OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities and Human Rights Committee

Thursday 7 November 2019

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Thursday 7 November 2019

CONTENTS

EQUALITIES AND HUMAN RIGHTS COMMITTEE

26th 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:

Leethen Bartholomew (National FGM Centre)
Beatrice Wishart (Shetland Islands) (LD) (Committee Substitute)

CLERK TO THE COMMITTEE

Claire Menzies

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Equalities and Human Rights Committee

Thursday 7 November 2019

[The Convener opened the meeting at 09:30]

Witness Diversity

The Convener (Ruth Maguire): Good morning and welcome to the 26th meeting in 2019 of the Equalities and Human Rights Committee. All mobile devices should be switched off and put away, please. We have received apologies from Alex Cole-Hamilton, and I welcome Beatrice Wishart, who is covering for him today.

Agenda item 1 is consideration of witness diversity. I refer members to paper 1 in their pack. The committee is asked to note the current and future work to improve and monitor the diversity of committee witnesses and, in the light of that, to consider the 2018-19 witness diversity statistics for the Scottish Parliament committees.

I invite comments from members.

Angela Constance (Almond Valley) (SNP): The report on the issue is detailed and interesting. It is very positive to see that there has been an improvement over the lifetime of the Scottish Parliament, but I am sure that, across Parliament, people will accept that we need to continue to focus on improving the diversity of witnesses. Given the depth of the work that was carried out to look at the figures and to devise an action plan, I think that it might be prudent and useful for the committee—if the convener finds this agreeable—to write to all other parliamentary committees to reinforce and highlight the work that has already been done and to ask what further consideration will be given to the matter in due course.

Mary Fee (West Scotland) (Lab): I agree entirely with the comments of my colleague Angela Constance. It is an excellent report, and it will be useful not only in informing committees of the progress that has been made throughout the Parliament and the steps that have been taken to encourage diversity, but in serving as a starting point and helping to generate a conversation within committees about what steps can be taken to improve the diversity of witnesses.

The Convener: We certainly want to acknowledge the recent work that has been done and the improvements that have been made and, to that end, we can write to committees to highlight the new guidance that is available for external organisations and committee clerking teams. Is that agreed?

Members *indicated agreement.*

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

09:33

The Convener: Agenda item 2 is consideration of the Female Genital Mutilation (Protection and Guidance) (Scotland) Bill at stage 1. I welcome Leethen Bartholomew, who is head of the National FGM Centre. Good morning, Leethen; you are very welcome. We will move straight to questions from committee members, as we have a lot to ask you.

Beatrice Wishart (Shetland Islands) (LD): Good morning. Could you give us a bit of background on the work that you do, the history of your organisation and how it operates?

Leethen Bartholomew (National FGM Centre): Good morning. Thanks a lot for inviting us to come to Scotland to share the work that we do in England.

The National FGM Centre started in 2015 with funding from the Department for Education as part of the children's social care innovation programme. It is a partnership between Barnardo's, which is the largest children's charity in the United Kingdom, and the Local Government Association. In 2015, we had full funding from the DFE to work in six pilot local authorities in the east of England. We worked specifically only on female genital mutilation. The approach involved looking at a system change in how local authorities respond to cases of FGM. The intervention model that we used involved placing project workers in children's social care. They were based either in the front door, which is the multi-agency safeguarding hub, or the equivalent, or an assessment team within the local authority. We had either delegated authority, which meant that our worker acted as the local authority worker, or delegated responsibility, whereby we would work alongside the local authority social workers. We would provide the interventions to support them in completing the assessments and doing direct work with families.

Part of the model involved community engagement, because we know that ending new cases of FGM by 2030, which is the goal of the United Kingdom and the United Nations, requires engaging with communities. Part of the work of the project workers—later, we recruited a community engagement worker—was to engage with communities to bring about an attitudinal change. We also have a training arm. We have a lead who is responsible for delivering training. We know that professional confidence is an issue with FGM, and we must ensure that people are culturally competent to respond to such cases. The other part of that is our knowledge hub. Our website has resources on FGM and other harmful practices, so it acts as a repository.

In 2017, the Department for Education decided to continue to fund our work, but to provide us with part funding, with the intention that the centre would achieve sustainability. Therefore, although we have funding from the DFE for the period between 2017 and March 2020, it is important to point out that that funding tapers off and that, this year, it has tapered off significantly, to the extent that we receive only 25 per cent of our funding from the DFE. Barnardo's, as a charity, contributes a significant amount to the running of the centre.

In 2017, the DFE asked us to focus not only on FGM but on other harmful practices, so we also work on breast ironing or breast flattening and child abuse that is linked to faith and belief. FGM overlaps with other forms of harmful practice, such as breast ironing and child abuse that is linked to faith and belief. Our work originally started off on FGM and then it moved over to those other harmful practices. Another aspect of the work that we do now is that we have project workers who are based within the health sector. We have one worker who is based in St George's hospital in London. She speaks Arabic, so she can provide a form of translation for the women and tries to connect them with community organisations. We have another worker who is based in London who works with health visitors and school nurses in supporting women and providing educational support for health practitioners.

Beatrice Wishart: That is helpful. Do you support the bill's aim of strengthening the existing legal protection?

Leethen Bartholomew: Yes. Even though we think that the child protection system is very robust, a number of measures that were brought in with the Serious Crime Act 2015 strengthened the support around prevention and prosecution for survivors and for girls who are at risk. One aspect of that is the extraterritorial powers that go with the Female Genital Mutilation Act 2003, whereby if the offence happens overseas, it is as if it happens here in the UK, which is not part of other existing legislation.

Angela Constance: Good morning, Mr Bartholomew. There are very different legal and policy contexts across the UK. We have the Scottish Parliament and the Scottish Government, which have responsibility for health and education, and a different legal system. I am conscious that you are funded by a UK Government department and the Local Government Association, which covers England; nonetheless, I am interested to hear whether—based on your experience south of the border or any reflections that you have that relate to Scotland—you think that there are existing approaches that are not being utilised to protect people from FGM.

Leethen Bartholomew: The FGM protection orders are still poorly understood by professionals and communities. Professionals do not understand the threshold around FGM protection orders; such an order is sometimes considered to be the last option when it should be considered to be the first option. The process is seen to be very draconian for communities. In some communities, having to engage with any legal system or any professionals is considered to be very taboo.

Another issue is the way in which some local authorities respond to FGM protection orders. I will give you a very recent example. I was contacted by a police officer whose concern was that a mum was concerned about her partner wanting to cut her daughter. When she approached the local authority for support, the response that she was given was, “You can apply for the order in your own right,” which left the mother feeling very distraught. The police officer approached me and asked what she should tell the local authority, so I had to break it down and tell her what to say to the local authority. In the end, the local authority responded positively and intervened and, from what I understand, an FGM protection order was put in place. One of the biggest issues for us is a lack of understanding and awareness of FGM protection orders.

Fulton MacGregor (Coatbridge and Chryston) (SNP): You have talked about FGM protection orders. In your submission, you said:

> “we know FGM is being practised in the UK”.

What evidence do you have to back that up? Why do you think that there has been only one prosecution in the UK?

Leethen Bartholomew: At the National FGM Centre, we have worked with just over 250 women and about 15 girls who have been cut. In at least two of those cases, the women’s story is that they have been cut here in the UK. One was cut and did not disclose it until she turned 18, because she was aware of mandatory reporting and did not want her parents to be prosecuted. The approach that we took in that case was to focus on the cutter, but it was very difficult for that young person to remember the details, because it happened to her when she was younger.

That is just cases. We have also worked with survivors who have not been referred to local authorities but who have disclosed to us in the course of our work with communities that they were cut in the UK. I must admit that the numbers that we know of are very small, because it is a huge step for someone to make such a disclosure, knowing the consequences for their parents and family members.

I am sorry—I have forgotten the second part of your question.

Fulton MacGregor: I have forgotten it myself. [*Laughter*.] It was about why there has been only one prosecution.

Leethen Bartholomew: There are several reasons for that. One is that, as I just said, in some communities, giving evidence against your parents is a huge step. FGM is cloaked under the guise that it is done for love and, when someone is brought up in a culture thinking that that is why it is done, it is very hard to go against that. If we think about communities where FGM is not practised, giving evidence against their parents is a very difficult thing for any child or young person to do.

09:45

Another reason is that we know that there is a lack of paediatricians with the expertise to examine girls, and the Crown Prosecution Service would need such medical evidence. In response to that, the centre is having a round-table discussion on 3 December, which will bring together a number of medical and legal professionals and the police to look at why there are so few paediatricians. Even if they can medically examine girls, they do not want to, because that would require giving evidence in court. We know that there was a case that resulted in a failed prosecution, in which the work of the health professionals was not—I am thinking about the right word to use—celebrated by the judge, because it was considered to be not a good piece of work. That could be a barrier to medical practitioners coming forward to medically examine girls.

In addition, an FGM protection order is a preventative order that prevents FGM from happening, so another reason for the lack of prosecutions could be that we are responding before girls are being cut and they are being protected. Another reason is the fact that FGM is a very hidden thing—we cannot forget that. We will never know the true prevalence of what is happening to girls in our communities, which means that we are not going to get people to come forward.

Fulton MacGregor: We have heard such powerful evidence on the family dynamics from a number of witnesses. That takes me on to something else that you said in your submission. You said that, in certain circumstances, FGM protection orders could

> “empower families to protect their daughters from FGM.”

When might such situations arise, given what you have said?

Leethen Bartholomew: We know that, in some situations, mothers would want to seek an FGM protection order. FGM is multifaceted—in about 20 to 25 per cent of our cases, it accompanies domestic abuse. At the point of leaving a relationship, the woman would seek an FGM protection order for her daughter. It is a case of giving a mother the agency and the power not only to take a stance and protect herself but to also protect her child. That is a very empowering thing for a mother. In a community that is very collectivist, where people make their journey in life not by themselves but with other people, relationships become enmeshed, and standing out from that is a very empowering thing for a woman. We have supported some women in seeking such an order for themselves. We work closely with a few barristers who will represent the women in court pro bono, because we know that if they do not qualify for legal aid, they will have to pay for it and some women just cannot afford it.

In addition, if an order is taken out by an individual, they have to pay to get it served. We are able to lobby on behalf of people in that position, and a pilot is being carried out by the police, which I can talk about later on, if you are interested in it, in which the police will be able to serve an order on behalf of the parent. That is a very supportive approach, and it shows that there is a team supporting the parent, which is also a very empowering thing for women who come from a situation in which they have lost power and control over their life because of interpersonal violence in relationships.

Fulton MacGregor: You said that you have been involved in gaining 35 FGM protection orders. Will you tell the committee a wee bit about your experience of doing that and provide some examples of the requirements of FGM protection orders, particularly with regard to the length of time that they last?

Leethen Bartholomew: Yes. We have been involved in 35 protection orders. In our model, our project workers are based in local authorities, and in cases where we do assessments, there will have been advice from the local authority that an FGM protection order is needed. We play a crucial part in driving that, and also in risk assessing, planning for safety and recommending which conditions should be included in the FGM protection order.

Our social workers and project workers have also written court reports in relation to FGM protection orders. We have been commissioned by local authorities independently. We are based in 11 local authorities at present, but we are commissioned by other local authorities that ask us to write court reports. If there is an interim order, they will ask us whether the order is needed or whether it should be overturned. We have had situations where we have said to the court that the risk has been reduced because we have done the intervention and the education work with the parent and the child, and in those circumstances we have recommended that the order be removed.

In our work on FGM protection orders, we have developed leaflets for communities and for parents because, as I said, they are poorly understood.

I know that there was a second part to your question.

Fulton MacGregor: I think that you have answered it. I asked for some examples of the requirements that can be in place, particularly with regard to the length of time.

Leethen Bartholomew: Some of the orders that have been made have lasted until the girl reaches the age of majority—until she is 18. Some have lasted until she is 16. Recently, we recommended in a court order that it should last until the age of 16 but with some intervention until the girl reaches 11—until the end of primary school. It all depends on the circumstances of the case.

Fulton MacGregor: Thank you for that. I will ask my other questions together. What is your view on the criminalisation of the breach of an FGM protection order? Do you have a view on the penalty that has been set?

Leethen Bartholomew: Breach of an order is a criminal offence. If we look back to forced marriage protection orders, we can see that it was originally not considered to be a criminal offence to breach such an order, but it was changed later to be a criminal offence.

FGM is a huge human rights violation and there must be some consequences to it. We know that some victim survivors do not want their parents to be prosecuted, but some see that as a need because it sends a very strong message. Views are very much divided. As I said, FGM is a human rights violation and it has serious consequences and implications for the lives of women and girls. Across the world, some girls have died because of it. Criminalisation should be considered for such an act. That also ties in with the view that the act polices a woman’s or a girl’s body in a way that nothing else does.

There is also the racialised element. However, as we find out more about FGM and begin to understand it, the idea that it criminalises a certain group of people probably ends up being on shaky ground, because we have worked with families from over 65 countries. It happens in Russia. We have worked on the case of a Russian woman who was cut, and her children as well. Someone contacted us about a case involving a white woman from the African continent who married into a country. There was also a case in the newspapers where a white American woman was cut.

With our growing understanding of FGM and the evidence, we know that it is much broader than we thought. If we really want to ensure that we send a message that it is not about "them against us" and that it affects not just one group but others and is growing, we need to look at it much more broadly. We have worked with white British women who are married to or in a relationship with a partner from an FGM-affected country and have had to go to court to seek an FGM protection order. It is much broader than we think.

Fulton MacGregor: What are your thoughts on the penalties? The penalty on summary conviction is

> "imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum".

On conviction on indictment, the penalty is the same as in England and Wales:

> "imprisonment for a term not exceeding 5 years or a fine (or both)."

Leethen Bartholomew: How long is long enough and what sentence is fitting? It is difficult for me to answer that, but I would say that five years or a fine would probably be suitable. I do not think that that is too draconian compared with the penalties for other offences.

Fulton MacGregor: I appreciate that that is a difficult question to answer. Thank you.

The Convener: Mary Fee has a supplementary question.

Mary Fee: You said that, quite often, a young girl who has been cut will not want her parents to be criminalised. I absolutely understand that. When you work with a young girl who has been cut, what work—if any—do you do with the parents to raise awareness of what they have done to their child? Do you do any work with the broader family to raise awareness of the issue of FGM?

Leethen Bartholomew: Our approach is that we try to work with the entire family. The work with the parents involves education. It involves thinking about their idea of why FGM happens, because we know that there are a lot of myths associated with it, and we try to debunk some of those myths. If we know that it relates to a religious requirement, that will be the focus. We focus on taking a child rights approach and a human rights approach. We help parents to understand what bodily integrity is and what child rights are, and we look at the health implications of FGM.

We sometimes make the mistake of speaking about FGM in the singular, whereas we know that we should look at it in the plural, because there are many different types of FGM and many different reasons why it is done. That is a focus of the work that we try to do with the parents, and we tell them about the law. Sometimes, parents think that people where they are originally from have moved on and that FGM is no longer an issue there. With such parents, we have to look at the international landscape—especially the country that they are from—and help them to understand that it is still a live issue, that work is being done to end cases of FGM and even that there is a law in their country that they are not aware of.

We try to include the wider family, but some of that work depends on parents giving us consent and allowing us to be in contact with the wider family and community. That is still a bit of a struggle. However, we work directly with the family. It is also about doing the work together. In some situations, we work with the child and the parent separately and then bring them together.

Mary Fee: That is helpful. Thank you.

Oliver Mundell (Dumfriesshire) (Con): In your evidence today and in your written submission, you have said that you have helped more than 260 adult and child survivors of FGM. We have heard in other evidence that the support is just as important as the other aspects that an order can bring. What support is available in England and how does it interact with FGM protection orders?

10:00

Leethen Bartholomew: We know that the provision of support is a postcode lottery. In London, there is an organisation called the Dahlia project, which is the only FGM counselling service that is available for women. The idea of counselling is a very new one in some communities, so we have to be creative in how we think about it, because people do not have our understanding of it.

Support for children, especially medical support, is sparse. In some local authorities, it is almost non-existent. We have only one dedicated FGM clinic, which is based at University College hospital. As I said earlier, we do not have medical experts available who can examine girls. FGM affects men as well, but very few organisations are dedicated to supporting men and enabling them to change their attitudes to FGM. Support for girls in schools is very limited, as is support that different organisations and institutions can provide at points when girls and women interact with them.

There has been a good step recently as FGM clinics for non-pregnant women have opened in a number of places across the country. In London, there is one in Croydon and another in Brent. A lot of work has been directed towards pregnant women, but what about non-pregnant women? At those clinics, there is therapeutic support for women, which is one of the best things that can happen. Women sometimes say to our workers that the point at which we engaged with them was the first time that anyone had taken the opportunity to talk to them about FGM. Those women have been through the healthcare system, been to their general practitioners and given birth, but no one has had that conversation with them.

The guidance for health professionals talks about mandatory recording, but it does not say that it is mandatory to ask the question. Recording is mandatory, but it is not mandatory to ask the question. If I do not ask the question, I do not have to record it, and we know that women are still not being asked the question. If they are not asked, they are not given an opportunity to get the support that they need. Even if we ask the question, we know that there is limited support for these women.

Oliver Mundell: On our committee visits, we have heard that people feel that they do not have secure access to housing and are concerned about their immigration status. Should support in relation to those things be included in the protection order? When the court grants a protection order, should it include support that sits alongside the other actions? Does that happen in England?

Leethen Bartholomew: We know that housing and immigration are issues in some of our cases. Some families have no recourse to public funds, which is a minefield. We work closely with some law firms that are willing to provide legal advice to parents and family members free of charge, but it all depends on where people are located.

Immigration advice and support is sparse and housing stock is limited. To include such advice as part of the conditions of an order would be difficult. For sure, if housing and immigration support are needed, they should be provided, but how would local authorities respond, especially on housing? It is a difficult ask.

Oliver Mundell: Should free legal advice be provided automatically in cases involving FGM protection orders?

Leethen Bartholomew: Yes. As I said, FGM is a huge human rights violation when it happens, and the risk of it happening creates fear, especially when it intertwines with the idea of honour-based abuse and the threat to someone’s safety and life. Sometimes, parents feel that they are being punished twice because they have uprooted themselves from their homeland and left their country—perhaps they have done so as refugees and have sought asylum here, and concerns about FGM may be among the reasons why they have travelled here to seek refuge—and then, when they come here, they fear that they will be returned home.

I know of a few cases where a parent has been told that they can go back to a different part of their country. That might seem logical in our context, because someone can leave London and come to Scotland and they might be able to fit in. However, in some countries, people will be going to another part of the country where people are not from their ethnic group, and there are conflicts between ethnic groups. We might think that people do not need to say who they are, but they can be very identifiable. If they have scarification, for example, people will know which group they belong to, and there is a long history of conflict between different groups. It is not as easy as saying that people can go to another part of the country. It is a real fear for some parents, and they feel as if they are being punished twice.

The Convener: You mentioned asylum and refugees. Oliver Mundell said that, when the committee met the workers, they said that one of the most helpful things would be for FGM protection orders to influence asylum applications in the immigration system. We have had a response from the UK Government on that, and it is not as we would wish it to be. Will you say a little more about the cases that you have been involved in and say whether FGM protection orders have been used as helpful evidence in asylum claims? If they have not, should they be?

Leethen Bartholomew: They should be. We have had cases where there have been immigration issues. I am thinking of a recent case that was before the court in England.

The family court should do its own risk assessment where there is a high risk if the child or family member returns to their home country. The Home Secretary could disregard the advice that the family court gives with regard to the level of risk, but FGM protection orders play a strong part in driving decisions by immigration authorities with regard to risk. I think that FGM protection orders should be considered in all circumstances and the family court should continue to do its own assessment of the risk to the child, because its advice still has some weight in the decision that will be made.

Oliver Mundell: I think that you mentioned racial profiling. There has been a suggestion that FGM protection orders could lead to racial profiling by professionals. What is your view of that suggestion? Is there evidence of such an outcome in England?

Leethen Bartholomew: I agree with that suggestion, but is it the orders that lead to that outcome or is it people's attitudes towards others? Should we target people's attitudes, to help them to change their views? It is about cultural competence. I know that some communities have been affected by not just FGM protection orders but the approaches that are taken by different local authorities.

Is it about the orders or just people's attitudes towards others? Do the orders make things worse? We must remember that FGM protection orders are served in the context of a legal framework and it is not the individual who grants the order. Yes, people will have to give evidence, but we have to rely on the court granting the order on the basis of what it hears. Even if it is an interim order, parents can go to court to have the order removed.

Some communities feel very much affected by the orders—they feel that they are being targeted—but the problem goes beyond FGM protection orders. Communities feel scapegoated, and the issue ties in with wider issues such as Islamophobia and how some communities feel about that. The issues become enmeshed and they do not separate one from another in their total experience of living in a society in which they are being othered. FGM protection orders are just one more thing.

Oliver Mundell: You work as a national centre. Do you think that having pilot projects with individuals based within local authorities has made any difference to how professionals work?

Leethen Bartholomew: We are based in 11 local authorities, and we have workers in the front line of children's social care in 10 of those. In one local authority, our work is focused on the new relationship and sex education curriculum, and it involves consulting parents, communities and children and young people themselves on the curriculum and what should be included in the material that will be taught to students.

In the other local authorities, we are working to bring about a system change. We have been based in some local authorities since 2015, and, because we have been there longer and because our multi-agency approach involves many partners such as education and health, our interventions have reaped a lot of benefits and rewards. When we work in a local authority, we work with community organisations on the ground, which helps us to drive the work of community engagement.

I do not deny that there are challenges, because to change attitudes you have to change your approach and adapt your work. It is a difficult thing in itself to engage different professionals to talk about FGM, because practitioners are sometimes afraid to respond, or they respond in a knee-jerk way. For example, we had one referral about a black family who were going to Barbados on holiday. I am from the Caribbean, and Barbados is very close to where I am from. I just cannot understand why a professional would be concerned about a family going on holiday to Barbados.

Our work is not only about intervening and supporting families; some of it is about professional development and about helping professionals to have the confidence to ask the question and know how to ask it in a trauma-informed way. We have heard of cases in which a woman has been shown an image and been asked, "What type of FGM do you have?" FGM is a very traumatic thing for most women, and showing them an image—asking them to talk about it that way—is not a trauma-informed approach, as it would obviously take a woman back to the point at which she had been cut.

Our work is about helping professionals to respond in the right way and not to be anxious about it. We help them to understand that it is just the same as any other safeguarding concern, and we try to allay their fears and give them the skills that they need. One of the most important things is asking the question, and we need to support professionals with something as simple as that.

Mary Fee: I want to ask about three areas, the first of which is guidance. Is there a benefit to making the guidance statutory as opposed to advisory? Multi-agency advice and guidance about FGM already exists across Scotland, but, while we have been taking evidence, we have heard that guidance should be statutory. Do you agree with that? Perhaps you can give us your thoughts on what would be beneficial, both in the FGM guidance and in the guidance around FGM protection orders. Is there something specific that we could include that would be helpful?

10:15

Leethen Bartholomew: There would be benefit in making the guidance statutory. Professionals sometimes do not refer even to guidance that is statutory, and that is even more the case if the guidance is advisory. We undertake work on child abuse that is linked to faith or belief. Back in 2007, the guidance was non-statutory and virtually no one knew about it, so it faded away and is now not referred to at all.

If statutory guidance places responsibility on chief executives and the directors of children's social care and other departments, saying that they must adhere to what is written in the guidance, that creates accountability at a very high level, which ensures that accountability cascades down to the front-line professionals. It is really important to have statutory guidance, and that would be the correct step to take.

Thinking about what should be included in statutory guidance, I had a look at the 2017 multi-agency guidance for Scotland. That guidance is a step in the right direction and mirrors the guidance in the rest of the UK.

FGM is a global issue and professionals must have an understanding of it. It is a matter of thinking globally but acting locally. The international context does play a part for families, and the guidance should include an element of that. It should also include information about the best approach to working with families and what the evidence says about what works, to give some tips. Sometimes, professionals speak only to other professionals, not to people who really know about the families. They do not engage with places of worship.

Perhaps there could be something that spoke to communities and helped them to understand their part as well as looking at how best to engage with and respond to communities. That would probably not be part of the statutory guidance, but it could be written the other way around, as guidance for communities about engaging with professionals. We know that there is a lack of trust between communities and professionals, and that could help us to make a dent and change attitudes—to engage with communities—by helping communities to engage with us and bridge that gap.

Guidance is very general and is not written with particular cases in mind, so we have to adapt it for the families that we work with. In my experience, some practitioners struggle with safety planning and what should be included in FGM protection orders, so some tips—looking at existing case law and what conditions are included in the orders—would be useful in helping professionals to understand what should be included.

There is also an issue about how the FGM protection orders are served. In one case that I know of, the order was granted here but the family members live in another country, so the order was served by another family member via WhatsApp. You need to think about creative ways of serving orders, taking into consideration how useful the internet and various electronic tools can be. Things like that should be considered in serving FGM protection orders.

Mary Fee: That is very helpful. I want to come on to awareness raising and education, but I will ask about something else before I do that.

I have a bugbear about guidance, because guidance can be a very useful tool but it comes down to accountability and the importance that is placed on it. I am always concerned that guidance is taken down from a shelf once a year, that people look at it and put it back and do not do anything with it. Do you think there is a benefit, particularly in relation to FGM, in guidance being regularly reviewed and updated? If you agree with that, how often should guidance be reviewed?

Leethen Bartholomew: You are right. There can be a long gap between a professional—a social worker, for example—getting the guidance and their deciding to refer to it. They get all the training and the guidance is issued to them, but it is only two or three years down the line, when they get a case, that they decide to open the guidance—if they even remember that there is guidance. That is the danger.

FGM overlaps with many other issues. If there is guidance on mental health, for example, FGM must be included in it, because we know that there are cases in which mothers have mental health needs that are related to FGM. We know that FGM overlaps with domestic abuse, so it should be included in domestic abuse guidance, too. FGM issues will then stay alive in people's minds and will not just go away.

It is difficult to say what is the right timeframe for the reviewing or revamping of guidance. In any organisation, all guidance and even policies should be reviewed and reconsidered annually. We know that Public Health England conducts a joint needs strategic assessment annually in some contexts and that FGM is included in that process, which keeps alive what our local areas are telling us about FGM and what learning we need to disseminate.

In the context of violence against women and girls, in some of the domestic homicide reviews involving women from FGM-affected communities that I have looked at, there is no mention of ethnicity or whether there has been any FGM overlap. We are doing women and girls an injustice in looking at FGM as a single issue. We do not look at it within the totality of their lives. We talk about FGM within a deficit model. Many women and girls are very resilient and empowered, but what makes them who they are is not the FGM but other aspects of their lives. That should be a focus in itself and should be celebrated; in that way, FGM will be kept on the agenda.

Going back to your question about the timeframe for review, I think that all policies should be reviewed annually. That does not mean that they will change, but they should be on the agenda.

Mary Fee: If you have true multi-agency working, with collaboration between professionals, if something is on the agenda or in the guidance that is issued to all the different professional groups, one body that picks up on anything can highlight it to the other organisations.

Leethen Bartholomew: That is where the local safeguarding partnerships, which were previously the local safeguarding children's boards, should play their part. They are multi-agency networks, and that is where guidance could be reviewed. Health and wellbeing boards should also play a part. Within local authorities, review of the guidance should also be placed on the agenda of the lead councillor with responsibility for children. Do not look at FGM as a single issue; for us, it is always FGM plus something else.

Mary Fee: I want to move on to education. In England, teaching about FGM in schools is mandatory. Can you briefly tell the committee what the education looks like and what benefits it has brought?

Leethen Bartholomew: It will be mandatory from September 2020. It is not mandatory yet, and it will be only for secondary schools, not for primary schools. We think it is a step in the right direction, but, knowing that FGM happens at a much younger age in most communities, we think that teaching about it in primary schools should be considered.

I have been to one primary school where it is part of the curriculum. I sat in on a class of year 3 students. The approach that is used in that school is to embed the issue in the science curriculum. In that school, there is a strong ethos around the United Nations Convention on the Rights of the Child, and those children knew their rights pretty well. My experience was that those children grasped the issue and understood it pretty well. They asked very informed questions, including questions that some adults would not even think of. I also had the opportunity to meet a group of year 6 students who go into secondary schools to teach about FGM.

That school shows the issues around FGM being taught in a very creative and engaging way, with the teaching pitched at a level that the year group is able to understand, not using any images. As adults, we are anxious about images being used, and some people use unhelpful terms like "barbaric" and other language that alienates people, but the teachers do not use any language of that kind with those primary school children. The issues around FGM are taught at that school from year 1 to year 6, and if that school can do it, others can.

In 2017, we worked with that school to develop the curriculum. It was a whole-school approach that involved training teachers and school governors, and we also had sessions for parents. Those trainees then went into 10 primary schools in London and shared their knowledge with the teaching staff, who would go into their classrooms and pass it on.

Education can work, but I understand parents' anxieties about it, which is partly why we are doing the work that we are doing on the RSE curriculum in one local authority.

Mary Fee: You have spoken about raising awareness. Do you think it would be beneficial to raise awareness across all communities in Scotland rather than just among specific groups of people?

Leethen Bartholomew: Yes. Patriarchy is at the heart of the matter. It is about inequality, and we know that people in other communities—women, for example—experience inequality. That is what patriarchy creates.

If you started off with a very broad context, helping people to understand the different forms of inequality that women, for example, experience—it is sometimes double inequality because of who they are—you could then narrow it down to specific examples, including FGM. I think that you would hit a number of different targets, not just FGM, because you would be starting with a wider conversation. That is the approach to take: do not narrow it down to one particular group, but look at inequality in its broadest sense and work with many different groups to help them to understand, because they all have a part to play. A woman might marry someone from a different community, after which inequalities may start to affect her. Why would we think of targeting just one group when we know that inequality is felt equally across all groups?

Mary Fee: FGM is very much a taboo issue that is not in our everyday conversation. Doing the things that you talk about doing would help to break that taboo.

10:30

Leethen Bartholomew: Yes. Communities, too, feel that there is inequality. For example, a white British woman could have certain procedures done and they would not be considered bad or negative. Someone from another group might take the view that they are being targeted for doing something that is slightly similar. That is why that group should be included in the discussion as well—so that we start to have a dialogue between the different communities and groups in order to understand the issues.

Mary Fee: Are you aware of any interventions in other countries that have been successful in helping to tackle FGM? Are there any alternative approaches that the Scottish Government could consider?

Leethen Bartholomew: Yes. We are part of the End FGM European network. When we think about prosecutions, we think about France, which has gone down the route of prosecuting parents. Other European countries are probably several steps behind the UK, but there are still lessons to be learned from them as well. The work that we have done in the UK should be celebrated, because a number of important measures have been put in place over the years since the girl generation conference in 2014.

We would probably not have safe houses for girls to flee to, as they have in Kenya, for example, but the community engagement that takes place in France seems, from the organisations we interact with, to be a good thing. We recently had a visit from an organisation from Finland, which came to learn about the work that we do in the UK and about our model at the centre. In its view, Finland is a step behind, although I would probably say the reverse. We have made a lot of strides forward, and people come to see our model and the work that is done here.

We can learn a lot from the countries that are affected by FGM about how they engage with communities and the approach that they take. It is much more a live issue in those countries than it is here. When we think about the communities who are affected by FGM, we should remember that poverty and deprivation affect those communities more than others. In the summer, I visited a country where there is a high prevalence of FGM. The drive there is to empower women and provide economic stability, because that gives them agency and means that they do not have to depend on others to play a part in ensuring that they can eat daily. We, here, can learn how to empower women and give them that sense of independence and agency, so that they do not feel pressured by family members that they are dependent on.

Annie Wells (Glasgow) (Con): Good morning. In your submission you state your views on the additional provisions that are available regarding FGM in England and Wales and in Northern Ireland—anonymity for victims, the offence of failure to protect and the duty to notify. Can you explain a little bit more your thoughts on those three? What is your view of Scotland’s having taken a different approach by not including those provisions in our bill?

Leethen Bartholomew: Was the last of the three about mandatory reporting?

Annie Wells: Yes.

Leethen Bartholomew: For us, victim anonymity is a step in the right direction. Anonymity should start at that point when the allegation is made, and it should be ensured that it is provided in respect of publication of names and locations. When a case goes to court in, let us say, Bristol, we know that that will likely mean that the family lives close by. It then becomes very easy to identify the person and even the professionals who are involved in the case. Is there a need to ensure that the professionals who are involved in a case are also not named? In the affected communities it is very easy to narrow down who the people in a case are, and it is then very easy to send the message back home about what is happening.

We know that the responsibility for, for example, newspapers’ breaches of anonymity is placed on editors and not on journalists. I am not sure what the answer is, but a question for me is why is only the editor responsible, and not also the journalist who has played a part through writing the article?

For us generally, however, victim anonymity is a positive thing and is a step in the right direction.

Another question that I have always had about anonymity relates to FGM within the family context, and whether anonymity should go beyond the child who has been cut and the parents. What happens about siblings who are not born yet and siblings who are not involved in the case? Anonymity should also obviously include them.

When we think about failure to protect—

The Convener: I am sorry to interrupt. I have a question about anonymity. Should anonymity be automatic or should the girl or woman have the choice as to whether she remains anonymous?

Leethen Bartholomew: Anonymity should be automatic for children. In broad terms, a child might make a decision but be unaware of how it will affect them in adulthood. That could also apply to adults, who might say that they do not want anonymity because automatic anonymity in some sense removes power and control from the woman to make decisions about her life. The matter should be considered case by case, but the default position should be, at the starting point when the allegation is made, that the person is given anonymity.

The Convener: Thank you.

Leethen Bartholomew: On the offence of failure to protect, we do not have much evidence at the moment of how it really works. It is very difficult to prove failure to protect, so it is a challenge. Does it have symbolic value? Probably, it does, but does that mean that it should be included in legislation? In our work with parents we have told them that it is their responsibility to protect their child and that if something happens to that child they will be held responsible. That is a strong message to send to a parent: it is a strong message to send to other family members, too, because failure to protect is not only about parental responsibility; the responsibility also applies to the person who has responsibility for the child at a given point in time. A grandparent who takes the child on holiday, for example, has the responsibility to protect and safeguard that child during that time, so the offence of failure to protect could apply to them, in that context. We are still in the very early stages in respect of the offence of failure to protect, so we do not know whether it is a useful thing. It is, however, still a strong message to send.

We know, based on anecdotal evidence and from talking to professionals, that mandatory reporting is not working as we think it should work. People question why there should be mandatory reporting for FGM but not for other forms of abuse. That is still poorly understood and is being misused. Even last week at our team meeting we were talking about a case of an adult woman for whom a health professional had dialled 101 for mandatory reporting when mandatory reporting does not apply to adults. That resulted in the police turning up at an address without having had a strategy meeting or discussion with other professionals. It was a knee-jerk reaction. I think that mandatory reporting is probably not a good measure.

Annie Wells: What is your view on the Scottish Government taking a different approach to the UK Government by not introducing the three measures? Does that create the understanding that there will be differences across the UK?

Leethen Bartholomew: Yes. My view is that victim anonymity is a good thing and should be considered by the Scottish Government. Not doing so sends the message that just across the border they take a different approach. We know, from the Department for Education's children in need census, which was published last week, that Newcastle City Council did 43 assessments for FGM during the financial year of the census. We know that it is an issue there and that a different legal approach is used there. How would that impact on families here in Scotland? I ask the committee to reconsider in particular the inclusion of victim anonymity, because of the message that that sends.

The Convener: May I go back to the offence of failure to protect? I would be interested to hear your reflections on that. You mentioned that a lot of the women whom you work with experience other forms of violence in their homes. What is your reflection on a mother being coerced and controlled while harm is being done to her child? I suppose that I am asking whether, if we were to have the offence of failure to protect, there is a risk that we would be punishing women again?

Leethen Bartholomew: That is an interesting question. I know that, in the dynamics of how FGM happens, women are unable to say no—they would be unable to stand up against their family members. It might seem as if we would be persecuting someone who has a different view around FGM, because in some communities the child does not belong to the mother, but to the wider family or even the man's family. I agree that it would be unfair to prosecute, for failure to protect, a mother who has voiced concern and has said that the FGM that happened should not have happened.

We are not dealing with a foolproof system. The answer is in how we ensure that we engage with communities—especially mothers who find themselves in such situations, to help them to understand that there is support out there for them. From our work in encouraging mothers to apply for the FGM protection orders themselves, and in providing legal advice from the solicitors and barristers with whom we work and who do that work pro bono, we know that many women are unaware of that.

There exists the possibility that a woman who is not inclined to cut her child at all could be held responsible if that were to happen to her child.

The Convener: Two more members want to come in, but I will press you a little more on mandatory reporting. We have heard from social workers and health professionals in Scotland that mandatory reporting is potentially damaging to relationships. You gave the example of a professional's knee-jerk reaction, or overreaction. Could mandatory reporting contribute to such things? Obviously, we do not want anybody to collude with someone who would harm a child, but there are relationships and other aspects to think of.

10:45

Leethen Bartholomew: Any type of reporting can affect a relationship. If we just step away from mandatory reporting, I point out that if a professional has a general safeguarding concern and makes a referral, that will affect the relationship. Why have mandatory reporting when all the evidence that we have so far shows that it is not really working? Research that has been done—not in the UK but overseas—shows that some professionals find ways of getting out of mandatory reporting because they do not agree with it. It can affect the relationship between a health professional and their patient.

In the case that I mentioned earlier, the person waited until she turned 18 to disclose the FGM because she did not want her parents to be prosecuted. Mandatory reporting therefore results in a barrier around disclosures for women who would want to seek support and help. That is a consequence of mandatory reporting, but in general terms any form of reporting could be considered to be a bad thing.

The Convener: I am sure that across the UK, everyone who is in contact with children in the context of child protection is very clear about their responsibilities and what they have to do. In the example that you gave of things going wrong the person who was reporting was an adult.

Leethen Bartholomew: Yes. That is because—as I said—responsibilities are still very poorly understood. We can find cases that should have been referred that have not, and that all goes back to professionals being fearful of what will happen because they hear of cases in which reporting has not been responded to appropriately. The experience from the health sector is that because a woman has been cut the health professional will just refer, when that professional should first be doing a risk assessment. The Department of Health and Social Care has risk assessment tools for health professionals. The department's guidance says that a determination to refer a case should be based on that risk assessment, but referrals are just being made.

That has implications for community cohesion and engagement because people can feel that they are being targeted. That says something about confidence and it says something about othering people, as well. There are also implications for children's social care in respect of how such cases are responded to.

Angela Constance: It has been really interesting to listen to your evidence, which is based on your experience in England and Wales. I have heard clearly that mandatory reporting is not working as was intended and is poorly understood. In relation to the offence of failure to protect, you have given nuanced evidence that highlights some of the pros and cons, and you have been very balanced. You are very much in favour of automatic anonymity.

I wanted to draw your attention a bit more to the context in Scotland. There are, obviously, UK-wide regulatory bodies for professional social workers, and there are health professions' regulatory bodies, from which there can be consequences for people's future careers when people do not perform the duty to care.

The convener mentioned our domestic abuse legislation, which is different from that which exists south of the border. Even more fundamentally, we have our children's hearings system, which is very different from what exists elsewhere, and our legal system is different. Nobody in Scotland gets automatic anonymity, but there are procedures—for example, for victims of sexual offences—such that there is some accommodation for that in our established systems. It is always great to compare and contrast, so I wonder what your exposure has been to the issues and the organisations in Scotland, and whether you can give nuanced evidence on that.

Leethen Bartholomew: Can you clarify that you are asking about anonymity and—

Angela Constance: I am very clear about the evidence that you have given about mandatory reporting and the offence of failure to protect, but have you looked at how our court system operates in terms of the anonymity issue?

Leethen Bartholomew: No.

Oliver Mundell: I will go back to the offence of failure to protect. Your answer was very interesting. How many cases are you aware of from the 260-plus people with whom you have worked? Is it common that failure to protect is pursued?

Leethen Bartholomew: Failure to protect is an offence. Obviously, when a case goes to court that will be one of the offences. We know that there have been very few cases—just four.

In the cases that we have dealt with, the narrative that we are given by parents or girls about what happened to them is sometimes that one parent did not want FGM to happen but the other parent allowed it to happen, so one parent failed to protect that child. That goes back to these questions: what happened to that parent, could they have actually said no and were they in a position to protect their child? It is very difficult for parents to go against the entire family. If the context is, for example, a marriage in which the parents are cousins, it is very difficult for them to go against the entire family. To prosecute such a parent seems to be a bit unfair.

The story that we are given is sometimes that both parents wanted FGM, or that a grandparent wanted it. In terms of FGM there is a whole gerontocratic system in which elderly people make decisions on behalf of others, who are very powerless and cannot say no to them. That is a common theme as well, where both parents have failed to protect the child. That has been a consistent narrative in cases that we have dealt with.

Oliver Mundell: That is very helpful. Thank you.

The Convener: That brings us to the end of the evidence session. I thank Leethen Bartholomew very much for the evidence, which has been extremely helpful.

Our next meeting is 14 November, when we will hear from the Minister for Older People and Equalities on the Female Genital Mutilation (Protection and Guidance) (Scotland) Bill.

10:53

Meeting continued in private until 11:15.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@parliament.scot

The Scottish Parliament
Pàrlamaid na h-Alba