



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 17 March 2015

Session 4

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JUSTICE COMMITTEE
9th Meeting 2015, Session 4

CONVENER

*Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)

DEPUTY CONVENER

*Elaine Murray (Dumfriesshire) (Lab)

COMMITTEE MEMBERS

*Christian Allard (North East Scotland) (SNP)

*Jayne Baxter (Mid Scotland and Fife) (Lab)

*Roderick Campbell (North East Fife) (SNP)

*John Finnie (Highlands and Islands) (Ind)

*Alison McInnes (North East Scotland) (LD)

*Margaret Mitchell (Central Scotland) (Con)

*Gil Paterson (Clydebank and Milngavie) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Paul Broadbent (Gangmasters Licensing Authority)

Ian Cruxton (National Crime Agency)

Helen Martin (Scottish Trades Union Congress)

CLERK TO THE COMMITTEE

Joanne Clinton

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament Justice Committee

Tuesday 17 March 2015

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Christine Grahame): Good morning and welcome to the ninth meeting in 2015 of the Justice Committee. I ask everyone to switch off mobile phones and other electronic devices, as they interfere with broadcasting even when they are switched to silent. No apologies have been received.

Agenda item 1 is to ask the committee whether it agrees to consider in private item 3, which is consideration of a draft stage 1 report on the Prisoners (Control of Release) (Scotland) Bill, and item 4, which is consideration of our work programme.

Members *indicated agreement.*

Human Trafficking and Exploitation (Scotland) Bill: Stage 1

10:00

The Convener: Agenda item 2 is two evidence-taking sessions on the Human Trafficking and Exploitation (Scotland) Bill. I welcome to the meeting our first panel of witnesses: Paul Broadbent is chief executive of the Gangmasters Licensing Authority; and Helen Martin is assistant secretary to the Scottish Trades Union Congress.

We will move straight to questions from members.

Margaret Mitchell (Central Scotland) (Con): It would be helpful if Mr Broadbent could say something about the role of accommodation in attracting people who are subsequently trafficked. For example, I have heard of advertisements that turn out to be quite misleading in their claims about attaching accommodation to employment.

Paul Broadbent (Gangmasters Licensing Authority): I can certainly say something about that—

The Convener: I am sorry. I should have told the witnesses that their microphones come on automatically. Moreover, if you wish to come in on a question that has not been specifically directed at you, you should just indicate that and I will call you to respond.

Paul Broadbent: There are 68 gangmasters licences in Scotland. Under the conditions that are attached to them, any transport, accommodation or anything else that a gangmaster advertises and provides should be of a sufficient standard for a reasonable person. However, some gangmasters subcontract accommodation or do not advertise or provide accommodation at all, in which cases workers must find their own accommodation. In our experience, that is where the problems lie, because there are many rogue landlords and people who are willing to charge exorbitant fees for accommodation that is not just substandard but is woefully inadequate. That very issue forms part of our inquiries.

All 68 gangmasters in Scotland are, at this point in time, compliant—I do not think that anyone becomes a gangmaster intending to break the law—but it is not just the registered offices that we need to think about. There are also 209 gangmasters from elsewhere in the United Kingdom supplying labour to Scotland, and we ensure as far as possible that the accommodation that they provide is of a sufficient standard and complies with our licensing standards. If it does not, their licences can be revoked or we can

impose additional licensing standards to give them time to improve the accommodation. Overall, however, our work is more and more focused on unlicensed gangmasters—also known as “criminals”.

Margaret Mitchell: How do you pick those things up? What checks do you carry out to bring such matters to light? Do you monitor adverts, or are the abuses unearthed through, say, complaints to local authorities about overcrowding and the subsequent noise?

Paul Broadbent: We pick them up through all those means. In fact, the work is almost entirely intelligence led. People will advertise that they have good accommodation, and we find out whether that is the case either by looking ourselves, or from a snippet of intelligence from a member of the public saying, for example, that the house next door to them seems to have a disproportionate number of people coming in and out in shifts. Changes in the people who live in a house between day and night, or 10 or 20 people living in a small house are typical signs. We receive intelligence from Police Scotland, local authorities and licensed gangmasters who do not want their reputations to be tarnished by the sort of operations that are used by unlicensed gangmasters. We unashamedly take intelligence from each and every source, including anonymous sources, and we act on it to find out whether the concerns that have been expressed have any basis.

Margaret Mitchell: Is a particular type of employment linked to the kind of accommodation that is abused?

Paul Broadbent: Last year or the year before, we did a job called operation Regor. There were two operations in the Fraserburgh and Peterhead area in the north-east of Scotland in which we and the local authority discovered a number of unlicensed landlords. Regulation in the area was tightened up to prevent exploitation of people by giving them substandard accommodation.

Margaret Mitchell: To what extent are the trades unions aware of the link?

Helen Martin (Scottish Trades Union Congress): The trade unions have a slightly different relationship with the issues because where we organise tends to be in the better end of the sector. The fact that the trade union movement is active in a workplace tends to mean that it is a better-quality workplace than others where it is not.

There is a link between general exploitation in society, trafficking and forced labour. We are clear that tackling trafficking needs to be seen as part of tackling a wider range of abuse. We might want to tackle accommodation abuse to ensure that

people are not subsequently abused in other ways, but we should also think about other labour-market issues, such as very poor-quality contracts, breaches in payment of the minimum wage and other things that we know are happening in industries that, although they do not necessarily constitute the severe end of labour abuse such as trafficking, open the door to such abuse.

We would like the matter to be seen as a spectrum of issues rather than try to tackle just the most severe issue without thinking about the other ones.

Margaret Mitchell: Are you confident that the balance is right and that, by looking at the wider spectrum, we would not neglect the potential for spotting trafficking and providing training to do so?

Helen Martin: No. To be clear, I say that it is important that we do that as well. In my submission I talk about the need to ensure that public sector workers who might come into contact with trafficking are properly trained. The Scottish Government is now starting to focus on that a bit more. We welcome that and hope that the bill will roll that out in full.

The bigger point that I am trying to make is that if we focus simply on tackling trafficking and ignore wider labour-market abuses, we are unlikely to get far in tackling trafficking. It is much better to tackle the abuse that is quite visible and that we know is happening because that helps to create sectors that are better organised, better run and have a mixed workforce.

Immigrant workforces are particularly vulnerable and tend to work in sectors in which they are likely to receive bad contracts and poor pay, so we need to raise the quality of the workforce and bring more Scottish people into it. That is not to do down immigrant workers—we welcome their working here. The point is that the better the jobs are and the better the workforce functions, the less likely we are to have trafficking.

The Convener: We do not dispute the general content of what you say about the need to improve working conditions and contracts across the spectrum, but we have to focus on the bill. I am not saying that what you say is incorrect, but I would like both of you to keep the focus tightly on how we can improve matters and where the bill falls down on the requirements that you see as you are out on the shop floor and at the coalface. Do you see what I am saying? If we go too wide, we miss the focus.

Margaret Mitchell: That was my next question. Someone else can ask it.

The Convener: I will go to Christian Allard. What the witnesses said is not wrong. It is just that we have to deal with the bill and report on it.

Christian Allard (North East Scotland) (SNP):

I have a question for the Gangmasters Licensing Authority. Has there been an increase in illegal activity—in particular, in sectors in which we did not have it before? Will you give us a picture of where we are at?

Paul Broadbent: Yes, there has been an increase in unlicensed activity that we are aware of, which manifests itself as forced labour, compulsory labour, domestic servitude and even human trafficking. That increase is the result of the public's and public authorities' awareness and increased understanding of the issue, as opposed to there being more human trafficking. That is evidenced by the increased intelligence that we are now getting from sources from which we did not previously get it. I do not think that there has been an increase in human trafficking or in the offences that are covered in the bill; rather, the increase in public and public authority awareness has given us more information with which to work.

Christian Allard: Will the bill provide more awareness, which will in turn bring an increase in activity for your organisation?

Paul Broadbent: Absolutely. Attached to the bill are non-legislative activities, which are included in the strategy. Some of those will involve awareness raising and training across the board for people who are even more on the front line than Helen Martin and I. That is the next stage.

Christian Allard: The question is, then: can you cope with that increase in activity?

Paul Broadbent: We are up to capacity in capability now, but we will do our very best to do more with less and less, as austerity moves even further.

Christian Allard: Would you like to have seen provision in the bill to address the difference, which you talked about, between the 68 gangmasters in Scotland and the 209 UK gangmasters that supply labour to Scotland? Is there any way that we can legislate to ensure that those 209 do not have different standards from the 68 in Scotland?

Paul Broadbent: The bill suits the purposes of the GLA very well, at this moment.

Christian Allard: The STUC said that it is concerned that the GLA might not be able to cope with increased activity.

Helen Martin: Yes—we have long been concerned about underresourcing of the GLA. We have repeatedly called for it to be much better resourced, because we think that it is a very important organisation that does a very good job of inspection and regulation, which is something that we really need more of.

We also believe that the GLA's remit and the sectors that it focuses on are too narrow and that there is a need to increase the number of sectors that it covers. However, there is no point in increasing a body's remit if it is not properly resourced for it. The GLA is underresourced for the remit that it has; we would like it to be properly resourced and the remit widened, or a similar organisation created to deal with other sectors.

Christian Allard: Can you be more specific about the sectors?

Helen Martin: We have concerns about the fisheries and maritime sector, for example. We have in the past had concerns about the construction sector, although we are not particularly concerned about it at present. There has been a huge amount of labour abuse in the construction sector, but things change over time, given economic conditions. The construction sector could have a better system of regulation that would prevent trafficking in the future.

Christian Allard: Would you back up what Paul Broadbent said about there having been not an increase in exploitation, but an increase in awareness of what is happening regarding illegal trafficking?

Helen Martin: That is almost certainly the case. Paul Broadbent will have a better insight into some of the issues than I do. However, there are structural issues that make trafficking more or less likely. We are concerned about domestic workers and issues around their exploitation, which are likely to be made worse by the changes in the tier 5 visa system. Those changes are being made at Westminster, but it is important to remember that they create a context that we must take into account when we are doing our anti-trafficking work here in Scotland.

There are also structural issues in the maritime sector regarding how it works. If we are serious about tackling trafficking in that sector, we need to think about those issues, even though they are much broader than the bill can deal with.

There are issues that we need to think about in the context of writing legislation, but it is also important that we focus on what the anti-trafficking strategy will do and all the different mechanisms that the Scottish Government and the UK Government have at their disposal to tackle trafficking in the round.

10:15

Christian Allard: Finally, do you think that the bill—as it stands—will help to decrease illegal activities?

Helen Martin: The bill is a good start; there are things that it could do that would help to support

that. However, we are somewhat concerned that there is not in the bill a huge focus on prevention. As such, we think that amendments could be made to give better focus on prevention. The first relates to criminalisation of purchasing sex, which would change and disrupt the current market for prostitution. It has been shown in other countries that that approach provides a good basis for eradicating trafficking in that sector.

Secondly, it would be useful if the bill were to establish an independent trafficking commissioner for Scotland. I understand that the Westminster bill is creating a trafficking commissioner who will cover Scotland, but we are hugely worried about that commissioner's independence, and we think that there is far too much focus on law enforcement. We would much rather see a commissioner in Scotland who provides a focal point for work in Scotland. There is an opportunity for the bill to do that. Thirdly, we would like to see a wee bit more in the bill about how the anti-trafficking strategy will be developed and who must be consulted on that.

Such things have gone into bills in the past, and they would give a really good legislative footing to how we will develop work in the future.

Christian Allard: Thank you.

The Convener: Before we move on, I have questions for the Gangmasters Licensing Authority. How much is your funding? Where do you get it from? You commented on cuts and being underresourced.

Paul Broadbent: The funding is £2.68 million—

The Convener: From?

Paul Broadbent: The funding is from Westminster—

I am sorry. There is actually £4.168 million from Westminster and £100,000 from the Department of Justice in Northern Ireland.

The Convener: I see. Is there currently a contribution from the Scottish Government?

Paul Broadbent: No, there is not.

The Convener: Thank you. I just wanted clarification on the position on your funding sources.

Roderick Campbell (North East Fife) (SNP): Good morning. The witnesses have covered some of the points that I was going to raise, but I want to focus a bit more on the bill.

Ms Martin, I take it that you do not have specific comments to make on section 4 of the bill, which is on slavery, servitude and forced or compulsory labour. Are you happy with how that section is drafted? You talked about wider labour abuses. I

take on board what the convener said earlier, but I was not sure whether you had any particular concerns about the drafting of the section on forced labour.

Helen Martin: I have no concerns about section 4 in and of itself. The STUC is a little bit concerned about the general definition of trafficking and the fact that there is a real focus on travel. I think that the committee has received quite a lot of evidence on that point.

Roderick Campbell: Yes—the committee has heard that point.

Helen Martin: We share the wider concern that perhaps more wording should be in line with the appropriate European directive, but we are not massively concerned about the points on compulsory labour in themselves. We think that the definition is reasonable and we hope that it will offer a good legislative footing.

Roderick Campbell: Okay. What would you like to see in section 31 in part 5 of the bill, which deals with the strategy, bearing in mind what you have said?

Helen Martin: We have concerns about how section 31 is drafted. Two of the specific things that the section will do focus a lot on, and essentially relate to, raising awareness. We feel that that is perfectly reasonable for the short term, but it will not necessarily future proof the strategy, because there will come a point at which raising awareness of the legislation will have been achieved, we hope, and people might want to go on and do other things.

The second point starts to get behind

“arrangements to facilitate the detection and prevention of that conduct”,

but we feel that the drafting suggests more emphasis on raising awareness of the bill than on prevention and enforcement, which is not necessarily a fantastic signal, although it is a small point. Maybe there should be more in section 31 talking strongly about the need to prevent trafficking from happening in the first place and the need to disrupt the markets that facilitate it.

We also feel that it is important to include in section 31 a provision that would require consultation of trade unions, civil society organisations and organisations such as the Gangmasters Licensing Authority, when the strategy is drafted or refreshed. It is important that we take evidence from people in a range of sectors about what is happening in Scotland, because that can change from one year to the next depending on the labour market environment.

Roderick Campbell: So, in your view, consultation of a range of stakeholders should be required.

Helen Martin: Yes. That would be a helpful approach, and it is one that has been taken in other bills.

Roderick Campbell: One of the disadvantages of specifying a strategy in a bill is that the strategy needs to be flexible and not too prescriptive, but I take your point about consultation.

The Convener: In putting in the bill a list of people—or any list—the problem is that when we want to add to or subtract from it we have to amend the legislation, which is cumbersome. I share Roderick Campbell’s view that we should keep it flexible.

Helen Martin: The trade unions have in the past taken the view that keeping the list relatively tight and listing only people who absolutely must be consulted creates an impetus to actually consult those key people. It does not mean that there cannot be provision that says, “and anyone else as appropriate.”

The Convener: That could be included as a catch-all at the end.

Helen Martin: Yes. That has been done in other bills and we have found it to be a useful approach that has helped with the creation of policy in the long term.

Roderick Campbell: That was helpful. Thank you.

Alison McInnes (North East Scotland) (LD): Christian Allard explored much of what I wanted to discuss, but I would be interested to hear the GLA’s response to the STUC’s claim that it would be beneficial to expand the remit of the GLA.

Paul Broadbent: I am asked that regularly. As a public servant, I think that the official line would be that we have enough to do within the GLA-regulated sector. However, I am aware that we regulate only a third of the temporary labour market in the UK. We cover agriculture and fish and food processing, but not fishing. If it lays on the seabed and it is dragged up, it is regulated, but if it swims in the sea, it is not, which is an anomaly. We do not cover construction, renovation, warehousing, care homes and so on.

Going back to Mr Allard’s point, I note that I have not seen a marked increase in exploitation in the GLA-regulated sector, but that is not to say that there has not been an increase in exploitation in areas that we do not regulate. Where we find information about exploitation in areas that we do not regulate, we need to pass it on—and we do—quickly to the police or other authorities so that they can investigate.

A frustration that I have is that a licensed gangmaster can be GLA compliant in our sector and abide by our rules and standards, but outside the GLA-regulated sector operates a different business model that would fail to meet the standards in our sector. That is a concern.

Alison McInnes: I appreciate that the GLA has quite enough to do, but would it make sense to draw on the experience that your organisation has and to expand it, provided that the resources were there to do that, rather than to set up a separate regulator for other industries?

Paul Broadbent: Yes it would.

The Convener: That is matter for the UK Government.

Paul Broadbent: Yes.

The Convener: I have not followed the matter at Westminster. Is there any prospect of the gaps being filled or the GLA’s remit being extended?

Paul Broadbent: I am aware that different conversations are taking place in committees such as this one across the UK, but nothing firm has been put down.

The Convener: If the committee wants to pursue that, we could write to the Justice Committee at Westminster to find out what it is going to do about it.

John Finnie (Highlands and Islands) (Ind): Good morning, and thank you both for your evidence. I am aware of what the convener has just said, Ms Martin but, as I understood it, you generally view the proper addressing of the abuse of labour as something that could in some way form part of a preventative process. Is that correct?

Helen Martin: Yes, that is exactly it. We are reasonably clear about the reports of trafficking that we might see or hear, with workers who are being held in different forms of bonded labour and who might have had their passports taken off them. Those are worrying abuses, and they occur in the sorts of places where abusive practices are already happening. They tend to be associated with companies that have long supply chains, use a lot of temporary labour and have quite poor contract models in which minimum wage abuses are known to happen, legally or illegally.

John Finnie: I know from your evidence that you would prefer such issues to be addressed on a statutory basis. You also refer to something called the Ethical Trading Initiative. Can you expand on that? What role, if any, could it play in addressing some of the factors that we are discussing?

Helen Martin: The Ethical Trading Initiative is an organisation that brings together trade unions

and employers. It has an international standing, in that it considers how labour markets function around the world. It has created what is known as the ETI base code, which sets out a list of principles that employers have to follow to ensure that they are treating their workforce fairly and that the products that they provide for the UK do not come with a lot of exploitation attached.

The base code is a reasonably good model, in that it provides a template for what a company would be required to do, such as the checks that it would have to follow to ensure that it is not abusing its workforce or inadvertently taking contracts from other people who are abusing their workforce.

ETI forms part of a much wider movement around human rights and business. The UK Government has signed up to that, and Scotland should be enacting things around human rights and business. Businesses are responsible for what happens along their supply chain. For example, supermarkets are responsible for what happens in the food processing sector, and hotels are responsible, potentially, for what happens to the workers who clean their rooms or provide other services, even though they are not directly employed.

All of a sudden, it is not possible for a business simply to say that it took the cheapest contract and never thought about why it was the cheapest. All of a sudden, a business has a responsibility to consider what is happening along its supply chain and to ensure that it is upholding human rights.

When we talk about slavery, we are talking about a complete breach of someone's human rights—of their freedom of movement and their dignity. The issue is really important, and we need to recognise that employers and businesses are legitimate actors to place requirements on.

The Scottish Government will have limited powers in that respect, as a lot of the powers sit with Westminster, but there is a supply chain clause in the Modern Slavery Bill that provides a legislative footing that applies in Scotland. There are other things that the Scottish Government could do around procurement, which could allow us to start to use such tools. It is not an easy answer, and it is not simple, but we could start to think about how the Government could do that and how requirements could be enacted under the business and human rights legislation that comes from the United Nations.

John Finnie: In your evidence, Mr Broadbent, mention is made of the "Supplier/Retail Protocol". That represents the same sort of philosophy, does it not? Has it been successful? Are there any plans to roll it out further?

Paul Broadbent: Yes, it has been successful. It started as a supermarket protocol involving the big six; in 2010, it went to the big 10. In 2013 we distilled the protocol down and made it more focused on two parts of the supply chain.

We license the gangmasters, who are the labour providers but, under the protocol, we focused on the labour user, the people who actually pull the product out of the ground and the retailer.

It has developed and evolved into accredited training from the GLA, the Ethical Trading Initiative and the University of Derby, which provides the accreditation. A number of supermarkets are queuing up to buy that training, which goes one step further than raising awareness. It trains people in spotting the signs, securing best evidence without putting themselves or the workers at risk, and presenting that evidence to the authorities, which can investigate.

The most crucial thing about that training is that it helps us to put in place systems and structures to prevent people from infiltrating legitimate supply chains in the first place, thus preventing exploitation at the earliest point. It is more about prevention than about reacting to and identifying things when they have already taken place.

10:30

John Finnie: Thank you very much; that is very helpful.

The Convener: This is all good background and I do not want to stifle discussion—I also understand all the interlocking legislation—but we have to focus on the bill, how it will assist, what its limits are and whether it can be amended. The committee should focus on the bill itself and whether it contains provisions that deal with the issues. Let us do that from now on please.

Elaine Murray (Dumfriesshire) (Lab): I am going to ask about something that is not in the bill. Ms Martin, the STUC criticises the bill for not containing provisions on the criminalisation of the purchase of sex—you referred to that earlier. Your submission refers to the Nordic model, under which the purchase of sex is criminalised while the sale of sex is decriminalised. The submission also refers to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, which has a clause that criminalises the purchase of sex. The submission says:

"there is little to stop a clause that criminalises the purchase of sex being included in this Bill."

The problem for the committee is that there is no such provision, so we have not been able to take evidence on what would be a fairly significant change—albeit one to which I am sympathetic. Is

it as straightforward as bringing in such a provision at stage 2, or do you think that a greater degree of consultation would be required, given the nature of the change?

Helen Martin: I believe that it could be brought in as a stage 2 amendment. It would be perfectly reasonable for the Scottish Parliament to decide whether it wants to insert such a provision. There is no real reason not to include such a provision, given that the approach has been shown to reduce trafficking in other countries. It would clearly fit in the bill.

It is also not a massive change to the law as it stands. Prostitution is illegal, and we agree that we do not want it in our society. We are talking about a change of emphasis in the law, rather than changing the law itself. Prostitution would still be illegal but the burden of illegality would move from the prostitute to the client. We acknowledge that the bill already contains provisions on not criminalising victims, and when we think about who is involved in prostitution, look at prostitution through the lens of trafficking and see the great vulnerability of those people, it makes sense to move criminal responsibility on to the person who quite happily leaves their workplace in the evening and uses their hard-earned cash to abuse women and children.

Elaine Murray: As I say, I am sympathetic to the arguments, but I am concerned that the issue goes wider than the bill. The bill is about human trafficking, and such a provision might go wider than the scope of the bill.

Helen Martin: It is wider because it would affect all prostitution but, as I say, prostitution is already illegal. Society already takes a view on it. It is not inconsistent to say that our society's approach to trafficking—this is also consistent with my evidence on labour—should be that we tackle everything in the round, using every lever that we have.

The convener has quite rightly asked me to give evidence on the bill. This is an area in which the bill could be changed, and it is in our power to do so. Amending the bill in that way could disrupt the market for traffickers and make Scotland a much less welcoming place for traffickers—a better way to put that might be to say that it would make Scotland a much more hostile destination for traffickers. Ultimately, such a change would defend vulnerable women.

The Convener: My colleague is making the point that, at stage 2, there is a limit to the evidence that could be taken on what—whatever one's views—could be argued to be a far-reaching provision. It might therefore be difficult to make such a change at stage 2. As I understand it, such a provision was introduced in Northern Ireland at

the end of last year. We do not know what the impact of that has been—we do not know whether it has been successful or whether it has driven prostitution underground.

Criminalising the purchase of sex is a big issue. That does not mean to say that it is not one that is worthy of being dealt with, but the concern is whether it could be dealt with within the ambit of the bill at stage 2. I do not know whether other committee members have a view on the matter, but we will undoubtedly discuss it when we come to deal with our report.

Gil Paterson (Clydebank and Milngavie) (SNP): I think that the committee would need to take more substantial evidence before we could do anything. I know that many people are sympathetic to criminalising the purchase of sex. I am not, for different reasons. It is not that I support prostitution, but I have concerns about other areas. Criminalising the purchase of sex might drive prostitution—which is something that has been going on for as long as men and women have existed—underground. I worry about that, because if prostitution is driven underground, that makes it more difficult to reach people who really need help, and it means that the practice cannot be exposed. That is just a comment.

The Convener: Do you have a question? With luck, it will be on the bill.

Gil Paterson: I have a fundamental question. I know that the STUC has concerns about the definition of trafficking that is used in the bill. We have not yet taken oral evidence from the Crown Office and Procurator Fiscal Service, the Faculty of Advocates and the Edinburgh Bar Association—the legal beavers, as it were—but we have written evidence from them in which they seem to be at least content with, if not supportive of, the definition. I would be grateful for your comments on that.

Helen Martin: In the course of my work on human trafficking, I have had many discussions with various organisations, including lawyers who specialise in the area. A consensus has come through that there is some concern about the focus on the word “travel” in section 1, and that the definition in the bill does not completely cover the definition in article 4 of the Council of Europe Convention on Action against Trafficking in Human Beings. To be clear, it is the bill's intention to cover the entire article 4 definition, because an attempt is made to tie up different elements of it in different ways later on in the bill.

The STUC's view is quite simple. It is important to get the definition right and it is important that the definition is clear. The last thing that we want is to pass legislation and then, when it goes out into the world and is interpreted, end up spending a lot of

time trying to pull back, saying, “Oh no, it means this rather than that.”

If there is a clear definition at the European level that people are agreed on and which people think is a good definition, why should it not just be incorporated in the bill as is, so that we all know where we stand and we all know that the entire convention definition is covered?

Gil Paterson: I am grateful for that.

The Convener: Yes, I think that we are pretty well convinced of the fact that the emphasis on “travel” is misplaced. We came to that conclusion pretty early on in our evidence taking.

Jayne Baxter has a question that she says has nothing to do with the bill, but I am hoping that there is a tenuous link with it.

Jayne Baxter (Mid Scotland and Fife) (Lab): My question is based on some of Mr Broadbent’s earlier answers. Under the GLA scheme, how are labour providers assessed for a licence? How specific are the criteria and the standards? Are words such as “reasonable” used, or do labour providers have to demonstrate certain things? What evidence do you take? How do you know that labour providers are meeting the standards that they claim to meet? How is that monitored? Is there is a one-off demonstration that the standards are being met, or do you go back and do spot checks? How is the system regulated? You spoke about labour providers in unregulated sectors behaving quite badly. How much avoiding of the standards goes on?

The Convener: That is linked to the bill—eccellente.

Jayne Baxter: Yay!

Paul Broadbent: There are two different processes, the first of which involves the application for a licence. If an entirely new company or a company that already operates in one area and which seeks to supply labour into another asks for a licence, it will have to meet a number of thresholds. Inquiries are made involving all the other Government agencies that you would imagine would be involved, and a number of other checks and a physical site visit are carried out. Sometimes, though, with a new business, all you will see on a site visit is an empty room; there is much more to see with an existing business. In any case, the thresholds need to be met, and everything revolves around two specific issues. First, the person to whom the licence is issued must be fit and proper; and, secondly, we have to believe that the person will adhere to the GLA licensing standards—those are being reviewed at the moment but they include the International Labour Organization indicators on forced labour—

and that they will not withhold wages, restrict movement and so on.

In addition to the application process, we conduct entirely intelligence-led compliance inspections. We do not carry out random checks and we do not carry out visits every two or three years, because that means that people know that we are coming. We work exclusively from adverse intelligence that we receive about, say, the withholding of wages or holiday pay. Indeed, with regard to holiday pay, the fact is that millions of pounds are being withheld from workers. The activity seems quite low level until you realise the amount of money that is being withheld and the interest that can be made from it, even with current interest rates. We could receive that kind of information or, indeed, information about people being kept in outhouses or in sub-standard accommodation with no water or electricity and being forced to work for pence each day—or perhaps not even as much as that.

We carry out announced or unannounced inspections either individually or with Her Majesty’s Revenue and Customs, the police or anyone else who can assist us with our inquiries. If there appears to be an immediate threat or risk to life, we will action that with the police straight away and go round and rescue people. We are a first responder in rescuing victims of human trafficking—we regularly do that kind of work.

More generally, however, we conduct compliance inspections against the 38 standards that are part of the gangmasters licensing regulations. The standards have different scores, but the contravention of a total of 30 points can result in the revocation of a licence. That is clear, and the industry knows that that is the bar. A gangmaster might breach a number of minor standards related to process and procedure; on the other hand, they might have withheld people’s passports, which would amount to restriction of movement and could end up in the revocation of a licence and the gangmaster being put out of business.

Of course, we are very mindful that, in revoking a licence, we could immediately make a number of workers jobless and homeless, so we work with the industry to help those people find jobs and accommodation with other labour providers. We do not take any draconian action in isolation; focusing on the workers and victims is absolutely key to what we do.

Jayne Baxter: Am I right that nothing in the bill will get in the way of the performance of your functions? Is there anything that would strengthen those functions or make your work easier?

Paul Broadbent: Nothing in the bill will get in our way. As for other aggravating factors, we

recently had to deal with a situation involving a number of female workers who, if they did not acquiesce to an unlicensed gangmaster or organised crime group, had three difficult choices: enter into a sham marriage; enter into prostitution; or donate an organ—and I use the word “donate” loosely. Of course, they chose the sham marriage option. There is a whole raft of aggravating factors out there that change all the time as criminals become more entrepreneurial, and we need to keep a weather eye on those trends to ensure that we can identify them quickly and effectively.

Jayne Baxter: That is very interesting. Thanks.

The Convener: Does Police Scotland have a database of the licensed gangmasters in Scotland, so that if a member of the public has concerns, the police can check whether someone is either licensed by the GLA and in breach of that licence, or unlicensed, in which case a criminal offence might be taking place?

10:45

Paul Broadbent: Police Scotland does not have such a database at the moment. However, we have an officer embedded in Gartcosh, who works alongside the police all the time. There is no need for Police Scotland to have a database because it has full access to our database.

The Convener: If something happens in Scotland—let us say that a member of the public sees something, such as caravans or a factory behind a high wall, and suspects that forced labour is going on—is the usual route that they would phone the police? I am trying to get something on the record. If somebody suspected that something was going on, how would they go about reporting it so that they felt secure in doing so?

Paul Broadbent: They could ring the police, Crimestoppers or the GLA. All three of those numbers are out there already. If someone rings any one of those numbers, it will always come back to us.

The Convener: Thank you for your evidence. [*Interruption.*] I beg Christian Allard’s pardon—I did not see that you wanted to come in again, Christian.

Christian Allard: Ms Martin talked about having a Scottish anti-slavery commissioner. Would you say the same thing for the GLA, Ms Martin? Could we have a Scottish GLA?

Helen Martin: Yes. We have proposed that in the past. It depends on whether that would be compatible with the remit of the Scottish Parliament. If it was possible, we would be extremely keen to do that because we could cover the industries that we wanted to cover and so on.

Inspection and regulation can be devolved. We have looked at that in other areas, such as health and safety. It is hugely important that we get grips with the fact that, although the GLA does a very good job in certain sectors, a lot of abuse could be happening in other sectors. We are extremely concerned about the maritime sector and the fish processing sector. We think that abuses are happening there that are not covered by the GLA at the moment.

Paul Broadbent: Just to reassure you, we work with the maritime authorities in Scotland, England and Northern Ireland. We also work with the authorities in the Republic, although that is in an advisory capacity because we have no jurisdiction and no powers there.

The Convener: The committee could probably write to the UK Government to ask whether there are any proposals to extend your remit to encapsulate the areas that do not come under the existing three headings. I do not know whether the committee would want to do that, but it links to the issue of exploitation.

I thank the witnesses very much for their evidence, and I suspend the meeting for a couple of minutes to allow for a changeover of witnesses.

10:48

Meeting suspended.

10:49

On resuming—

The Convener: We come to our second panel. I am going to call our next witness a panel of one, but he should not be frightened, and I am sure that he is not. Ian Cruyton is the director of the National Crime Agency’s organised crime command at the UK human trafficking centre. We invited immigration enforcement at the Home Office to attend the meeting, but it was unable to send a representative as it is involved in the Modern Slavery Bill, which is being considered at Westminster today. I can understand why, but it is a bit disappointing, given the Home Office’s key role in relation to immigration and how immigration is sometimes conflated with trafficking. I will discuss later with members whether we want to pursue that and have Home Office witnesses in front of us.

I will go to straight to questions. I look around in the hope that a member has one.

John Finnie: Good morning, Mr Cruyton. To what extent does the link between human trafficking and immigration make the issue difficult to deal with for a number of agencies, yours included?

Ian Cruyton (National Crime Agency): On occasion, there are difficulties with, as the convener mentioned, people conflating the two issues. We recognise that organised immigration crime provides a rich seam of people who are potentially available for exploitation. From an international perspective, we regularly see people who begin their journey to the UK and to Scotland as an economic migrant or as someone fleeing a conflict area or something of that nature and who have willingly entered into an agreement with people who will assist them on that journey. During the course of that journey they will quite often fall into the hands of people who see them as ripe for exploitation and strip away the control over their own lives that they would routinely have. There is an important point there: organised immigration crime is a rich fertile ground for people who end up exploited, whether en route to the UK or when they are here.

Another important point, which was touched on in the earlier session, is the degree to which people who are Scottish and UK nationals and have never left the country or who are otherwise perfectly at liberty to remain in the country are nevertheless exploited hugely. There are vulnerable people out there, so it is important that we always make the distinction between the two.

As the convener mentioned, the human trafficking centre sits under an area for which I have responsibility. We seek to make a clearer distinction between organised immigration crime and the issues to do with human trafficking and modern slavery, while recognising where there are linkages between them.

John Finnie: We have heard the terms “human smuggling” and “human trafficking”. When does someone’s status change? Can someone retain the same status throughout but there is still a crime? Is that correct?

Ian Cruyton: There is a clear definition of human trafficking—the Palermo protocol, which we tend to operate to. There are additional subtleties in how the Modern Slavery Bill describes some categories of people that there is concern may not fall automatically under the definition of human trafficking.

People smuggling is a different issue. In some of the other areas of criminality for which I am responsible, such as drugs and firearms, the language that I have used is that the commodity that is being moved is agnostic. Drugs and firearms do not have an opinion, an attitude, a desire to hide and they are not coerced, bullied or subject to having their support mechanisms stripped away. The difference is the distinction between that and when the commodity is a person. From that perspective, people smuggling refers to people who are willingly entering into a

journey, while human trafficking is where people are very much used as a commodity.

John Finnie: It is important that the bill works at the international level. This Parliament will legislate, but it is important that the legislation dovetails with the position elsewhere in the UK, the European Union and beyond. Are you content that that is the case with the legislation?

Ian Cruyton: Yes. The legislation works very comfortably alongside the Modern Slavery Bill and how we work with our international partners. There is extensive co-operation at the European level, with the Europol European multidisciplinary platform against criminal threats—EMPACT—projects. The National Crime Agency manages a worldwide liaison officer network, which is a niche and unique capability that we provide for Scotland. Through that, you are able to access our international network not only to secure intelligence and to get operational activity under way but to launch joint operations with international partners occasionally. That is an important relationship. As always, we could do more but, nevertheless, we have significantly realigned resource over the past couple of years to ensure that we are starting to place people into geographical locations worldwide, which we traditionally have not done, based on an improved understanding of human trafficking.

John Finnie: I will ask about the specific distinction in Scots law relating to children. Are you content that your organisation is sufficiently versed in it to understand the different approach that is taken to children’s wellbeing in the legislative framework here?

Ian Cruyton: Which particular aspects do you mean?

John Finnie: In the past, there have been issues with juveniles being placed at Dungavel. That no longer happens in Scotland, although it happens at detention centres elsewhere in the UK. Are your staff versed in the different approach that is taken to children here?

Ian Cruyton: I would have to come back to you on that point, as I do not have the detail on it. Sorry.

John Finnie: Okay. Thank you.

The Convener: I want to take you back to “willingly”. It is very tricky to distinguish between someone who agrees to be smuggled into a country and somebody who is trafficked—I will keep with the definition that involves coming from outside, although I agree that there are difficulties with it. Section 1(2) of the bill says, quite frankly:

“It is irrelevant whether the other person consents to any part of the arrangement”

When we went on our visits, the issue was raised with us that although a person might not think that they were being trafficked, we would, looking from outside. Because of the nature of the person's experience elsewhere, they might think that their trafficking was fine; their criteria might be very different. Alison McInnes and I raised with Barnardo's the issue of getting someone to see that trafficking was exactly what had happened to them. Some people do not see their journey in that way, and it takes a lot for them to understand that they have been trafficked and exploited.

It is difficult to draw lines, is it not? Sometimes the conflation is difficult to disentangle.

Ian Cruyton: Convener, you are absolutely right. I apologise for my slightly sloppy language regarding willingness.

The Convener: No, no; I just—

Ian Cruyton: Clearly, in some instances we can see that an individual or family has paid formally to be moved from location to another. In those kinds of circumstances, it is hard not to assess that those people have entered into some kind of willing engagement relationship with the people who may well be managing that transition. However, you are absolutely right. There is huge complexity in this area. We have real difficulties persuading some people, many weeks and months after they came into contact with the National Crime Agency, the police service or others in the victim support arena, that the people who have, from our perspective, exploited and trafficked them are anything other than friends and people who have acted as a support mechanism for them. They may not have experienced that kind of a relationship in their lives previously. It is a hugely complex issue.

Roderick Campbell: The UK human trafficking centre is a competent authority for the purposes of the national referral mechanism. The mechanism has been subject to a review, which recommended that multidisciplinary panels should be used, which would replace your agency's role. How has it been working up to now and what is your view on where we go from here?

Ian Cruyton: I will give you a little bit of the history. Back in 2009, the responsibilities around human trafficking moved to the then Serious Organised Crime Agency. When that happened, a requirement was identified to record instances of contact with potential victims of trafficking. As a result, we self-resourced the creation of the national referral mechanism and the infrastructure that went with it. Over the past couple of years, we have had continually to use operational resources to supplement the resourcing of the NRM, to handle what has been an increasing volume of referrals, year on year.

In our submission, which we made from an operational perspective to the Home Office, which led the review, we said that the NRM as it currently operates is predominantly an administrative process. It is not an intelligence process and it is not designed to be one, so our submission said that the NRM would be better handled by the Home Office or another organisation that is better prepared and equipped to deal with it, so that we could get on with the law enforcement aspects of trying to identify and tackle the traffickers who sit behind the trafficking, bring them to justice and assist in preventing other people falling into their hands.

That was the basis on which the review heard evidence from the National Crime Agency. There has been a range of recommendations on the back of that and you are right that the proposal for the creation of multidisciplinary panels is the preferred recommendation for the way forward.

Our intention is that, at some stage that is still to be determined, the NRM will transfer from the National Crime Agency to the Home Office. We anticipate that, at that stage, we will reinvest the resources that are currently tied up in the referral mechanism into our intelligence development to identify and tackle more organised crime groups.

11:00

Roderick Campbell: You talked about the mechanism being administrative rather than intelligence based. I do not wish to draw you on policy issues, but does that mean that there would be a significant problem with having a Scottish national referral mechanism or administrative unit?

Ian Cruyton: That is a policy decision. We have a really good relationship with the national human trafficking unit in Police Scotland. It works incredibly well. At the moment, the unit uses the national referral mechanism's services. Anything that would reduce the effectiveness of that relationship would need to be examined long and hard.

The ability to draw down the analysis of what is happening in human trafficking has been a powerful contributor to the journey that we have been on over the past few years. We have been able to do that because we have been able to compare figures like for like over a range of periods. If there were to be duplication or a shift in the nature of the analysis, we would start to lose some of that distinction.

Establishing a Scottish national referral mechanism or administrative unit might be the right decision. It is clearly a policy decision, but I counsel that anything that is established must improve what we do currently as opposed to just changing it.

Elaine Murray: Earlier in your evidence, you mentioned that you use the definition of trafficking in article 4 of the Council of Europe trafficking convention. Am I correct about that?

Ian Cruxton: Yes.

Elaine Murray: The bill does not. It has a different definition and other witnesses have suggested that it should be amended to reflect the Council of Europe convention's definition. Is that your view?

Ian Cruxton: We found that replicating the European standard is beneficial to unlocking international co-operation. It means that we are aligned to something that is readily acknowledged, identified and often embedded in statute in countries around the world. Rather than arguing about the nuance of specific new words and phrases that might be introduced, we adopt a standard that people readily recognise and understand. That has been our experience.

In our discussions on the Modern Slavery Bill, our advice from an operational perspective was not to complicate matters by trying to alter the definition of modern slavery and create a new one but, at the same time, we acknowledged that that was ultimately a policy decision. However, the Modern Slavery Bill does not currently seek to redefine it.

Elaine Murray: We have also heard concerns that, as you mentioned, people can be trafficked without travelling but the bill's definition focuses on travel. If it was reworded in the way that you suggest, would that no longer be a concern? Would it mean that the definition was more encompassing and would recognise the fact that people could be trafficked from within Scotland?

Ian Cruxton: We have always taken the view that the wider definition—the European definition—is sufficiently broad to allow us to use it for individuals who may not geographically move around and may not cross a land boundary but who pass through the hands of different individuals who seek to exploit people. Therefore, we believe that that covers it.

Elaine Murray: Concerns have been raised about the conflation of trafficking with immigration issues. Would that definition help to decouple them?

Ian Cruxton: It would, because it clearly and specifically does not make reference to borders and boundaries.

Margaret Mitchell: You have said that you deal with enforcement, while the NRM is essentially about administration. Is there not an issue about establishing the credibility of the person before you to establish whether the NRM needs to kick in and support needs to be made available? Are you

concerned about the timeframe within which you must establish that and the fact that the victim themselves might well be quite confused or in a vulnerable state?

Ian Cruxton: The current national referral mechanism works on a five-day timeframe for establishing reasonable grounds for suspecting that the person in question is a victim of trafficking and a 45-day timeframe for providing conclusive grounds. That information is provided by the referring first responder organisation—in other words, police forces and others. We are very strong about ensuring that we meet the five-day timeframe, because identifying reasonable grounds for suspecting that someone is a potential victim of trafficking unlocks the victim support mechanisms and so on and ensures that the person is moved to a place of safety and looked after.

The 45-day timeframe is more challenging. After all, in some of the more horrendous cases, it can take 45 days for a victim to even begin to speak. Dare I say it, we can at least be confident that we have the right support mechanisms and victim support in place around them.

Margaret Mitchell: Thank you.

The Convener: I think that I am correct in saying that this is a paper exercise. I am concerned that on paper it might sound that someone had come here as an illegal migrant when they had in fact been trafficked. I do not know whether this is practical, but there is a huge difference between seeing and speaking to someone and reading something on a bit of paper. Is that an issue?

Ian Cruxton: You are correct that it is a paper exercise, but we are talking about presenting a very detailed breakdown of information at the initial and subsequent phases. In some cases, it would be fantastic to sit down with the individual, but you cannot do that for every single person.

The Convener: Do you do it for anyone?

Ian Cruxton: I do not believe that we do at that stage, but I will confirm that for definite for the committee.

The Convener: So who fills in the form?

Ian Cruxton: It is filled in by the person who comes into contact with the potential victim of trafficking, so that will be someone from a police force, an approved governmental body or other first responder organisation. The form that they complete is very comprehensive. Of course, the person who is believed to be the victim of trafficking also has to give their consent to enter into the national referral mechanism.

The Convener: Which could be difficult if they do not speak English.

I want to pursue this issue a bit further. Is there an approved list of people who can make these referrals?

Ian Cruxton: Yes.

The Convener: Do voluntary and third sector organisations that deal with victims of trafficking and exploitation fill in these forms?

Ian Cruxton: In many instances, yes.

The Convener: It would be quite useful to have that list, because—and I am not attacking you personally here—we have heard criticism of the national referral mechanism as something of a paper exercise. As I suggested when you were answering John Finnie’s questions, victims can fall through the net because they do not consider themselves to have been trafficked. Perhaps some time could be spent talking to them—although, obviously, I am not asking you to do that with everyone. There might well be black and white cases in which you can say, “There’s absolutely no issue here,” because the people in question will have come in by such and such a route.

However, there must also be very vulnerable people who cannot speak any English and who are probably being done a disservice by being put through this process and treated as illegal migrants when they have indeed been trafficked without being aware of it. From our visit, it was clear that it took some time—in certain cases, months—for people to appreciate what had been happening to them across several continents. In one trail that we saw, a person had been moved around for two years without having any idea that they were being used as a commodity. On the committee’s behalf, I ask you for a list of the organisations that can refer to the national referral mechanism. Does anyone else wish to say something? Alison, you were on the same visit and I think that you felt the same as me.

Alison McInnes: I agree with you, convener.

Margaret Mitchell: I think that the trafficking awareness-raising alliance is on the list, and it thought that the 45-day timeframe was inadequate and was very keen for it to be looked at. Moreover, on the issue of consent, I know from having spoken to a trafficked person that it was quite clear that she had no idea what the national referral mechanism was. That must raise huge questions about its effectiveness.

The Convener: Did you wish to say something, Christian?

Christian Allard: Of course, people are not just vulnerable because they cannot speak the

language. What if potential victims have, say, learning disabilities?

Ian Cruxton: Clearly, we and first responders cannot assess that sort of thing when we first come into contact with people. However, by giving people the appropriate victim support, we ensure that a range of such issues are taken into account. In England and Wales, that work is managed by the Salvation Army and I understand that, in Scotland, TARA deals with victims of sexual exploitation and Migrant Help deals with others. A range of support functions are therefore available.

It also depends on the nature of the activity. With certain pre-planned operations, we are very clear about the language requirements and other matters. Things become tricky when you come into contact with someone unexpectedly.

Christian Allard: I would love to have the details of the form and the questions that you use to make your assessment, particularly the questions about the person’s ability to respond to the questionnaire.

The Convener: Is the form online?

Ian Cruxton: I do not believe so. [*Interruption.*] I have just been told that it is.

The Convener: I see that you are getting support. We will look into the matter, but if you can provide us with anything else, especially the list of organisations in Scotland that can refer people and more information on the process, it will be very useful.

Ian Cruxton: There is certainly an approved list of organisations.

The Convener: Is that online, too? [*Interruption.*]

Ian Cruxton: I am reliably informed that it is all on the Home Office website.

The Convener: As members have no other questions, I thank Mr Cruxton for his evidence. As previously agreed, we will now move into private session.

11:12

Meeting continued in private until 12:51.

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