OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 22 December 2020

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 22 December 2020

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JUSTICE COMMITTEE
34th Meeting 2020, Session 5

CONVENER

*Adam Tomkins (Glasgow) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

*Annabelle Ewing (Cowdenbeath) (SNP)
*John Finnie (Highlands and Islands) (Green)
*Rhoda Grant (Highlands and Islands) (Lab)
*Liam Kerr (North East Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Liam McArthur (Orkney Islands) (LD)
*Shona Robison (Dundee City East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Tam Baillie (Child Protection Committees Scotland)
Garry Burns (Homeless Action Scotland)
Professor Mandy Burton (University of Leicester)
Callum Chomczuk (Chartered Institute of Housing)
Stacey Dingwall (Scottish Federation of Housing Associations)
Gillian Mawdsley (Law Society of Scotland)
Detective Chief Superintendent Samantha McCluskey (Police Scotland)
Lyndsay Monaghan (Scottish Women's Rights Centre)
Dr Marsha Scott (Scottish Women's Aid)
Paul Short (Association of Local Authority Chief Housing Officers)
Joan Tranent (Social Work Scotland)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

Virtual Meeting

Scottish Parliament

Justice Committee

Tuesday 22 December 2020

[The Convener opened the meeting at 09:30]

Domestic Abuse (Protection) (Scotland) Bill: Stage 1

The Convener (Adam Tomkins): Good morning, everyone, and welcome to the Justice Committee's 34th and final meeting in 2020. We have received no apologies this morning.

At agenda item 1, we continue our consideration of the Domestic Abuse (Protection) (Scotland) Bill; I refer members to the relevant papers in our pack. We will take evidence from three panels today.

I welcome our first panel of witnesses, who are all attending remotely, as are all committee members. We have with us Tam Baillie, who is vice chair of Child Protection Committees Scotland; Dr Marsha Scott, who is chief executive officer of Scottish Women's Aid; and Lyndsay Monaghan, who is a solicitor with the Scottish Women's Rights Centre.

I am afraid that, because we are—as is usual for the committee—very tight for time, we do not have time for opening statements from any of the witnesses. We have received your written submissions, for which I offer many thanks—they are, as always, published on the committee's web pages.

Members have been asked to direct their questions to specific witnesses. Witnesses should not feel that they have to add that they agree with what they have heard, if they indeed agree with it. If they disagree, and would like to add something in response to what has been asked of another witness, I ask them to indicate so to me, using the chat box on BlueJeans, and I will come to them. However, we have a lot of questions and only a short period of time.

With that—too lengthy—introduction, I invite Rona Mackay to open the questioning. I ask for short questions and answers, so that we get through everything.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Good morning, panel. I will start by asking about the existing powers that are available to the police and the criminal courts. There are currently powers to restrict the movements of a suspected perpetrator, such as release on an undertaking, bail conditions and the use of investigative liberation. Can you explain what gaps there are in the existing powers that a domestic abuse protection notice would address?

The Law Society of Scotland takes the view that the proposed link between a DAPN and investigative liberation is not clearly articulated and that there could be some duplication of powers. I would like your views on that. Perhaps Marsha Scott can start.

Dr Marsha Scott (Scottish Women's Aid): Good morning—I am happy to answer that. It is evident to Scottish Women's Aid that there is a gap in the law, for two reasons. First, when we look at the gap between what criminal justice surveys tell us about the prevalence of domestic abuse in Scotland and what the reporting rate to Police Scotland is, and certainly from what we have been hearing for decades from women on the ground, it is clear to us that women do not feel that they are sufficiently protected under the existing scheme to enable them to call the police.

Secondly, such orders exist in a huge number of countries—in many countries, they have been in place for decades—as part of a scheme of protection for women and children; in fact, they are required under the Istanbul convention. There is a mass of opinion that says that, without emergency barring orders of this ilk, the ability of police to protect women and children is hampered. That is why we support the bill.

Tam Baillie (Child Protection Committees Scotland): Apologies for the interference—I am using my reserve machine.

First, the existing measures are insufficient. For instance, there may be not enough evidence to put conditions on bail. The facility of exclusion orders, which came in under the Children (Scotland) Act 1995, was well intentioned, but it is hardly used, and it is actually quite difficult for women and children to exercise that option.

If the intention of the bill is to keep the family stable while they look at other options, I believe that it fulfils that function.

Lyndsay Monaghan (Scottish Women's Rights Centre): Good morning—I thank the committee for having me along today. The Scottish Women's Rights Centre welcomes the bill and its intentions, despite the comments that we have made regarding some aspects of the bill that could be strengthened.

With regard to the existing measures, we see through our outreach work—such as our helplines and surgeries—that there is often a gap where women have reported domestic abuse but there is insufficient evidence for bail conditions to be put in place or to enable engagement in any further criminal process.

Where that gap exists, police often inform women about, or refer them to, civil solicitors so that they can try to get protective orders. However, there will be a gap in protection between the reporting of the abuse or the ending of the relationship and trying to put in place one of those civil protective measures, which could be a non-harassment order, an interim interdict or—as Tam Baillie mentioned—an exclusion order. We know that it is notoriously difficult to get those orders in place, depending on the circumstances of the case. We certainly hear and see that there are real gaps in protection, which I believe the bill seeks to—and could—address.

Rona Mackay: I have a brief follow-up; it is along pretty much the same lines as my previous question. As some of the witnesses said, there is a view that the bill could result in overlegislation. The system is already complex, and it is important that there is a clear pathway for victims to get protection.

Is there a danger that the orders could make the system even more complicated and hamper its work? The Government is considering a wider general review of civil protection orders. Does the proposal in the bill confuse matters, or is there a definite need for the orders?

Dr Scott: There is no question but that there is a need for the orders. I am sympathetic to concerns about complexity, but if we weigh up complexity against safety, we know what must win. The bill is about putting in place a measure to plug the gap and then seeing how the law works and how the courts respond. If further amendments are needed, we can go there.

Tam Baillie: The systems are enormously complex, so I understand the argument that bringing in new orders could make things more complex. That might have some bearing when we discuss the length of time for which the orders apply. I see the order as a short-term measure, whereas we are aiming for longer-term stability for women and children. To come at it from a children's point of view, the last thing that we want is for children to move around, losing contact with friends, family and their schools. Anything that can stabilise the situation, including in the longer term, is important.

I accept that the orders add complexity, but we can perhaps take the sting out of that when we discuss the length of the orders and how they will impact families.

Lyndsay Monaghan: I would echo what the other witnesses have said. The intention is that the orders and notices will complement the civil protective orders that are currently in place. There is a need—a great need—for such interim protection in the period before further measures can be put in place.

The only question now concerns the length of the orders and how they will complement the other systems that are in place. As Tam Baillie said, that may be a discussion for later.

The Convener: Yes, we will come on to the issue of duration later on in the questioning.

Rhoda Grant is next.

Rhoda Grant (Highlands and Islands) (Lab): The Government has made it clear that the domestic abuse protection notices and orders will take priority over other legal measures that relate to children, such as those that exist under the child protection system, court orders and measures to do with custody, but there is no such provision in the bill. That is what the Government has stated. Is that the right policy approach? Would it be better for such provision to be included in the bill, rather than the policy being set out in guidance?

Tam Baillie: I am pleased that the bill says that the views of children should be taken into consideration and that, at the notice stage and at the order stage, there is a requirement to consider the welfare of children. I suggest that "best interests" would be better wording to use, given that we are about to have legislation on the United Nations Convention on the Rights of the Child. For me, that requirement would mean that account must be taken of whatever else is happening in the child's life.

One thing that is not in the bill is provision on contact arrangements that children might wish to be in place when they are asked for their views. It is not as straightforward as the bill simply overriding other requirements, because the sheriff already has to take account of the child's welfare—I suggest that "best interests" would be better—and the views of the child. I can imagine that there will be many complex situations that might not lend themselves to one bit of legislation trumping another bit of legislation. The inclusion of the conditions that the sheriff must consider is a safeguard but, from my point of view, the provision is not perfectly worded.

Dr Scott: I share Rhoda Grant's concerns. I would like the bill to indicate clearly that domestic abuse protection notices and orders will supersede the arrangements under existing contact orders. We know that one of the most significant areas of danger at the end of a relationship in which domestic abuse has been present is the child contact that can happen when the parties no longer live together. It is important that it be laid out clearly, for the court and for the police, that child contact arrangements will be superseded by domestic abuse protection orders. They are short orders, and there is plenty of time

for the contact arrangements to be put back in place, if that seems to the court to be appropriate. That period is a dangerous time for families, so it is absolutely critical that children and their mothers are not forced into dangerous situations as an unintended consequence of enforcement of contact.

To add to what Tam Baillie said, I point out that Scottish Women's Aid is a bit concerned about the wording around seeking the views of children. We understand that that might not be possible when it comes to notices, but for orders, certainly, and throughout the bill, we would like stronger language to be used that makes it a requirement that the views of children be sought. That does not mean that it will always be possible to get those views. The language that is used in the bill at the moment, which talks about the child's views being taken into account if the senior constable or the court is "aware" of those views, is not strong enough.

Rhoda Grant: Does Lyndsay Monaghan have anything to add—in particular, on whether the provision that domestic abuse protection notices and orders will take priority over other legal measures should be included in guidance or in the bill?

09:45

Lyndsay Monaghan: I do not have much to add to what my fellow witnesses have said. The Scottish Women's Rights Centre's position is that that needs to be clearer; it is not as clear in the bill as it could be.

Our main concern is about the impact on women if, for example, an order is put in place and that stops contact. We want the guidance—whether we are talking about guidance in relation to the bill or guidance that is provided to women by the police or the court, depending on the stage of the process—to be clear about what is expected of women. Are they required to facilitate contact, and what should that contact look like? We often find that, if new legislation is not clear enough, women get in touch with our service and ask, for example, what they should do. They ask whether they can allow contact, whether they should allow it, whether they are breaching anything and whether they can facilitate contact arrangements when no contact order is in place. The position needs to be clear in the bill and in the guidance.

Rhoda Grant: Thank you. I will ask later about seeking children's opinions.

The Convener: Tam Baillie wants to come back in to respond to Marsha Scott.

Tam Baillie: On the interaction between child protection processes and domestic abuse protection orders, when we talk about the duration of orders it will be important to consider that some children will want on-going contact.

Contact arrangements are difficult at the best of times, but that does not mean that we should not attend to them as we try to build in extra stability and protection for the family. We have to deal with how we arrange contact. I know that such decisions are among the most difficult decisions for sheriffs, often because of the quality of the information that is before them. Contact is a critical and problematic area and has been for many years, so we should not just say that one bit of legislation overrides another.

John Finnie (Highlands and Islands) (Green): Good morning. The good news is that no organisation that has offered its view to the committee has disputed that there is a need for an effective legal response to domestic abuse.

However, members of the judiciary and the Law Society of Scotland have expressed concern about the test in section 4. In particular, they are worried about the evidential threshold that must be met before a domestic abuse protection notice can be imposed. Given the wording of section 4, the Law Society and the Sheriffs Association questioned whether a DAPN will be a proportionate measure, in the context of the relevant rights under the European convention on human rights. How do the witnesses respond to that?

Dr Scott: I will default to the same answer, which is that it is evident to us that the existing regime of protection is not working. I am slightly unsurprised by the objections of the Law Society and the Sheriffs Association, because we heard concerns of that kind when we were discussing the Domestic Abuse (Scotland) Bill. The reality is that we must weigh up the consequences of not acting.

The domestic abuse protection order will be a civil order, so the requirements will be less stringent, which I think will provide flexibility. Obviously, we must invest in police resources and training, because the police will be at the sharp end of the process. The evidence requirements do not seem to us to be draconian; they also offer some protection that should reassure the rest of the legal system.

Lyndsay Monaghan: We are happy that the definition in the bill reflects the current Domestic Abuse (Scotland) Act 2018 and is an appropriate definition. That leads me to say that, if a person were to report domestic abuse to the police, that abuse would—I hope—be considered to be a crime under the domestic abuse legislation, and protective measures would be put in place. However, we often find that there is insufficient

evidence, so the high evidential threshold for the criminal element is not met. However, that does not necessarily mean that the behaviour does not fall into that category; that person therefore requires protection.

Although proportionality is not really something that I am able to comment on, I believe that there is a requirement for the protection. Very similar legislation in England and Wales is undergoing a review, and it has been agreed that the threshold of threat of violence or physical violence that they had down in England and Wales was simply too high and was not reflective of coercive control, psychological abuse and women's lived real experiences of domestic abuse. I am content with the bill and the protection that it would provide to women in those circumstances.

Tam Baillie: Proportionality is not my area of expertise. However, if I was to choose between the proportionate response and increased safety of women and, in particular, children, I think that I would fall on the side of increased safety.

The other aspect is that the evidence still has to go before a sheriff when we are talking about the imposition of an order. That is a matter to debate during the passage of the bill—the nuances of wording and criteria, so that people are satisfied that the bill strikes the right balance between a proportionate response and the safety of the family.

John Finnie: If I may, I will put a supplementary question to Dr Scott, specifically about the notices. Scottish Women's Aid was very closely involved in drafting the bill. What can we read into your expectation of the frequency of use of notices and of proportionality? For what percentage of reported cases do you envisage notices being put in place?

Dr Scott: That is difficult to answer, in part because it approaches the whole blurry area of women choosing not to report because doing so feels unsafe to them. Certainly, in relation to other provisions in the bill, we hear all the time about women not reporting because they are concerned about the consequences of being homeless. I think that notices will be put in place for a relatively small proportion of cases. In our view, they will not be issued routinely by police, because we hope that there will routinely be evidence for arrest and criminal charge.

However, we might well see notices in cases in which there is an investigation in which evidence has been put to the Crown, but it chooses not to prosecute because there is insufficient evidence, and the police still have strong concerns about the safety of the family. In such a case, a notice will be a critical tool that is not currently available. I suspect that we will see use of notices in such cases fairly consistently—at least initially—because obviously the police would not have reported to the Crown if they did not think that there was a safety issue.

John Finnie: I thank the witnesses very much. That is very helpful.

Liam Kerr (North East Scotland) (Con): Good morning, panel. I will direct my question to Dr Marsha Scott first. Other panel members can come in if they feel that they have something to contribute.

In its written submission, Police Scotland suggested that it might not be a positive thing that the police will be able to issue a DAPN without the usual multi-agency involvement in decision making, and that the bill

"is not in step with the established partnership approach".

Last week, the committee heard from the bill team that multi-agency working need not be enshrined in statute because it will just happen in practice. What is your view, Dr Scott? Are Police Scotland's concerns valid? If so, how could we address those concerns?

Dr Scott: I was quite surprised by that. Our experience is that the police rarely engage with multi-agency structures for an initial call or in situations in which a notice would be served. However, we really value multi-agency working because it brings more information to everyone's decision making. However, multi-agency working takes time and the notice process is a short-term intervention that would be scrutinised by the court. That subsequent scrutiny can be informed by multi-agency information. The use of a notice does not avoid input from multi-agency settings, such as multi-agency risk assessment conferences—MARACs—it is just that such input would come later in the process.

Liam Kerr: You are saying that the bill reflects that approach, which is to give the police discretion, at the time, to decide whether they have time to do multi-agency working, and whether that would be productive or they need to crack on and do what they need to do. Are you comfortable with the current approach?

Dr Scott: What you have described is our understanding of what happens now. The idea that following a call, a police officer would delay a knock on the door in order to call the local multi-agency group, which probably meets a couple of times a month, to consult it on whether they should use a notice makes no sense.

Liam Kerr: I understand. Thank you for that answer. I will hand back to the convener, unless Tam Baillie and Lyndsay Monaghan have something to add.

Lyndsay Monaghan: I have nothing to add.

Tam Baillie: [*Interruption*.] I do want to contribute, but I cannot type R just now.

Liam Kerr: We can hear you, Tam.

The Convener: Please go ahead; we are ready.

Tam Baillie: Can I go? Sorry for taking up valuable time.

The notices are very quick and short. The police are first responders in the vast majority of protection cases in Scotland—those that involve children as well those that involve adults. There is nothing unusual about the police having to act singly as an agency.

In relation to child protection, the police are right to point to the multi-agency approach. In the process, there are initial referral discussions—IRDs—which happen very quickly when there are concerns about children. The police are one of three key participants—the others are social work departments and healthcare departments. Where there are concerns regarding children and a notice has been issued, I would expect that to be brought to the attention of the IRD process. The IRD approach is currently strongly endorsed in child protection guidance in Scotland.

There might be different timescales for MARACs, but in relation to children, there is a very short time between an incident and its being brought to the attention of the relevant agencies. That forms the bedrock of our child protection processes in Scotland.

I apologise for the messing around at the beginning of my answer.

The Convener: That is okay, Tam. Thank you for those helpful clarifications.

Fulton MacGregor (Coatbridge and Chryston) (SNP): My question follows from Liam Kerr's question on multi-agency working and moves on to the referral of a person at risk to a support organisation. Do the witnesses think that a presumption to refer a person to support services would be a worthy addition to the bill? Does that routinely happen at the moment? I heard different views from the witnesses about the multi-agency work, but the referral issue is a bit different. Do you think that referrals to support services, when necessary, happen regularly already, or would a presumption in the bill be useful?

10:00

Dr Scott: Thank you for giving me the chance to say something that I wanted to say. There is a complex interaction of consent, risk and access to services when it comes to what happens on the ground. Our conviction is that the issue is not so much whether a referral is made but how and when a referral is made.

We would support an opt-out arrangement, rather than a presumption. Some of the local policing arrangements involve an opt-out referral to a Women's Aid service, which we call a warm referral. The police say, "There is this service that we think would offer you helpful support and we will refer you to it. However, you have control over that and, if you object for whatever reason, we will not refer you; otherwise, our assumption is that we will refer you".

That approach gives a strong message that the support services will welcome contact, without taking control out of the hands of women. There are two reasons why that is important. The first is that all the risk assessment research and literature across decades says that women are the best predictor of future harm. It is important to understand that. If there is an intervention with an accused, the best way to figure out how he will respond is to ask the victim. There may well be some complex interplay of factors in the victim's decision on whether to take up a referral, so it still needs to be in her control. Secondly, we have evidence that, if a survivor is offered a referral in the first 24 hours of her contact with police, she is around 90 per cent more likely to take it up than she is if she gets the offer after the fact. Therefore, a referral needs to be made in a timely fashion.

There are some good relationships between police and Women's Aid services across Scotland, and there is a lot of existing good practice. However, the reality is that practice is choppy and uneven, and the bill provides an opportunity to make crystal clear what good practice looks like.

Fulton MacGregor: Thank you—that is a good overview. Lyndsay Monaghan, do you have anything to add, specifically on whether a presumption to refer would be useful?

Lyndsay Monaghan: I echo what Dr Scott said about that. It is important to put the decision into women's hands and not force it on them. I think that it would be better if they had the opportunity to opt out.

The support services that are available are invaluable. Our helplines and surgeries are sometimes the first point of contact for women, because they have stumbled across our number and phoned up. We find that, when a woman has not already engaged with a support service such as Scottish Women's Aid, there is often a higher risk for that woman as she presents to us. We are a legal service, so we are giving advice about protective orders and the criminal justice process. I can only imagine that it would be invaluable to women to be able to access such information at the immediate point of risk. Scottish Women's Aid

can do the relevant risk assessments and ensure that the woman has the practical support that she needs, so I agree that such support is needed.

When a woman goes through the criminal justice process, the police should refer her to, and give her information about, victim support. We see the benefit of that. When a woman has been referred to Victim Support Scotland at that point, she will often have a lot more information about the process. However, where that fails and women do not get the information or, as Dr Scott said, they get it later in the process, they usually do not engage as much or do not understand what is going on. Perhaps there should not be a presumption that it will happen, but it is important that that should be at the police's disposal.

Fulton MacGregor: Thank you. Does Tam Baillie want to come in on that question?

Tam Baillie: It makes sense to have something in the bill about the assessment of needs and, where appropriate, the provision of supportive services. I would be careful about having a presumption. I say that because, in the early 2000s, there was a presumption that all cases of children involved in situations of domestic abuse would be referred to the reporter. That practice, over many years, nearly brought our reporter service to a standstill, and there are now other ways of ensuring that services get to children.

The assessment of needs and provision of support services should be for all parties: the woman, who is most often on the receiving end, the children and the perpetrator. To have a long-lasting impact, we want to minimise the recurrence of incidents in future. Therefore, the issue of assessment and support goes right across the board for all the parties that are involved.

Fulton MacGregor: Thanks, Tam. You raise an interesting point. There are good programmes and good work out there. You will know about the Change programme, the Caledonian system programme and many others. A presumption that there should be support services for perpetrators, as well, may be something that the committee should look at.

The Convener: I see that Marsha Scott wants to come back in, but I ask her to wrap her response to that into her answer to Annabelle Ewing's questions, which will pick up on closely related themes.

Annabelle Ewing (Cowdenbeath) (SNP): Good morning, colleagues and panel. I have two key questions. I will change the order in which I ask them to flow better from the discussion that we have just had. In the process for the DAPN and DAPO, there is no requirement in the bill to obtain the consent of the victim. What are the panel's views on that? It would, perhaps, happen as the norm, but that would allow for exceptions where it was not deemed appropriate, for whatever reason. What is your response to the current approach on that important issue?

Dr Scott: We all understand that there is a balance there in terms of risk and agency, but we think that we need to maximise options, which refers back to what I was saying about women being the best predictor of their risk. In the case of notices, we want the police to be required to seek the views of women and, when possible, children, but we are clear that obtaining consent will be less easy to rely on in those circumstances and that it will not necessarily be a feature of the notice.

When we get to the orders, however, we have strong concerns about orders that are made without the consent or even directly opposing the will and wishes of women. I think that that refers back to what we were saying about women being the best predictor of their own harm. I also refer to Patrick Down's testimony about the whole process working better if women support it.

However, we need flexibility in the system. We all have a duty of care, and if the court is convinced that the woman has been coerced, and if there is clear evidence that there is imminent danger to the children of the woman involved, we need to build that flexibility in. The more we can do to ensure that the court does more than "have regard" when it is aware of such evidence, and to require it to seek the views of women and children and listen to their input, the better the whole system will work.

Annabelle Ewing: If consent is not given in some circumstances, how will the system work? I understand that notices such as the DAPN are to be served to where the perpetrator resides. There are likely to be some cases—perhaps those that are more in extremis—in which that could be a very difficult scenario because the perpetrator will be served the DAPN in the home where he, in most cases, resides with the victim, and the victim is not really part of the process. Perhaps Lyndsay Monaghan could comment on that.

Lyndsay Monaghan: I agree; that is a dangerous situation that could occur, and it is one of the reasons why taking the views of the women and, when appropriate and when age appropriate, the children must be built into the process.

The DAPN is a short-term emergency protective order for women's safety, so it is our position that views should be taken at that point but it is accepted that consent might just not be possible at that stage. As Dr Scott said, women are champions of their own risk assessment and they know best what is safe to happen. We often try to embody through our practice the idea that women know their own risks, they know their abuser best

and they know what is likely to happen. If they can inform the process, it creates a safer process.

The DAPO is a longer-term order, but we consider that it might need to be longer than proposed. As it is a longer-term order, it makes more sense to take consent at that point, because it will have longer and wider-reaching impacts on the woman.

On the risk of the abuser still being in the home, one of the intentions of the bill is that the abuser will be removed or not allowed to return to their home. That would alleviate that risk, but certainly the woman would be best placed to inform that and explain.

In the criminal justice process, women's views and their position are often not regarded. One of the biggest complaints that we hear through our helplines, surgeries and other outreach is that women just do not feel as though they are involved in the process or that they are heard. It is an access to justice issue when you do not feel as though the process is involving you. We would hate for that to be reflected in the bill.

Annabelle Ewing: Thank you for that comprehensive response. Before I turn to my second question, which I will address principally to Tam Baillie, could you say whether you feel that the bill reflects what you have just said in its desired policy intention?

10:15

Lyndsay Monaghan: No, because the bill says that consent is not needed. Although it says that views should be taken into account, if it is clear that consent is not needed, especially for the order, views might not be taken into account. The bill has to be clearer that women's views should be built into the process.

Annabelle Ewing: I turn to Tam Baillie for my next question, although it is absolutely fine if he wants to comment on my previous question. In terms of the scope of the bill, age thresholds are set. The threshold for perpetrators is 18, whereas it is 16 for victims. Do you have any comments on that?

Tam Baillie: That reflects the mixed position that we have with regard to children and adults. As I mentioned, we are about to move to a position in which, under the UNCRC, children are regarded as those under 18. However, there are still situations in which those who are 16-plus can be householders, for example. We have rather mixed legislation in Scotland for the 16 to 17-year-old age bracket. The bill has to reflect situations and maximise the safety of people who are caught in positions of domestic abuse. It is not satisfactory, but it reflects other legislation on that age group.

I will add to what has been said about consent. The bill is about the imposition of the police and courts on a family's situation. There is an advantage in there being police action. It takes the weight of responsibility for the notice away from the mother in most instances. However, as soon as we get to longer-term provisions, such as the orders, the system is basically unworkable unless there is consent.

There is a little point about how the order appears, who takes the initiative and how the mother, in particular, can maintain her safety and that of her family if the order is imposed by a court, rather than her taking the initiative through court action. I agree that the longer the order lasts, the more we will need consent and the person's views to be consistent with the imposition of the order.

I am sorry—I should have answered those questions the other way round.

Dr Scott: I should share with the committee the point that women are the best predictors of their future harm, but they are not good predictors of homicide. The homicide in Britain study that was done by the Dobashes made it clear that women—[*Inaudible*.]—partner or ex-partners did not see that coming. We need something that is suitable when the danger is that high. I remind everybody that coercive and controlling behaviours are one of the few signals that we have that abuse is more likely to move into lethality. Therefore, it is less concerning to us that consent is not required for the notices. I fall back on what all the witnesses have said about the orders.

The Convener: That is helpful.

Shona Robison (Dundee City East) (SNP): We have touched on the issue of taking the views of a person at risk, in relation to both the bill's drafting and how the system might operate in practice.

As you know, and as we have discussed already, the bill provides that the views of the person at risk should be taken into account if a domestic abuse protection order is to be made or extended. I put my question to Marsha Scott first. I think that she said that taking the views of the person at risk must be a requirement, rather than their views simply being sought. Should the wording be changed to reflect that explicitly? How might that operate in practice?

Dr Scott: The language in the bill suggests that the court has to pay attention to those views when it is aware of them. Frankly, we are concerned that that is too big a loophole. We would like the court to be required to seek those views and to pay attention to them where it can get them.

The process is different for children. I want to underscore that we need to be careful about that.

We have lots of new language in the Children (Scotland) Act 2020, which talks about, and sets principles around, children's participation. I look forward to the day when our courts know how to do that. We should enshrine children's right to participate—and to do so safely—in decisions that are made about their lives in every piece of legislation that we can.

I am simply saying that we need to change the language to make it stronger and to make it clear that we expect all elements of the justice system to seek the views of both the women and the children. That should be the default, so that if the court does not have their views, it should be asked why not.

Shona Robison: Could Lyndsay Monaghan say how she thinks that that might work in practice?

Lyndsay Monaghan: The bill says that consent is not required to make a domestic abuse protection notice, so it would have to be made clear that views must be taken to inform the process. The bill must be clearer.

As we have said, it is important that views inform that aspect. We agree that consent may be too difficult at that stage. The ideal is to get a woman's consent, but that might not be possible, given the short-term nature of an order. However, their views must be taken.

On what the sheriff must take into account, when it comes to an order, we think that the woman's views should inform the whole process. To echo what Marsha Scott said, we think that, rather than views being taken into account if they are available, views must be taken. If that is a question of timing, the order must last longer in order to allow that to take place. It is crucial that a woman's views are taken, whether that is through a victim impact assessment or something else that the sheriff can access and take account of. That might include a woman being able to appear at hearings, if they so choose. I also think that something more substantial is required.

Shona Robison: Would it be reasonable to include wording along the lines that reasonable steps should be taken to elicit those views, given that there may be circumstances in which views cannot be taken? There would need to be a caveat so that, if views could not be taken but all reasonable steps had been taken to elicit them, matters could proceed. Would you be comfortable with that?

Lyndsay Monaghan: Yes—or at least that views be taken where possible. There has to be a requirement, but there will always be circumstances in which a woman is incapable of providing her views, or it is clear that she does not want to provide her views but wants the process to continue.

I think that most women will want to be involved in the process and have a say, but, as you say, there will be times when a woman might not want to do that or is incapable of doing so. The process should take that into account, to make sure that the orders can still be put in place.

Tam Baillie: I will add to that from the perspective of children. A provision could be included on contact arrangements, for example, which could be subject to appeal if the views of children over the age of 12 were not taken.

I must say that the feedback from sheriffs is that the quality of the information that they have to go on is not always what they would deem appropriate for the level of decision making. Thankfully, we are making progress, but we have a long way to go before we can be assured that we are taking the views of children who are involved in court processes appropriately.

The other point is about the age and stage of the children involved. We should not presume that children under the age of 12 do not have a view, although there is a decline in the number of times that the views of children under 12 are given to the court—the rate declines the younger they are. There are real difficulties in getting the views of children who are under the age of five, who attempt to act out their views through their behaviour rather than articulate them. It takes time to get alongside a child so that they can have the confidence to express their views to you and so that you can be confident in what the child is saying.

I have mentioned that I believe that the length of the orders—two months with a one-month extension—is too short for the courts to be able to come to a reasonable view. There are challenges. I have no doubt that the wording could be strengthened regarding a requirement to take views, but consideration of the age and stage of the children, and the length of time that it might take to get alongside those children so that they are confidently able to express their views, is key.

The Convener: We have about 20 minutes left for this panel and we still have questions from Rhoda Grant, Liam Kerr and John Finnie. If we keep up the pace, we should get through it all.

Rhoda Grant: I have heard what the witnesses have said about taking the views of children. I think that Women's Aid said that the Children (Scotland) Act 2020 should be the model for that. Do all the witnesses agree with that, or do they think that child welfare is not the paramount consideration in the bill? Should the focus be slightly different?

Dr Scott: There is already some language about using advocates as supporters to help to consult children and get their views. As we know,

children who were in our young experts group for the Children (Scotland) Act 2020 were clear that having an adequate supporter would be critical to their ability to participate in the system. The interests of children should be paramount—that should always be the bar when we make decisions.

I apologise—I am not sure that I am answering Rhoda Grant's question. However—[*Inaudible*.]—for children to make their views heard. We know that there is no presumption in relation to the views of younger children in the 2020 act, but support needs to be in place for them so that they can articulate their views.

I totally support what Tam Baillie has said. Children's workers and Women's Aid can tell you that you cannot whisk a seven-year-old into chambers and have the sheriff ask them what they think and think that anyone will get a reliable response to those questions. That really needs to be done with children and by their supporters, whom they trust and have a relationship with.

That is similar for adult victims. This goes back to the referral question, which has to do with making sure that timely referrals have been made, so that by the time the court is seeking a woman's views, she has had the support and counsel that she needs.

Rhoda Grant: I will push you a little further. In places such as Australia and New Zealand, children are able to access orders and protections in their own right. Would that be worth while considering in the bill?

10:30

Dr Scott: That is a difficult question, because I always want children to have more rights, rather than fewer. However, with regard to the particular framing of the emergency order in the bill, the reality of children's lives is that their safety in emergency situations often depends on their mother's safety, and the single most important intervention that we can make is to ensure that the mothers are safe, because they are the most protective factor for the children.

Over the longer—[*Inaudible*.]—response, but, in an emergency situation, we blur the areas of who is in danger. For decades, our system has discounted how much harm comes to children because it is felt that, somehow, they are not harmed by what happens to their mothers. Similar controls, coercion or abuse is happening to them but those are invisible in the way that our system takes evidence; in addition, harm to mothers is harm to children. Therefore, weighing all those factors, this is the appropriate way to go, knowing that we would have child protection processes for use by children.

It would be less urgent for children to have an order of their own if they had real access to justice, rather than just on paper. We all know that children have a right to legal representation, and yet that right is barely discernible in the system. We should explore how to improve access to that right, which will help assuage some of our concerns about children not being able to raise an order on their own behalf.

Rhoda Grant: Does Tam Baillie want to comment on that and say where we could access best practice in getting the real views of children in a way that does not cause them harm?

Tam Baillie: Yes, but I want to say two things before I come to that. First, there is a movement afoot in Scotland with regard to trauma-informed practice. In essence, we are talking about children who have been living through traumatising situations. I hope that we will be better attuned to their experiences in how we support those children.

Secondly, with regard to advocacy, I welcome the discussion and the progress that we are making in supporting children. I see little point in children having some agency in the bill unless we are prepared to support that. That is not to say that I do not welcome it. We have very few pieces of legislation in Scotland that give children the right to that agency. The Education (Additional Support for Learning) (Scotland) Act 2004 was one of the earliest examples, but there are few others. Therefore, if the committee were minded to really strengthen the position of children through the bill, I would welcome that.

We have many examples of good practice in supporting children. However, in my experience with, for example, children who are being supported in going through court cases with regard to child abuse, the courts have sometimes called on that counselling and support in evidence, which militates against getting early support to children. Therefore, while I welcome the focus on the views of children and strengthening their rights through the bill, that would have to be accompanied by confidence or a requirement that support be routinely given to children who are caught in domestic abuse situations. That would be different from where we are just now, because not all children get that support. Therefore, I am saying yes, but other things have to go along with that.

I have not come equipped with particular examples today. I am reluctant to say that I will provide those, but I will if I can. For the record, I would be happy to try to find good examples of children's views being given in court situations in a way that could be pointed to as examples of good practice in Scotland.

Rhoda Grant: That would be good—

Tam Baillie: I do not know whether I can; that might be quite reckless.

Rhoda Grant: Does Lyndsay Monaghan have anything to add?

Lyndsay Monaghan: No.

The Convener: We will move to Liam Kerr.

Liam Kerr: Good morning. I direct my question to Lyndsay Monaghan first. Section 8 is about the making of domestic abuse protection orders. As it is drafted, the police—but nobody else—can apply to the sheriff court for such an order. That is in contrast with the proposed approach in England and Wales, in which the person at risk or the local authority can also apply for an order. I notice that it also contrasts with the approach that is used for a female genital mutilation protection order. Last week, the committee heard from the bill team that the Scottish Government's view is that it is appropriate to limit that power to the police.

What is your view? Should the power to apply for a DAPO be extended beyond the police? If so, to whom? How can a joined-up approach be ensured?

Lyndsay Monaghan: I consider that the police are the appropriate body to have the ability to do the domestic abuse protection notices and the orders. However, we also consider that the provision on who can apply for the orders should be broadened. Speaking specifically of local authorities, statutory services such as health and social work, follow-up work after MARAC assessments, and housing services could offer the chance to assess people. The real reason for suggesting that is that quite often women will present at those services as having difficulties with domestic abuse. As those services are often their first port of call, we consider that enabling them to apply for an order, or at least make referrals to the police, is important for women's safety and for ensuring greater access to justice for women.

I understand that that would put a significant resource strain on local authorities, and therefore it has been suggested that a power to make referrals might be more appropriate. However, even in that case, appropriate funding would have to be put in place for services across the board, including for support services. Appropriate training and resources and an understanding of domestic abuse are really important for the police, local authorities and anybody else who is involved.

Liam Kerr: Thank you. Before I pose the same question to Marsha Scott, I would like to press you on the good point that you made about the resource implications if that power is expanded. Does that not also suggest that we need to think carefully about the resource implications for the police? If they have the power to make the application, as proposed in the bill, are there serious resource questions for us to consider around that?

Lyndsay Monaghan: Most certainly. Adequate resources and funding have to be put in place to ensure that the bill is rolled out adequately. That starts with training and understanding, so that the police and anybody else who is allowed to apply for the orders have an understanding of risk assessment, to ensure that they can put in place the notices and orders safely. That is where it would start, but for the bill to be successful, officers will also have to be able to implement it, and they must have the time and the resources to do that.

Liam Kerr: Marsha Scott, do you have anything to add to that?

Dr Scott: I do. Although we share about 100 per cent of those concerns, we would err on the side of preferring that the police request an order. We think that local authorities, social work officers and other agencies could refer to the police to do so.

My concern is about the unintended negative consequences of opening up the process to people who are in roles in which they are not necessarily required to have appropriate training. We know that one of the biggest miscarriages of justice in our system happens when a victim seeks safety and is arrested mistakenly as a perpetrator. I am happy that, in the first year of operation of the Domestic Abuse (Scotland) Act 2018, under the coercive control element in section 1, about 4 per cent of perpetrators were female, which is what we said the evidence suggested would be the case. Scotland needs to take credit for that, because it is quite unusual. In most places where there is a change in arrest policy, there is a spike in mistaken arrests of women as perpetrators.

If we broadened out the measure beyond the police, I would really worry that well-intentioned elements of the rest of the community would seek notices without really understanding who the likely primary aggressor is. We have good protocols between the police and the Crown Office. We have training in place for the police, and we can expect to do more training with the police if they need it as a result of the bill. However, I do not think that we have the capacity or the scope to train others in the community who might want to be involved. The logical thing is to start with an entity that we know is likely to have the infrastructure to implement the measures appropriately, and to use that entity as the focal point for the process, although we should absolutely welcome multi-agency engagement in referring people to the police.

The Convener: I am sorry to intervene, but we will have to speed up, as we have only three minutes left for this panel. That was an important answer from Marsha Scott, but it was also rather long. I ask for short, sharp and crisp questions and answers for the next couple of minutes. I think that Liam Kerr is not quite finished, but I ask him to be quick.

Liam Kerr: I am grateful, convener.

There is a slight tension between what Marsha Scott just said, which I think was that we should limit the ability to apply for orders to the police, and her written submission, which says that the Scottish Government should

"consider options for other professionals to be granted the authority to apply to the court"

for an order. I am curious about that. Did I mishear you? Which should I prefer?

Dr Scott: You did not mishear me; you heard our ambivalence on the issue. I would like other elements of the community to be able to request orders, but I am not sure that sufficient resources will be put in place under the bill to allow that to happen without negative consequences. If there was a way that sufficient resources could be put in place, we would support the proposal. That is a bit like what Lyndsay Monaghan said: if you put in the resources, we could support that approach but, if you do not, we cannot support it.

The Convener: That ambivalence is clear, and it is actually quite helpful.

John Finnie: I will direct my question to Ms Monaghan. It is about the interplay between the civil and criminal courts. As the bill is configured, a DAPO could be imposed only by a civil court and not by a criminal court. Do you agree with that approach? I am interested in your views on the idea of criminal courts having the power to impose an order on sentencing, as well as perhaps at earlier stages in the proceedings.

Lyndsay Monaghan: I cannot really comment on that, because the criminal law is not my sphere. However, I agree with the approach taken in the bill: it should be a civil order. The civil courts have the appropriate framework in place to take that through, with interim orders and so on. I do not have much to add.

John Finnie: Briefly, Dr Scott, do you have a differing view on the potential benefits or otherwise of expanding the power to the criminal courts?

Dr Scott: Briefly, the NHO process that is built into the Domestic Abuse (Scotland) Act 2018 is the more appropriate one. We know that it can be imposed for longer periods. It should do what it says on the tin as far as protection orders are concerned. However, adding the civil process on to the criminal one would not be helpful.

10:45

John Finnie: My final question is for Mr Baillie and is on the duration of orders, which he touched on earlier. A view has been expressed—including by Dr Scott's and Ms Monaghan's organisations—that the proposed duration of three months is potentially too short, given the challenge of obtaining longer-term civil protective orders. If the bill were to be amended to make them longer-term protective orders, do you accept that the Government might have to revisit the evidential threshold that must be met before they could be imposed by a court?

Tam Baillie: The answer to both questions is yes. I absolutely agree that the proposed duration is too short, which puts pressure on the evidential aspects of obtaining an order. However, the prize is stability for the woman affected, her children and her family. That would satisfy one of the main policy objectives, which is that the family should stay put while the perpetrator is moved on. It would therefore be really worth while for the committee to worry away at the business of the appropriate period of time for such orders because, on my reading of it, a longer duration would more clearly fit with the policy intention. That is especially so given the limitations and the other measures that are available through the courts.

John Finnie: I ask Dr Scott and Ms Monaghan to say briefly whether, if an extension were to be put into place, they feel that that would impact on the evidential threshold that would be required.

Dr Scott: The bottom line is safety. If the court is of the opinion that extending an order would increase the safety of the children of the woman involved, that needs to be the mechanism by which we decide how long the period should be. I do not think that having a period of four months would somehow mean that we would need a higher threshold of evidence. It is important to understand how slowly—[*Inaudible*.]—on housing decisions. The system needs to be based on safety. It is important that we do not encourage courts to think that just because a perpetrator has not reoffended in the three months during which an order has been in place it can be assumed that they are no longer a risk to children and women. We have so much evidence that that would not be true.

John Finnie: Thank you all very much—that is helpful.

The Convener: I thank Tam Baillie, Marsha Scott and Lyndsay Monaghan for their evidence. I am really sorry that our session has been a bit

rushed, but we have eight further witnesses to hear from today. With that apology, and the committee's grateful thanks, I wish our first panel of witnesses as happy a Christmas as it is possible to have in the current circumstances.

I suspend the meeting for five minutes to enable a change of witnesses. We will reconvene at 10:53.

10:48

Meeting suspended.

10:53

On resuming—

The Convener: I welcome our second panel of witnesses: Gillian Mawdsley, who is from the Law Society of Scotland; Detective Chief Superintendent Sam McCluskey, who is from Police Scotland; Joan Tranent, who is from Social Work Scotland; and Professor Mandy Burton, who is a professor of socio-legal studies at the University of Leicester.

I thank you all for joining the committee this morning. We have about 75 minutes for this session, which is not quite long enough—the time that we have is never quite long enough. We will not take opening statements from you, therefore, but go straight to questions.

I will open the questioning. Given that the police and the criminal courts have existing powers available to them to restrict the movements of suspected perpetrators of abuse, is there a gap in existing protections and police and criminal court powers that a DAPN would address? I direct that question first to Gillian Mawdsley and then to Detective Chief Superintendent Sam McCluskey.

Gillian Mawdsley (Law Society of Scotland): That is a good question, convener. First, we have always stressed that we are completely against any form of domestic violence and that, if there is a gap in the legislation, it would be appropriate to constitute those orders. However, at all points, including in the policy memorandum, we have asked for examples of scenarios in which such an order would operate that are not already covered by various means and protections in the current law.

Secondly, if it is concluded that the orders are appropriate, far more attention needs to be paid to the interaction with the criminal process and with the other existing measures that are available across the board. Overproliferation can cause confusion and does not serve the interests of any party.

The Convener: I might come back in a moment on something that you have just said, but I want to hear from the other witnesses first. I put the same question to Detective Chief Superintendent McCluskey.

Detective Chief Superintendent Samantha McCluskey (Police Scotland): Good morning. Similarly to what has just been said, we would very much support anything that enables us to protect victims better. We do not necessarily see the gap, but there is a real acknowledgement from us that we could make better use of existing powers. The recent changes in legislation, for example the Domestic Abuse (Scotland) Act 2018, as well as the training that officers have now had so as to recognise coercive control and the dynamics of domestic abuse, might start to have an impact.

The Convener: So, there is no gap in the current law, but there is a gap in training and in the use of the current law: that is what I think I heard you say there.

Detective Chief Superintendent McCluskey: The training that we have delivered was good—it was excellent. It was very well received, and the feedback was very good. We have seen a shift in attitudes to how we approach domestic abuse from a policing perspective.

It would be fair to say that we have not previously used the existing powers to their full extent on domestic abuse, but that is hopefully changing now. We view the bill as providing an exceptional tool for use in exceptional circumstances, but it should not constitute the routine response.

The Convener: Professor Burton, is there a gap in existing Scots law? If so, is the bill the way to fill it?

Professor Mandy Burton (University of Leicester): Yes, I think that there is a gap in the protection that is offered—the short-term protection that can be provided by the police. At the moment, the police have powers under the criminal law, but the proposed orders are civil orders, and that is where the gap can be filled. Victims can get long-term civil protection themselves, or they can get remedies from the police under the criminal law, but they cannot get a short-term civil protective order at the moment. That is the gap that the proposed orders fill.

The Convener: Thank you, Professor Burton. Finally, could we hear from Joan Tranent on this question, please?

I cannot hear Joan Tranent. Is her microphone unmuted?

I still cannot hear her. I ask broadcasting and information technology colleagues to fix the connection. I am sorry, Joan, but we will have to fix the problem and come back to you later.

Gillian Mawdsley, could you reflect on what you have heard from the other witnesses? I heard you say that we should not be legislating here unless there is a gap, but I am not sure if we really heard your view on whether there is a gap that needs to be fixed.

Gillian Mawdsley: The difficulty is that there is not a substantial gap that we can see. The circumstances in which it would appear that the notice would operate involve a short-term situation where there is insufficient evidence for the police to arrest a perpetrator. It seems that the notice would be used in those circumstances as a means of protection. In that very limited circumstance, there is perhaps an immediacy or short-term measure that is not currently covered. How often and exactly where that would occur needs to be resolved, and there is a lack of clarity in the bill.

It is not that we think that there is a gap as much as that there might be a specific short-term situation where the provision might be required—the Thursday-to-Sunday scenario comes to mind. We can reflect on that in more detail during the evidence session, if you want.

11:00

The Convener: Thank you; that is a helpful clarification. I want to pick up on something that you said in your first answer, which was about the interaction between those provisions and other alternatives to custody or parole requirements that already exist in the criminal justice system in Scotland. For example, as I asked the bill team last week, where a person is required to remain a minimum distance from their home—such as with regard to electronic tagging arrangements—is the interaction between DAPNs and DAPOs and the rest of the criminal justice system an issue that needs to be directly addressed in the bill, or would addressing it through guidance be sufficient?

Gillian Mawdsley: As you can imagine, the reply from us is that primary legislation should be as clear as possible, and there are gaps within the legislation that need to be made much clearer as the bill progresses through Parliament. I do not think that they are a matter for guidance because, if the issues arise and we are looking at them now, they need to be sorted where they can be. The senior police officer has already reflected on the fact that training, education and awareness are important components, and guidance—for instance, in relation to section 18—is clearly appropriate, so I do not suggest for one minute that there should not also be guidance on Police Scotland's website. However, let us sort out those gaps within the primary legislation, where they exist. Certainly, we, the Sheriffs Association and the Faculty of Advocates are united in the view that there are areas and sections that require clarification.

Professor Burton: Where we have orders that interact with other provisions, albeit under criminal, civil or family law, it is important that there is provision for which orders take priority, particularly if there is conflict. It is important that there is a joined-up approach and that the family is seen holistically, so that any measures that are being taken—under the criminal or other aspects of law—are working and pulling in the same direction.

Detective Chief Superintendent McCluskey: We would absolutely seek and welcome clarity in the legislation, because Police Scotland will be held accountable for how we apply that legislation, so guidance would not be sufficient.

The Convener: Thank you; that is a really helpful steer from all of you.

Joan Tranent is still not with us, but we hope that we will reconnect with her in short order. Rhoda Grant will pick up the questioning from here.

Rhoda Grant: While we are on that question, we understand that the orders and notices take precedence over court orders regarding child access arrangements and child protection orders. First, do you believe that that approach is correct? Secondly, like the last question, should that be explicit in the bill or should it be in the guidance?

Detective Chief Superintendent McCluskey: We are asking police officers to respond to emergency situations, to risk assess and make judgment calls on matters that might counter court-imposed orders. It needs to be really clear what takes primacy there, and that is not for us to decide; it needs to be explicit in the legislation.

Rhoda Grant: Mandy Burton, is that the approach that is taken in the UK Domestic Abuse Bill? Could we learn something from that?

Professor Burton: Potentially, we have a lot to learn from the approach in England and Wales. This past year, the Government set up a review of harm in child arrangement proceedings, because of the huge body of research that shows that the risk of harm that results from pro-contact presumptions in domestic abuse cases is a problem internationally. A large body of empirical evidence suggests that the question of harm in child contact cases needs to be taken seriously, and the Governments in England and Wales have put in train new processes for dealing with that risk.

We have to remember that emergency barring orders are a short-term remedy. If there is a conflict between a child arrangement order and an emergency barring order, the priority should be

given to the latter, because it is a short-term remedy for the protection of the family. After that, revisiting the child contact arrangements in the domestic abuse protection order would be appropriate.

Priority should be given to the emergency protection, because we are dealing with a short period of time. In most cases, there will not be a child arrangement order in place anyway because the parties will still be together, which is why the protection notice is being issued.

It would be helpful if the legislation clarified that priority be given to the protection notice over any child arrangements.

The Convener: Joan Tranent from Social Work Scotland has joined us. Joan, let us test that you can hear us and we can hear you.

We cannot hear Joan—the sound does not seem to be working. I am afraid that we have to move on.

Shona Robison: Thank you. Can you hear me okay?

The Convener: Yes, I can hear you.

Shona Robison: Good morning to the witnesses. I want to ask about the test that is set out in sections 4, 8 and 10 that relates to respective imposition of a DAPN, granting of a DAPO and granting of an interim DAPO. Are any of the witnesses unhappy or unclear about any aspect of the test? Would you suggest any changes in the legislation, or will training and guidance be enough to address concerns?

Gillian Mawdsley: That is quite a wide question; I am not sure where to start. There are some concerns about, for example, exactly when and in what practical circumstances the police would issue a protection notice. I have some difficulty in relation to how a senior police officer could exercise discretion in issuing a notice on the alleged perpetrator. I could expand on that point, in due course.

The standard of the burden of proof has been raised as an issue, so that could benefit from clarification. The fact that the orders are civil orders does not necessarily imply that the civil standard must always be applied; it might be felt that the criminal standard would be appropriate. There are probably more aspects on which I could comment, but those two are perhaps enough. I can expand as required, after others answer your question, if that is okay.

Shona Robison: Because of the lack of time, it would be helpful if you could write to the committee with more detail on that point, if you want to add anything beyond your written statement.

Detective Chief Superintendent McCluskey: Police Scotland has concerns about the threshold. Much of the research was done on the England and Wales model, in which the threshold was considered by many people to be too high. In the bill, the threshold is potentially a little too wide, so we would welcome further discussion of that.

There is no component of risk in section 4. That is really important. People use the term "emergency order"; the police officer's decisions on such an order will be risk-based. That is absolutely correct, but what we see now has morphed slightly from what the intention was for emergency barring orders. At the start, the focus was on couples who cohabit, but it now goes much wider. Furthermore, the bill covers a single instance, whereas the Domestic Abuse (Scotland) Act 2018 covers a course of conduct, which enables the police to make an holistic assessment of the circumstances and, of course, to identify primary perpetrators.

We would absolutely welcome more clarity on the threshold.

Shona Robison: Should that clarification be in the legislation rather than in guidance?

Detective Chief Superintendent McCluskey: Yes.

Shona Robison: Professor Burton—do you have anything to add to what has been said?

Professor Burton: [*Inaudible*.]—Gillian Mawdsley's remark that it would be possible to have a criminal standard of proof for what is a civil order. I question whether the consequences of that would be helpful because, if you were to adopt a criminal standard for the making of emergency barring orders, there would be little point in having them, because they would not be filling the gap that has been identified in respect of the police being unable to take action under the criminal law, and protections via bail, for example—[*Inaudible*.]

The Convener: It looks as though we have lost Professor Burton, as well.

Shona Robison: Professor Burton could follow up in writing with any points that we did not hear. I am aware of the time, so I will end there.

The Convener: Thank you for that—although, given that we now only have two witnesses rather than the planned four, we might have a little time in hand. However, we hope that we can reconnect with Joan Tranent and Mandy Burton.

Fortunately, John Finnie, who will come in next, has questions that are principally for the witnesses who are still with us.

John Finnie: Good morning. I thank you for your contributions today, and for your written submissions.

I have a question for Detective Chief Superintendent McCluskey. As legislators, we want to give practitioners the best tools. We are trying to understand the circumstances that will prevail at the scene of a domestic abuse incident, particularly with regard to countercomplaints and counterallegations. I appreciate that that is a common thing that the police have to deal with. How would that relate to what we are discussing today?

Detective Chief Superintendent McCluskey: The circumstances in which the police would envisage issuing a notice then subsequently applying for an order would be when someone has reported domestic abuse and we have removed the perpetrator from the address in order to facilitate investigation, but we had insufficient evidence to charge them and had to release them, even though we had assessed that there was still a significant risk in the home to the person and any children, so we were required to take steps to continue to protect them.

Statistics show that we have 6,000 such cases a year. That is why I am saying that there has to be an exceptional tool that is used in exceptional circumstances. We need to be able to take action. We can train officers, but that takes significant investment, so we need resources. In relation to on-going calls, we can have officers dealing with those and still have another 160 incidents a day to respond to appropriately.

John Finnie: I appreciate the demands on every organisation's time.

In the example that you gave, you seem to imply that a third party was delivering information to the police, but correct me if I am wrong.

However, I would like to understand the situation that transpires when police officers arrive at the scene and parties make counteraccusations or the police are hearing two accusations. How would the bill impact on such a situation, if at all?

Detective Chief Superintendent McCluskey: I apologise if I gave the wrong impression that there was a third party. I am talking about officers attending live incidents. When there is a counteraccusation, there is a lot of risk assessment, and professional judgment comes into play. The bill is quite difficult for us because action can be based on a single incident, rather than an holistic view being taken of all the circumstances and any behaviour that has gone before. It is very challenging for officers on the ground, in relation to counteraccusations.

11:15

People talk about the wrong person being arrested, but I think that officers are very astute; there is now much greater awareness of coercive control and who the real victim might be. I have huge confidence now in officers' responses, but that remains challenging and is one of our concerns about the bill going much wider than the 2018 act.

John Finnie: Okay. Thank you very much for that. I will leave it there for now, convener. I will have some questions later for the detective chief superintendent about the police's evidence.

The Convener: Rona Mackay has a supplementary.

Rona Mackay: I have a question for DCS McCluskey, following on from John Finnie's line of questioning. In a practical sense, if an officer were to determine that there was a need to apply for a DAPN, how long would it take to go through, from the point of deciding that it must happen?

Detective Chief Superintendent McCluskey: That is very difficult to say because we do not have a civil process that supports the criminal—[*Inaudible*.]—to be involved in. However, I can say that it takes, on average, nine hours for an officer to deal properly with a domestic incident. That is a significant demand on resources without the issuing of notices and so on being introduced.

Rona Mackay: That is great, thank you. I just wanted an idea of how long it would take.

Liam Kerr: I will stay on that topic, which is quite interesting. I have a question for Gillian Mawdsley. We just heard that the police will have to make some pretty significant and difficult decisions in pretty fraught circumstances. Do you foresee any liability issues for the police in relation to the decisions that they make if they get it wrong—if they take a particular decision and terrible things happen as a result, for example? Is there a liability issue that police should be worried about?

Gillian Mawdsley: I think that the police are best placed to answer how they assess liability, but Police Scotland is a public sector organisation and is liable to criminal law and prosecution, as any other organisation is. There are also the full implications of aspects such as the Osman warning to consider. Having flagged up those two points, I say that DCS McCluskey is probably better placed to evaluate the liability that Police Scotland might attract, were it not to act. Certainly, there are currently frequent occasions on which the police have both parties and must make decisions. As DCS McCluskey has reflected, that is a common enough circumstance.

Liam Kerr: I am grateful for that response. I will throw the question to DCS McCluskey, now. Earlier, you said that Police Scotland would be liable for how the legislation is applied. Do you have concerns about what could happen on the ground in relation to that?

Detective Chief Superintendent McCluskey: We will be accountable under the legislation and have legitimate concerns. The bill allows for discretion on the part of police officers. It is about managing the expectations of other organisations in relation to when we might issue notices and apply for orders. If we take what might be perceived to be the wrong action, or if there is inaction on our part and it is perceived that we should have taken a step that we did not take, we might find ourselves liable. That is something that we still need to work out; there are legitimate concerns within Police Scotland about that.

Liam Kerr: Is there anything that the committee could do or anything that could be in the bill that might go some way towards addressing that, or is that a practical issue for when the bill is enacted?

Detective Chief Superintendent McCluskey: If we apply a little more scrutiny, get more clarification on the threshold and are very clear about the circumstances in which we would apply it, that will build a bit of confidence among police officers, who will be expected to make decisions and build the public's confidence in our response, and their confidence that we will be lawful and proportionate and that the approach will be based on immediacy, urgency and necessity.

I would like clarity in the bill and, perhaps, time being taken to learn from England and Wales, where the previous process has been repealed because of issues that have been encountered, so new legislation is being implemented.

Liam Kerr: My final question, which is to Professor Burton, is on exactly that point. You heard Detective Chief Superintendent McCluskey. How have police forces in England and Wales addressed that issue and the issue of training for officers and staff?

Professor Burton: Obviously, there were problems with the original notices—which could be encountered with emergency barring orders in Scotland, as well—particularly in relation to the duration of an order, to the fact that the police had very little time, and to the fact that there was bureaucracy surrounding the making of orders. Perhaps that is why there will be major reform of the process in England and Wales—although, obviously, the new orders in the new legislation are not emergency barring orders in the sense that the ones that are proposed in Scotland are, but are longer-term orders that are intended to be the go-to orders in domestic abuse cases. Therefore, we are not comparing like with like.

Obviously, training is a key issue for the police. There has been a very good training programme in place in Scotland since the Domestic Abuse (Scotland) 2018, which takes in coercive control and a broader understanding of domestic abuse. Rolling out the training and updating it to align with the process and procedural issues with protection notices will be crucial.

Detective Chief Superintendent McCluskey was correct to say that potential liabilities arise from not taking action. By taking the step to introduce in legislation emergency barring orders, the Scottish Government is fulfilling its obligations under international human rights law and the Istanbul convention. Likewise, the way in which the police enforce or do not enforce protection notices will reflect their potential liability under human rights legislation. Victims of domestic abuse—adult and child victims—have rights under articles 2 and 3 of the European convention on human rights, which are on the right to life and the right to be free from inhuman and degrading treatment.

Therefore, the bill is a very positive step towards meeting the obligation that the Scottish Government and the police have under human rights law to have in place appropriate levels and protective orders for victims of domestic abuse.

The Convener: Thank you very much for that, Professor Burton. It is very good to have you back with us. I am sorry that we lost your connection for a while. If there are questions that you missed but which you want to answer, please feel free to follow them up in writing after the meeting. I am sorry that the connections do not seem to be as strong today as they often are.

Is Joan Tranent back with us, or have we lost her for the duration of the session? Can you hear us, Joan?

Joan Tranent (Social Work Scotland): Yes, I can hear you. Can you hear me?

The Convener: We can hear you now. That is excellent. I am afraid that we do not have time to go back over all the ground that we have already covered, but we will seek to include you in the questioning from here on.

Fulton MacGregor: Good morning, panel. I want to follow up on Liam Kerr's questioning and my questions to the previous panel about referring people who are at risk to support organisations. Last week, when we discussed that issue with the bill team, we talked about whether there should be a presumption in favour of referring a person to support services and whether that would be a worthy addition to the bill. Obviously, that would require the police to explain why they have not

made a referral in an individual case. Detective Chief Superintendent McCluskey, would that be a good move? Are such referrals already made routinely, or would it be good to have that as part of the bill?

Detective Chief Superintendent McCluskey: Every time a police officer attends a domestic incident, whether that is a criminal or non-criminal one, they will document concerns, risks and vulnerability. That information is shared with statutory and non-statutory partners.

In June, at the height of the pandemic, we moved to the public task model, where we seek views rather than consent, because when consent is not obtained that limits the opportunity for broader risk assessment, support and intervention.

We already share information quickly with our partners when officers attend a domestic incident.

Fulton MacGregor: Gillian Mawdsley and Professor Burton, what are the policy merits of creating such a presumption? Is there anything worth while in that?

Gillian Mawdsley: Obtaining the best information that is available is a way to replicate the situation that you would have in court. The orders are creating an opportunity to plug the gap that has been described. In a normal case, such as a child welfare case, the sheriff would look at the balance of information and advice on both sides. If there is any way to replicate that through the significant nature of the notices and orders, that would be the best place to do that. The Law Society would support any way that that can be achieved by the agencies that are involved.

Professor Burton: Referral to support is a crucial aspect of the success of emergency barring orders. If we look at the research evidence from multiple jurisdictions, it is clear that those that have the greatest success are those that offer wraparound provision and referral to support. A presumption of referral to support could therefore be helpful. It is not in the English legislation as it stands, but evidence from other jurisdictions suggests that it could be regarded as a model of best practice.

If there is to be a presumption of referral to support, services must be properly resourced to back that up. There is no point in saying that victims should have access to support if it is not properly funded.

It is helpful to have a presumption of referral, but victims should be able to opt out. Referral must be consensual if it is to be beneficial. Services should not be forced on victims of domestic abuse. Victims must be able to opt out of anything that they do not find helpful to their long-term safety planning.

Fulton MacGregor: I refer members to my entry in the register of members' interests. I am a registered social worker. I apologise: given the nature of our discussions, I should have said that at the start. I hope that you will accept that I have done it now.

Joan Tranent, what are the merits of the presumption of referral to support?

Also, I do not know whether you heard him, but Tam Baillie, a witness on the earlier panel, said that, if there is a presumption in favour of support of people who are at risk, we might also need to support perpetrators and alleged perpetrators. That conversation referred to the Caledonian programme, which I know has been successful. So, as well as talking about the presumption of referral for those who are at risk, could you also comment on that idea?

Joan Tranent: I fully endorse a multi-agency approach. We cannot solve domestic abuse on its own. I accept that the police are the first to arrive at the house, but multi-agency sharing of information supports victims and their children.

In relation to perpetrators, in addition to the Caledonian project, the safe and together approach is being rolled out across many local authorities. That looks at perpetrators' behaviour and their capacity for change. Ultimately, once we make an order, we need to look at future planning. The multi-agency approach is a key requirement in taking the bill forward, because no one agency on its own will be able to implement that change in relation to children and families living in a safer environment, so I fully endorse that approach.

11:30

Fulton MacGregor: Convener, I see that Detective Chief Superintendent McCluskey has indicated, but I will leave that up to you—that is me finished.

Detective Chief Superintendent McCluskey: Our information suggests that the police are the most common referrers to support agencies. That is based on the recognition that we, as a single agency, cannot resolve the complex issues around safety and so on for women and children, who are primarily the victims in that set of circumstances.

In relation to the referral pathways for perpetrators—bearing in mind the fact that, for some of those people, we might not have sufficient evidence to establish that there has been a crime or to report it—the Caledonian project is not national yet. There is a lack of resources there, so the question is, "Who would we refer them to?" It would be welcome if there were resources there but there are not—not nationally.

John Finnie: I have a number of questions for Detective Chief Superintendent McCluskey. Your written evidence was particularly helpful. I will ask about how you envisage things working—[*Inaudible*.]—again. The decision on whether to issue a notice must be taken by a police officer—an inspector or above—although it is fair to assume that it is unlikely that an inspector will attend the locus of any alleged offence. How do you see that working in practice? In your evidence, you alluded to the absence of powers to require the perpetrator to remain with you while the process is completed. How might that process work?

Detective Chief Superintendent McCluskey: To be perfectly honest, that is another of our concerns. We think that there is a lack of clarity and direction for us. You are right to say that an inspector would rarely be on the ground at a domestic incident. The officers would be expected to conduct a risk assessment based on what they are faced with and perhaps take the individual into custody to facilitate an investigation. If there was no evidence that would allow them to charge, they would have to approach an inspector and convince them. The thresholds are different: one is criminal. If they have reasonable grounds to suspect, they can bring that person into custody to facilitate an investigation and then convince the inspector that there are reasonable grounds to believe. We might have some challenges there and we need to invest in—[*Inaudible*.]—to get people to understand the true thresholds. As I understand it, the legislation makes the inspector hold that belief rather than the officers, so they will have to convince that person.

John Finnie: In an earlier answer, you alluded to risk, which is often assessed in conjunction with other parties. Is it your understanding that the information that the inspector would act on would be from the officers who attended the scene only or would there be engagement with other bodies?

Detective Chief Superintendent McCluskey: Given the restrictive timescales that apply for the issuing of a notice, the inspector would have to base their decision not only on the officers' account and the evidence that they present but on all the other information that we hold in police systems, so it would be a single-agency assessment. The issuing of the notice would be an exceptional tool for use in exceptional circumstances as an emergency order, but the fact is that the next lawful day would not give us time to engage with our partners and to follow the multi-agency approach that we try to apply for assessing domestic abuse. That timescale would not give us the opportunity to do that in preparation for applying for the order. It would be a single-agency assessment for the notice, yes.

John Finnie: Okay. I stress that we want to make good legislation that has a practical effect. Police Scotland outlined three particular instances. The first related to there being

"no powers to require the perpetrator to remain"

until the completion of that process. The second was about a breach of the process. To save time, rather than reading them all out, the third might be summarised as being about the relationship between a notice, orders and an on-going report to the fiscal about the matter. How could the legislation reflect Police Scotland's concerns? Does Police Scotland have specific asks?

Detective Chief Superintendent McCluskey: Yes. We have engaged frequently with the drafters and have tried to emphasise our concerns. We need clarity about where the orders will sit in relation to court-imposed orders or restrictions, such as bail and special bail conditions, other on-going processes, and family court orders. We are not clear, and we need that clarity on how the orders are going to work together.

John Finnie: Do you believe that that clarity requires to be in the guidance, or would something specific in the bill help the operation of what everyone agrees is a good intention?

Detective Chief Superintendent McCluskey: Again, it is about the threshold. We need clarity around the threshold. We need to look at whether it should focus on cohabiting couples, which would impact on child contact. During Covid, we have seen a real increase in the number of domestic reports to us that involved child contact. I can see real conflict there, unless the legislation is very explicit.

John Finnie: Okay. Thank you very much.

Gillian Mawdsley, on powers, will you comment on some of the matters that I have raised with the detective chief superintendent?

Gillian Mawdsley: I support exactly what the detective chief superintendent has said. As the bill stands, enormous discretion is afforded to the police. Not for one minute am I suggesting that the police would not exercise that appropriately, but we are looking at someone being deprived of their home because of circumstances that have arisen.

We have talked about proportionality, human rights and all those other aspects. The threshold is causing an issue. For example, if a neighbour phones the police saying that they have heard violent shouting, would that be sufficient grounds for the making of a notice? I do not expect the detective chief superintendent to be able to answer that, because, quite rightly, she will say that it depends on the facts and circumstances of the case. However, we have already addressed the fact that it could be one incident and, with the

greatest of respect to the police, I tend to feel that they would exercise their powers in favour of a notice, particularly in a situation of short-term immediacy, rather than have the risk of a much more significant circumstance arising. It is hard not to defend that.

I therefore think that the threshold is a real issue. Exactly what kind of evidence is required must be looked at. It is perhaps not so much a question of primary legislation, although I think that the bill would require some modification. The guidance has to illustrate how it is intended to work, and what kind of evidence would be sufficient to trigger a notice and therefore deprive a person of their home for 24 or 48 hours, or up to four days, because of court holidays, for example. I hope that that is helpful.

John Finnie: Okay. Thank you very much.

Annabelle Ewing: My first question is about the scope of the bill in relation to the age threshold. The bill's provisions apply to perpetrators aged 18 or over, but to victims aged 16 or over. What are your views on that? Before I start with Gillian Mawdsley, I remind everybody that I am a member of the Law Society of Scotland and hold a current practising certificate, albeit that I do not currently practise.

Gillian Mawdsley: As you have illustrated, there is always a problem with such age limits, which come in and work in different ways. I do not think that we have a set view on the matter. We recognise the reasoning that has been put, but we do not have a view that it is wrong or that it is right. There are obvious difficulties where there are thresholds of 16 or 18, but we will be happy to go along with the way that the bill goes. We do not have a problem with it. We recognise that others are putting forward different views, but we are prepared to accommodate that.

Joan Tranent: Other witnesses this morning have highlighted the position in Scots law regarding the ages of 16 and 18. The Children and Young People (Scotland) Act 2014 clearly states that, if someone is attending school, they are a child even if they are 18. I think that there are some issues in relation to the different ages, and I want to highlight that. I am not sure that I am legally competent enough to advise on what the outcome should be, but the police and others will need clarity on what the age groups for victims and perpetrators will be.

Annabelle Ewing: Professor Burton, will you comment on the age thresholds south of the border?

Professor Burton: As I understand it, the age threshold in England and Wales is 18. However, I understand the reason in this instance for having the lower threshold for party B, the victim. Young people can be in a relationship and living independently at a lower age, so I see no difficulty in lowering the threshold for the victim to 16.

Annabelle Ewing: Thank you for that. My other question concerns the consent of the victim vis-à-vis the DAPN and DAPO. The bill does not include a requirement to obtain the victim's consent to a notice or an order. I think that it is anticipated that there will be nothing to prevent consent from being sought and that that may be the norm, but that is not written in the bill.

DCS McCluskey, what is Police Scotland's view on the proposed approach?

Detective Chief Superintendent McCluskey: Police officers already seek victims' views every time they engage with them. As I said, we have adopted the public task model, whereby we will share information if we suspect that there is a risk and a support intervention can be put in place to support the victim.

There is a clear difference between seeking a victim's views in relation to a notice and doing so in relation to an order. The order is court imposed and, to be honest, consent is probably required to allow us to police any breaches. There is a clear line between the two. However, I reassure you that we seek victims' views on every occasion anyway.

My concern is about who it would be tasked to if we were required to obtain consent from individuals. Would there be an additional demand on the police, who would have to evidence all that for the application for an order, an interim order or an extension?

Annabelle Ewing: I hear what DCS McCluskey says in that regard; it is a fair point from an operational perspective.

My next point, which I raised with the previous panel, concerns the practicalities of serving a DAPN, even where views have been sought. It seems that the notice is to be served where the perpetrator resides, so the police could serve a notice on a perpetrator who was in situ in the matrimonial home—I use that expression as shorthand—while the victim was there. How do the witnesses foresee that working in practice?

11:45

Detective Chief Superintendent McCluskey: I cannot actually envisage a set of circumstances in which we would serve a notice on an individual who was still living in the family home. To my mind, that would significantly increase the risk to the victim and any children, as well as any other person in the home.

The threshold in that regard needs to be clear, and the circumstances in which a notice should be

issued need to be explicit. The notice has to be served on the individual in person—we cannot do that when they are still in the home, or we would create further risk. That is why we envisage using the order in exceptional circumstances where somebody has been in our custody and we cannot charge them, but we know that the risk is so great that they cannot go back to the family home. We would not serve an order in the presence of the victim or any children.

Annabelle Ewing: I thank you for that clarification from a practical perspective; I am not entirely sure that the bill states what you have said expressly.

I will go to Gillian Mawdsley on that point. Do you feel that the bill as it is currently drafted supports what DCS McCluskey has said?

Gillian Mawdsley: On the issue of consent, there absolutely must be a requirement—from an article 8 perspective alone—that the views of the victim are sought.

Both I and Annabelle Ewing know that, in criminal law, criminal prosecution can still proceed—quite correctly—without a victim. The criminal law overrides the personal interest, and proportionality requires that.

In this case, there must be a requirement to ask for consent. If consent is not given, that is very difficult; one can see circumstances arising in which there are problems with the children and everything else. Nonetheless, I ask the Parliament to consider carefully when a notice would go ahead without the consent of the victim. We are talking about civil rather than criminal law, and the rights of the victim must be to the fore, however that aspect is factored in. That is a question for consideration. I totally support DCS McCluskey's view that it needs to be absolutely clear in the bill, because the question is being raised now—it is not just something that may arise after the bill has been passed.

Whatever side the bill comes down on, views must be sought. The question whether they can be overridden in the situation is clearly a matter for legislation. That would allow us the clarity that we need as lawyers, and it would give clarity to the police, who say that the matter should not be left to their discretion.

Annabelle Ewing: Finally, I ask Professor Burton for a comparative perspective. What kind of approaches are taken elsewhere on that specific issue?

Professor Burton: There are a variety of approaches across the different European jurisdictions that I have looked at. Some require consent, and others do not. It is an extremely controversial issue, because we want to support as far as possible autonomous decision making for victims. We do not want to replicate the coercive control and the abuse that they have suffered at the hands of the perpetrator of domestic abuse by imposing state control on them.

As far as possible, the victim's wishes should be ascertained, as they are in criminal proceedings. As DCS McCluskey pointed out, we try to take into account the victim's views. The legislation as it is drafted is a bit passive in saying that the victim's views, when they have been sought, should be taken into account. Perhaps there needs to be a stronger requirement to actively seek the views of the victim. However, I do not think, looking at best practice in other jurisdictions, that those views can and should override other elements.

The utility of an emergency barring order can be dramatically reduced if the victim's consent is required, because that opens the victim up to pressure from the perpetrator of the abuse not to give consent. In a situation of coercive control, we cannot assume that victims are able to give their consent to orders that might well be in their best interests and the interests of their children.

It is right that consent for the notices should not be a pre-condition, but more careful consideration must be given to the longer-term orders. I know that Scottish Women's Aid has suggested that consent should be a pre-condition for the orders. I also agree with the DCS's submission in relation to that. Orders without consent are practically unenforceable because you are relying heavily on the victims themselves to report breaches in order for them to be enforced. From a practical point of view therefore, it might well be that there is not much point in having the longer-term order without requiring the consent of the victim, given that it will mean that the victim is crucial to the effective enforcement of the order.

The Convener: Rona Mackay was next on my list to ask questions on this area, but I do not know that there is anything left for you to come in on.

Rona Mackay: I have one brief question for DCS McCluskey. You said that your officers seek the views of the person in all cases. When those views are sought and the officer thinks that there is a risk, but the person does not consent, what happens? Are the children and the women left at risk? Will you talk us through the practicalities of that situation?

Detective Chief Superintendent McCluskey: Every case is taken on its own merits, and every set of circumstances is judged individually. When we seek a person's views about referral or sharing information with a partner organisation, officers are trained to recognise that, sometimes, victims do not recognise the level of risk that they are facing, so a professional judgment has to be made

about whether a meaningful intervention can be made through support organisations. The police cannot resolve all the other complex issues. Even when a person's view is sought and the person says that they do not want to be referred to Women's Aid or ASSIST or whoever, the officers might consider that the risk is sufficient that the information should be shared. That is the right way to go to enable that kind of holistic assessment of a situation.

Rona Mackay: Thank you for that. I just want to point out that the women's organisations said that, from their experience, they have found that women are the best predictors of the risks to them. I just wanted to get your view on that.

The Convener: Joan Tranent has indicated that she wants to come in on this point.

Joan Tranent: Can you hear me?

The Convener: Yes.

Joan Tranent: I just want to offer reassurance that, when police attend a domestic abuse incident, if the mother or the victim says that they do not consent to further information sharing, but the police think that there is a significant risk to the children, they can take other routes and an automatic referral to children's services would be made, if not immediately then further assessment would be done the following morning. There are checks and balances in place if consent cannot be gained at the time.

The Convener: Thank you, Joan; I think that we caught all of that.

We have about 10 minutes left and I have questions from Rhoda Grant and Liam Kerr.

Rhoda Grant: As well as considering the views of the person who is at risk, police officers have to take on the views and welfare of any associated children before making a protection notice. DCS McCluskey, how will that be done in practice? Are you happy with the drafting of section 4 of the bill on that point?

Detective Chief Superintendent McCluskey: We have emphasised that we would like section 4 to be much clearer. Officers are encouraged to seek the views of children who are in the circumstances of domestic abuse; it is consistent with the Children (Scotland) Act 2020 that they seek those views where possible. However, we are talking here about an emergency situation in which officers will have to make quick-time and dynamic risk assessments and judgments. For me, the difficulty lies in relation to the resources and particularly the time that that requires; it is about the length of time that they have to seek views between the notice and the order.

Rhoda Grant: Are you saying that it is maybe not possible to do that in relation to the notice?

Detective Chief Superintendent McCluskey: I do not think that it will be practically possible on every single occasion.

Rhoda Grant: Should other family members or close friends be included in the notice? At the moment, it is just the person at risk and the children.

Detective Chief Superintendent McCluskey: The new legislation is very much aligned to the Domestic Abuse (Scotland) Act 2018 and the definition of an intimate partnership, which I think is correct. We have frameworks in relation to child protection and adult support and protection and there are other ways in which we can address risk to other individuals. The bill is very specific to domestic abuse and the dynamics of domestic abuse, and it is right that it stays that way.

Rhoda Grant: I am sorry—my question was about domestic abusers who, after being taken out of the situation, turn their attention to family members or close friends in order to continue to perpetrate the abuse through a third party.

Detective Chief Superintendent McCluskey: That should be investigated as a domestic abuse incident and as a crime under the 2018 act. It is absolutely recognised that a perpetrator can use or try to use other family members, third parties and children to perpetrate the abuse on victims. The notices are very much about excluding perpetrators from the family home and keeping the family safe in that home environment in the short term.

Rhoda Grant: This question is for Professor Mandy Burton. How does the bill compare with the UK Domestic Abuse Bill in relation to the points about taking on the views of children?

Professor Burton: You are probably going much further in your approach to taking on children's views, which I can see is aligned with other legislation that you have put in place. Obviously, when it comes to taking into account a child's views, regard has to be given to their age and maturity.

I reinforce the points made by DCS McCluskey about the time pressures around taking children's views into account, particularly in relation to the notices. I am afraid that I probably dropped out when the question about the duration of orders was being considered, but I note that the very short time period for the notices makes it impossible to gather all the information and evidence that is needed and to fully take into account children's views. The question of taking into account children's views is probably more

relevant to the longer court orders than it is to the notices.

A point was made about authorisation being at inspector level, which will build in delay. As was said, the inspector does not attend the scene and will not talk to the children. More junior officers may be reluctant to undertake that type of task and pass the information back up to more senior officers. In England and Wales, the fact that a more senior officer had to be approached for authorisation was a significant barrier to notices being made.

There are significant practical problems in relation to taking into account children's views in the making of a notice. However, I agree that the approach that the Scottish Government is proposing of taking into account children's views for the longer court orders is very helpful, and the bill goes a good way towards establishing the appropriate weighting that should be given to children's views in that process.

The Convener: Liam Kerr wants to ask about who can apply for an order.

Liam Kerr: It is basically the same line of questioning that I was exploring with the earlier panel. Section 8 provides that just the police will have the power to apply for an order. Joan Tranent, given that local authorities have powers in relation to other protective orders, why is it your view that they should not have similar powers in this context?

12:00

Joan Tranent: I listened to the earlier points about who else should have the powers, such as health, MARAC and homelessness services. We need to be proportionate here. The police are the first attendees when such incidents occur. Invariably, most incidents happen after hours, and in the past we have always had an emergency social work service on call, but those people often do not know the families that are involved. Police have a good understanding of their local communities and families; therefore, from a Social Work Scotland perspective, I would say that they are best placed to apply for the notice. After that, for the longer-term order, we should think about having a multi-agency approach. As I keep saying, there needs to be a multi-agency, not just a police-only, route.

In initial instances, the police are well suited to attend to the matter and make the appropriate assessment of risk at that moment.

Liam Kerr: That is in relation to notices. In relation to orders, I see from your submission that your view is that local authorities should not have the power to apply for an order. However, am I hearing that perhaps there is some wriggle room there?

Joan Tranent: We have stated before that that would require resources and training. In taking out any protection order, whether for adult support and protection or child protection, there is a civil route that local authorities can take. We would need resources, and there would need to be lots of further training, to allow local authorities to apply for such orders.

There would also have to be good communication. Housing comes under local authorities, so there would have to be a joined-up approach. From a Social Work Scotland perspective, I am not able to comment on whether my housing colleagues see themselves as being in a position to advocate for having such powers.

Liam Kerr: Thank you.

Detective Chief Superintendent McCluskey, you have heard Joan Tranent's answer and the reference to taking a joined-up approach. In its submission, Police Scotland was concerned about the resource implications of the police being the sole responsible body. Will you talk about those concerns? If, as I think Police Scotland would envisage—[*Inaudible*.]—are to be extended, how do you see the joined-up approach that Joan Tranent was talking about—[*Inaudible*.]? All organisations would be working to the same considerations of need. What would need to happen to ensure that the police got all the information about any orders that had been granted, so that you could carry out your enforcement duty?

Detective Chief Superintendent McCluskey: Our colleagues in other organisations have expressed concerns about resources and infrastructure, and we have the same concerns. Significant investment in resources, training, legal services and so on would be required to enable us to implement the provisions, bearing in mind that, on average, 160 domestic incidents are reported to Police Scotland every day.

The timescales are prohibitive. It is fine that the police can issue a notice, but the fact that we have only until the next lawful day to apply for a court order will restrict our ability to engage meaningfully with our partners and have a multi-agency meeting. If that timescale was extended to seven days, we would have the opportunity to take a multi-agency approach and gather in all the relevant information.

I do not think that we should restrict the power to the police. With the right investment and resources, other organisations that have experience of applying for civil orders should be able to do so.

The Convener: I do not think that members have any other questions. A number of you expressed concerns and reservations about the duration of domestic abuse protection notices and orders under the bill, so I wonder whether it would be helpful to bring them all together. By way of closing remarks, will Gillian Mawdsley bring to the committee's attention any concerns that she has about the duration of notices or orders? I will ask each witness to do that.

Gillian Mawdsley: With regard to the notice, as long as it is accepted that it could extend to a four-day period in circumstances when there are court holidays, and as long as it is restricted to absolute immediacy and the short term—[*Inaudible*.].

With regard to the order, our feeling is that three months—two months and then a further extension—is potentially a very long period. The bill is not clear as to the grounds for extension and what would be required in that regard. I remind the committee that we have referred to a plethora of other interacting civil and criminal orders that are on the horizon. Three months is a very long period when there are other measures that could be put in place. I appreciate that there might be urgency and people might not be able to get an interim interdict, for example, but within the longer period some of those other measures might be obtainable, so there would be no need for the order to exist for such a long time, and certainly not beyond two months.

Detective Chief Superintendent McCluskey: The time limits on the notices probably raise the most significant practical concerns for us. That is very challenging for us in terms of demand on resources and does not allow for a multi-agency approach.

I understand what Gillian Mawdsley is saying about the length of time for which the orders might apply, given the short timescales and it not being only victims' rights that need to be considered, albeit that safety will always have primacy. In our experience, it can take a lot of time to build a victim's confidence and to resolve all the complex issues around housing and so on. I am not convinced that two months is long enough to allow for meaningful intervention that is as effective as it could be.

Joan Tranent: One day is a very short time. A four-day period would be better in enabling people to get a fuller assessment, if that was required. I agree with the police about the three-month period. Things do not move quickly in housing, social work or anything else. More important, it could be a family that very few agencies know. Even three months is a very short time in which to get to know people, build up trust and so on. That is Social Work Scotland's view.

The Convener: Professor Burton, you have alluded to the time limits for notices and orders, but would you like to add anything?

Professor Burton: Yes, thank you. Both are too short. Forty-eight hours is too short a period and, as the police say, it will create huge practical problems. A period of four to seven days would be much more helpful. The evaluative research on domestic violence prevention notices in England and Wales indicated that their short duration created huge problems and potentially led to a problem of significant underutilisation. We have heard evidence that there is a danger that the orders will be overused, but in reality the empirical research shows the opposite. There is a big danger of underutilisation of the orders and one of the factors that contributed to that, at least in England and Wales, was the short duration of the notices and the practical problems that the police then encountered in applying for the longer-term orders.

I agree with other submissions that two months is a relatively short time for a domestic abuse prevention order to apply. Gillian Mawdsley's point that other orders, such as interim interdicts, are available, does not cover the fact that those remedies have to be sought by the victims through their own financial resources or, potentially, legal aid, if that is available. In contrast, DAPOs will not put financial and administrative burdens on the victim. Article 52 of the Istanbul convention is very clear that emergency barring orders should be available to victims without financial or other burden. Therefore, more consideration could be given to the duration, to give a practical opportunity to put in place long-term safety planning.

The Convener: That is clear—thank you. I see that Gillian Mawdsley wants to respond to that, so the last word will go to her.

Gillian Mawdsley: I will be brief. I would be very concerned about any extension of the notice period. There is an immediacy in the power being exercised by the police. The matter needs to go before a judicial authority at the earliest opportunity. That seems to me to be the proportionality and absolute substance of the bill. I want to stress that point. I understand the practical resourcing implications, but a notice should be used only in an emergency and because of the circumstances, so it is entirely appropriate for the period to be until the first court day. I would be very resistant to any extension beyond that.

Thank you for the opportunity to come back on that, convener.

The Convener: I thank all our witnesses—Gillian Mawdsley, DCS McCluskey, Joan Tranent and Professor Mandy Burton—for their evidence. I

am very sorry that we had some technical issues and that we lost one or two of you for a short period. Please feel free to come back to the committee with any supplementary evidence that you might care to give. We will put a number of the issues that you have raised with us to the cabinet secretary when he appears before us on 12 January next year. You have been very helpful with your time and expertise, so thank you all very much.

I suspend the meeting for five minutes to enable a changeover of witnesses. We will reconvene at 12:16.

12:11

Meeting suspended.

12:16

On resuming—

The Convener: I welcome our third and final panel of witnesses: Paul Short, who is homelessness manager at Fife Council; Callum Chomczuk, who is director of the Chartered Institute of Housing Scotland; Garry Burns, who is from Homeless Action Scotland; and Stacey Dingwall, who is senior policy manager at the Scottish Federation of Housing Associations. I thank you all for joining us this morning.

Shona Robison: CIH Scotland said in its written submission that the power to apply for a DAPO should be extended to social landlords. I ask Callum Chomczuk to elaborate on that. Do the other witnesses agree with CIH Scotland's view? For the sake of time, you can simply say whether or not you are concerned that such an approach could undermine the policy advantages of clarity and consistency that the Government says are associated with giving such powers only to the police.

Callum Chomczuk (Chartered Institute of Housing): I thank the committee for inviting us to give evidence, and I am happy to comment on the question that Shona Robison raised. We asked that question of our members across the housing profession, principally social landlords, who were keen that the power be extended in that way. Social landlords have a huge amount of experience of making representations to the courts on behalf of tenants—for example, in the context of eviction processes and the removal of people as a result of antisocial behaviour.

DAPOs will be civil orders. If social landlords are able to act, they could be an important source of help for victims of domestic abuse. Many victims of domestic abuse feel uncomfortable about raising issues with the police, given the associations with criminality, but civil orders are different. Given social landlords' skills and experience and their willingness to take on the new power, we think that the ability to apply for a DAPO would be an appropriate mechanism for them.

I recognise the concerns about making the system overly complex, but the focus is on making the bill's provisions as useful as possible, so it would be appropriate to extend the bill to enable trained individuals, including housing professionals, to apply for DAPOs.

Shona Robison: Can you foresee any issues in that regard? For example, would small social landlords have the capacity to apply for DAPOs?

Callum Chomczuk: As part of the bill's implementation, statutory guidance and training will be developed, which—as previous witnesses have mentioned—is massively important. Shona Robison's point is especially relevant because we know that social landlords, with some exceptions, do not have in place well-developed domestic abuse policies and protocols. I am hopeful that the legislation process will encourage more landlords to develop better policies and protocols. Ultimately, landlords have a responsibility to take cases to court in respect of antisocial behaviour and eviction processes, and looking after the welfare of their tenants is a core component of that.

There may be examples of where it would be more appropriate for the police to take the lead on taking such cases to court. However, where victims feel concerned about engaging with what they might perceive to be a criminal process, giving social landlords the ability to deal with those issues might be a more effective way to raise such concerns with the courts.

Shona Robison: I turn quickly to the other witnesses, starting with Stacey Dingwall. Do you agree with that assessment?

Stacey Dingwall (Scottish Federation of Housing Associations): Yes—I support Callum Chomczuk's comments. If the purpose of the bill is to empower social landlords, tenants and victims of domestic abuse in such situations, that would seem to be a sensible approach to take.

In bringing forward the powers in the bill, statutory guidance will—I hope that our submission reflects this—be key for the SFHA's members in supporting them to put policies in place.

Shona Robison: I ask Garry Burns for his views.

Garry Burns (Homeless Action Scotland): We fundamentally disagree with the extension of the power to housing officers, because the issuing of a DAPN can effectively result in a criminal

charge for the perpetrator. We feel that, as the housing officer would be the person who issues a decree for eviction, it would create a conflict of interest for them to be involved at the start of the investigatory period.

I was watching the earlier part of the committee's meeting. We have already heard that the police have had problems with issuing DAPNs. We believe, therefore, that if such criminal or civil matters are passed to housing officers, who may or may not have had previous issues with the tenants involved, that could create a conflict of interest. It would make it possible for a housing officer to be judge, jury and executioner in assessing whether someone should be evicted from their home.

Shona Robison: That is interesting and helpful. I will go back to Callum Chomczuk for his response, but first I would like to hear from Paul Short.

Paul Short (Association of Local Authority Chief Housing Officers): We support CIH Scotland's position on landlords being able to take actions. The primary reason is that the first point of contact for people who are experiencing domestic abuse will often be their landlord. The issues that Callum Chomczuk raised about the reluctance of some victims of such abuse to take their situation into what they see as the criminal sphere would be to approach—[*Inaudible*.]

In addition, landlords are often part of a larger, wider and more multi-agency approach. Local authorities in particular have a long history in that regard, and we have worked in the multi-agency risk assessment conference sphere for quite a long time. Given that background, the committee can perhaps take comfort that our approach would come from a place of multi-agency working.

Shona Robison: Thank you, Mr Short. It was not very easy to hear some of your comments—perhaps the problem could be picked up by our tech people.

Perhaps Callum Chomczuk can respond quickly to what Garry Burns said about a potential conflict of interest.

Callum Chomczuk: Housing professionals are just that: they are entirely professional. Landlords will be used to dealing with such situations. It is common practice for landlords to take cases to court and to provide the evidence base in order for the court to take action, as has been set out clearly by previous witnesses representing the courts.

In my view, the bill's overriding objective is to give rights to victims of abuse and ensure that their voices are heard. Providing victims with greater opportunity and different access points lies at the heart of the bill, and giving social landlords and housing practitioners the ability to raise such matters will give confidence to victims who are reticent about going through the police.

I am concerned that if there is only one route to raising a domestic abuse protection order, that might limit the potential benefits. I hear what Garry Burns says, but I disagree on the risks. I think that there are greater risks if the bill does not contain multiple routes for accessing the court, which ultimately puts victims at the heart of the process.

Shona Robison: I see that Garry Burns wants to come back in. For the sake of time, I ask him to comment briefly before he begins answering my next question.

With regard to the proposed maximum duration of three months for a DAPO, CIH Scotland suggested in its written submission that that period might be too short where a social landlord is trying to evict a tenant under section 18 of the bill. CIH Scotland noted that, in such circumstances, there might be advantages in providing greater flexibility around the maximum duration for a DAPO.

Do our witnesses agree with that? If so, how long would be necessary? Should the maximum duration be set in legislation or by the court? Should the court have to review the continuation of a DAPO in each individual case to ensure that the measure lasts no longer than necessary?

I will come to Garry Burns first, given that he wanted to come in again on a previous point.

Garry Burns: On the previous point, if a housing officer or senior housing officer has significant evidence to demonstrate that domestic abuse is happening in a household, they can provide that to the police, which would allow the police to pick up and investigate the matter. It is not necessary to give housing officers the ability to stop somebody from being accommodated in their own home; we strongly believe that that should sit with the police.

Moving on to the next point, there are some issues around the timescale for a DAPO. You asked whether the duration should be set by Parliament or by the court. I suggest that, given that courts can provide some recourse to proportionality, the question of how long an order should last should sit with the court.

Perhaps the legislation should suggest a limited time period, but the courts should have some discretion in that regard, because it can sometimes take some time for housing associations or councils to start eviction proceedings, given how the courts work. Perhaps the courts should be given some discretion to extend or shorten the length of time for which the DAPO applies, if that makes sense.

Shona Robison: Yes, it does. I put the same question on duration to Stacey Dingwall.

Stacey Dingwall: There are some potential issues around the proposed duration of three months, which could pass very quickly. I agree that there could be some provision for timescales in the legislation, but the courts should retain an element of discretion in such cases.

Paul Short: I hope that the committee can hear me a bit better now.

I agree that the timescale could be tight, and the process could end up being quite a rush for landlords, so I suggest that it should indeed be— [*Inaudible*.]

Shona Robison: We just about got that.

Given that I was referring to your evidence, Callum, do you want to add anything?

Callum Chomczuk: I agree with what has been said. The bill is composed of two main parts, the first of which concerns the introduction of DAPNs and DAPOs and is complementary to the subsequent provisions on social landlords being able to end joint tenancies. We could get into a situation in which an order is applied but the person in question is allowed to return to the domestic setting, while the social landlord may still be trying to go for a formal process of permanent eviction. That creates confusion in the legislation.

Until we are able to ensure that there is a settled process and a settled outcome for the victim and for the perpetrator in respect of their accommodation, it seems appropriate that there should be flexibility around how long an order should last for. I do not think that we can prescribe the length in the bill. If we had a more streamlined court process, we could get to a quicker conclusion, so it is difficult to prescribe that in legislation. We want to see flexibility from the court in interpreting the law.

12:30

Shona Robison: Should the court have to review the continuation of the DAPO in an individual case?

Callum Chomczuk: Yes, that is entirely right. I would like the court to bear in mind that a settled housing outcome is required. It is in no one's interests for a potential perpetrator to return to a domestic setting while a social landlord is half or three quarters of the way through the process of evicting somebody. That would undermine the whole intent of the bill. Until there is a settled outcome, therefore, it would be inappropriate to have an order come to a conclusion.

Rhoda Grant: In relation to section 18, what are the key issues with the existing powers that are available to people who are at risk under the matrimonial homes legislation and to social landlords under the Housing (Scotland) Act 2001? There will be an opportunity for greater detail later but, in general terms, do you think that section 18 solves the problems that you have identified?

Stacey Dingwall: Overall, the current legislation does not empower the victim and the social landlord in those cases, but we hope that the new legislation will. Domestic abuse is a complicated situation and the bill makes it clearer where the appropriate power lies. Most importantly, if they know that the social landlord is empowered to take action, it removes the onus from the victim to do so. That is why we welcome the introduction of section 18.

Callum Chomczuk: With regard to the laws that are in place, we heard from previous witnesses that the Matrimonial Homes (Family Protection) (Scotland) Act 1981 has criteria around eligibility. In order to take action, people need to access legal aid or pay for it, so there is a barrier there. Also, under the 2001 housing act, there is a victim-led process, and the victim might have to give evidence in court. None of those are ideal circumstances for people who are going through a difficult process of trying to end a joint tenancy. Given the limitations in the law as it stands, we feel that the provisions that are set out in the bill would be appropriate and, as Stacey Dingwall said, would give the victims the confidence that a landlord can progress that on their behalf, so that they are not forced to go through assessment of criteria or put themselves in the unenviable position of going into court and making representations.

Garry Burns: When a tenancy is terminated by the perpetrator of domestic abuse against a survivor, we want to make sure that it is embedded in the legislation that there is no discrimination against the survivor. Should that person have had issues around antisocial behaviour or rent arrears, that should not disbar them from getting a new tenancy, even though the perpetrator of the abuse might be evicted. In section 18 of the bill, line 25 on page 13 refers to situations where "the landlord wishes" to create a new tenancy. That should not be a wish; it should be a duty to give a tenancy to the victim. If there are issues around antisocial behaviour or rent arrears, they should deal with that in the normal way. However, if we merely want to support people who are going through domestic abuse and survivors of domestic abuse, we should deal with the domestic abuse side first and, if there are issues around rent arrears, that should not disbar that victim or survivor from getting a new tenancy. Many local housing policies would do that. We want the legislation to ensure that, even if a victim has had issues with antisocial behaviour orders or

with their landlord, they are entitled to that new tenancy, irrespective of the landlord's views about that previous behaviour.

At the end of the day, we are dealing with a victim of domestic abuse. If there are other issues, we should deal with those after the person has a new tenancy, which gives them their rights.

Pegged on the back of that, Homeless Action Scotland would also suggest that, as well as evicting the perpetrator of abuse, we should be offering the survivor of domestic abuse the right to move, because a lot of that abuse might have happened in that home. If we accept and go ahead with evicting someone for perpetrating domestic abuse, surely there is an argument to be made that the survivor of that domestic abuse should be allowed a move by the social landlord or local authority. That is completely missing from the legislation. That approach would protect the victim, give them a new home and move them away from the place where they may have been tormented for years.

The Convener: We are moving into areas that Rona Mackay wanted to ask about, so we will come back to a number of those issues in a second. Callum Chomczuk, I see that you want to come in, but be patient, if you would, and we will come back to those issues.

Rhoda, do you have any further questions?

Rhoda Grant: I have one further question. Under section 18, a court must make an order where various conditions associated with the use of the new grounds are met and either it is reasonable to make an order or the perpetrator has been convicted of an offence in the past 12 months relating to his or her abusive behaviour that is punishable by imprisonment. Are you happy with the threshold in the new test, and are you clear about what evidence will be required in court and from whom?

Garry Burns: I am happy to answer that. The threshold has to be that there has been a conviction, in civil or criminal court, for domestic abuse. There should be an evidence base and there should have been a police investigation. That must be your minimum threshold, because, as mentioned by different witnesses, the complexities around domestic abuse can make it difficult to ascertain the facts, but at the very least, we should be looking at court orders and civil or criminal convictions for some form of domestic abuse. There is a plethora of scenarios in that regard.

Rhoda Grant: I can see that Callum Chomczuk wants to come in on that. I wonder whether it would be appropriate where there are notices and orders or whether that would be—

Callum Chomczuk: I disagree with Garry Burns. That is too high a threshold for this kind of legislation. Housing officers and managers and social landlords, as well as social workers and other professionals, are well experienced and have a well-evidenced understanding of domestic abuse in that setting. Frankly, the victim knows best, and it is often the victim who comes forward to a social landlord to express their concern that they are a victim of domestic abuse and in need of that support. Creating an artificial barrier of a criminal conviction will deter people from engaging in the process and undermine the point about supporting victims.

I want to pick up on what Garry said about moving the victim in order to look after them. That tends to be the process that we have now among social landlords. Most tend to move the victim and the family, and sometimes that is done time and again, because the perpetrator does not want to move. However, we find that that punishes the victim. A great piece of work was done in Fife on that issue. It resulted in a report called "Change, Justice, Fairness", which explores the experience of victims who have been moved by a system that is supposed to help them. With his experience, Paul Short might be able to speak to that.

I am reticent to make an assumption that we want to move victims. We want to listen to victims. For the most part, they know what is best for them and, in the majority of cases, they would like to stay in their own domestic setting. As drafted, the bill will help to give them that choice to stay in their home.

The Convener: I know that Garry Burns and Paul Short want to come in, and that Rona Mackay wants to pick up the questioning in this area, so I will invite them to wrap what they want to say into their responses to Rona.

Rona Mackay: A key feature of section 18 is the obligation on social landlords to provide perpetrators with advice and assistance in relation to the availability of alternative accommodation. What issues does that raise for perpetrators, for people who are at risk, for local authorities and for registered social landlords? I will go to Paul Short first and then to Callum Chomczuk, Garry Burns and Stacey Dingwall.

Paul Short: I hope that my connection has improved and that people can hear me a little bit better.

I want to pick up on a point that was raised earlier about victims. There is a project in Fife that has been running for some time, working with people who have experienced domestic abuse. The key issue that people talk about is their ability to choose either to remain in the home that, in many cases, they love or, where appropriate, to

move. It is entirely appropriate to allow people who are experiencing domestic abuse to have—[*Inaudible*.].

It is also entirely appropriate to work with perpetrators. In Fife, we are lucky to have the Caledonian system, through which we can work with colleagues in other agencies to refer perpetrators on to get assistance. One of the key issues that comes up is housing for perpetrators to be moved to, and the ability of housing officers to have a discussion with perpetrators is also important. We have to be very careful about issues around perpetrators, but we should be able to move them on where appropriate.

Callum Chomczuk: The rehousing of perpetrators is absolutely central to the legislation if it is to be effective. We do not want perpetrators to feel that they are being covertly punished; nor do we want any consequences for the victim. Indeed, if the victim knows where the perpetrator is living, that can be a real source of comfort.

Local authorities already have existing homelessness duties. As drafted, the bill provides for advice and assistance, but it is not ambitious enough; in practice, it could mean a lot less. I do not think that this needs to be set out in legislation, but the guidance will have to be quite prescriptive about some of the protocols that we would like to be developed between registered social landlords and local authorities to ensure that perpetrators can be rehoused.

I absolutely recognise that there are small registered social landlords in Scotland and, as Paul Short said, supply is an issue, so stock might well not be available. When we can facilitate a management transfer to another housing association or local authority, that would be appropriate. The provision of advice and assistance could be interpreted as being quite a low-level intervention and I am concerned that it could lead to a perpetrator not being rehoused successfully.

Garry Burns: The existing legislation says that if a person is given an interdict to not present themselves at their normal family home, they can present as homeless. I do not, therefore, see the necessity—[*Inaudible*.]

Under the bill, the police can turn up and issue an order to say that the perpetrator cannot be at their home for the next two or three weeks. That person can either find their own accommodation or present to the local authority as homeless. The bill states that quite clearly—

Rona Mackay: So you do not think that the perpetrator should be given advice and support per se; they should go through the normal channels.

12:45

Garry Burns: I am not saying that they should not be given advice and support; I am talking about the immediate issue if, let us say, the police turn up to a domestic abuse incident on a Friday night at 6 o'clock and say, "You need to remove yourself" and issue a DAPN. If the person says, "I've got nowhere to go", the police just need to say, "Turn up at your local council", because the test for most homelessness is that the person has no place where they could reasonably go. If someone presents to a local authority and says that they cannot go home because they have been charged after a domestic abuse incident, the local authority must give them temporary accommodation. I see no need for a change in legislation to give alleged perpetrators additional protection. That does not mean that people cannot go back to their housing association and ask to be moved to a different place—although the reality of that happening is almost zero. They have the right to homeless accommodation if they are homeless because they have been charged with domestic abuse.

Rona Mackay: Okay.

Stacey Dingwall: I reiterate that it is important not to underestimate the experience of social landlords—compared with landlords in other tenures—and their important relationships with tenants. We can all appreciate that this year, when social landlords have worked closely with tenants to provide support, particularly around rent arrears that have arisen through no fault of the tenant. Social landlords will certainly work with victims of domestic abuse.

For our members, the provision on advice and assistance goes far enough. As Callum Chomczuk said, a lot of our members are small social landlords and it would not be practical for them to rehouse, given not just stock availability but the potential for proximity to the victim. It is important that the guidance provides for advice and assistance that is not just a tick-box exercise. Proper advice and assistance must be given to enable the perpetrator to be rehoused. We do not want anyone to be directed into homelessness. We would welcome strong partnership working on that.

Rona Mackay: Are you saying that you do not think that that needs to be in the bill?

Stacey Dingwall: I do not think that there should be an obligation to rehouse. There should be a requirement to provide information and assistance.

The Convener: Garry Burns wants to come back in. Please be brief; that would be helpful.

Garry Burns: On the point about housing associations moving people who are victims of domestic abuse, that literally does not happen, which is why so many women and other victims of domestic abuse present as homeless. If they go to their landlord or social landlord and ask for a move because of domestic abuse, they are told to go down the homelessness route—anyone who works in a homelessness advice centre will tell you that that is what victims are told to do.

The idea that housing associations can move people is nonsense. However, they can have working arrangements with other associations that involve moving people to different areas in their locale. Also, there is nothing to stop local authorities moving victims of domestic abuse to another local authority, without people having to go down the homelessness route.

The homelessness route has been shown time and time again to be really bad for the people who go through it. It is there for emergencies and we really do not want to send victims and survivors of domestic abuse down that route when we can have legislation that allows people to move legally within local authorities and housing associations.

The Convener: Thank you. We appreciate those comments.

John Finnie has been waiting patiently to ask questions of this panel.

John Finnie: I have a specific question for the Chartered Institute of Housing about future reforms and gaps in the legislation. Mr Chomczuk, the Scottish Government advised us that the working group on improving housing outcomes for women and children experiencing domestic abuse, which the CIH co-chairs with Scottish Women's Aid, plans a second phase of work, which will relate to private sector housing, including owner-occupied and privately rented housing. Will you explain what that work will cover, the timeframe for it and, in particular, whether it will have regard to the unique and often overlooked situation of the Gypsy Traveller community?

Callum Chomczuk: Unfortunately, I cannot go into much detail. We have not agreed the scope of the work at all. We have just concluded our work on social housing and trying to improve the housing outcomes for women and children who are experiencing domestic abuse in that sector.

You raise a useful point about the scope of the group's work. My co-chair from Scottish Women's Aid and I have not had time to reflect on what that work will explore. The work this year lasted for six to nine months. I hope that the group will start work early in the new year and that something will come out of that towards the latter part of 2021. Looking at the experience of the Gypsy Traveller community may be inappropriate to our scope, but we have not yet pinned down the brief.

John Finnie: Okay, many thanks. Perhaps we will raise that with the cabinet secretary.

The Convener: That is all the questions that the committee has for this panel. It has been a focused and useful session. I thank Paul Short, Callum Chomczuk, Garry Burns and Stacey Dingwall for their help on the housing elements of the bill. We are grateful to you.

That brings the public part of the meeting to a close. Our next meeting will be on Tuesday 12 January, when we will continue our consideration of the Domestic Abuse (Protection) (Scotland) Bill by hearing from the cabinet secretary.

I thank all members of the committee and all the parliamentary staff who support us: the clerks and—especially, this year—the broadcasting staff, information technology staff and everybody who works behind the scenes. I also thank all the witnesses who have helped us with their time and consideration, not just in this inquiry but in all the inquiries that we have undertaken this year.

As the Prime Minister said, I wish everybody a merry little Christmas this year.

12:52

Meeting continued in private until 13:05.

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