeting at 09:00]

Female Genital Mutilation (Protection and Guidance) (Scotland) Bill: Stage 1

The Convener (Ruth Maguire): Good morning, everyone, and welcome to the 24th meeting in 2019 of the Equalities and Human Rights Committee. I ask everyone to ensure that all mobile devices are switched off and put away. We have received apologies from Angela Constance and Alex Cole-Hamilton, and I welcome Beatrice Wishart, who is here as a substitute.

Under agenda item 1, we will continue our oral evidence on the Female Genital Mutilation (Protection and Guidance) (Scotland) Bill. I welcome Andrea Bradley, assistant secretary in education and equalities at the Educational Institute of Scotland; Detective Superintendent Elaine Galbraith, who works in public protection and is from Police Scotland's specialist crime division; Suzanne Hargreaves, senior education officer for health and wellbeing at Education Scotland; and Liz Owens, senior officer in child protection at the Glasgow health and social care partnership, who is here on behalf of Social Work Scotland. Thank you for being with us.

What is your experience or knowledge of FGM? What work do you do in relation to it?

Detective Superintendent Elaine Galbraith (Police Scotland): I am the head of child and adult protection for Police Scotland. In that role, I have various portfolios, one of which is the child protection portfolio. I have a team that works very closely with other divisions and which is responsible for developing our policies and working with other agencies in relation to FGM. We work closely with third sector organisations, in particular, to learn how the police's approach to dealing with FGM can be developed and improved. That work is on-going.

Over the years, we have attended various events. A couple of years ago, we held a conference at the Scottish Police College, which was centred around enhancing our work with communities. A lot of the groups that we work with were invited to attend the conference, and we centred the whole day around survivors'

experiences in order to better our practice. We combine that work with the work that is done by officers in the public protection arena and by community officers, which helps to share learning. That summarises my experience and that of my team.

Andrea Bradley (Educational Institute of Scotland): I am the assistant secretary in education and equalities at the Educational Institute of Scotland. We are the biggest teacher trade union in Scotland, representing members across the nursery, primary school and secondary school sectors.

A huge number of matters relating to FGM are of professional interest to teachers. Teachers have certain professional responsibilities in relation to child protection and equalities matters so, as a trade union and a professional association that represents teachers, the EIS has a particular interest in FGM. We have been long-standing campaigners on various aspects relating to gender equality, and we view FGM as sitting comfortably within that work.

The EIS is concerned with any matters that relate to the professional standards by which teachers are governed. The General Teaching Council for Scotland's professional standards clearly outline the duty of teachers to safeguard and protect the wellbeing and interests of young people. Teachers also have a responsibility to ensure that, as far as possible, young people are treated equally in their experience of school education. Given all those aspects, we have a particular interest in the subject.

We have not had too much dialogue with our members about FGM specifically, but we keep an eye on the area. We have not had a large number of reports from our members of FGM being a particular concern. However, there is an issue with professional learning, which is another area for which I have responsibility in the EIS. From inquiries that we have made, we know that members feel that they need professional learning specifically on FGM and on equalities more broadly. It has been a long-standing ask of our members that they have systematic, easily available and high-quality professional learning that relates to equalities, and we would like to see specificity around FGM.

The Convener: We will certainly get into that later on.

Liz Owens (Social Work Scotland): I am a senior officer in Glasgow's central policy and practice child protection team. My experience of FGM spans direct practice, policy development and training.

On practice development, our role is to support best practice. We would be consulted by our social

work colleagues to offer advice and guidance and attend child protection case discussions in special circumstances in which FGM is a concern with partner agencies, such as the police and health and education services.

We have developed FGM guidance in Glasgow with the child protection committee and partner agencies, and we have delivered multi-agency training with education and health colleagues.

We have experience of engaging with communities. Over the past few years, we have engaged with black African communities in looking at child protection in its broadest context. That has included discussion of FGM. From that, we developed a one-day cultural competence training programme for all multi-agency staff that considered how culturally competent we are to have really sensitive conversations with communities and how we can work better with communities so that we do not drive FGM and other harmful practices underground.

Suzanne Hargreaves (Education Scotland): I am a senior education officer for health and wellbeing at Education Scotland.

One of the organisers in the curriculum is relationships, sexual health and parenthood. Within that, there are experiences and outcomes and benchmarks. I am here to talk a little about the work that we have done on the curriculum aspect of health and wellbeing.

The experiences and outcomes and benchmarks are progressive and coherent. FGM comes in at the third level, at secondary 1, S2 and S3. We use it as an example of gender-based violence.

The benchmarks were marked internationally to ensure that Scottish children are not out of step in age and stage-appropriate aspects of learning. Children learn from a very young age from “My Body Belongs to Me” straight through to the third and fourth levels, at which children learn about the support that is available and current legislation relating to types of abuse, such as FGM, domestic abuse, grooming and child sexual exploitation.

At this year’s Scottish learning festival, we launched a new relationships, sexual health and parenthood resource that is progressive and coherent for people all the way through from three to 18. At the third and fourth levels, there are lessons on FGM, human sexuality and the idea of sexual rights. It is all very well having a resource, but we have a plan. I am glad that Andrea Bradley mentioned professional learning. On 29 October, we will launch a programme of professional learning for teachers and practitioners who work with young people, because young people told us that they wanted teachers who are confident and competent on this aspect.

The Convener: Thank you. That is really helpful.

Do you support the bill’s aim to strengthen the existing legal framework? It would be helpful to know your general views on the existing framework.

Detective Superintendent Galbraith: Police Scotland supports strengthening the legislation and certain aspects of what has been proposed. We support anything that can provide us with more opportunities to identify where FGM is occurring and, more important from a policing point of view, more opportunities to enforce legislation that will help to eradicate FGM. We whole-heartedly support the proposal for FGM protection orders in particular. We see the orders as an obvious tool to prevent certain activity and place conditions on individuals, which will assist us in trying to enforce the legislation.

In our experience, the current framework has some limitations with regard to prevention in particular. I think that everyone would agree that prevention is what we want—we do not want to wait until a child has been abused and then enforce the legislation. We would certainly wish to explore any opportunities for preventative legislation on offending.

The Convener: Obviously, FGM is already illegal. Are the approaches that are currently available being used to their full extent? If not, why?

Detective Superintendent Galbraith: As I said at the beginning of the session, a lot of that potentially comes down to underreporting. As the committee will know, the data on the prevalence of FGM across the country is very limited.

I spoke earlier about the discussions that we have had with members of communities. I think that there is also a fear aspect attached to FGM. If we cannot identify whether FGM has occurred, that makes it difficult for us to enforce the legislation that is currently in place.

The Convener: What is it about the protection orders that you think will improve the situation?

Detective Superintendent Galbraith: First, it is a civil order, and we have seen other civil orders used effectively to address the conduct of others. Secondly, it gives us the ability to put measures in place. The legislation says that FGM is illegal, as it has done for some time. However, individual members of communities will be able to say that there is an order that prevents them from removing their child from this country, or that prevents someone from coming into the country to carry out such acts or to encourage or coerce parents to remove children from the country. We

see that added layer of protection as one of the positives of the bill.

The Convener: Do any other panel members have a view on that?

Liz Owens: Social Work Scotland definitely upholds the strengthening of the bill. As Elaine Galbraith said, engagement with communities has been really good. We have had some very important and frank conversations, and we have heard from women and children about their experiences. The order would be a really protective and empowering tool to have.

Andrea Bradley: We concur with that view. There are child protection procedures firmly in place across the school sector, and teachers are confident in the way that they engage with those procedures. However, there is perhaps a question with regard to how well 16 and 17-year-olds are protected by the current procedures. The strengthening of legislation in this area offers an opportunity to educate all our front-line workers who work with children and young people on FGM: what it looks like, who might be at particular risk of experiencing it and what measures might be taken to counteract it across all our service areas.

With regard to statutory guidance, it is important for that element to be included. However, it would have to be framed in terms that practitioners can understand. It should be light on bureaucracy so that teachers do not have to spend a significant amount of time trying to understand and process it.

I also reiterate my earlier point, which Suzanne Hargreaves echoed, on the importance of professional learning being attached to anything that we do in this area. I think that we in Scotland would, as a society, want to do all that we practicably can to safeguard the wellbeing and the personal, physical and psychological safety of all our children and young people, especially girls who might be vulnerable to that kind of abuse.

The Convener: You have answered my next question without my having to ask it, which is good. It is about the evidence that we have heard on the gap that exists for 16 and 17-year-olds. Do other panel members have any reflections on that?

09:15

Liz Owens: The current child protection procedures apply to children aged up to 18, but legislative opportunities to offer them protection stop if they just come into the system at the age of 16 or 17. Our experience has been that forced marriage cases often involve 16 or 17-year-olds, so it is great that we have been able to use forced marriage protection orders successfully in those.

There needs to be greater focus on young people of those ages. We need to hold them in our child protection processes as well as thinking about whether to apply for forced marriage protection orders, so it would be very useful to have a similar option in FGM cases.

Beatrice Wishart (Shetland Islands) (LD): I was going to ask for panel members' views on FGM protection orders, but they have probably covered that. I am interested in finding out how we can protect women and girls who are taken out of the country and then brought back. How might such orders help them?

Detective Superintendent Galbraith: I will go first again, if I may. The travel aspect has been a huge factor in tackling FGM cases. We should possibly consider having conditions that would prevent such travel from occurring in the first instance. A lot of the multi-agency discussions that take place are on individual concerns from our partners in areas such as education, where a trip might be planned. Such cases are quite difficult, because we might have nothing other than an indication of what could be going on. We must then look at other risk factors to determine whether that child is potentially at risk of significant harm. It is very difficult to make such an assessment based solely on the fact that a trip is planned. However, by having a protection order, looking at the case through a risk assessment framework and having multi-agency involvement through an interagency referral discussion, we can say that there is merit in trying to prevent the child from going out of the country in the first instance. The best means of doing so is to have protection in place at the border.

Beatrice Wishart: Do other panel members have any thoughts on that?

Liz Owens: Again, there is an interplay among the current child protection processes in relation to child protection orders and whether there is a discussion to be had with our partner agencies at the IRD stage about whether to apply for a child protection order if there is immediate risk on that day; we then consider whether to apply for a forced marriage protection order.

To draw a parallel with our experience in forced marriage cases, throughout our initial referral discussions and case discussions we have successfully considered whether we needed to have an application ready and waiting, and the case flagged at ports and airports. There is practice there on which we can draw. In Scotland, there is not a huge amount of it, but there is practice that enables us to think about how we might look at our statutory guidance and what we would guide people to do in practice.

Beatrice Wishart: Convener, may I ask another question?

The Convener: Of course.

Beatrice Wishart: Why do panel members think that there have been no prosecutions in FGM cases in Scotland?

Detective Superintendent Galbraith: It comes down to difficulties with identification and underreporting of cases and with the sufficiency of evidence. There has been one prosecution in the United Kingdom. As regards the processing of concerns that we hear emerging in Scotland, I agree with Liz Owens that every case in which there is significant concern will go through child protection procedures. We regard the issue of FGM as being part of child protection, so there is multi-agency assessment, information sharing and decision making. If there is a need to investigate further, that is undertaken either jointly or via a single agency. However, it often follows from that process—whether it is through fear or people not wishing to speak up in their communities—that there is a lack of sufficient evidence for a criminal case to be brought.

Oliver Mundell (Dumfriesshire) (Con): I will follow on from what you said about criminal cases. What do you think about the breaching of FGM orders being criminalised?

Detective Superintendent Galbraith: Making it a criminal offence to breach an order will send such a strong message. Getting the order in the first place and then, if any of the conditions are broken, policing it, will go a long way towards outlining that Scotland very much sees any association with FGM as a criminal offence.

Oliver Mundell: This is not my view, but I put it to you that people say that the current legislation is difficult to use, because people are fearful that it may lead to criminalisation. Is there any risk that they will confuse the criminalisation of a breach of an FGM order with the current legislation, and that it will change how they think about FGM protection orders?

Detective Superintendent Galbraith: No; I think that protection orders will be seen as a protective measure and as being about—I think that the word was used earlier—empowerment. From a survivor's or a victim's point of view, they will have a protection order, which means that the responsibility is not all on them. The protection order comes in to prevent FGM from occurring in the first place. To be perfectly honest, the criminalisation of the breach of an order is only a good thing.

Oliver Mundell: That is very helpful. What should the penalty be if an order is breached?

Detective Superintendent Galbraith: It should be similar to what we have in relation to the forced marriage protection orders.

Liz Owens: I think the same as Elaine Galbraith. Important conversations and change are already happening in communities, with women and girls talking about FGM and wanting the practice to change. Criminalising the breach of an order will strengthen that position and help to sustain and progress that change.

Oliver Mundell: Do the witnesses have a view on whether children's hearings should be able to grant an FGM protection order? If so, why?

Liz Owens: Wow, that is a big question. I have not considered children's hearings being able to grant an order. It would make it easier for under-16s, if we were already going for a child protection order and were in that process. To be honest, I am not sure how it would actually be done.

The Convener: How might that be for the girl and the family who are involved—would there be a difference?

Liz Owens: It is a different process. The court process could be much more sensitively managed, potentially by using special measures, whereas a children's hearing can be an adversarial and difficult process to be involved in, and people would be given all that information. I do not know about Social Work Scotland, but speaking personally, I am not sure how skilled people would be in managing such sensitive information.

The Convener: That is interesting.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I have a brief supplementary question to Oliver Mundell's line of questioning. We heard mixed evidence from previous panels around criminalisation. Most folk would agree with the general principles that you have described—that it sends out a clear message—but there is also a worry that it could push the practice even further underground. Do witnesses have any thoughts on that aspect of criminalisation?

Andrea Bradley: The point that Suzanne Hargreaves made about the curriculum is important, as is Elaine Galbraith's point about underreporting. There is a job to be done to raise young people's awareness of their rights to protection, safety and security. That bit of the picture needs to be kept strongly in mind, so that, when we consider introducing legislation that might have the unintended consequences of greater underreporting than we already have, we are conscious of that risk and counteract it by skilling up young people on their understanding of the issues and their rights and entitlements as human beings. We need a strong human rights approach to all that within the school curriculum.

My plea is that we need to create the time and space in the curriculum, so that teachers can consider and address those complex and sensitive areas.

Liz Owens: I agree. It is also important that we think about our engagement with communities and public awareness, that we have those public conversations and think with communities about how we change. We need to talk about criminalisation, the law and our duty to protect children. FGM is a form of abuse and it should not be treated differently from other forms of abuse. However, we need to engage with communities and have those conversations with faith leaders, mothers, fathers and grandparents, as well as doing vital work with children and young people.

Fulton MacGregor: Thank you; what started off as a supplementary question has taken me nicely on to my line of questioning about education and raising awareness.

Do we need to raise awareness of FGM right across Scotland, through every group in every part of Scottish society, or should it be targeted?

Liz Owens: We probably need to do both. We need to do general public awareness. I have engaged with communities around child protection and done a lot of work on child sexual exploitation and I sit on the NWG Network for tackling child sexual exploitation, as well as the FGM national action plan implementation group. It is important to talk about child protection generally and include FGM in the conversation as another form of abuse.

Fulton MacGregor: That is a good point. In relation to targeting, we have also heard evidence about concerns over possible racial profiling.

Liz Owens: Absolutely.

Fulton MacGregor: It is interesting to hear your response.

Suzanne Hargreaves: I agree with those points about universal and targeted education. The new resource that has just been launched does not shy away from the issues that young people face in the 21st century, including unprecedented access to porn. The resource is being built with that in mind. We piloted it in 38 schools, where young people worked with the resource and they have been influential in designing it. We need to be careful about how we look at issues such as gender-based violence. The curriculum was designed to meet the needs of the children in front of us, so teachers and schools will decide the most appropriate aspects of RSHP for children to learn. FGM might be one of those aspects, under the topic of gender-based violence.

Fulton MacGregor: Would that approach be rolled out to all children who go through the curriculum?

Suzanne Hargreaves: Yes.

Fulton MacGregor: I will also ask about training more generally for each of your services. You do not need to go much further than what you wrote in your submissions, but what training have your services had and what plans are in place for future training? Some panellists have already mentioned that.

Detective Superintendent Galbraith: From a policing point of view, FGM is part of the child protection standard operating procedure. It also sits within its own standard operating procedure, alongside honour-based abuse and forced marriage. We are reviewing all our standard operating procedures to make them more accessible and applicable to all 23,000 police officers and staff across Police Scotland.

09:30

There are specific training inputs through the Scottish Police College, as well as localised multi-agency training. There are public protection inputs into the various stages of the detective officers' training—the investigators development programme—right the way up to senior investigating officer level, with specific inputs on the investigation of FGM.

In addition, for officers coming in to the child protection specialism, there is a separate child protection course that includes a lesson on FGM. Probably the most important course is that on the interagency referral discussion. It is a three-day course at the college to assist officers who are undertaking that role, dealing with multi-agency partners in the national health service and social work. It is about how to make decisions when information comes in, because that is the critical point in terms of how we go forward.

It is safe to say that the standard operating procedures, guidance and information on FGM are universally available through our intranet, but there is also specific, bespoke and concentrated training for those who will be working in this area.

Andrea Bradley: It would appear that some teachers, in some schools, in some local authorities have some exposure to FGM training, usually within the package of training that they receive on child protection more generally.

We asked a question about the confidence levels of teachers in relation to handling potential cases of FGM as they might emerge and we got a very mixed response. Some people said, "Yes, I am confident that I would know how to channel that through child protection procedures," but

others said, "I am not confident at all—please can we have some guidance in this area," even though the teachers reported that this was not something that they were coming across at all. People had heard some anecdotal references, but nothing really specific.

Our impression is that training is patchy. Local authorities have different responses to FGM training. One local authority has included it quite systematically within a child protection online training package that it has recently adapted, but there seems to be a dearth of such approaches.

Fulton MacGregor's point about racial profiling is important. It needs to be quite carefully thought out—it not just about how to upskill teachers on FGM, but how to do it in a way that would avoid exactly that scenario. The training on the prevent duty that has been rolled out south of the border has resulted in some really unfortunate cases of children and their families falling foul of misjudgment around matters relating to different kinds of extremism.

Training needs to be systematic across the country. Statutory guidance on that would be helpful and we need to take careful consideration of the potential racial profiling element.

The Convener: What is the benefit of making the guidance statutory rather than advisory?

Andrea Bradley: The current guidance is advisory and our teachers are telling us that this issue is not high in their consciousness and they do not feel confident about addressing it. Strengthening the status of the guidance could generate a bit of activity within the system to improve that picture.

That said, I am conscious of the number of asks on the education service, the amount of strain in relation to teacher workload, and the number of training and professional learning demands. It may be a question of decluttering by deciding what is an absolute priority. Space has to be created in the system, because this is about the safety of girls and young women.

The Convener: That is really helpful. Do any other panel members have any views on guidance for practitioners?

Liz Owens: I concur that such guidance would strengthen and support the development of practice and responses.

On training, the national implementation action plan group asked the 32 local authorities whether they have a training strategy for FGM, what it is and how robust it is. I agree that we have single-agency training, and multi-agency child protection, so there is training for different levels, for different areas and specialist investigators, but that is

different across the country and that does not support us to drive practice forward.

Mary Fee (West Scotland) (Lab): I will look in more detail at the practical impact of the protection order. In response to earlier questions, we have heard words such as "empowerment" and that the order will protect women. In practical terms, what will the protection order do for women and girls?

Detective Superintendent Galbraith: It will provide a layer of protection, in our opinion. I was asked earlier about the difference between the protection order and the existing legislation. The fact is that anybody can apply for a protection order. The responsibility is not necessarily on the shoulders of a young victim or a survivor. It means that society is saying that we want to protect you, so we will apply for an order. It could be a local authority, the police or another agency that applies for the order to protect someone.

Child protection arrangements will take care of a child if she is at risk of significant harm. As Liz Owens said, we are then getting into child protection orders, compulsory supervision orders and the children's hearings system. An FGM protection order would impose certain conditions on any potential perpetrator and prevent any activity or conduct being undertaken; that is where its level of protection comes in.

Mary Fee: Does any other witness have any thoughts on the practical impact of the protection orders?

Liz Owens: I agree with Elaine Galbraith. The orders will let us look at bringing perpetrators to justice and offering protection to children, young people and women.

The parallel with forced marriage is important, in that we can see people's experience of being protected by a different kind of order. I am aware that that has been fairly successful for some young people.

Mary Fee: In some evidence, we heard people saying that young girls would be particularly unlikely to speak out against their families and that there is a section of the population that does not know that FGM is against the law. FGM is not talked about and people say that, although it happens, they do not talk about it.

If protection orders come in and people do not know that FGM is against the law or are reluctant to speak out against their families, how will the protection order help them?

Liz Owens: It is similar to sexual abuse. Suzanne Hargreaves talked about what we are doing in the curriculum to help children to understand that they have a right not to be abused. So many lessons are being learned from the historical sexual abuse inquiry that is going on

just now, and the situation with FGM is not dissimilar to victims not recognising that sexual abuse is not okay, that it is against the law, and it is abuse.

Mary Fee: Does anyone have a different view?

Suzanne Hargreaves: It is important that young people know about their sexual rights and about the legislation. That is why it is important that these things are in the new teaching resource and the curriculum. A new document has just been published about health relationships and the law around consent. Again, our young people do not understand that law. It is a similar argument; we need to make sure that our young people know the law and what their rights are around consent and abuse.

Detective Superintendent Galbraith: I agree with that—it falls in with the rights aspect. We know that a lot of people do not understand that FGM is illegal, so it is our job to ensure that that understanding is out there and that we link it to the protection of women's rights and the prevention of gender-based violence.

That goes back to our discussion about universal awareness. We need to publicise the fact that FGM is a criminal offence and that FGM protection orders will be in place to protect people. That would go hand in hand with how we would see information around the bill being rolled out.

Mary Fee: What support is currently available for women and young girls, and families, who have experienced FGM or who are likely to be removed to another country so that the practice can be carried out? Is that support adequate? When the protection orders come into force, should a different type of support be put in place?

Liz Owens: The FGM national action plan implementation group has been looking at that question, because support is patchy across the country. The group asked the same question when we were looking at child sexual exploitation. We looked at the support services that were available to children and young people and to their parents and carers. Again, we know that provision in that area is not consistent.

The national implementation group is asking each of the local authorities what support they have available. If they do not have any support in place, do they need to think about that? What services could they put in place? What services do they have? Can they use existing services or do they need to think about creating other resources?

Mary Fee: I want to ask Liz Owens a question, and then the other panel members can answer as well. If you come across a young girl who is potentially at risk from FGM, what can you currently do to support her?

Liz Owens: In Glasgow, we have services, such as Saheliya, to which we would refer her. We are able to access resources in Glasgow, which is good, but I am not sure what would happen in other places.

Mary Fee: I accept that it may be slightly more difficult for the education people on the panel to give an answer, but perhaps Elaine Galbraith can respond. What services do the police have at their disposal to help and support people who are at risk from FGM?

Detective Superintendent Galbraith: The support is very similar to what is available from a local authority point of view. I echo what Liz Owens said about the patchwork of support that is available across the country in respect of all aspects of child abuse.

That is where the interagency referral discussion comes in. We have to look at what is out there, what is best and how we can support people. We need to put the child at the centre and ask, what does this child need by way of support and is that support available?

The agencies that Liz Owens spoke about are very much the same ones that we would go to, but that would be done within a multi-agency setting so that we can ensure that we get the best support that is available, if it is available.

Mary Fee: We have heard that legal aid should be free to anyone who needs support around FGM. What is your view on that? I accept that you may not have a detailed view. Do you think that legal aid should be free?

The Convener: Everybody is nodding.

Mary Fee: Yes, everybody is nodding.

Liz Owens: Why would it not be?

Mary Fee: We have heard that the usual criteria for an application for legal aid would be applied in the case of FGM. A financial assessment would be done, and some financial contribution may be required. However, we have also heard that legal aid should be completely free. Should the usual criteria apply, or should it be completely free?

Detective Superintendent Galbraith: It is not something that I have considered, so I am considering it on the spot just now.

Due to underreporting and people not coming forward or not having faith in the system—that is the evidence that you have heard so far—I support the argument for legal aid being free. FGM is not like any other crime. It is different, because people are not confident in the system or, as you pointed out, they do not even know that it is a criminal offence.

09:45

Annie Wells (Glasgow) (Con): We have heard, especially from Elaine Galbraith, about the underreporting of FGM, which has potentially led to there being no prosecutions in Scotland. What is the panel's view on the introduction of a duty to report?

Should we make an offence of failure to protect?

We have heard strong support for the anonymity of the women or girls who come forward—what are your views on that?

Should we put those three aspects in the bill, or should they be dealt with through statutory guidance or other measures?

Detective Superintendent Galbraith: We have established child protection procedures, so notification is already taking place in the conversations that are held when we feel that there is a risk to a child. Statutory guidance to clarify that existing framework will help. I was involved in the development of the multi-agency guidance and a conversation about when to have the interagency referral discussion was certainly part of the discussion about agencies informing other agencies. We already have a good, sound child protection process in place that will be further strengthened by the revision of the national guidance on child protection. We have those links in Scotland.

If there were an offence of failure to protect, we would be asking people to come forward, to tell and to report, but, after gathering evidence, we might end up telling those people that they have failed to protect. The danger is that that might drive the practice of FGM even further below the surface. That is our concern. If there is clear and obvious evidence that a parent or carer has exposed a child to danger, there is existing legislation—section 12 of the Children and Young Persons (Scotland) Act 1937—to deal with that.

There are processes in place in the legal system to protect the anonymity of individuals. I am not sure about the automatic right to anonymity, because it comes down to the individual. Some people might want to have their details known, to stand up in court and have their evidence heard, and to not remain anonymous. It comes down to their rights. Each case should be dealt with individually and the appropriate measures put in place, if need be. The Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 will come into play in Scotland soon, which will increase the use of prior statement or evidence by commission, so that will be another option.

Annie Wells: If no one has anything to add, I will ask my other question. Earlier, we touched on some people not feeling confident enough to

report, if they have never had to do it before. Perhaps guidance is needed on how to go about reporting, rather than having a duty to report in the bill. We need to make sure that people feel able to go to the relevant person to make a report. I think Suzanne Hargreaves touched on giving people the means to understand and have a conversation in order to move on. Should we look at that?

Suzanne Hargreaves: Teachers always refer to the child protection officer and do not deal with such matters directly. CPOs know the children really well and that system is well established.

The Convener: Previously, we heard evidence about the potential damage to relationships between practitioners. Although child protection is the most important aspect, having a duty to report might cause harm. Do you have a view on that, or can you provide examples of it?

Liz Owens: I agree with Elaine Galbraith—I am not in favour of a duty to report. We have robust child protection multi-agency processes and practices. Each case needs to be looked at individually when it comes to decisions about criminalisation, or a failure to protect. Situations are frequently delicate. We work with mothers who might not be aware, might be being coerced or might be powerless to do anything. There should be individual risk assessments and we should think about what interventions we make in our ongoing work with non-offending carers. That is important. We do not require a duty to report. It would be a detrimental practice.

Andrea Bradley: It is all about extremely careful professional judgment. It is about knowing children, observing their behaviour and habits, and talking to other professionals about what has been observed—all in a climate of trust and openness. Introducing legislation such as a duty to report could create a culture of fear and hypervigilance, and might result in actions that are counterproductive to what we are trying to achieve.

The Convener: For clarification, if anonymity provisions were in the bill, would a woman or girl be able to tell their story? Elaine Galbraith said that that should be down to individual choice, and that we already have the capacity in the system for anonymity. If it was in the bill, would it prevent someone from speaking?

Detective Superintendent Galbraith: It could if there was automatic anonymity. That was my point: it should be down to the individual to decide. There should be other protection measures in place—which there are—if anonymity is not what they want, as opposed to it being decreed that they have to be anonymous.

Oliver Mundell: Do you mean that they should have an automatic right to request anonymity?

Detective Superintendent Galbraith: They should have the choice to request anonymity, rather than it being decreed that they remain anonymous.

Oliver Mundell: If they request anonymity, should it be automatically granted, or should it be dealt with case by case?

Detective Superintendent Galbraith: Depending on what they request and why they request it, that should absolutely be respected.

The Convener: Thank you very much for your helpful evidence.

09:53

Meeting suspended.

09:58

On resuming—

The Convener: Our second panel this morning is: Anne Marie Hicks, national procurator fiscal for domestic abuse and head of victims and witness policy at the Crown Office and Procurator Fiscal Service; Neil Hunter, principal reporter at the Scottish Children's Reporter Administration; and Gillian Mawdsley, policy executive at the Law Society of Scotland. I welcome you all and ask you to spend a couple of minutes telling us about your experience and knowledge of FGM and the work that you do in relation to it, and to say whether you support the bill's aim to strengthen the existing legal protections.

Anne Marie Hicks (Crown Office and Procurator Fiscal Service): The Crown Office and Procurator Fiscal Service supports the aim of the bill to strengthen the protections for women and girls at risk of female genital mutilation. We have been involved with multi-agency partnerships in discussing guidance on the issue and we have been involved in work on the equally safe strategy, in which FGM is recognised as a key factor.

Our approach involves guidance for prosecutors in relation to offences under the Prohibition of Female Genital Mutilation (Scotland) Act 2005. We also have a national lead prosecutor who is a very experienced prosecutor in our national sexual crime unit, who will be the lead prosecutor for cases on FGM. To date, we have never received a case reported by the police in respect of those offences.

10:00

Neil Hunter (Scottish Children's Reporter Administration): The SCRA fully supports the bill. As you know, the children's hearings system is fairly unique, taking a broad and holistic approach to how we deal with the care and protection of

children and young people in Scotland. It has significant longevity and it has adapted over time to a whole range of changing circumstances and societal challenges. We see ourselves as being very much in the forefront with our ability to adapt to a whole range of demands on and changes to the work of the hearings system.

At this stage, we have had limited exposure in terms of operational experience of FGM, but we continue to brief our staff and to make sure that they have a level of understanding and knowledge of it. We, like others, see FGM as being very clearly part of the spectrum of child abuse and exploitation that the hearings system was established to deal with in a child-centred way. We fully support the aims of the bill, and the hearings system will adapt to demands as required.

Gillian Mawdsley (Law Society of Scotland): The Law Society of Scotland is in full support of the provisions of the bill. Our involvement is, in part, on behalf of our members, who represent both the defence and the procurator fiscal service and who will be involved in matters in connection with the terms of the bill.

However, it is not just about our membership. There is also the much wider matter of the public interest in promoting and protecting the rule of law, and the principles of the bill clearly do that. As we have said before, that is the benefit of having legislation that makes it abundantly clear to all parties what their responsibilities are and we welcome the Parliament's efforts to do that. FGM is clearly an unacceptable practice. I have not had any cause to come across it in my professional practice, but I am certainly aware of the undercurrent. The more that can be done about it, as is clearly demonstrated by all the literature in support of the bill's provisions, the greater the benefit to the public in Scotland as a whole.

The Convener: Why are the available approaches not being used fully at the moment?

Anne Marie Hicks: I had the benefit of listening to the previous panel and I fully support what they said. There are lots of barriers to people reporting FGM, including fear and lack of knowledge of the law. There may be levels of coercion and different power structures in communities so that people are not able to report it. There are many complex reasons why people cannot come forward and also challenges in gathering evidence, even in cases where something is made known to the police. There is no doubt that it is a very challenging area.

The Convener: How do you think that the protection orders will assist with addressing that?

Anne Marie Hicks: Being able to act before something has happened is always a good thing. We have seen examples of that with other

protection orders, such as forced marriage protection orders, domestic abuse interdicts, civil non-harassment orders and the like. If we have orders that enable people to seek help—not only the people at risk but also local authorities and the police, so that they can intervene if someone is at risk of harm—that has to be a good thing as it prevents behaviour before it happens.

Mary Fee: I have a question for Gillian Mawdsley on some of the comments in the Law Society's written submission. I accept what you have said this morning, but the submission says:

"We query exactly how the Bill would be shown to be more effective in preventing FGM and safeguarding those at risk",

and at the end of that paragraph, it says:

"Exactly why there have been no criminal prosecutions in Scotland is ... a complex issue but without that information, it is hard to illustrate its current effectiveness or otherwise at present or provide a comparator".

Do you have any further comments on that? Is that still the Law Society's view or is there a slight nuance to that?

Gillian Mawdsley: We were talking about the need for an evidence base. We are fully supportive of measures being taken—there is no doubt about that, and there is no change there. However, we are concerned about how we could show that the provisions were working without an evidence base. We were trying to highlight the need for a starting point. I hope that that clarifies our position.

We are aware that there is a problem but that, as Anne Marie Hicks said, there have been no prosecutions. There are complex reasons for that. You heard from the previous panel that, as well as introducing the provisions in the bill, we have an opportunity to drill down into why there have been no prosecutions. It is important to show that legislation that has been introduced is effective. If we do not have a starting point, that can be hard. Does that help?

Mary Fee: It does. Thank you.

Beatrice Wishart: Good morning, panel. We have heard about the possible reasons why there have been no prosecutions in Scotland. What are your views on the FGM protection order and what it might be able to achieve?

Anne Marie Hicks: The previous panel talked about empowerment, which is really important. It is important that people have their rights protected. The order will prevent behaviour, but it will also apply where an act has already happened—it will protect people from further harm. We have examples in relation to other legislation where a breach of a civil order is a criminal offence, which can strengthen enforcement. We see that with

domestic abuse interdicts, non-harassment orders and the like, and also with forced marriage protection orders. They provide people with additional protection.

Beatrice Wishart: Are there any other views?

Neil Hunter: Having protection orders on the statute book will offer an opportunity to respond quickly and effectively to issues of FGM as they arise. Where there are concerns about a child's safety or vulnerability to FGM, it will also allow, as Anne Marie Hicks said, a preventative approach to be taken in order to avoid the child being harmed or removed from the UK, or any other potential risk to the child. There is both a reactive and a preventative element to the protection order, which we support.

Gillian Mawdsley: As my colleagues have said, the crucial words are "prevent" and "reduce". If someone does not obey an order, it will be a criminal offence, but the criminal sanction should not come into play if there are ways of avoiding the problem starting. I stress that section 1 of the bill says exactly that—the protection order is there to

"prevent, or reduce the likelihood of"

an act of genital mutilation. Before we get to the commission of an offence, protection orders can be put in place and protect those who are at risk.

The Convener: Can I press you on the empowerment aspect? Empowerment is a good thing and it is a good word, but can you give an example of how the protection order will empower a mother and a child? It is potentially something that will be done to them. It might be helpful for us to have a scenario—perhaps one that you know about at present, when we do not have the legislation—in which the protection order will empower them.

Anne Marie Hicks: I think that it will give people options. Someone might choose not to take the option, but they might wish to do so. If people have knowledge of that and children are aware of their rights, it will give people opportunities to have those conversations and seek orders. It is also—

The Convener: I am sorry—I am going to be a bit of a pest and interrupt you. What will they have an opportunity to do? Can you think of a specific example?

Anne Marie Hicks: They will have an opportunity to seek help. A young person might think that they are at risk of FGM. Perhaps there have been discussions in the family and they are aware that they are to be taken out of the country. I have dealt with some forced marriage protection order issues, and the ability to have such an order means that people will contact a support agency. They will not necessarily contact the police or the

local authority, but they will often contact one of the stakeholder organisations, whether it is Saheliya or one of the other agencies, which can then get involved and get an order.

It is about having a framework where people know their rights and know that they do not have to get the protection themselves but can ask someone else to get it on their behalf. I accept that, as with the reporting of criminal offences, not everyone would wish to do that, but it is important that a suite of measures is available to people.

The state sometimes has to intervene to protect people who are at risk of harm, and it is important that the responsibility for seeking orders is not all down to the individual. There can be financial and other constraints on individuals, and it is sometimes appropriate for the police, the local authority or others to intervene if someone is at risk of harm.

The Convener: Oliver Mundell has a supplementary question.

Oliver Mundell: On the balance between the individual and agencies, my understanding is that under the bill as currently drafted, someone with parental rights would have to go to the court to get permission to seek an order, whereas the police and social workers would have an automatic right. Is that the right balance, or should people with parental responsibility have an automatic right to seek an order?

Anne Marie Hicks: Proposed new section 5C of the Female Genital Mutilation (Scotland) Act 2005 lists a number of parties who can apply for an order. We cannot really comment on whether parents should have an automatic right. A number of parties, including a person who is at risk of harm and a parent, can make an application. From my reading of the bill, there is an adequate range of provision for everyone who might need to apply to the court for such an order to be able to apply.

Oliver Mundell: On empowerment specifically, if the mother or father of a child sees that they are at risk, is there a disparity in their having to seek permission from the court before they could go ahead? In a lot of cases, particularly involving younger children, it is unlikely that a person might feel able to do that without support from a parent.

Anne Marie Hicks: That is not really a matter for me to comment on. Whether members want to change that provision is a matter for them, but it is important that another person is allowed to apply. I suspect that the bill is drafted in that way because a person who is not a parent could apply, and we would not necessarily want another person in the neighbourhood to apply as well. That is probably the reason for that provision. It is simply to allow the court to have some scrutiny of who is applying for an order as opposed to trying to prevent

someone who has a legitimate interest from doing so. If a parent applied to protect a child from risk and was trying to care for them, I do not foresee any difficulty with the court envisaging that they had a legitimate interest in becoming involved. I hope that that clarifies the matter.

Oliver Mundell: That is really helpful. Thank you.

Neil Hunter: The extra step helps us to ensure the legitimacy of the applicant and the applicant's relationship with the child, young person or adult, and ensures that the court is able to assess the appropriateness of the application. Therefore, the balance seems right to me.

The Convener: We have heard evidence that there is a potential risk that abusive husbands, as part of their coercion, could claim that the child was at risk of FGM from the mother. Forgive me—I cannot remember whether we heard that evidence last week or the week before. In that case, would you consider that that extra step is needed to ensure legitimacy?

Anne Marie Hicks: I can envisage that that could be done as part of an abusive process, but it would be a matter for the court to consider all the circumstances.

Oliver Mundell: In my main line of questioning, I am interested in two things. First, should the children's hearings system be able to grant an FGM protection order?

Neil Hunter: In our written evidence, we said that we do not see that as necessary. We have a broad range of grounds of referral to the children's hearings system that cover a range of issues and difficulties that come up in children's and young people's lives.

10:15

We are not seeking additional powers in relation to the hearings system. We believe that the current grounds of referral are sufficiently broad and, more importantly, holistic as regards our approach to children and young people. Neither are we seeking additional powers for the reporter to the children's panel in relation to protection orders. We believe that the strengths of the hearings system lie in its focus on the child or young person—their best interests and the paramountcy of their welfare—and a hearing's ability to make compulsory supervision orders to regulate who has contact with the child and where the child can reside and to apply additional conditions that it might deem appropriate in individual circumstances. Therefore we believe that we have most of the powers that we require to respond to FGM cases at this stage.

We also have routes into the hearings system, to the reporter from the courts, as outlined in the bill. Importantly—and uniquely—we have a single source of referral to the children’s reporter, which allows anyone who has a concern about a child or young person’s welfare or protection to contact us. We then have a duty to assess and investigate such concerns. We have very strong links with local authorities in relation to emergency protection for children and young people and with the police, who remain the referrer to the reporter in by far the majority of cases.

Oliver Mundell: In its submission, the Law Society of Scotland supported—

Gillian Mawdsley: We responded from the perspectives of both criminal and family law. From the perspective of family law, it was suggested that there should be an additional ground of referral. I bow to Neil Hunter’s greater knowledge of the children’s hearings system, but I can quote the Law Society’s family law committee’s reasons for that suggestion, which were that an additional ground would ensure that

“a child ... enjoys the same procedural safeguards and protections that an equivalent person would in a similar situation where the risk or welfare concern was other than FGM”

and would avoid

“the possibility of important decision making being made for the child already within the children’s hearing system outwith that system, and so outwith that ‘whole system’ focus.”

It would also prevent

“the prospect of a child being made the subject of conflicting orders or measures”

and ensure

“that the thresholds for intervention are consistent with those that exist in relation to other grounds for intervention”

at present. Finally, it would place an

“additional responsibility on the various stakeholders to specifically assess and identify children in need as to whether they are at risk of FGM”.

Clearly, I support any suggestion in relation to the children’s hearings system as it represents a specialism in that field of law. If it would be helpful to the committee, I would be happy to let it have in writing our committee’s further comments, from which I have just quoted, since they were provided after our evidence was submitted.

Oliver Mundell: Yes, that would be helpful.

Does the Crown Office have a view on the matter?

Anne Marie Hicks: No.

Oliver Mundell: Would you be happy with whatever the Parliament decided?

Anne Marie Hicks: I think that we do not have the expertise to comment on what happens in the children’s hearings system, so I prefer not to express a view.

Oliver Mundell: That is still helpful.

My second set of questions is on whether the criminalisation of breach of FGM orders is appropriate. If you feel that it is, what should the penalties be?

Anne Marie Hicks: I think that criminalisation is appropriate. As I said earlier, we have seen examples of it in the context of other legislation and civil orders such as forced marriage protection orders and domestic abuse interdicts.

The offences that we have in Scotland go further than those created by the legislation in England and Wales: it is not only the person who breaches an order who is criminalised. The approach in proposed new section 5N of the 2005 act is to create three other offences by people who have not themselves been made subject to the order. That is fairly novel, because the usual approach would be to criminalise someone for not having followed the terms of an order to which they themselves are subject—for example, a bail order or a non-harassment order.

In our submission, we commented that such prosecutions could present evidential challenges, because we would have to prove that such an accused person knew the terms of the order as well as proving that they had breached it. That would be far easier to do if the accused person was the person who had been made subject to the order and it had been served on them. However, the outcome of such challenges might depend on the circumstances of the individual case.

Penalties would be a matter for the courts. The English and Welsh offence has a five-year penalty. The forced marriage protection order has a two-year penalty on indictment, although that offence was introduced eight years or so ago. Perhaps things have simply moved on, and it may make sense to have similar penalties to those that exist in the rest of the UK. That is just an observation—sentencing would be a matter not for COPFS but for the courts.

Oliver Mundell: On gathering evidence, going back to the lack of prosecutions, is there an issue whereby, by putting things in law, we will not be able to prosecute and pursue, and we undermine confidence in the legislation? Is that a legitimate concern, or is it more important to send out the message that we think that it is wrong?

Anne Marie Hicks: I do not know whether it would undermine the legislation. The first offence, against the person who is subject to the order, is really important. It is for Parliament to consider

whether it chooses to take a further step and legislate to include other people who are not themselves subject to the order, but who act to assist that person or who do the act that the person is prohibited from doing. It would be really important for enforceability that, at the very least, it is a criminal offence for a person to breach an order that they are required by the court to obey.

Mary Fee: Could you say something about the support that is currently available to women and young girls who are at risk of FGM, and whether that support will be adequate once the protection orders are in place? Also, if the support is not adequate, what else needs to be put in place to make sure that women, young girls and, indeed, families are adequately supported?

Anne Marie Hicks: The panel members who were here earlier are probably better placed to talk about that, because they will be dealing with people at a far earlier stage. Obviously, by the time that it comes to my office, that work has already started.

I know that a number of organisations and stakeholder groups such as Saheliya and Scottish Women's Aid and children's charities such as Barnardo's and the National Society for the Prevention of Cruelty to Children get involved in that kind of work. It is really important that that support is there.

The points that were made earlier about education are also critically important. If we are to have a law that is effective, it is important that people in communities that are likely to be affected know about it, and also that children know about it, and know how to access their rights.

Mary Fee: If we are in a scenario where cases will potentially be going through court, do you think that the victim support service in the court system should do something differently, or—perhaps—broaden the scope of its support services?

Anne Marie Hicks: At the moment, Victim Support Scotland deals with victims of a crime, so, if someone was going through the court in respect of a civil protection order, they would not be referred to it. I do not think that that would be its role unless we were prosecuting a breach and someone was going through the court, in which case those measures would kick in.

It is important that there are good measures in court, and that there are proper support measures for people to give evidence. However, it is also critically important that there is support in the community before it gets to the stage of court proceedings.

Neil Hunter: In relation to a child or young person who is coming through the hearings system and who is at risk of FGM, I emphasise

that elements of the system are hardwired in terms of the duties that are placed on local authorities to support, direct and provide services to children, young people and their families as part of a compulsory supervision order. Those elements seem pretty robust and well established.

In each part of the country, there is probably a need for a balance between local specialist services, which have a role in providing on-going and intensive therapeutic support to children, young people and adults who have experience of, or who are at risk of, FGM, and non-specialist universal services, in which I am particularly interested. Such services have a role in aiding understanding and providing clarity, and they have a higher level of awareness of FGM issues, which allows them to support children, young people and adults. The services also have a clear role in prevention and in the detection and identification of needs and risks. Across the whole workforce, on-going professional learning and development needs to be accelerated so that, wherever they are, a child, young person or adult who is at risk of FGM can receive a degree of support and guidance, in a competent and confident way, to meet individual needs.

Mary Fee: You talk about the need for a balance in services. Are you concerned that there is a postcode lottery in relation to services because of the nature of the country's geography?

Neil Hunter: I do not have a clear enough picture of the situation across the 32 local authority areas in Scotland. I suspect that specialist and more generic services will be provided in some of the big urban centres, as we would expect. As time progresses, and as we focus on wider awareness and workforce development, I think that some of the provision can be evened out.

Mary Fee: That is helpful. Does Gillian Mawdsley have a view?

Gillian Mawdsley: Much has been said. One of the main thrusts of our response has been to highlight the role of education and training, which is essential if the bill is to progress successfully. As we have said on a number of occasions, there is no point in having a law unless people are aware of it and the provisions are there. I am aware of the number of specialist stakeholders, to which Anne Marie Hicks referred, but there needs to be that level of awareness and support across all specialist services. The NHS and schools need to be aware of the provisions so that they can support people who are most at risk, particularly in the light of what we said about the lack of an evidence base. That is not a criticism but a statement of fact.

I very much agree with what Mary Fee said about there being a postcode lottery, because I think that the provision of services will be piecemeal. Obviously, we should target resources at pockets of communities where FGM might be more likely. Libraries, help groups and so on all seem very important but, fundamentally, getting the message out will involve education and training. I accept that that includes legal professionals and members of the judiciary who might become involved in these matters being aware of their powers and of the prevalence of FGM. People need to be aware that FGM is happening under the surface, but there have not been the prosecutions and convictions that would have made the issue more apparent. That is a difficulty for all of us who have a role in the matter.

Mary Fee: That is very helpful.

One view that has come out of our evidence sessions is that legal aid should be free for anyone who is at risk of FGM. On the one hand, the consultation said that the “usual criteria” would apply to legal aid, so a financial assessment would be done and, even if legal aid was granted, a small financial contribution might be required. However, on the other hand, there is a view that legal aid should be completely free. What is your view?

Gillian Mawdsley: That question is probably for me, wearing my other hat. Legal aid should certainly be available to provide advice and assistance. Making it free could open gates and lead to people saying, “If this is free, something else should be free.” Looking at the spirit of access to justice, which might be the easier context, I can see arguments in support of making legal aid free. If we are trying to encourage people to get advice and assistance, we want to ensure that they are not hindered by the burden of financial assessment. On the other hand, I recognise the requirements of the state and that, if we start to make certain areas exempt, there will be calls for there to be exemptions in other areas.

I do not know how large the problem would be, because we do not quite know how much demand there would be. I stress that, as well as making legal aid available, we need to have the lawyers to provide the legal aid in order to ensure that people can access justice wherever in the country advice and assistance might be required.

Mary Fee: Before Anne Marie Hicks comes in, I have a question. We have talked a lot about forced marriage and forced marriage legislation. If someone is going through the courts in relation to forced marriage, are they entitled to free legal aid or do the usual criteria apply?

10:30

Anne Marie Hicks: I am not sure.

Gillian Mawdsley: I am not sure, either. If the committee would like clarification, I can check that point through the legal aid committee and come back to you.

Mary Fee: That would be helpful, because we have talked about the issue a lot. Although FGM is not the same as forced marriage, there are similarities around the fact that it is underground and is not talked about, and we need to encourage more people to come forward. If you could provide some information around forced marriage, that would be helpful.

Gillian Mawdsley: I would be happy to do so.

Mary Fee: Thank you. Anne Marie Hicks, do you have any view on legal aid?

Anne Marie Hicks: As Gillian Mawdsley said, there are various considerations. I do not think that it would be appropriate for the Crown to have a view on that.

Mary Fee: That is fine.

Neil Hunter: The only thing that I would say is that, if agencies, local authorities and others are not making the application for a protection order on behalf of an individual, the likelihood is that the circumstances in which individuals find themselves require really rapid access to legal advice and assistance. I would imagine that the degree of urgency around an individual who is seeking to make an application to protect themselves through an order would require pretty rapid access to legal advice and assistance. That suggests that, if there are barriers or inhibitors to accessing legal aid, we need to examine and try to reduce them.

As Gillian Mawdsley pointed out earlier, there is a need for everyone to have a level of awareness and understanding to be able to enact our public protections rapidly and effectively.

Mary Fee: Whatever guidance comes with the bill, the strength of that guidance will be its ability to point people in the right direction, whether that is for legal aid, support services or something else. Everything has to join up and be reflected in the guidance and information that comes with the legislation.

Gillian Mawdsley: Just to pick up on that point, I think that the signposting of information on legal and practical assistance is crucial, and that has been reflected in other areas that the Parliament has been examining. It is also important that that signposting service is available no matter where in Scotland the person at risk might be.

The guidance is extremely important, because it will be on the books, so people can go and look at

it. Therefore, I would very much welcome that strong guidance.

Mary Fee: That is helpful; thank you.

Annie Wells: There are various responses in the submissions that we received with regards to the anonymity of victims, the failure to protect and the duty to notify.

The question on anonymity is whether there should there be automatic anonymity if a woman or girl comes forward to report FGM, or whether it should be necessary to go through the sheriff, as is the case at the moment, to get those special measures put in place.

On the question of failure to protect, the Law Society of Scotland said that that could be considered after the bill is passed. On the duty to notify the police, we heard from Detective Superintendent Galbraith, on the previous panel, that there are already measures in place that would allow that to happen.

Those aspects are in the legislation for the rest of the UK, but that is not the case here. What are your views on that?

Anne Marie Hicks: There are already provisions in place at common law and under statute to address the issue of anonymity in cases across the board. I think that they would be adequate to address the issue for FGM cases. Whether you want to go further and make that the position in such cases, as has been discussed, is a policy choice. The only observation that I would make is that there are lots of other cases where there is no automatic anonymity, such as sexual abuse, exploitation or even other non-sexual cases involving exploitation. From a practical point of view, a number of measures can already be employed and would be employed in such a case when it was appropriate to do so.

The failure to protect is a fairly novel aspect. Yesterday, I was at an event at which a senior social worker was talking about the negative legacy of the failure-to-protect approach that social work adopted to domestic abuse. That had the effect of blaming mothers who were victims for exposing their children to it, and prevented people reporting to the police and seeking the help that they needed from social work. That has to be a concern.

From my perspective, there is already a lot in section 12 of the Children and Young Persons (Scotland) Act 1937 that would allow us, when the circumstances are appropriate, to prosecute someone for wilfully neglecting a child or exposing them to harm. Provision is therefore already in place that might not have the unintended consequences of a specific offence.

We are not particularly involved in the duty to notify. I listened to what the witnesses from the police and social work said earlier, and the established child protection procedures seem sensible. I do not have anything further to offer on that.

Gillian Mawdsley: On balance, the Law Society came out as supportive of the anonymity provisions. I take Anne Marie Hicks's point that there might be adequate protections, but in our consultation response and our response to the call for evidence, we said that there might be circumstances in which the press would try it out.

Our feeling about it touches on something that was mentioned earlier about the need of vulnerable witnesses for support. Although we do not want unnecessary legislation, and I will touch on that shortly, there might be an opportunity for that bill to carry such a specific measure.

As I say, I am not saying that there is not adequate protection already, but if it was in the bill, you would be very much underlining the fact that anonymity is there for people. Whether other areas of legislation should have that provision is a matter for another time and place, but as I understand it, you are looking for things that could actively be done to tackle an undercurrent of a problem. To go back to the point about clarity of legislation, making what you are saying abundantly clear means that there can be no doubt. It will not be left to a sheriff to decide, and the press will not try something out and make a mistake. I suppose that anonymity is the one aspect of the English set-up that we could see would work.

With regard to the other aspect, I refer to what I said in our evidence. On failure to protect, whether there are adequate protections or not, the criminal law committee is concerned about the possibility that the over-criminalisation of the law could make it too complex or bring about a situation in which there are so many offences that the police do not know what to report and it becomes difficult to prosecute. I am hedging my bets. If, after the bill is enacted, you find that there is some need for the provision, you could look at the legislation again when you had an evidence base.

I do not really have anything to add on the duty to notify the police. If there is always to be a positive duty, it must be contained in statute. I am always concerned about the fact that we set out all these duties in legislation when, sometimes, they can be best left to guidance. I do not think that there is any more that I can add.

Neil Hunter: We operate on a strong presumption of anonymity in relation to children and young people in any case. Certainly, the hearings system offers stringent protection in

relation to the transmission or reporting of any proceedings or any information about a child or young person in the system.

Anonymity in the broader sense will be important in this context. Again, we might work on a presumption that anonymity will be offered to people who make representations and applications.

I agree with my colleagues on failure to protect. It is a complex area.

In relation to children and young people, where demonstrable wilful neglect or harm is exercised on a child, that is a criminal offence. That area is much more complex, because there are a lot of power differentials at play within families and within relationships.

I see the potential benefit of a broader duty on people to protect and report where they can, but there is a degree of complexity in relation to power and exploitation and oppression, which make it more complex, as Anne Marie Hicks has suggested.

Annie Wells: That answers my questions very well; thank you.

The Convener: Our colleague Fulton MacGregor has had to go to another committee, but he had some questions on training, which I will ask for him. What specific training on FGM is there for the people you are speaking on behalf of? Are there any gaps in that training?

Anne Marie Hicks: The Crown Office has guidance in place and we also have regard to the multi-agency guidance. Because we have not had to deal with any cases, it is not a major area of training for us. However, for any bill that is passed that creates a new offence, we will likewise create new resources for prosecutors. If any further training needs developed on top of that, we would address those needs.

Neil Hunter: As you may expect, we do a lot of work with our children's reporters on the issues of child sexual abuse and child sexual exploitation. FGM fits within that continuum of children who are vulnerable and at risk. We have not done a huge amount on FGM specifically but we are at the stage where we have a degree of confidence about our workforce's awareness of—and the visibility of—the issue.

There is something compelling about a wider workforce plan on FGM. I have touched on how important universal services are in relation to health, education and so on. There is real potential in having a workforce development approach that has interagency professional training at its heart so that people are able to learn from one another's roles and responsibilities.

The Convener: Another issue that was raised with us is the potential for racialisation of this issue. Do you have training on that side of things? That cuts across other areas—even if you are not dealing specifically with FGM at the moment, there is a more general point there.

Neil Hunter: We have taken a broad, generic approach to the issues of child abuse, child exploitation and child-related harms rather than focusing on particular groups or particular subsections of the community. We are well aware that abuse and exploitation of children and young people happens across the community, so a broad awareness of the issues is important.

In our previous evidence to the committee, we have focused on some of the research work that we have done with black and minority ethnic communities in relation to child protection procedures. We identified a need to increase understanding and raise awareness among the wider workforce of some of the fears and anxieties of people within those communities in relation to child protection procedures, so that we can close the gap that exists in that regard.

We are taking a broad approach to the development of training and awareness but we understand that particular areas of the community have worries and concerns about child protection and childcare issues.

The Convener: Is there any focus in the training on the racial biases that we all have?

Neil Hunter: There is always an emphasis in training on bias, misunderstanding and prejudice, so to that extent, yes, there is a focus.

The Convener: Does anyone else have anything to add?

Gillian Mawdsley: There have not been any criminal prosecutions but defence solicitors would be aware of their responsibilities, as they would in any defence case, so there would not be an issue around specialist training. Anne Marie Hicks has already dealt with the Crown Office side. In-house lawyers who work for organisations might have to produce guidance for staff, so solicitors might be involved in the area in relation to legal responsibilities.

10:45

On your point about racialisation, clearly, equality and diversity are a key part of much of legal training, both at university and otherwise, and within any office or organisation. To a large extent, that is the area in which the specific issue will be covered. Certainly, that is a part of training that is followed all the way through legal careers.

Anne Marie Hicks: I echo that. The Crown Office has made a significant investment over a number of years in training on diversity and equality issues. We have a big commitment to that. We have also had training for our staff on things such as unconscious bias. For any case that is reported to us by the police, we consider the facts and the evidence, and we also have regard to any available guidance. I am quite confident that we could deal with the issue appropriately.

The Convener: Okay. Thank you all very much for your evidence, which has been very helpful.

Our next meeting is on 31 October, and meeting details and an agenda will be available on the Parliament website on 25 October.

10:46

Meeting continued in private until 11:16.

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