OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities, Human Rights and Civil Justice Committee

Tuesday 21 September 2021

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 21 September 2021

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EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE

4th Meeting 2021, Session 6

CONVENER

*Joe FitzPatrick (Dundee City West) (SNP)

DEPUTY CONVENER

*Maggie Chapman (North East Scotland) (Green)

COMMITTEE MEMBERS

*Karen Adam (Banffshire and Buchan Coast) (SNP)
*Pam Duncan-Glancy (Glasgow) (Lab)
*Pam Gosal (West Scotland) (Con)
Fulton MacGregor (Coatbridge and Chryston) (SNP)
Alexander Stewart (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jen Ang (JustRight Scotland)
Jeremy Balfour (Lothian) (Con) (Committee Substitute)
Barbara Bolton (Scottish Human Rights Commission)
Martin Brown (Scottish Government)
Ash Denham (Minister for Community Safety)
Dr Igi Moon (Memorandum of Understanding Coalition against Conversion Therapy)
Jill Stephen Poller (Scottish Government)
John Wilkes (Equality and Human Rights Commission Scotland)
Luis Felipe Yanes (Scottish Human Rights Commission)

CLERK TO THE COMMITTEE

Katrina Venters

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Equalities, Human Rights and Civil Justice Committee

Tuesday 21 September 2021

[The Convener opened the meeting at 10:00]

Interests

The Convener (Joe FitzPatrick): Good morning, everyone, and welcome to the fourth meeting in session 6 of the Equalities, Human Rights and Civil Justice Committee. Apologies have been received from Alexander Stewart and Fulton MacGregor. We welcome to the meeting Jeremy Balfour MSP, who is joining us as a substitute for Alexander Stewart. As this is Jeremy's first attendance at the committee, I invite him to declare any relevant interests.

Jeremy Balfour (Lothian) (Con): I have nothing to declare, convener.

Decision on Taking Business in Private

10:00

The Convener: The first item on the agenda is to decide whether to take agenda items 5 and 6 in private. Under agenda item 5, the committee will consider the evidence that it heard under agenda item 4, and under agenda item 6, it will consider its approach to future engagement, evidence and a draft report on petition PE1817. Do members agree to take those items in private?

Members *indicated agreement.*

Subordinate Legislation

Children's Legal Assistance (Miscellaneous Amendments and Consequential Provisions) (Scotland) Regulations 2021 [Draft]

10:01

The Convener: Agenda item 2 is consideration of the draft Children's Legal Assistance (Miscellaneous Amendments and Consequential Provisions) (Scotland) Regulations 2021, which is an affirmative instrument. I welcome to the meeting the Minister for Community Safety, Ash Denham. She is accompanied by Scottish Government officials: Jill Stephen Poller is a legal aid policy officer in the access to justice unit, and Martin Brown is a solicitor in the constitutional and civil law division.

I refer members to paper 1 and invite the minister to speak to the draft regulations.

The Minister for Community Safety (Ash Denham): Good morning. I thank the committee for asking me to speak to the regulations.

The purpose of the instrument is to support implementation and commencement of the Age of Criminal Responsibility (Scotland) Act 2019, which provides for orders in relation to children to allow investigation of their actions, notwithstanding that they will not have committed offences.

The orders, when they are granted, will largely permit the sort of interventions that the police would otherwise be able to make in respect of suspects, including searches, interviews and taking of prints and samples. The interventions will enable the police to determine what has happened so that the right support can be put in place for a child whose behaviour has caused harm, as well as for the person who was harmed by that behaviour.

The legal aid provisions are to allow for representation in respect of applications for the orders, in order to ensure that the rights of children—and others, in some cases—are protected in the course of proceedings.

That is a brief overview of the regulations. I am, of course, happy to answer any questions that the committee has.

The Convener: Thank you, minister. Do members have any questions?

Members: No.

The Convener: As members have no questions or comments, we will move on to agenda item 3,

which is consideration of the motion on approval of the affirmative instrument.

Motion moved,

That the Equalities, Human Rights and Civil Justice Committee recommends that the Children's Legal Assistance (Miscellaneous Amendments and Consequential Provisions) (Scotland) Regulations 2021 be approved.—[*Ash Denham.*]

Motion agreed to.

The Convener: I thank the minister and her officials for attending.

Do members agree to the committee producing a brief report on the instrument?

Members *indicated agreement.*

The Convener: There will be a brief suspension for the next panel to come in.

10:03

Meeting suspended.

10:11

On resuming—

Petition

Conversion Therapy (PE1817)

The Convener: The next agenda item is to continue taking evidence on petition PE1817, which is on ending conversion therapy. We have two panels of witnesses today, and both are here in person. I welcome to the meeting our first panel of witnesses. John Wilkes is head for Scotland of the Equality and Human Rights Commission, and Barbara Bolton is head of legal and policy at the Scottish Human Rights Commission. I refer members to committee papers 2, 3 and 4 and I invite our witnesses to make short opening statements, starting with John Wilkes.

John Wilkes (Equality and Human Rights Commission Scotland): The commission would like to thank the committee for the invitation to come to discuss our submission on the petition on banning conversion therapy.

The Equality and Human Rights Commission's role as an equality regulator for Britain covers Scotland, Wales and England. We are also a national human rights institution—a role that we share, in Scotland, with the Scottish Human Rights Commission.

We have a range of inquiry, investigation and other powers to enable us to carry out our role of challenging discrimination, promoting equality of opportunity and protecting human rights. We work with other organisations and individuals to achieve our aims, and are ready to take action against those who abuse the rights of others.

We have used as a framework our role and remit as a regulator and promoter of equality in consideration of our submission to the committee. Our colleagues in the Scottish Human Rights Commission have provided a human rights analysis, so we have focused our contribution on the equality aspects and general principles.

Our starting point is that we support the ending of conversion therapy across Britain and in Scotland. The therapy is a harmful practice, as many people have noted nationally and internationally, including the United Nations independent expert on sexual orientation and gender identity. We regard it as discriminatory to groups in society who are protected under the Equality Act 2010—in particular, those who have particular sexual orientations or who are protected through gender reassignment protected characteristics. Such practices have no place in a modern, fair and inclusive society.

Barbara Bolton (Scottish Human Rights Commission): I thank you for having us here today. As the committee knows, the Scottish Human Rights Commission is Scotland's national human rights institution under the United Nations human rights system. The commission supports a comprehensive ban on so-called conversion therapy by organisations and individuals, in all settings, and for all LGBT+ people.

Conversion practices are inherently humiliating and demeaning, as has been noted by the independent forensic expert group for torture victims. The combined effects of powerlessness and extreme humiliation generate profound feelings of shame, guilt, self-disgust and worthlessness, which can result in a damaged self-concept and enduring personality changes.

Conversion practices often amount to inhuman or degrading treatment, or to torture, under international human rights standards, depending on the severity of physical and mental pain and suffering that are inflicted.

The practices also breach the right to health. Every person, without distinction, should be able to enjoy the highest attainable standards of physical and mental health. That includes freedom from non-consensual medical treatment. There is also the right of persons to be fully respected for their sexual orientation and gender identity. Conversion practices breach the right to health, because their premise is the idea that the person's sexual orientation or gender identity is wrong and requires to be changed, and because they cause severe physical and psychological harm.

In addition, the very existence of conversion practices in our society promotes a culture in which LGBT+ people are seen as needing to be fixed, which undermines their dignity and encourages discrimination and violence against them.

10:15

There is consensus among the UN human rights bodies—including the independent expert on sexual orientation and gender identity; the UN special rapporteur on the right to health; the special rapporteur and the UN Committee Against Torture; the UN High Commissioner for Human Rights, and the UN special rapporteur on freedom of religion or belief—that a ban on conversion practices is required in order to protect the rights of LGBT+ people. They have all called for such a ban.

The Scottish Human Rights Commission agrees that ending conversion practices is necessary to uphold and protect the fundamental rights of freedom from torture, and freedom from inhuman and degrading treatment, and the rights to health and to equality.

With regard to the suggestion that a ban on conversion practices could breach the right to freedom of religion or belief, the commission agrees with the UN special rapporteur on religion and belief, who has said that legislative measures prohibiting conversion practices

"will advance human rights and do not violate the right to freedom of religion or belief."

The right to freedom of religion or belief is not absolute. Although we all have the absolute right to believe whatever we wish, we do not have the absolute right to act on those beliefs. The state can and should restrict manifestations of religion or belief when it is necessary to do so in order to protect the fundamental rights of others. The special rapporteur noted that

"States cannot compel faith leaders to change their beliefs on sexuality or gender diversity. But states are empowered to protect ... people from harm."

To conclude, I note that the commission supports the petition's call for a comprehensive ban as an important step towards fulfilment of the state's obligation to protect LGBT+ people and to uphold their rights.

The Convener: I thank both witnesses for their opening statements. I will start the question session with a question about definitions, which I have asked other folk. Obviously, much of the evidence that we have received makes the point that it is important that we get definitions right.

I will start with Barbara Bolton. Please sum up, as briefly as you can, your understanding of the definition of conversion therapy. The EHRC's submission states that it is important that we have a statutory definition of gender identity. Maybe John Wilkes could cover that, as well.

Barbara Bolton: It is helpful to look at what the special rapporteur on religion and belief has said. He has taken a lot of evidence on the issues and has considered matters under the UN system. He has suggested that, in order to be sufficient in terms of safeguards for freedom of religion and expression, the definition of conversion practices should include that a specific person, or class of persons, is targeted on the basis of their sexual orientation or gender identity, for the purpose of changing or suppressing their sexual orientation or gender identity. The special rapporteur has also pointed out that the ban should cover advertising and promoting conversion therapy, and has referenced other countries where bans have been introduced, including Germany and Victoria in Australia, about which the committee has heard more detail.

There must be an end to all conversion therapy for all LGBT+ people in all settings; it has to be a comprehensive ban and the definition has to capture that. The independent expert has also indicated that legislation should ensure that public funds are not used to support conversion therapy, that punishments are in place for non-compliance, that claims are investigated and that there are mechanisms to provide access to all forms of reparation.

John Wilkes: Ending conversion therapy might involve a suite of measures. We think that the critical issue is the definition, so that the people whom the proposals are designed to protect are, in fact, protected and so that others, who do not need to be brought into it, are not brought into the issue. For us, the key thing is that the ban should target practices and policies that are harmful because they intend to change or suppress a person's identity, whether that be in relation to their sexual orientation or their gender. We say that those two things are not the same: sexual orientation and gender identity and transition are different, so in drawing up definitions we need to ensure that we reflect that properly.

The convener asked me to cover the point about there being no statutory definition of gender identity. The Equality Act 2010 obviously talks about gender reassignment, which is the process of a person transitioning from one sex to another. However, there are other examples that the Scottish Parliament has used recently, including in the Hate Crime and Public Order (Scotland) Act 2021, which sought to set out a definition of trans people.

There are examples, but we believe that the crux of the matter will be really carefully thought-through definitions so that—as I said—the people whom the ban is designed to protect are, indeed, protected, so that those who perpetrate such practices can be brought to justice, and so that others who do not need to be drawn in are not drawn in.

Jeremy Balfour: Good morning. I thank the witnesses for coming along.

In my previous life, I was a church minister; different people from my congregation would come to me looking for counselling, advice and prayer on lots of topics. They would come because they wanted my advice; they approached me and gave their consent for me to do that. Often, it was done with somebody else there, so that it was a safe environment. Under the proposed change in law, would it be illegal for me to pray for somebody, if they asked me to do that? If so, how would the change not affect religious liberty?

John Wilkes: That would depend on how the law was drawn up. Our view is that the law should be targeted at the practice whose intent is to change someone's identity. There is a difference between identity and behaviour; there are LGBT people in religious communities, or who have religious faith, who wish to adhere to the tenets of that faith in how they live their lives. Therefore, the law should be drawn up such that it allows support from faith leaders and spiritual leaders—support that is not intent on changing a person's identity but can help them in how they live their life within the rules of their religious faith or belief. To us, that is the key dividing line.

Again, I stress the importance of clear definitions, so that people who set out to support a person in relation to their behaviour and lifestyle—not using conversion therapy to try to change their identity—are not brought into what would be covered. The line will sometimes be difficult to draw, so a great deal of care should be taken in consideration of how the legislation is drawn up.

Barbara Bolton: Again, I reference the helpful guidance from the special rapporteur on religion and belief. He pointed out that a ban should not prohibit ordinary religious teaching or appropriate pastoral care, and should not prohibit individuals from discussing or exploring their sexual orientation or gender identity with therapists or faith leaders in a non-judgmental and non-directive manner. If we go back to the three prongs that he suggested should be included in the definition, we see that targeting of individuals or groups on the basis of their sexual orientation or gender identity, with a view to suppressing or changing it, would not cover ordinary religious teaching or appropriate pastoral care.

Jeremy Balfour: Both of your answers are very helpful. There are obviously different religious teachings in different faith groups, so it is not a standard thing. However, there will also be those in different faiths, whether they be of the Christian faith, Judaism or the Muslim faith, who give different teachings. Some would argue that celibacy, whether heterosexual or homosexual, is a lifestyle that should be followed outwith marriage. I have had conversations with people about these issues—not, I hope, in a judgmental way. I have listened to them and have sought to pray and advise them. Would you see that as a legitimate thing for a minister or counsellor to do without necessarily trying to change someone's identity? I am talking about giving them pastoral support and prayer as they work through the issues as individuals.

Barbara Bolton: Going back to what John Wilkes said, it comes down to the way in which the legislation is crafted. Countries and states such as Germany and Victoria have looked at the issue in detail and have managed to come up with wording in legislation that covers all conversion therapy but

does not preclude ordinary religious practice or pastoral care.

Freedom of religion and belief allows us all to hold whatever beliefs we wish to hold, and we can espouse those views, whether in prayer or otherwise, up to the point at which we are causing harm and undermining the fundamental rights of others. That point has to be found, and the legislation has to be crafted so that it covers what needs to be prohibited in order to protect LGBT+ people at the same time as protecting religious freedom. I think that that balance can be found.

Jeremy Balfour: That is very helpful. I have no other questions, convener.

Pam Duncan-Glancy (Glasgow) (Lab): Thank you very much for that. It was really helpful—particularly your analysis of the human rights that are at play here. It is really important that we have a solid understanding of those if we are going to take a human rights-based approach to the work, which I hope and believe we will.

I have a question that sort of follows on from some of the conversation. Forgive me if it sounds as though we are labouring the point, but it is important that we get this right, for all the reasons that we have rehearsed.

In the SHRC submission, you say that the legislation should be drawn up to ensure that there is no interference with religious thought or access to non-judgmental support such as has just been described. Can you tell us a bit more specifically about how that would be drafted? For example, would it be a lift and lay from the Victoria legislation, or would it be something different? Is there something missing from that legislation or something that should be amended?

Barbara Bolton: You might get more detail on that from the people who are coming to the next evidence session.

I am aware of the Victoria legislation and have listened to the evidence that has been given on it so far. It sounds as though they have managed to come up with a way of crafting legislation that captures all LGBT+ conversion therapy while protecting ordinary religious practices. I have not had the opportunity to look at that legislation in detail, so I would not like to speak to it.

My colleague Luis Felipe Yanes, who could not be here today, also looked at the German example and found that it had managed to craft that balance. On the basis of what the special rapporteur on the freedom of religion or belief has set out, it should not be too challenging to craft such legislation. We know what the harmful practices are that we are trying to capture, and we know the general principle is that someone can hold whatever beliefs they like and can espouse those beliefs, but only up to the point at which they are causing harm to another. If we apply the three prongs that the special rapporteur set out, that is about targeting someone or some people with a view to suppressing or changing their identity, which ought not to be done.

Pam Duncan-Glancy: Thank you. That is helpful. Convener, would you mind if I just followed on with the international question? I know that it is a bit further down the list, but it relates to the point about Victoria.

The Convener: Okay.

Pam Duncan-Glancy: The equalities commission in Victoria has a specific role in the Victoria legislation to mediate, intervene and investigate. Could that work in Scotland? If so, who could play that role?

Barbara Bolton: The first thing to say on that is that it sounds as though the Victoria legislation has addressed one or two of the key requirements under international law, which is very positive.

The administrative and judicial remedies that are provided for breaches of human rights should include investigating complaints and finding a way to address on-going violations as well as providing restorative justice. In looking in more detail at how such legislation could be crafted, careful consideration should be given to all of that.

As you say, a human rights-based approach should be adopted to that, as to everything, which would mean hearing from victims from different communities and different religious and faith backgrounds, and understanding from them what they need in terms of support and the systems that we would set up.

10:30

I am aware that the Victorian Equal Opportunity and Human Rights Commission has been identified as the body to receive individual complaints and to investigate. I have not looked at that myself, but I understand that it has a civil remedy and a criminal remedy, which is an interesting approach and one that you would benefit from considering further in order to address some of the issues around criminal enforcement. However, as I say, I have not looked at that example in detail.

A human rights body as opposed to an equalities body would be the appropriate home for something like that role, if it was to be with one or the other, but the Scottish Human Rights Commission's mandate is quite narrow in the sense that we do not have a mandate to deal with individual complaints. In fact, we are almost precluded from doing that, so our mandate would have to be changed. Although the mandate is set

to evolve with the Children (Scotland) Bill and the wider human rights legislation that is to come, that is specifically in relation to raising public interest litigation and not in relation to handling individual complaints. Changing the mandate to include that role would need to involve careful consideration of resourcing and structure to make sure that the SHRC could fulfil its full mandate across all its powers without detriment to any of them.

John Wilkes: We are aware of the various pieces of legislation that have either been passed or are being drawn up around the world. We are aware of the Victoria legislation, but we have not done enough analysis to reach a view and say whether there might be any learning from that or whether it could be cut and pasted into the UK or Scottish legislation.

We are also aware that concerns have been raised about it. I am sure that, in every jurisdiction in which such measures are proposed, concerns will be raised about them. However, in July this year, the New Zealand Parliament introduced a bill that takes a slightly different approach to the definitions, and I am not totally sure about that. It has also proposed a similar remedy mechanism by suggesting that its human rights commissioner should take on the role of mediator or should be able to take complaints or investigate.

As an equality and human rights commission in Scotland, we are more of an equality regulator because of our colleagues in the SHRC. We have a range of inquiry powers and we can take complaints about equality issues under the Equality Act 2010.

We do not yet know what the UK Government's proposals will be or whether they will include some sense of a body. We said in our submission that there might be a space for a body to look at these sorts of things. We were not suggesting ourselves at that point, but, if the UK Government introduces legislation, it might look at whether our current powers and tools would be suitable for that role or whether they would need to be added to, or it might look at whether the legislation would cover the whole of the UK.

We have reached no view on the matter, and the commission has not taken a position—that would be subject to whatever the proposals were and what we considered at that point. That would be true for any legislation that was generated in Scotland through the Scottish Government and Parliament. We would have no view on that.

The Convener: Before Karen Adam asks some questions on a different area, I invite Pam Gosal to come in on the religion issue.

Pam Gosal (West Scotland) (Con): We have heard evidence from other witnesses about the respondents to the survey, and we have found that almost 60 per cent of the respondents came from Christian households. Taking that into account, do you think that further research should be done in order to bring forward more evidence to support the ban on conversion therapy in Scotland? How would you see including other communities and other religions in that?

Barbara Bolton: The research that was carried out by the special rapporteur confirmed that conversion practices are carried out by all the major religions in the UK. Whether they are carried out particularly by one faith or another, the state has an obligation to protect LGBT+ people from those practices wherever they might arise.

I understand that the committee is taking evidence from survivors, and it will be important to hear from survivors from all faiths, if possible. When the state takes measures as recommended by the UN bodies to carry out a public awareness campaign and educate people about the harmful impact of conversion therapies and how they do not work, it should ensure that it reaches out to all communities and all faiths. I am not sure whether that answers your question.

Pam Gosal: That is fine. Thank you.

Karen Adam (Banffshire and Buchan Coast) (SNP): We have heard a lot about conversion therapy on a personal level, and "shame based" is a term that I have heard used to describe it. The fact that conversion therapy is often undertaken within the private sphere makes it difficult to see its full extent. Is there a danger that evidence could be hidden because of the privacy aspect or because of the definitions that were mentioned earlier? Is there anything more substantial that could impact on the evidence base?

Barbara Bolton: For the reason that conversion therapy is often very private and concealed, it is all the more important that the committee hears evidence from survivors, if at all possible. Such evidence should be taken in a closed and safe space—I understand that that might be what is intended. As other witnesses have said, it will be important to hear from survivors, and what will matter is qualitative evidence, not quantitative evidence. It is not a question of numbers. We might not be able to find out the numbers, because of the factors that you have mentioned, but we know that the practice exists and that it is extremely harmful, so what matters is the quality of the evidence from those individuals.

John Wilkes: I agree with those comments. There is evidence out there, and the national LGBT survey provided some of that evidence. However, it is clearly still incomplete, and there is still a lot to find out that might be helpful in building up a complete picture. In the 2017 survey, 5 per cent of respondents said that they had been

offered conversion therapy and 2 per cent said that they had taken up that offer. Whether the full extent of those affected by conversion therapy is greater we do not know, because, as you say, it might well happen across a range of private settings. As some people who have already given evidence have suggested, it has sometimes taken place in the family. Our view is that conversion therapy should be ended irrespective of its setting—the issue is the intent and the practice. We make the point in our submission that the legislation should be considered carefully around parents and guardians of children dealing with issues of sexual orientation or gender identity, but they should not be excluded when they engage in harmful practices.

These are difficult issues, and how one would understand them in practice speaks to the fact that there needs to be a suite of measures to support victims. Opportunities need to be provided for those who might be experiencing conversion therapy in settings in which it is not easy to record it—in schools, for example, if we are talking about children. In our view, in order to end the practice, there needs to be a whole range of different measures, from supporting victims through to different ways in which people can disclose where they have been subjected to harmful practices. There will need to be careful consideration of what that range of measures would be, to ensure that we provide support for all people who experience the practice.

As Barbara Bolton said, it does not matter how many people are experiencing the practice; the practice itself is not acceptable and we need to ensure that it does not happen, that people are protected and supported, and that we engage with all communities in the process, as they will have different views and perspectives on some of these things.

Karen Adam: You have answered my second question, which was a follow-up question about the fact that a lot of aspects of the issue are hidden. Is there anything that we could do prior to legislating for a ban? You touched on a few points in that regard, but perhaps you would like to expand on what you said.

John Wilkes: There is a role to play in bringing such matters to people's attention and having public discourse about them. Education can play an important part. The practice is often quite hidden, so it is important to have open public debates about it. The fact that the UK and Scottish Governments have said that they are going to ban the practice is really helpful. As I said, from our perspective there needs to be a whole suite of measures and tools to address all the different characteristics, because of the way in which the practice often works.

Barbara Bolton: A key point that was picked up in previous evidence, including from survivors, is the need for specific medical support and counselling for people who have come through such circumstances. That ought to be provided in any event under the right to health, whatever happens with a ban, and that is recommended by the UN human rights bodies.

In addition, there needs to be a public information campaign that reaches all communities and all faiths. Awareness needs to be raised of the great harm that such practices cause, of the fact that they do not work and of the scientific evidence on that.

Maggie Chapman (North East Scotland) (Green): I thank both of you for the clear summaries that you have provided this morning and for your detailed submissions.

I want to follow up on how legislation might have an impact on healthcare professionals, among whom I would include psychotherapeutic professionals. How can we ensure that the way in which we craft the definition the legislation provides clarity on which practices are allowable and which are not? There is an issue around medical professionals being able to offer support, guidance and advice on a range of options for people who may suffer from gender dysphoria, for instance.

I would be interested to hear your views on how we get that element right so that we ban what we need to ban but do not encroach on some of the very sensitive conversations that a medical professional should have with a patient—with the person in front of them.

John Wilkes: As you say, there might be more involvement in the context of a medical setting when it comes to people who are considering gender reassignment—they might have more engagement with medical, psychological or other forms of support than perhaps someone who is coming to terms with being gay or lesbian. That is not universal; they, too, might need support.

It is really important that the legislation does not prevent medical professionals from doing their job professionally in helping people who might have gender dysphoria or might be working their way through such questions. That is another example of how the two issues are different and the fact that the legislation—if legislation on such matters is introduced—needs to capture that difference.

Most medical bodies already have very clear standards, guidance and rules about the therapies and interventions that people are supposed to practise. It comes back to the core point about what conversion therapy is and the intent behind it. We are talking about harmful practices that are about changing identity, rather than practices that

are to do with helping or working with someone to explore their identity.

10:45

The commission would not see it as being our role to offer the committee legislation. When legislation is proposed by the UK Government or the Scottish Government, we would offer our perspective and comments when we had had the chance to consider it. I am sorry that I cannot help you with that.

However, you have outlined some of the key issues, and the area of medical and professional support is extremely important. We must get the legislation right in that respect, so that medical professionals do not feel inhibited in providing the support that they need to provide, and so that there is as little a grey area as possible around those issues.

Barbara Bolton: It is also worth noting that the independent expert on sexual orientation and gender identity recommends that, regardless of whether there is a ban on conversion therapy, states should adopt and facilitate healthcare and other services related to exploration, free development and/or affirmation of sexual orientation and gender identity, so those services should exist in any event and any ban should not cut across them. The key there is that they be non-judgmental and non-directive.

In addition, the ban should not preclude discussion or exploration of sexuality or gender identity with therapists in a non-judgmental or non-directive manner. If a ban was to follow the three prongs that were referenced by the special rapporteur on freedom of religion or belief, such discussion or exploration would not be caught, because it would not be targeted at changing or suppressing orientation or gender identity.

Maggie Chapman: I have a second question, in which I will seek to draw out some of what Barbara Bolton has just said. What is your response to the suggestion that medical practitioners and psychotherapists could be criminalised if they do not affirm a young person's gender identity? There is an issue around the balance between consent and affirmation, which can be seen as blurred. Even in law, we cannot legislate for blurred lines.

Barbara Bolton: I think that previous witnesses spoke about the fact that the word "affirmative" can have the wrong connotation. The key is that such therapy be non-judgmental and that there be no predetermined outcome. The memorandum of understanding that has been signed up to by various medical professional bodies, including the national health service, the Royal College of Psychiatrists and many others, notes that anyone who goes into the space of providing such therapy needs to have the essential qualifications and understanding to do that, and needs to enter that space without any bias or predetermined outcome. Therefore, professionals should engage in such therapy only if they are able to approach it in that way.

What is not required, as I understand it, is that they affirm. As one witness said last week, affirmative therapy does not imply that they must respond, "Oh, great!", and then affirm and continue down that path. There must be room for exploration.

However, again, it would be really important to defer to those with lived experience of the process, who can speak to exactly what they need and where that line is to be drawn.

Maggie Chapman: Thank you—that is helpful.

The Convener: Pam, would you like to come in at this point?

Pam Duncan-Glancy: Thank you. I apologise for skipping ahead to the international stuff. I realised that I stopped the conversation on Pam Gosal's question—I apologise for that.

My question has almost been answered by what has been said. In its submission, the Equality and Human Rights Commission talks about a

"harms-based approach, which disregards benign intent".

Given what we have heard about the rapporteur's definition of harm and the three prongs, we could make an assumption, but how would you define "benign intent"?

John Wilkes: Clearly, it is about the impact of whatever the intervention is around, irrespective of the motivation of the person who is undertaking that intervention. If the impact is around something that becomes harmful practice that seeks to change someone's identity, even if that is not what is intended, regardless of the motivation or the good will of the person who seeks to carry out such an intervention or therapy, that should be covered under the ban so that there is no get-out in that sense.

I think that it will be challenging to draw up the legislation in that regard, such that we protect the people we need to protect but do not inadvertently include medical professionals, and that we protect freedom of religion and people's views, and support people in terms of how they might live in their faith but also be gay or seeking to change their gender.

Barbara Bolton: The independent experts for torture survivors found that conversion therapies are inherently harmful and degrading. The question of intent potentially muddies the waters, which is why the special rapporteur has not included that. What matters is the practice and

what the practice is aimed at doing—suppressing or changing—because that in itself is inherently harmful.

We might like to look to examples of legislation where we have prohibited practices in other spaces on the basis of strict liability, where there is no requirement for intent and there is no question of consent. An example is female genital mutilation. We could also look at the more recent legislation in relation to physical violence against children—there was a defence of "reasonable chastisement", but that is no longer permitted. Another example is domestic violence legislation. We can draw a lot of learning from those areas in terms of very harmful practices that happen in a private space and how we have approached questions of intent.

Jeremy Balfour: I am acting as a substitute member of the committee today, but I read the evidence from the past couple of meetings, as well as the submissions, which were extremely helpful.

Obviously, many laws already exist that outlaw torture, rape and any forms of abuse. What benefit would a new law have with regard to effective enforcement? Is it simply the case that we need the law that we already have in Scotland to be enforced properly? What added benefit would a new law give? I do not mean this in a bad way, but would a new law be more symbolic, in that it would highlight the issue in the public's mind, or would it have a better legal effect in bringing about more prosecutions, where that would be appropriate?

John Wilkes: As you said, there are some elements of certain types of conversion therapy, such as corrective rape, that could easily be covered under existing legislation, but there may be other areas of conversion therapy that will not be so easily covered by that legislation. It is about filling the gap and ensuring that there are no gaps in protection for people who experience conversion therapy, which, as a number of people have said in evidence the committee, can include a whole range of things. There may be elements of the law—not only the criminal law but civil law, in terms of the regulation or further regulation of professional bodies—that might need to be looked at to fill those gaps.

As I said, legislation is part of a whole suite of measures. The UK Government and the Scottish Government seem to be indicating that, in order to end conversion therapy, some form of legislation might need to be introduced to fill the gaps that are not covered by existing platforms of legislation. We are waiting to see what those proposals might be.

Barbara Bolton: New legislation could have quite a strong deterrent effect, which is particularly important for harmful conduct that happens behind closed doors. That has been pointed to in relation to the approach that has been taken in Victoria, where the civil administrative route is expected to have a strong deterrent effect. If legislation is combined with raising of awareness and a public education campaign, the overall impact could be very positive and could challenge the undermining of the dignity of LGBT+ people, which can make them more vulnerable to discrimination and violence.

I think that new legislation must be considered in the round for its overall impact, and not purely in relation to criminal enforcement, although having a specific offence will inevitably make it more likely that we will be able to enforce it effectively.

Jeremy Balfour: It might be helpful if you could write to the committee on that, because I would be interested in hearing about where the gaps are in the present criminal law. I absolutely take Barbara Bolton's point about the taking a more holistic approach, but I think that it would be interesting for the committee and the Parliament to know where the gaps are in the criminal law. I appreciate that that is quite a broad question that you will not be able to answer today, but if either of you could write to the committee on that, I would find that beneficial.

The Convener: I thank the witnesses for the extensive evidence that they have already given us. In relation to the question of further written evidence, I think that John Wilkes mentioned that he was looking at the implications of the Australian legislation. We would be keen to hear any thoughts on the approach that Australia is taking versus the approach that New Zealand is taking versus the approach that Germany is taking. We will obviously need to get more evidence on that, but it would be good to hear your thoughts on that, John, if that is work that you are considering doing anyway. It would be helpful to get a summary paper from you on that.

John Wilkes: Certainly. In considering the introduction of measures in Britain or in Scotland, we have looked at the international jurisdictions, as others have. As I said, we have not done a full analysis or reached the conclusion that legislation elsewhere is fabulous, works really well and should be transported here. We are certainly not in that position with respect to the legislation in Australia, New Zealand or elsewhere.

Legislation will be designed for the jurisdiction to which it applies. We are waiting to see what proposals will be introduced by the UK Government. I think that the Scottish Government has said that it is looking to see those proposals first before it determines whether it needs to do anything separate, different or additional. We are going through that process.

The Convener: As no other members have indicated that they have a question, I thank the witnesses very much their evidence, which has been very helpful.

I suspend the meeting to allow for a changeover of witnesses.

10:57

Meeting suspended.

11:02

On resuming—

The Convener: We are pleased to welcome our second panel of witnesses: Dr Igi Moon, who is chair of the memorandum of understanding coalition against conversion therapy, and Jen Ang, who is director of development and policy at JustRight Scotland and is also appearing on behalf of Amnesty International UK and the Human Rights Consortium Scotland. I invite you to make short opening statements.

Dr Igi Moon (Memorandum of Understanding Coalition against Conversion Therapy): Thank you for inviting us to attend. My name is Igi Moon, my pronouns are they/them and I am the chair of the MOU coalition on conversion therapy.

Before I give my statement, I want to honour two people who have died recently: Jonathan Cooper OBE, who was a human rights lawyer who dedicated a good part of his life to a ban on conversion therapy for young people; and Professor Michael King, who sadly died a couple of weeks ago and was an instigator of the movement to bring about change in relation to conversion therapy.

I also wanted to say thanks to Blair Anderson and Tristan Gray, who spoke at your meeting on 7 September. I found their testimony incredibly moving.

The MOU is a broad coalition made up of more than 20 organisations representing NHS Scotland, NHS England, the Royal College of General Practitioners, the British Psychological Society, the Royal College of Psychiatrists, Northern Ireland Humanists and trans-led organisations such as CliniQ and Gendered Intelligence.

Our goal has always been to protect lesbian, gay, bisexual, transgender and asexual people from harm. We know from research that LGBTA people, including those who are disabled or from black or minority backgrounds, are often pressurised to access services to change or suppress their identity. We know that the impact of that leads to anxiety and depression requiring medication, suicide attempts, self-harm and eating disorders. In young people, it leads to poor mental health, suicidality, internalised homophobia and transphobia, and psychiatric morbidity.

We know that the age group that is being targeted in the UK is young people between the ages of 16 and 24—that is the largest group that is being offered conversion therapy, according to the LGBT survey. We therefore support whole-heartedly the efforts by the Scottish Parliament to bring the United Nations Convention on the Rights of the Child into domestic law, as we believe that the voice of the child must be heard, enforced, protected and not violated. We believe that young people and adults must be protected by a conversion therapy ban, in order that their identities are allowed to develop and so that they may live free from the hostility and rejection that lead to lifelong pain.

Overall, we believe that the practice of conversion therapy, whether in relation to the suppression of sexual orientation or gender identity, is unethical and harmful and must be banned immediately to prevent further harm. I agree with Blair Anderson and Tristan Gray that there must be a fully comprehensive ban in legislation, and we hope that the Scottish Government brings forward its own proposals in the event of any delay from the UK Government. We believe that a ban on conversion therapy must protect both adults and children. We hope that historical cases will be provided with redress and compensation, and that survivors will be provided with publicly funded support, such as a helpline.

We hope that there will be a co-ordinated approach, but we acknowledge that there are matters that the devolved nations can work towards, such as a survivors network. We basically want a rights-respecting approach.

Thank you for this opportunity.

Jen Ang (JustRight Scotland): Amnesty International Scotland, the Human Rights Consortium Scotland and JustRight Scotland strongly support the principles of the petition and urge the Scottish Government to enact a comprehensive ban on the provision or promotion of LGBTI+ conversion therapy in Scotland by individuals or organisations in all settings, public or private, for all people in Scotland.

The UN Universal Declaration of Human Rights states that people

"are born free and equal in dignity and rights ... without distinction of any kind".

International human rights law recognises sexual orientation and gender identity as fundamental parts of our personal integrity. Conversion therapy is not a neutral practice but is founded on the belief that certain sexual orientations or gender identities are wrong and require correction. It is a

form of violence or discrimination committed against individuals because of their sexual orientation or gender identity and, on that basis, it is a violation of the international human rights legal framework.

Barbara Bolton from the Scottish Human Rights Commission thoroughly summarised the position for you. It is clear in international law that that finding is supported by the UN Human Rights Committee, Committee on the Elimination of Discrimination against Women, Committee on Economic, Social and Cultural Rights, Committee against Torture and Committee on the Rights of the Child, all of which find conversion therapy to be inherently discriminatory and to amount to degrading, inhuman and cruel treatment, which practices should be promptly investigated and prosecuted by the state.

That brings us to the present petition and the commitment by the Scottish Government to ban this discriminatory and harmful practice as far as possible within the powers of the Scottish Parliament.

We know that equality and non-discrimination lie at the core of all human rights treaties, and ensuring equal protection for all people in Scotland against violence and discrimination is embedded in our domestic legal framework—the Human Rights Act 1998 and the Equality Act 2010—but we also know that some harmful practices are so difficult to tackle that, in order for the state to meet its obligations to its people, we require to take additional steps to ensure protection of people, particularly those vulnerable to harm, and to provide restorative justice and support for survivors.

We have already undertaken similar work under the powers conferred on the Scottish Parliament. For example, in addressing forms of gender-based violence, the Parliament has acted to criminalise forced marriage in 2014 and to increase protections for people at risk of female genital mutilation by expanding the scope of the criminal offence in 2005.

We are asking the committee to keep the petition open with a view to continuing to monitor the Scottish Government's manifesto commitment to take action to ban conversion therapy. We are also urging that any assessment by the Scottish Government of proposals by the UK Government be evaluated against existing guidelines set out by UK and other international human rights bodies. Where the proposals fall short of a comprehensive ban, with meaningful engagement with survivors and suitable resources to support training and awareness raising and rehabilitation, we ask the Scottish Government to take action to the full extent of its own powers to secure the necessary protection and support that LGBTI+ people in Scotland deserve against this harmful practice.

The Convener: Thank you both for your opening remarks. With my first question, I have been asking people to provide a definition, but I think that you covered that in your comments. Unless you have anything further to say about the definition, we will go straight to Jeremy Balfour.

Jeremy Balfour: Good morning. Thank you for coming here and for the evidence that you have given.

I want to follow a similar line of questioning to that which I had for the previous panel—I am not sure whether you heard that. As I said, I used to be a church minister. People would come to me to talk, for counselling and for prayer, and they would bring a variety of issues. I am seeking a bit more clarity from you on how we protect religious freedoms, such as the right to pray with somebody and the right for someone to talk about their faith and how that works out in practice, while stopping a practice that is clearly wrong. How do we hold that balance? Briefly, how would you write that into law? That is the key thing.

Dr Moon: When I go and speak to the local priest with whom I sit and talk through certain issues, I feel that I am listened to and that we have a good rapport, and I feel safe. I do not feel in any way that it is likely that anything will happen in that space that will leave me feeling unsafe. If that were to happen and I did not feel okay, I think that it has been ensured that there is somewhere where I could take that.

However, I think that there are some people in different religions who have agendas that may fulfil a belief that certain things are not okay, and homophobia or transphobia may become part of their thinking without their realising it. My understanding is that we are not trying to ban people from being able to use a space in a safe way, where the people who are spoken to feel that they are able to have a conversation. That is very different from when somebody introduces certain practices or says certain things that are about preventing you from leading your life because of your gender or sexual orientation, or makes it very clear that that is unacceptable.

I am aware that it is difficult to put it into law, but the way to go about it is probably to look at the Victoria ban and work with people in the different professions on how to go about making those spaces safe. As a therapist, I am very aware that we need to be thoughtful about how that is done, but I believe that we can achieve that together. I do not think that that concern would be a reason not to introduce a ban.

Jen Ang: I would refer to the work that has been done on the issue by the special rapporteur

on freedom of religion or belief, who has clearly given it some thought and rejected the claim that religious belief would justify violence or discrimination against people on the basis of their sexual orientation or gender identity. The special rapporteur said that it is clear that it is possible to exercise the unrestricted freedom of religious belief, which we all have, while restricting certain activities or behaviours that are unlawful in practice. If we look at the examples that I gave, we can see that it is possible to hold a belief that forced marriage and FGM are worthwhile practices, but the actual activity, or arranging or encouragement of that activity in the jurisdiction of Scotland is criminalised.

Therefore, we hold that balance. I chose to use examples from Scots law rather than international human rights law in order to demonstrate that there are other examples that we can look at to ensure that we keep that balance and that any legislation that we pass is interpreted here in Scotland in the Scots courts in light of that understanding.

11:15

To go back to something that Barbara Bolton outlined, I wholly endorse the idea that there has been good thinking on these questions. Ordinary religious teaching and appropriate pastoral care would not be prohibited and, actually, for some people, it is in a religious setting that they would be best able to access that non-judgmental, supportive and open environment in which to explore their gender identity and sexual identity. For that reason, it is important to involve religious and community leaders in the process of crafting the bill, and the guidance and support that goes alongside it. We can be a community in support of ending this horrible practice rather than seeing that there is anything to balance or anything at odds here.

Jeremy Balfour: Thank you both for those helpful answers. The first panel pursued a line about people's identity being slightly different from their practice. I may identify myself in lots of ways, whether that is to do with disability, sexuality and so on—we identify ourselves in different ways. However, my practice will not necessarily be the same. Different identities will practise differently. Do you see a difference there? People from some faith backgrounds might see celibacy as the right way forward outwith marriage—that teaching comes from Judaism and some Christian faiths. In pursuing this, would a counsellor, minister or rabbi differentiate between a person's identity, which they are not necessarily looking to change, and the practice of how they live their life? Can that be looked at, or would it be too difficult a definition?

Jen Ang: This is maybe quite a narrow answer—as you would expect from a lawyer—but what we are seeking is a prohibition on engaging with someone on the basis of their sexual orientation or gender identity for the purpose or with the intent of changing that sexual orientation or gender identity. If you look at this narrowly, we are looking at the intent in terms of the space that is being held open in that discussion. If it is a non-judgmental and non-directive space or environment, it should not fall foul of the ban.

You asked whether I accept that there is a difference between identity and behaviour. Of course, that is for every individual to interpret on their own terms, but what we are trying to stop is the practice of bringing someone in and engaging with them for that reason, because of the harmful mental and physical consequences of that.

Dr Moon: I agree with Jen. It seems to me that we need to look at the teaching and training of all the practitioners and professionals involved, including maybe those from religious and faith backgrounds. Some of this might open up questions about what people's agendas are when they are working with their constituencies. It is probably worth while for us to work together to bring about some of that change. If it is likely that people are introducing techniques of counselling on wellbeing, we can work together to find ways to ensure that people feel safe in the space where that is offered and that the people offering it are aware of what they can do to create a safe space. For example, maybe the therapist needs to let people know when they come in that, in the event of their not feeling safe, there are places where they can report that.

I imagine that something like that happens in faith organisations. That is where we could all work together, actually.

Jeremy Balfour: There has been a big movement in faith communities on child protection and how issues are reported.

My final question goes beyond religion and relates to therapists in general. How would you advise a therapist if someone comes to them and says that they want to change their identity? That might not necessarily be about religion—they might just purely want to have that discussion. Can that discussion take place or, as a therapist, if the law came in, would you have to say that you cannot even discuss that change? How do we make sure that that is done with the consent of the individual and without their in any way being manipulated?

Dr Moon: If it is in relation to therapy, the MOU is very clear that we do not discourage, deny or exclude anyone who might come in and say that they want to explore their gender identity or sexual

orientation. That is where it clicks in with training. I am aware that the training of psychologists and psychotherapists rarely includes an intersectional approach. For example, I work with doctoral-level students and I could ask them—as I do—whether they have explored what their gender might mean for them. Nine times out of 10, they have not done that—it is not something that has happened. Reflective practice in training, alongside theory, is incredibly important.

That allows us to open the space in which, if someone is an accredited, registered and chartered therapist who has gone through training, and if their organisation agrees with the memorandum of understanding, which asks people to ensure that ethical training is in place, nobody would be scared or banging a drum and saying, "We cannot ask these questions—we must not ask any questions about whether somebody has a particular sexual orientation or gender identity." All of us have a gender and we all talk about our gender within therapy in some way. Therefore, it would be silly for us to say that you cannot speak about your gender, because everybody does that in some way, shape or form. The same applies to sexual orientation and other issues.

My feeling is that this is strongly linked to the way we regulate, and to training and curriculum development. I do not think that there is any need for any therapist to feel that they are being told that they cannot discuss sexuality or gender. That is just not credible—not if people are in organisations that adhere to the memorandum of understanding and if the training and curriculum development are up to speed.

Pam Duncan-Glancy: I thank the witnesses for the information that they have provided, which has been really helpful. Both of the sessions this morning have been excellent.

My questions are on the same issue that we have been discussing. We heard earlier that affirmative practice is about non-judgmental practice, very much in the circumstances that you have just described around therapy settings. Are the current training and support for therapists adequate to ensure that people can provide that non-judgmental approach? If the training is adequate, that is great. If not, what intervention is needed to help us to move in that direction, given the importance that you have ascribed to the memorandum of understanding and training practices?

Dr Moon: In relation to affirmative therapy, we probably need to upgrade our thinking, actually. In the training of therapists, psychologists, psychiatrists and doctors, effort needs to be made to ensure that there is intersectional thinking. It is not just about gender and sexuality, because it is pointless to think about gender and/or sexuality without thinking about blackness and whiteness and disability; it cuts across all the things that a human being is. Someone might think, "I am disabled, I am white, I am trans." All of that sticks together, and it is really important that reflective and theoretical practice bring that in.

We can work together to look at the training and curriculum development. There are two takes on affirmative therapy at the moment. One is that what is happening is that you are affirming somebody who is going from male to female or female to male, which is a very crude and, I think, objectionable way of thinking about affirmative therapy. In the standards of care number 5 in the late 1990s, it was made clear that affirmative therapy is about offering flexibility of thinking in relation to clients. It does not mean focusing just on gender; it means thinking about the way that somebody wants to talk about their gender, their socialisation processes and the way that they feel in the outside world. It offers flexibility.

We need to grab hold of this moment to stop the rather horrible language about affirmative therapy assigning itself only to gender, because it does not. Affirmative therapy is the way that therapists work flexibly with clients—children and adults—to ensure that they are in a safe space with an accredited registered therapist, who has probably gone through as much training as is on offer, although I think that that needs to improve. As therapists, we need to acknowledge that it is incredibly important that regulation works with the people on the MOU and that we systematically look at what we are offering and how that flexibility can be used to build a much safer approach to working with LGBTA people and, on the MOU, intersex people.

We need to grapple with some of the myths that are going around and create a space that says that there is nothing wrong with affirmative therapy provided that we understand what is meant by that term. It is being slightly distorted by some people who are making statements about what it means when it does not mean quite what they are saying it does. That is why it is really good to have opportunities such as this meeting, where we can say that we need to work together, look at regulation and look at what therapy, practice and training are about. It is essential that it incorporates adult and child thinking in that way. Thank you for the question.

Pam Duncan-Glancy: That was really helpful—thank you.

Pam Gosal: I thank the witnesses for giving such an informative summary and for their informative answers.

Dr Moon, you mentioned Blair Anderson, who told us that 60 per cent of respondents to the survey came from Christian households. Taking that into account, do we need to do further research to get evidence and hear from more diverse communities and religions in order to ensure that they are included in support for the ban on conversion therapy in Scotland? If so, should those views be heard in relation to the bill or to secondary legislation, in order to reach out further?

Dr Moon: I think that you are referring to the Ozanne Foundation findings. The LGBT survey probably shows that conversion therapy takes place and is being offered across faiths. I do not know how much more research we want. It is happening, we know that it is happening, and we have evidence that it is happening. We need to stop it and we have an opportunity to do that.

To me, if any young person who is born today reaches 10 or 15 and has the opportunity to live in the world in a safe way because of what we have done, that will be one of the greatest statements of freedom that we could possibly have. That is why we are here. That young person does not need to know who we are; they need to know that we have created safety and security for their life. With all due respect, there is a limit to how much research and how many consultations and meetings we can have. It is an abhorrent practice and it needs to stop. We have the opportunity to stop it, so let us do it.

11:30

Pam Gosal: You mentioned that it happens and that we know that it happens, but there are a lot of religious, cultural and linguistic barriers out there. How do we overcome those to reach out to the people who most need our help?

Dr Moon: We need to work together, although I appreciate that it is not easy. We have a coalition that is made up predominantly of mental health and national health service professionals. I am sure that a number of people in the MOU coalition have religious affiliations. We work with national voluntary organisations and foundations and we have reached out to different people to try to bring religious organisations together, so there are opportunities to do that work.

Most surveys of young people look only at those who are 16 and over. We have not looked at those who are under 16, but it is highly likely that they are open to conversion therapy. At one level, all the research points us in the right direction, but I do not know any other way than us working together. This meeting is one way of us doing that, but we have to find ways to make sure that the work continues when we leave the room in order to make sure that people are safe. I do not think that that rules out the ban. It is absolutely necessary because, without it, the practice will continue.

I remember that, several years ago, before trans binary and non-binary people were included in the MOU, we were at a meeting where we—predominantly trans-led organisations and some smaller organisations—advocated that trans be included. We were told very clearly by two people at the meeting that we needed more research to show that transgender people were being persuaded into conversion therapy in some way, shape or form. My argument was that, while we did the research, people would be dying, and I would not be culpable for that.

The anecdotal and testimonial evidence that we gathered from witnesses is available. There was plenty of it, and it told us that trans binary and trans non-binary people were receiving conversion therapy, so we moved to include them in the MOU. In the week when we presented it to the Houses of Parliament in 2018, the LGBT survey that included the subject was produced, and it showed us that trans people were being offered conversion therapy. Trans women were the most likely to be offered it, but trans men were also being offered it.

We need research, but not at the expense of a ban. We have to find a way to do that.

Jen Ang: I will respond to the question about whether further research might be needed for the legislation or at a subsequent stage. I understand what Pam Gosal articulated, which is that there were responses to the consultation exercise in which people across Scotland raised concerns about what this would look like.

I emphasise that all our organisations have come back to say that it is important that survivors of conversion therapy in Scotland are pivotal and are engaged at the start, from now. It is important that real evidence of what conversion therapy looks like here is fed in. We have international examples but, for the legislation to succeed for us, we need to look at what we know about the survivor profile here. At the same time, the engagement with people who have raised concerns, whether in a faith-based or therapeutic setting, should be drawn in. That should happen both in relation to the drafting of primary legislation, but also—crucially—at the guidance stage.

As Dr Moon said, the content of the ban is clear, and there has been a unified view across the evidence sessions that you have held. The only real question is how to make it meaningful in Scotland, and that is about addressing the particular communities and settings in which conversion therapy occurs and hearing from the

people on both sides of this regrettable practice about how it happens so that we can get to the root of it.

I say one more time that we have a good track record in Scotland of not being afraid of these complex issues and of putting a foot forward. We sometimes pride ourselves on being first or early in banning harmful practices and offering restorative justice to survivors.

Karen Adam: You have answered a lot of the questions that I was going to ask, so I have been changing my questions as I go. Thank you for being so clear, direct and articulate. It was really quite moving when you spoke about children in the future, which is what it is all about. You have highlighted the heteronormative lens that we often get trapped in looking through, and you said that homophobia and transphobia are often internalised, which comes from pressure to conform in our heteronormative society.

I keep trying to pin people down on the point that a ban on conversion therapy will need to be supported by a range of non-legislative measures. What more do you think is necessary to support the ban? Do we need any wider support now and in the future?

Jen Ang: In our joint response, we outline a range of additional supports that we believe it will be important to think about. Some of them are drawn from international human rights framework best practice and some come from our experience of working against harmful practices in Scotland.

First, we speak about the need for leadership in relation to the affirmation that LGBTI+ people are not broken or disordered. You might think that that obviously underlies the decision to ban conversion therapy, but there is something important about a strong cross-section of Government and third sector organisations stating that that is the purpose of the ban.

We need to target the false, misleading and pseudoscientific claims that drive conversion practices, and to prohibit the advertising and promotion of such practices.

We have spoken about the need to ensure that survivors are involved from the start of the process. As we all know, having a truly co-produced or survivor-led process will mean that we need to be open minded about the other asks in relation to both resourcing and the shape of the legislation and the guidance to come. It is important that we properly fund awareness raising and training for the front-line practitioners who will work to identify the practice and report it.

We have said that there needs to be significant investment in support for survivors of the practice. In that regard, I note in particular that JustRight Scotland does a lot of asylum casework, including for people who have suffered persecution on the basis of their gender identity or sexual orientation. We need to have regard to the number of survivors of conversion therapy in Scotland who may have experienced different or more severe forms of the practice abroad.

Finally, we flag up the need to consider investigative powers. I know that the committee explored that earlier and left it open but, as a lawyer, I could not recommend that we simply ban the practice without a mechanism for enforcement and accountability.

Dr Moon: That was a comprehensive answer.

We have been fortunate to have support on the MOU from the Conservative MP Alicia Kearns, who has set out the wording and a number of proposals around the banning of conversion therapy. We are certainly looking at survivors. We are doing a piece of research with a young man—a cis guy—at the University of Warwick about what support survivors want. We want to find out what support the survivors who are out there need, for example through a helpline, which is something that we want to ensure is in place. If there is not a ban, the number of survivors will grow, and in future there will be survivors who are adults and children.

We want to make sure that therapists and those who undergo psychotherapy training are mandated and that they are trained properly. We need to work with organisations to ensure that intersectionality is incorporated, that gender and sexual orientation are included and that training organisations, healthcare providers and general practitioners are aware of the importance of practising safely.

We want to ensure that young people are protected and that something is in place to ensure that parents and legal guardians protect young children from conversion therapy.

Also, the advertising of conversion therapy in any way needs to be addressed. A number of organisations use language in a particular way to present the idea that people can explore their gender in a safe way, but when we dig down into it, we realise that most of those organisations do not want to be on the MOU, that they do not agree with it and that the extended exploration of someone's traumatised history is really a way of preventing them from being able to live their life and have the gender or sexual orientation that they wish to have. We want that to be addressed.

Karen Adam: Thank you. That is really helpful.

Pam Duncan-Glancy: I echo what my colleague Karen Adam said about the strength and power of Dr Moon's testimony. It is probably

one of the most powerful statements that I have heard in a long time, particularly in relation to young people and the need to get on and ban the practice and not necessarily focus too much more on time and research.

You will forgive my being sceptical about the UK Government's approach on the issue. A lot of evidence suggests that there is much that we in Scotland can do within the devolved capabilities and responsibilities of the Parliament, which I am pleased to hear. On the points that we have heard about regulation, in particular in relation to training and the need for us to get that right, do we need, ultimately, to wait for reserved legislation on that or is there something that we can do in Scotland to address areas that you mentioned?

Dr Moon: There are things that you can do right now in Scotland. It is important to make sure that the ban is implemented and that the matter is addressed in a way that allows you to move ahead. I feel that our appearing at the committee is an incredible statement—who the committee has before it and what it is achieving sets a precedent. It is about changing things.

I do not want to say anything about where the UK is at, but if it carries on delaying, the question why there is a delay will need to be answered. I do not know why there is a delay. Having come to the committee, I am incredibly pleased to see that there are people who actively want to make a change.

We have the information. I have tonnes of papers; I could go home and bring back wodges of books, papers and consultations, but we are here. I hope that the Parliament will do what is suggested, because it is about changing people's lives. I identify as trans and I am knocking on a bit, but there are young people who desperately need to know that they can live in this world safely. That must happen through what Parliament implements and what we do.

We need to make sure that training is safe and that young people can see therapists. I am aware that a number of therapists will be shuddering at the thought of having to think about gender and sexual orientation, but we need them to do that, because those things are part of who we are and it helps us to live in the world.

11:45

I am trans and have a disability. That does not make my life easy. I have to hope that legislation brings about changes so that I can actually get on a bus. Such things matter to me, but they matter far more to young people. Gendered intelligence works incredibly well in respect of young people who are being attacked because they are transgender. We cannot allow that. We are adults; we need to know that we have the power to make a change. I believe that Scotland can do that.

It is quite overwhelming to be here. To hear that people want to bring about change is so powerful, because we can take that message to young people who listen to this Parliament and will trust that we will do what you are setting out. That is so important. I thank you on behalf of those young people.

The Convener: Thank you very much for that really powerful contribution.

Maggie Chapman: Thank you both for coming today, and for your powerful and informative contributions, previously and this morning. I am very mindful of the view that we should stop talking and get on. I share somewhat your frustration at the fact that we are still talking about the issue.

Igi Moon talked about the importance of intersectionality. Thank you for raising that issue, because I do not think that we have previously heard the matter being articulated in that way.

My questions draw on strands of what Pam Duncan-Glancy and Jeremy Balfour talked about earlier—in particular, medical professionals, in which I include the full range of healthcare professionals from clinical and medical professionals to psychotherapeutic professionals. How do we provide clarity on what is and is not allowed in respect of that setting being the safe space that you mentioned, and in relation to therapists being able to allow challenging and confusing exploration with patients, clients and survivors? I am interested to hear how you think our definition in law will impact on that.

Dr Moon: In our work with young people and older people, good training means that we are not afraid to work with someone and say, "Look, this is the situation." When I am working with people, I am pretty aware of what is going on around them, and I need to say it.

We need, through training, case studies and reflective practice to overcome our own fear. We often have our own embedded anxiety and fear. When somebody comes to a therapy session and is experiencing depression, we must not be afraid to explore the dreadful places where they go with that depression.

I worked in alcohol and drugs services for 20 years. I have seen people die in my life and in the work that I have done. We must not be afraid to sit with people and talk about feelings. If a person is unable to verbalise their feelings, we need to find ways to mediate those feelings in a space in which the person feels that they are able to explore who they are.

I am aware of rhetoric that is going around at the moment, with people asking, "Gendered feelings—what does all that mean?" What does anything mean? How do we know what depression feelings or anxiety feelings are? We know that there is a world exists that is affected by that, and we need to feel safe enough to explore it. We have to do that through training.

General practitioners and mental health professionals need to be supported in that. As Stonewall has found, many mental health professionals do not feel that they understand anything about sexual orientation and/or gender. I do not think that that would be difficult to remedy. Most of the organisations that are signed up to the MOU could ensure that whatever training is needed is put in place, so that people would not be anxious about addressing gender and sexuality, race, ethnicity, religion and age intersectionally.

To be frank, this is about thinking radically about how we want our professional worlds to be. I am aware that GPs are very scared of prescribing hormones because of what is happening at the moment. That is partly because of training issues. They do not discuss gender and hormones and they have very real anxieties about wanting to be heard about what the treatment might mean.

The judgment in Bell v Tavistock has been overturned. That is a good thing, but it means that there are questions that we need to ask about training and curriculum development. That is where it starts. We are where we are now because that has not happened over the past 20 years. I am aware of that because I train people. Equally, our thinking in society needs to be done as we are doing now—that is, we need to sit down and think things through. We then need to develop educational packages to help young people to live better lives.

Again, I say that it is about working together. The issues can be addressed. I do not think that there is anything that cannot be addressed and would therefore prevent a ban. It can be done. As you do, I think that taking action is really important.

Maggie Chapman: I will draw on the evidence that you have produced about medical professionals practising conversion therapy. What sanctions do they face? Does the practice largely go unchallenged because of fear of discussing it?

Dr Moon: People are very scared to talk about it. Some GPs, because of their religion, culture or beliefs, do not want to treat certain people. I hear that a lot of people in the trans community do not receive treatment that they should be getting, so there are obviously problems with access to trans healthcare. Such issues must be addressed, and they must be addressed properly, thoughtfully and mindfully so that people come on board voluntarily and issues that they need to speak about can be addressed in supervision and in reflective practice. We have the ability to puts things into place, but I am not sure that we are doing that as well as we could.

Some 19 per cent of people were offered or had conversion therapy in healthcare settings. That is a worry, but it is not unusual. I know of one young trans person with an eating disorder who was put in a setting that was not in keeping with their gender identity. They were told quite clearly that they needed to pray and that their gender would change.

Those are not acceptable practices. When we sit with people, we hear what they say and we know what they think. We have an ethical responsibility to challenge such thinking and to provide a space where people can get the support that they need. Their views might not be coming from a bad place, but from a place that needs to be worked through. Years ago in the NHS we would have weekly training on different topics. Doing such things is not difficult, but we need to do them together.

The Convener: You are covering a lot of questions in your answers, which is great.

Jeremy Balfour: I will start with Jen Ang, if that is okay. You will have heard the previous witnesses being asked this question. Obviously, and as you have described, we already have lots of laws in Scotland. Many are to protect people from torture, rape and other forms of abuse. The previous witnesses said that there are still gaps in the law that legislation such as we are discussing could fill. I do not want to put you on the spot, but can you outline some of the gaps and how the legislation would fill them?

Jen Ang: Sure. I alluded to that in my opening remarks. It is possible, through current legislation, and depending on the context, to seek to bring a case that would challenge conversion therapy as a breach of human rights. As we know, rights are not real if they are not enforced and people are not protected.

We see from the evidence that our existing legislation does not cover everything in this area. In referring to legislation, I mean not just the legal framework, but the awareness raising that is required round it, and the support and access to advocacy to make people understand that the practice is unlawful and harmful. That is not all in place. States might require to take other steps in order to fulfil their obligations.

We already agree that conversion therapy is unlawful practice, but the gap between the law as it stands and the number of people who are experiencing those harmful practices and are not

supported tells us that action needs to be taken. In those circumstances, the strongest thing that a state can do is what we have done. That is, first, to show leadership. We see Governments doing that alongside social movements, communities and faith leaders in many other matters. If we cast our minds back over the past 40 years, we can mark where widely held beliefs have shifted over time. Some of that has been through strengthening protections against some practices, as we have become aware that there is a gap.

I will come back to the question. There is a difficulty in the UK in relation to conversion therapy. I distinguish it from more harmful forms of conversion therapy that many of our clients have experienced abroad. Forms of it are clearly illegal; for example, rape being used as an instrument of conversion therapy. I mention that to illustrate the far end of conversion therapy and the damaging beliefs that underlie it, which we seek to stem in taking leadership on the idea that it is not legitimate to engage with someone in order to change their sexual orientation or gender identity. The difficulty in the UK is as has been pointed out; actions such as rape and physical assault are already illegal, but other harmful behaviour is not being captured and prosecuted, because it is not picked up through the frameworks that we have.

I will draw another analogy. Domestic violence, gender-based violence and domestic abuse are issues on which Scotland has thought long and hard. Those are not specific offences; there is a range of offences and there is a really good cross-sector and cross-Government approach to making it clear that gender-based violence is a serious harm. There is a package of support that is geared towards combating gender-based violence that sits alongside prosecution of other criminal offences.

Jeremy Balfour: I will push you a wee bit on that. I still have not quite worked out what a change of law would mean in criminal law terms. I appreciate that this is a civil matter. Is this more about educating civic society, the police and the Crown Office and Procurator Fiscal Service than it is about seeking to change the law?

12:00

Jen Ang: No—it is important to support a ban that includes criminalisation of an offence, because there is a gap. As I said, the harm occurs through people engaging with someone—very often by speaking to them in taking advantage of a position of power—in order to try to change their sexual orientation or gender identity. Such action is very difficult to pursue; indeed, it is not possible to pursue it in all contexts. That is the gap.

States have a choice between civil and criminal penalties; criminalisation of a practice indicates its severity and importance. Where there is recognition that we have an obligation to stop a harm being perpetrated, that is typically the sort of practice that we would look to address with criminal sanction rather than just a civil penalty.

Pam Duncan-Glancy: You have talked about the need for investigative powers. We have heard in various submissions about the approach in Australia. In particular, Victoria has legislation on the issue and has given the Victorian Equal Opportunity and Human Rights Commission powers to investigate, monitor, intervene and so on. Could that approach work in Scotland? Is there a body with which we could lay such powers? Where should the powers lie?

Jen Ang: It is not quite a lift and lay situation, as you will be aware from having just heard from my colleagues from the Scottish Human Rights Commission and the Equality and Human Rights Commission. There is, in Scotland, a particular framework that the national institutions have worked out, which is different from that in other jurisdictions. I am inclined to believe that, if there were a criminal offence, the main body of rights that we would be looking to protect would be based on our human rights framework, so perhaps the Scottish Human Rights Commission would be the appropriate body. However, I agree with my colleagues that, at this stage, it is difficult to know what the UK Government and Scottish Government are going to do, so it would be foolish of me to make a proposal that is impractical in terms of what could be done.

I highlight that, as you know, a law is not effective if it is not enforceable, and that leadership is everything. That is one reason why, in the context of new legislation banning a harmful practice, it is important to have a body with investigatory powers as well as responsibility to monitor and to hold to account. That will be especially the case in the first five to 10 years, when we will all be coming to terms with the law and understanding what it means.

The Convener: As members have no more questions, I thank our witnesses very much for their extensive evidence, which has been really helpful to the committee's work.

We now move into private session.

12:03

Meeting continued in private until 12:49.

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