



OFFICIAL REPORT  
AITHISG OIFIGEIL

DRAFT

# Health, Social Care and Sport Committee

Tuesday 12 March 2024

Session 6



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**HEALTH, SOCIAL CARE AND SPORT COMMITTEE**

**8<sup>th</sup> Meeting 2024, Session 6**

**CONVENER**

\*Clare Haughey (Rutherglen) (SNP)

**DEPUTY CONVENER**

\*Paul Sweeney (Glasgow) (Lab)

**COMMITTEE MEMBERS**

\*Sandesh Gulhane (Glasgow) (Con)  
\*Emma Harper (South Scotland) (SNP)  
Gillian Mackay (Central Scotland) (Green)  
\*Ruth Maguire (Cunninghame South) (SNP)  
\*Ivan McKee (Glasgow Provan) (SNP)  
\*Carol Mochan (South Scotland) (Lab)  
\*David Torrance (Kirkcaldy) (SNP)  
\*Tess White (North East Scotland) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Margaret Akers (Society for the Protection of Unborn Children (Scotland))  
The Rev Stephen Allison (Free Church of Scotland)  
Eilidh Dickson (Scottish Human Rights Commission)  
Alina Dulgheriu  
Rob Gowans (Health and Social Care Alliance Scotland)  
Ross Greer (West Scotland) (Green) (Committee Substitute)  
The Right Rev John Keenan (Bishop of Diocese of Paisley)  
Dr Catriona McMillan (Law Society of Scotland)  
Dr Mark Pickering (Christian Medical Fellowship)  
Isabel Vaughan-Spruce

**CLERK TO THE COMMITTEE**

Alex Bruce

**LOCATION**

The David Livingstone Room (CR6)



# Scottish Parliament

## Health, Social Care and Sport Committee

*Tuesday 12 March 2024*

*[The Convener opened the meeting at 09:18]*

### Abortion Services (Safe Access Zones) (Scotland) Bill: Stage 1

**The Deputy Convener (Paul Sweeney):** Good morning, and welcome to the eighth meeting in 2024 of the Health, Social Care and Sport Committee. I have received no apologies. The convener is unable to attend today's meeting physically and will therefore join us remotely, so I will convene the meeting as deputy convener.

Today, the committee will take evidence from two panels on the Abortion Services (Safe Access Zones) (Scotland) Bill. As she is the member in charge of the bill, Gillian Mackay MSP will not participate in the committee's scrutiny of the bill by virtue of rule 9.13A.2(b) of standing orders. Ross Greer will attend in her place as a committee substitute by virtue of rule 12.2A.2 of standing orders.

In our first evidence session, we will explore the impact of the bill for those who are against the introduction of safe access zones. Before we begin, I will provide a brief introduction to the session. The evidence that we will hear today will be in relation to the proposed establishment of safe access zones, and we will hear from individuals with lived experience as a consequence. As such, some of the content of this meeting might be sensitive or potentially distressing, and the committee encourages anyone who is affected by any of the issues discussed today to seek support. If anyone needs to take a break during the session, they should indicate that to me.

I welcome to the meeting Margaret Akers, who is the services co-ordinator of the Society for the Protection of Unborn Children in Scotland, and Bishop John Keenan, who is vice-president of the Bishops' Conference of Scotland and the Bishop of Paisley—they are both attending in person. I also welcome Alina Dulgheriu, Isabel Vaughan-Spruce and Dr Mark Pickering, who is chief executive of the Christian Medical Fellowship, who are attending virtually.

Thank you all for giving evidence to the committee this morning. I know that some of you are sharing personal experiences. We appreciate your joining us to help to inform the committee's

scrutiny of the bill. Please note that there is no pressure or expectation to share anything that you are not comfortable with. Again, please let us know if you would like to take a break at any point.

I understand that Alina and Isabel will begin by setting out their experiences and views on the proposed establishment of safe access zones. I invite Alina to address us first.

**Alina Dulgheriu:** My name is Alina Dulgheriu. In 2011, I was single, abandoned, facing unemployment and terrified when I discovered that I was pregnant. I booked an appointment for an abortion; I just did not seem to have any other option. My baby would not know her father and I had little in the way of financial or emotional support. I wanted to keep her, but I did not know how, so my hope rapidly began to fade.

The day that I turned up to my abortion appointment, a volunteer outside the clinic gently gave me a leaflet. Somewhere beneath the palpable anxiety and pressure, I felt that it provided me with exactly what I was longing for. Some would say that I had already chosen abortion, but the truth is I did not choose it. The pro-life vigil gave me the hope I was searching for.

Had I not received the support from volunteers, my beautiful daughter would not be here today. I weighed up the two options I had before me and I chose motherhood; I chose to accept help. It was not easy, but without the support of the group who had given me that leaflet, I could not be proud of the life my daughter and I have charted out together.

In 2019, at the Court of Appeal, I legally challenged the United Kingdom's first buffer zone, which was set up through a public spaces protection order in Ealing, on the grounds of infringing freedom of expression. That is why I am alarmed at this attempt to introduce safe access zones in Scotland. That will criminalise volunteers outside abortion clinics, such as the one who approached me.

No one will deny that visiting an abortion clinic can be distressing, but I did not feel threatened or harassed by being handed a leaflet. It is worrying that we will consider denying vulnerable women access to this potential life-changing information, especially when facing one of the most challenging decisions of their lives, which could have lasting ramifications on their mental and physical health.

Removing the option to receive help to keep a child in case we feel offended is deeply patronising and assumes that women cannot make a decision for ourselves or that we might choose the wrong option. My case is not a one-off: there are hundreds of women, just like me, who have benefited from this support. Yet, we are all

too often ignored in the single-minded race to encourage access—without caution—to abortion for vulnerable women. Other women who would rather keep their babies than have an abortion will be denied valuable assistance in the planned safe access zone. The law will turn anyone who volunteers advice into a criminal.

**The Deputy Convener:** Thank you very much, Alina. I now invite Isabel to address the committee.

**Isabel Vaughan-Spruce:** I have been praying near abortion centres and speaking to women or couples there for around 20 years, and I organise a volunteer group. With my group in King's Norton in Birmingham, we used to stand in twos or occasionally threes near the abortion centre. We never had any posters and we simply offered a leaflet of help to anyone who was entering, with the words, "Can I offer you a leaflet?". We know many, many women who felt empowered to make the choice that they wanted to make to continue their pregnancy because of the support that we offered them, which might be financial support, accommodation, childcare, friendship, baby goods, private medical care, and so on; essentially, services that are not offered by the abortion providers.

Some of the locals in Birmingham campaigned to bring in a buffer zone despite us offering to discuss any concerns they had. The police even arranged a meeting for us, abortion staff, locals and council members to attend, but we were the only ones who bothered to show up.

Since the onset of the Birmingham buffer zone in 2022, I have been arrested simply for standing silently near the closed abortion centre. The justification for that was that it was intimidating service users. The centre was closed; there were no service users. After having to clear my name in court, I was re-arrested two weeks later, and told that my silent prayers were an offence.

I am concerned that this will end up happening in Scotland as it is clear that the issue is not really about women being harassed. We have laws for that and all campaign leaders would willingly work with any authority to condemn harassment.

From my experience, apart from being concerned about the abortion itself, any women who felt anxious going for an abortion were anxious about what they thought we might do because of the negative and twisted stories that are written about pro-lifers. What people hear or read about us is the chief cause of anxiety, and to my knowledge that has not been addressed at all.

My volunteers now pray outside the nearest Catholic church, which is a long way from the abortion centre. Locals have now said that they want the church to be moved, and my volunteers

have been screamed at, spat at, sworn at, and even physically assaulted. Viewpoint-based censoring will inevitably expand beyond the buffer zone.

The zone has created a huge amount of division in the area, with locals who support us telling me that they are terrified that their neighbours might find out what their beliefs are. The community has become polarised and it has fostered the sense of intolerance that was the real issue to start with. Pro-lifers have been demonised. We have even had politicians calling us perverts. That has got to stop. We now have a whole section of society being treated as social pariahs for offering help to pregnant women, and proposed new legislation is simply endorsing that.

I wholly recommend that the Scottish Government protect freedom of thought and speech in Scotland, and that it promote tolerance as opposed to censorship.

**The Deputy Convener:** We now move to questions from members, and I invite Ivan McKee to start.

**Ivan McKee (Glasgow Provan) (SNP):** Thank you, convener, and good morning to the panel. Thank you for coming along virtually or in person. We are keen to get your perspectives on a number of aspects of the bill.

The first thing that I would like to explore is the way in which the bill focuses on behaviours that are defined as behaviours that may cause "harassment, alarm or distress", as you are aware. How does that wording relate to the activities that are conducted by groups standing outside abortion provision centres? How does it relate to what you experience outside those centres?

**The Right Rev John Keenan (Bishop of Diocese of Paisley):** We are grateful for the opportunity to speak to the committee, so that we can present the views of those who hold pro-life views and who want to hold these vigils and also, as Isabel Vaughan-Spruce said, to help women who might well want help at that particular point.

As the police described, the behaviour is static and peaceful vigils. That is the behaviour. As far as we can see, therefore, the bill would have the effect of criminalising static peaceful vigils.

09:30

**Margaret Akers (Society for the Protection of Unborn Children (Scotland)):** To reiterate what Bishop John has said, pro-life vigils in Scotland are a peaceful presence; people are primarily there to pray, not to protest. There has never been an arrest relating to Scottish pro-life vigils and Police Scotland has confirmed in writing and, I understand, verbally to this committee that existing

legislation is sufficient in the event of intimidation and harassment but that no behaviour at pro-life vigils has ever met that threshold.

To echo a concern that was voiced by Isabel Vaughan-Spruce, the bill refers explicitly to silent vigils and to prayer. Criminalising prayer and thought is an alarming precedent to set. I encourage the committee to consider the ramifications of that and how thought and silent prayer might fit the description of behaviours that Mr McKee mentioned.

**Ivan McKee:** Does anyone joining us online want to comment on the issue? If not, I will move on.

If the bill is passed and protesting outside clinics is made illegal, how will that impact on the individuals who take part in those protests? We heard some evidence in private on that, and I am keen to hear your perspectives.

**The Right Rev John Keenan:** As Isabel Vaughan-Spruce said, essentially, the pro-life view is fairly mainstream in Scottish society. It is held reasonably, and those who hold it hope that they do so on the basis of some scientific evidence of the nature of what happens in the womb—we would say the nature of the child in the womb; that is how we would put it. It is a reasonable position to hold in Scottish society. It is held by the Catholic Church in Scotland and it is held in good faith.

Our concern, as was expressed by Alina Dulgheriu, is that the proposals almost amount to saying that to be pro-life is inappropriate and unacceptable. You must remember that there is provision in the bill to extend the ban to general practitioner clinics, counselling services and pharmacies, so, potentially, the bill allows for the creation of zones in Scotland where it is unacceptable to be pro-life. Laws affect social perceptions and we need to be careful about the fact that, if we go down the road of passing the legislation, it makes the position of being pro-life almost unacceptable, in terms of popular opinion.

**Ivan McKee:** We will come to the wider impact of the bill in terms of human rights issues and the issue of silent prayer later in the meeting.

**Dr Mark Pickering (Christian Medical Fellowship):** Thank you for the opportunity to contribute. You asked about protest, but I think that it is significant that the word “protest” does not occur in the text of the bill. The offence that is being created is that of influencing anyone who may wish to access abortion, but the bill’s title contains the phrase “safe access zones”. I do not think that, for those trying to get to premises, there is an issue of safety or even of access. The real question is about influence, and there is an assumption in much of the discussion around the issue that any influence that might lead a woman

to make a different choice, such as Alina Dulgheriu did, is always negative and should be viewed in terms of protest. We are given the impression that people will be shouting or waving placards—Isabel Vaughan-Spruce has cogently talked about the perception that is given—but, actually, we are generally talking about the provision of information, and an effect of the bill will be to reduce the information that is being given to women.

With regard to that question of influence, which is central to the bill, it is important to be clear that, in relation to a polarised ethical issue such as abortion, there are few neutral spaces or opinions. The opinions of those who want the bill to be introduced and who want to raise concerns about protests, as they would put it, are often highly polarised in one direction. Even the staff in abortion premises are not neutral; they may be very nice people, but there is certainly a tendency to influence women in one direction, because of where the staff work.

The question about influence assumes that influence is always negative, whereas we have heard from Alina Dulgheriu’s story that influence can be incredibly positive, and it may simply involve the provision of information. My overriding concern is that the bill would ban alternative information for women who are often not coming for an abortion because they are settled on the decision. They are often torn and in two minds, as Alina was. They are often very distressed and disturbed. Simply having someone who says, “You know what, there is support if you want to make a different choice, and we can talk with you if you’d like that,” can be life changing and transformative for many women. The bill is seeking to ban and limit women’s access to that information.

**Ivan McKee:** Thank you for that point about terminology.

It would be good to get your views and the views of others on the panel as to whether the information that is provided in the clinics reflects that balanced view. Are options presented and is there counselling and other support as part of the process? What is your perspective on that issue, which is another point that we have heard about in private sessions?

**Margaret Akers:** Part of my role at the SPUC is to work with women to help give them a platform to speak about their experiences of abortion. Although this is not universal, a great number of the women whom I work with feel that they were not properly counselled at a clinical level ahead of their abortion, and that they were not given all the information that they needed to make an informed choice about the alternative options that were available to them and services that they could use. The reason why they were considering abortion

was primarily to do with external circumstances, and nobody took the time to address the external circumstances that were pushing them in a particular direction.

I would not say that that is the universal experience of women, but I know a great number of women for whom that is the case and, ultimately, those are the women whom the pro-life vigils want to reach. To go back to your previous question, which was about the impact on people who participate in vigils, I know that the committee has heard from women who participate in vigils as a result of their experience of abortion. It is easy to see the group of vigil participants and the group of women who attend for abortion or who have had abortions as two separate circles, but there is quite a lot of overlap, and it is important to look at the situation with that nuance in mind.

In fact, it is people's experiences of abortion that have made them feel called to offer this lifeline to other women so that they can reach them in their time of need. They do it because they feel that nobody was there for them and that nobody met their need. It is important to consider that nuance. On this issue, it is not so clear that there is one side and another side—there is quite a bit of overlap.

**Ivan McKee:** That was certainly what we heard in the private evidence sessions that we had on the matter.

**Alina Dulgheriu:** I just want to add something from my experience. When I went to an abortion clinic, I asked for help and whether there was an alternative to abortion, because I did not want to do it, but they said that they only offered abortion and that there was no other help. I was already in distress and upset because I did not have any other options—not even friends or family were supporting me—so I received help from a complete stranger. It is hard to believe that someone whom you do not know can give you 100 per cent support, but abortion facilities will not offer the option that some women are looking for.

**Dr Pickering:** The question of information provision is highly important and, as Alina Dulgheriu has just said, the information that is given in abortion clinics is often about what the procedure will do, perhaps with discussion of the potential complications. The women going there will not generally be offered the kind of information that might be offered in, say, a pregnancy crisis centre on financial support, community support and other things.

Very often, there is a highly polarised discussion about the kind of evidence that gets discussed. With regard to evidence on, for instance, how an abortion affects the mental health of women, we will often hear pro-abortion campaigners saying

that there is no evidence that an abortion can affect the mental health of a woman detrimentally, and yet we hear first-hand testimony from thousands of women who go to pregnancy crisis centres, sometimes for post-abortion support, and who will talk eloquently about the extreme mental distress caused by the memory of the abortion that they went through.

The published evidence from journal articles and studies is also highly contested. There are campaigns going on right now involving published articles in journals that show that, in some circumstances, there might be some negative mental health consequences from abortion. Those campaigns are seeking to have those journal articles retracted. It is not that they want a debate or another journal article to be published that shows a different side; they want the journal to say, "We should never have published this." Things are highly politicised, polarised and contested, and there is definitely a campaign to show that there are no negative consequences from abortion.

This sort of thing needs to be done responsibly. However, you will very often hear pro-abortion campaigners saying that pro-life campaigners misuse evidence, use misinformation and so on. Occasionally that might be true; we certainly need to ensure that evidence is given in a responsible fashion and is discussed appropriately, and we at the Christian Medical Fellowship are keen that any person providing pro-life information at a pregnancy crisis centre has really good evidence that they can discuss in an appropriate way.

That said, we must not believe that people on the other side of a polarised debate are neutral. There is a campaign to suggest or make it seem that everyone with reservations about abortion is to be lumped in with, for instance, the crazy Covid sceptics who deny that Covid was even a problem. We must be really careful about that.

**Ivan McKee:** Great—thank you very much. We can connect with you later about this, but from the committee's point of view, it would be helpful to get some data sources, as we have had different perspectives on this issue in some of our sessions and it would be good to get our hands on some specific articles.

**Ross Greer:** I want to pick up on Margaret Akers's point in answer to the first question about this being about prayer, not just protest. The right to prayer and the right to protest are protected differently and to different extents in different pieces of human rights legislation.

My first question, though, comes from my personal perspective as a Christian. As it is a theological one, Bishop Keenan, I hope that you will not mind if I come to you first. How important is

proximity to prayer? I have to say that I am not aware of a reading of scripture that emphasises the importance of proximity for the purpose of prayer.

09:45

**The Right Rev John Keenan:** In answer to your theological question, I would say that place is important. Christianity is an incarnational religion; what that means for us is that we believe that God in Jesus Christ came at a particular time and in a particular place. That makes place and time not just important but crucial from our point of view.

Places were important. People could pray in their own homes—absolutely. Jesus said, “Go to your private room and pray.” However, he also went to the temple, and it was important to do that. He said:

“Where two or three are gathered in my name, I am there in your midst,”

and

“Go into the whole world, and proclaim the Good News to all creation.”

Let me put it another way: if you are saying that the Christian point of view is that you can pray only in privacy—or that it is only natural or important to do so—I have to say that I do not think that that would be a Christian point of view.

**Ross Greer:** You referred to Jesus talking about going into private rooms to pray. That is in Matthew 6, and what comes immediately before that is criticism of those who pray performatively for others to see them. You also mentioned Jesus going to the temple, but the temple is the place where people expect to see others praying. There is a distinction, I think, between praying in a faith setting or in a faith institution—in our case, in a church—as opposed to in a public setting such as this one. I accept that not everybody who takes part in pro-life vigils comes at the matter from a Christian perspective—although that is largely the case with the panel today—but what I am struggling with from the Christian perspective is that, in the scripture, Jesus, immediately before introducing the Lord’s prayer, is very critical of those who pray performatively and calls on people to go and pray in private spaces.

If what you are saying this morning is that the important thing here is not protest but prayer, I have to say that I cannot understand the basis for that as a point of belief, given that scripture tells me that we should not pray like that. Indeed, Jesus is quite explicitly critical of people who do so.

**The Right Rev John Keenan:** I would probably say two things in response to that. First of all, where you are going with that could be

problematic for human rights, because you seem to me to be making a distinction between freedom of worship and freedom of religion, which is something that worries us as bishops in Scotland.

The European convention on human rights and the United Nations Universal Declaration of Human Rights are about freedom of religion—in other words, the freedom to be able to profess your faith in the public square. There have been attempts to revise that to freedom of worship—that is, you are entitled to pray, but only in a church. We worry about that, because it means that you are enclosing religion in houses of worship, whether they be mosques, temples, synagogues or churches. That is not what the Universal Declaration of Human Rights or the ECHR talks about, and we need to be careful about that.

Moreover, in the scriptures, Jesus was not saying, “Don’t pray publicly”; he was saying, “Don’t pray in such a way that you make yourself proud or arrogant.” I think that that is what he was really saying there—he was not saying, “Don’t give public witness,” as far as I can see.

**Ross Greer:** I am obviously not suggesting that you should—

**The Deputy Convener:** Ross, I should just advise that Isabel Vaughan-Spruce and Dr Pickering would like to come in, too.

**Ross Greer:** I am very keen to speak to Isabel specifically about the matter—I just do not want to leave the point lying. Obviously, I am not suggesting that you should be allowed to pray only in a private space—that is, a church—but it is certainly what we are encouraged to do from a Christian perspective.

As for your point about our rights, Bishop Keenan, the fact is that people’s rights are conditional, because sometimes they are contested and can clash with each other. Again, on the idea that some should have the unconditional, unfettered right to do some things, that will clash with other people’s right to do other things, and the question is how we balance those rights. I think that we will all acknowledge that there is a balance-of-rights perspective to be taken into account here.

**The Right Rev John Keenan:** I agree, but silent prayer is tantamount to being a thought—indeed, it is a thought. As far as we as the Catholic Church can see, if you criminalise silent prayer, you criminalise people’s thoughts. Indeed, when the police gave evidence last week, they expressed their worries about that. The human right that is absolute and which cannot be balanced is freedom of thought; many other rights can be balanced, but I think that freedom of thought is the one that is absolute and therefore

cannot be balanced against anything—and I think that it includes silent prayer.

**Ross Greer:** I am particularly interested in Isabel Vaughan-Spruce's perspective on the matter. I think that you mentioned in your opening comments that your volunteers in Birmingham now pray outside a church, much further away from the abortion provider. If it is prayer rather than protest, is it not okay to do it at or outside the church rather than at the abortion provider?

**Isabel Vaughan-Spruce:** Thank you for giving me the chance to respond to that. I want to keep picking up on the word "protest" because I do not organise protests and I have never protested outside an abortion centre. I think that that gives a whole different picture of the work that I do. I hold a vigil, or we have volunteers who might gather in groups of two or three, but we are not there protesting.

It is really important to recognise that presence is crucial for many Christians and even for those who do not share our faith. For instance, flowers would be left at the scene of a road accident or, for a tragedy such as 9/11, people might hold a prayer service at the actual place. When an accident has happened and people lay flowers at the side of the road or when a mountaineer has died and people place flowers up the mountain, that is not necessarily done because those people are there any more, particularly in the case of a road accident. However, that place and that presence are key.

I think that Bishop Keenan alluded to the fact that we are physical people who operate in space and time, so place is very important for us. Christians in particular, including Catholics—I know this, as a Catholic myself—will go on pilgrimage to places where things might have happened hundreds of years ago. The place becomes crucial to our prayers. Likewise, with abortion, it is really important to be at the place where we are praying.

In the case of my arrest, the prayers were not even being manifested. I was not kneeling down holding rosary beads or with a Bible in my hand, speaking prayers. They were simply silent, imperceptible thoughts in my head. In fact, the police officers had to ask me, "Are you praying? What are you praying for?" The fact that someone thinks that it is okay to ask somebody those incredibly intrusive questions that even my spiritual advisers and priests have never asked me is incredibly concerning from the perspectives of religious freedom and freedom of thought.

**Ross Greer:** On the question of proximity, before the buffer zone was brought in in Birmingham, you prayed adjacent to the facility. Even before the buffer zone was brought in, you

would not have been allowed to pray inside the facility—in the waiting room or, indeed, in the room where the procedure was taking place. Do you agree that placing some kind of limit was acceptable? It would not have been appropriate for you to pray in the room where the procedure was taking place while it was taking place. Do you therefore agree that this is not a black-or-white matter of restriction or no restriction, but that it is about where we place the restriction?

**Isabel Vaughan-Spruce:** We have always been respectful of private property. However, we are talking about a public street, and that creates a very different situation. We are talking about somebody not being able to pray on a public street. It is clear that other people are allowed on the street. When I was standing outside the abortion centre, people were standing in different places on the street doing different things—they might have been looking at their phone or stopping to chat with friends. It is clear that, if it is a public street and we are simply banning thoughts that are directed towards God, that is really concerning. Even if somebody else does not understand why we are doing that or its importance—I appreciate that other people might not understand or believe in all the things that I believe in—criminalising my thoughts because they are directed towards God is discrimination.

**Ross Greer:** I will press you a wee bit on that. The bill provides for 200m zones. In some cases—certainly in Scotland—a person would still be on the provider's campus even outwith that 200m zone. I want to ensure that I am getting your perspective correctly and that we are recording it correctly. Are you saying that it would be acceptable for no protest to take place on the provider's campus, even if it was beyond 200m, but that, when the area is a public space or a public highway, that should not be restricted?

**Isabel Vaughan-Spruce:** I am talking about public property. If it is a place that any member of the public is allowed to go to, I would have particular concerns about that. However, if we are trying to restrict silent prayer, that is, as Bishop Keenan said, a concern anywhere. It is a concern if we are saying that somebody cannot think their own thoughts in a house or a building. A silent prayer should be allowed anywhere that people are allowed. Again, that is from the Bible: we are told to pray unceasingly. That is something that St Paul talks about. For those who believe in the gospels and the Bible and try to follow that teaching, their prayer should go with them at all times, in some way or another. Therefore, even on private property, silent prayer should be allowed. I appreciate that who is allowed to be in a private property is up to the individual who owns the property, but anyone who is allowed in a property should be allowed to silently pray there, if they

wish. To say that somebody cannot be on a public street solely on the basis of what they might be thinking is discriminatory.

**Ross Greer:** I completely understand why the emphasis is on the provisions around silent prayer. What is your perspective on vigils, or what some people characterise as protests? Your perspective is that silent prayer should certainly not be restricted, and I completely understand that perspective. Where do you come down on the issue of the placement of people holding placards with provocative messages on them or images of an unborn baby or a fetus? We have seen examples of that, and we have heard evidence of images being projected on to the wall of a hospital. Obviously, walls have windows, so the images would also be projected into the rooms of a hospital.

I understand and respect your perspective on silent prayer, but it is really important for us to understand your perspective on other kinds of activities that have taken place in Scotland which are more visual and provocative. I know that people would characterise things differently, but what is your position on activities where there is more to them, if you understand what I am asking?

**Isabel Vaughan-Spruce:** Alina Dulgheriu spoke to that when she said that we have to be very careful that we do not patronise women just because they are pregnant. It is clear that many of those women might be in vulnerable situations, but that vulnerability can go both ways. For instance, we know that coercion is a big situation with regard to those who are seeking or considering an abortion. If a woman at that stage is so influenced simply by seeing a picture of a baby, it is quite possible that her mind is not made up as hard and fast as we are often told is the case. I have spoken to many people who have said to me that, literally until the last second, they were not sure which way they were going to turn—whether they were going to have an abortion or not. Those people should be able to look at—

**Ross Greer:** On that point, part of the evidence that the committee has heard—it is important for us to talk about this—is that we are not talking only about women who are going into premises potentially to have an abortion but about all people who are accessing a service. We have heard evidence that women who have had a miscarriage or stillbirth are deeply distressed to see those images. They might be accessing the premises for a completely different reason. In most cases in Scotland, the premises are a hospital, so people could be accessing the building for all sorts of reasons that are totally unrelated to reproductive healthcare. However, seeing those images can be deeply distressing not just for pregnant women but for people who have had that kind of experience.

**Isabel Vaughan-Spruce:** Clearly, somebody who is in a state of distress might be distressed by anything. They might see a woman walking into the building with a baby in a pram, and that might distress them. When they are in the hospital, they might see someone else who is pregnant, which might distress them because that person wants to be pregnant, and they are intentionally ending their pregnancy. All sorts of things might distress people when they are in those situations, and nobody wants anyone else to be distressed. However, we cannot start making all those things criminal unless there is something about those things in and of themselves that is intentionally offensive, and I do not think that any of those things are. I do not think that we can say that a picture of a pre-born child becomes offensive simply because somebody might get upset by seeing it any more than somebody carrying a baby is offensive just because it might upset somebody.

**The Deputy Convener:** We are reaching the halfway point of proceedings, and there are three witnesses who wish to comment on that issue. I invite Dr Pickering and the two witnesses who are in the room to comment. We can then move on.

**Dr Pickering:** Isabel Vaughan-Spruce has given some helpful comments, and Bishop Keenan's comments on proximity are helpful, too. Prayer and proximity are often combined and, if the main purpose of a person within the zone is to provide information, we have to accept that that person might be praying silently in their head while offering information. Again, we have to be really careful about criminalising thoughts.

10:00

Various other kinds of prayer could go on within the access zone. If a church is sited within an access zone, it could have a pro-life prayer meeting. It could be advertised that, on a certain day of the month, members of that church will be in it praying for women who are coming to the abortion clinic and perhaps even praying for the staff in a perfectly reasonable way. If that gets out or if it is circulated by pro-abortion campaigners, there could be protests against the church. As Isabel Vaughan-Spruce has said, there are now campaigns to move her church, which is nowhere near the abortion clinic that is under consideration.

A private individual could have a prayer meeting in their home, which might be situated within a safe access zone. That could be advertised online for those who wish to go to it. It could simply involve prayer that is focused on people who are accessing the clinic within the safe access zone. We are really getting into deep and murky waters if we start to talk about that.

I bring the committee back to the wording of the bill. Prayer and protest are not mentioned in the wording of the bill, and neither is vigil. The term that is used is “influencing”, and the question is whether a prayer in and of itself can influence a woman. I would therefore love members of the committee to consider whether they are suggesting that a person who is praying in their home, in a church, or silently on the street, as Isabel Vaughan-Spruce has done, influences women. Whether silent prayer causes an influence is a theological question.

I think that there are questions about tastefulness and decency. I would never support people parading around with placards of pictures of dismembered fetuses who have been aborted and that sort of thing. We have to be very careful about the messaging. I would never support people having placards that say that abortion is murder and so on. However, as Isabel Vaughan-Spruce has said, you cannot start saying that any visibly pregnant woman or any woman with a child must be kept away from the confines of an abortion clinic just in case a woman might feel upset by the thought of what she is about to do. We have to be really careful about that. The offence is influencing. That is the key point.

**Margaret Akers:** One thing is often missing from the discussion. In discussing pro-life vigils, we talk about the views of women who present for abortion as universal. I reiterate that things are much more nuanced than that and that is simply not true. I know a great number of women who have said after their abortion, “I wish they were there when I needed them.” Those are the exact words that a friend of mine, Hayley, shared. The experience, like the experience of other service users who might be at the hospital for various reasons, is not universal.

If members will allow me to be a little bit personal, although I recognise that this is not the issue at hand, I have had a miscarriage, and I see pro-life vigils as reaffirming the humanity of the child that I lost. I see that as a positive thing. On the day I went to hospital to confirm my miscarriage, I had to walk past the hospital book store. It was in February, so there were cards out for mother’s day. I found that deeply distressing. However, I am not campaigning for mother’s day cards to be removed from shops. We are exposed to things that are upsetting and distressing, and people view them differently.

A great number of women—particularly vulnerable women—pursue an abortion that they might otherwise not want because they are at risk of coercion by a partner or are in terrible financial straits, or for whatever other reason. Some women say that they were just looking for a sign that they did not have to do that. People stand out there

with signs. That is literally being present to women at their point of need.

I recognise that that is not how all women feel about pro-life vigils, but I encourage the committee to see that the perspectives of women vary. A great number of women who present for abortion are, at best, ambivalent about that decision because of the various influences on their lives. Therefore, women have varied experiences, and they have varied opinions upon seeing a pro-life vigil, seeing those signs, and seeing that presence.

If I do anything today, I want to echo the voices of those women who, like Alina, were glad that vigils were there for them or who longed for a vigil to be there at their point of need, but it was not. Some of those women now participate in pro-life vigils themselves, and I think that their perspective is particularly important in this discussion. I just want to add that to the record, so that people are aware that the experience of those women is not a universal one.

**The Deputy Convener:** I will quickly bring in Alina Dulgheriu and then come to Bishop Keenan.

**Alina Dulgheriu:** As for my own experience, I have taken part in those vigils, and I can say that scans are not being shown to mothers when they go into abortion facilities. Information about the mother is being held by those facilities; the woman is not allowed to see the scan, because she is considered to be too incompetent to make the decision on her own. It would be fair for women to be shown those pictures. Why does the abortion facility find it so problematic to show those pictures? There is a baby inside.

With regard to Margaret Akers’s miscarriage, I unfortunately had a miscarriage on mother’s day. That was a reminder—just because I had a miscarriage, I would not want to ban mother’s day. It just does not make any sense; things happen.

**The Right Rev John Keenan:** I want to come back to the question of location, because it is important.

If we look at places where location has been important, we might consider, say, Faslane, where for years there was a peace camp just outside the nuclear facility. It was important for those people to be at Faslane. Similarly, my predecessor, Bishop John Mone, often went along to the protests, as they were—or vigils—outside Dungavel detention centre. Presence is important; when those people were there, it concentrated minds about what was happening inside with regard to giving asylum seekers the rights and dignity that they should have had. For people who are against nuclear weapons, it was important that they were at Faslane.

I think that this question of being there with regard to pro-life vigils has implications for Faslane and Dungavel, too. The same reasoning that could be applied to pro-life vigils could, if the context were changed ever so slightly, be very easily applied against those who are for peace or whatever. I think that that is important.

I go back to Ross Greer's point about balance. No one is saying that there should not be balance or that people should be right inside an abortion facility, harassing people. However, we are saying that balance should not mean that a legitimate point of view should be made invisible. That is what seems to be the case here; the bill is saying that this is okay, as long as nobody—indeed, nobody in the facility or the hospital—sees it. We would say that that is not about balance.

I think that we would probably point to the laws that are already in place, of which there are many. The police have laws that allow them to deal with harassment or something that is threatening; there is a law to deal with these things. In fact, they even have a law in their toolkit to deal with something that causes distress—they can intervene if they think that something is distressing.

My evidence as far as the police are concerned is that they do not need extra powers; indeed, what I have sort of picked up from them is that they do not want any extra powers. I do not think that they want to be in a position of having to police thoughts or police influence.

So, what would be the solution? It involves going back to what I think happened in relation to the Faslane protests, where everyone—those involved in the peace camp and the Campaign for Nuclear Disarmament, people from the facility and the police—got around a table, discussed the issue and came up with a solution. That is what the church would propose.

Criminalising rights is quite a blunt instrument, but there is a solution. Perhaps, when an application is made to a local authority to have a vigil or a protest, there could be some condition attached to approval regarding discussion, arbitration or mediation. That could enable someone to say, for example, that they find a particular poster triggering, and the people using the poster could agree to think about using another poster. There is a solution to the situation that we are facing, and it involves dialogue, negotiation and arbitration in a way that ensures that everyone around the table can see that their rights are protected.

I think that you intend to address this issue later, but I would just say that, when you criminalise rights, that is a failure—it is a defeat. Before we take away a right, we have to ensure that every

option is exhausted. It has to be necessary to do so; there has to be no other means of achieving the desired outcome. The measure also has to be proportionate, but I think that the bill proposes unlimited fines. Further, there has to be a way of removing the provision once the issue is no longer there. The right has to be respected—that is the important thing, and that is why we do not want to criminalise a right.

**Carol Mochan (South Scotland) (Lab):** I have a brief supplementary question, which Father Keenan or Dr Pickering might want to answer. I found the discussion about influence interesting. At the point in time that the influence is applied, who is the target of that influence in the various gatherings that have been mentioned? Is the gathering trying to influence lawmakers, or is it trying to influence individuals so that they will make different decisions? Have you thought about that? Does that represent a different way of approaching things?

**Dr Pickering:** That is a good question. I think that, if people want to influence lawmakers, they should be protesting outside Holyrood. That question of proximity is important: you go to the place where something is happening, and that place differs depending on who you want to influence.

To my mind, the chief benefit of what some of my colleagues are talking about is the provision of information in the right context to women who are considering accessing those facilities. Again, that comes down to influence. There is a perception in the wording of the bill that assumes that any influence that might lead a woman not to have an abortion—or might give her the confidence to make a decision not to have an abortion—is always negative. There is an undercurrent in the bill that abortion is essential healthcare, that women make black-and-white decisions, that they are always certain about those decisions and that anyone who gives them any information which might help to dissuade them from following through on those decisions is doing a bad thing. We have heard very clearly from Alina Dulgheriu that that is not the case. There are some women who will be very clear about what they are doing—it is not an issue for them; they just want to get it done and go home. However, there are many who will go to the clinic in great distress and turmoil and are in two minds—or more than two minds—about what is the right thing to do.

The question is, what influence do the staff in the clinic have over women? The bill does not discriminate between somebody outside a clinic offering information to a woman as she walks in and the staff inside the clinic offering information when she is there. Will you start to police all the information and the counselling that is given to the

women inside the clinic by the staff? I would have concerns about going in that direction.

It is true that abortion providers talk about trying to be non-directive, but when a clinic is providing a service about which there are polarised views, people who work there will often have one of those views and will not be in a position of moral and emotional neutrality. Therefore, we have to think carefully about the influence that the people in the clinic have on the women, whether consciously or unconsciously.

We often hear that women who have gone to clinics are not provided with alternatives, and any evidence that they might have heard about the mental health consequences, potentially, is often denigrated and played down. That in itself is influence, so we must be really careful about that.

10:15

**Sandesh Gulhane (Glasgow) (Con):** I declare an interest as a practising national health service GP. I would like to separate silent prayer and protest, and I want to ask about protest to start with. Dr Pickering has said that he would not support placards, shouting and the use of pictures of aborted fetuses. Isabel Vaughan-Spruce spoke about how she does not organise a protest but a vigil. Is everyone in agreement that protest, in the way that I have described it and in the way that Dr Pickering has described it, is something that should not happen outside an abortion clinic?

**The Right Rev John Keenan:** We have had a bit of theology today. I think that the root of the word protest is the word protestare, which means to speak on behalf of a value. You are not speaking against something; you are speaking on behalf of a value. Therefore, a protest in this case, is, literally, someone speaking on behalf of life. At Faslane, it would be someone speaking on behalf of peace—

**Sandesh Gulhane:** I am sorry, but can you comment specifically on the context that I described and not on other contexts?

**The Right Rev John Keenan:** Are we all agreed that we should not have distressing images outside clinics? Is that the question?

**Sandesh Gulhane:** Yes—in the same way that Dr Pickering described the things that he would not support.

**The Right Rev John Keenan:** Yes, I think so. I think that that is right. I think that 40 Days for Life makes efforts not to have what it would consider to be, as Mark Pickering said, images of aborted fetuses and things such as that. If it used an image, it would be a living fetus in the womb or something like that. I think that we would say that,

if you are outside those centres, you should have positive life images. I think that that is right.

**Margaret Akers:** One of the reasons why we are quite staunch about distinguishing between vigils and protests is that vigils are what are happening. Ultimately, what the bill is proposing—

**Sandesh Gulhane:** I am sorry, but can you comment specifically on my question? We will come on to the matter of vigils, but my question is specifically on protest, not vigil—

**Margaret Akers:** Yes, I understand.

**Sandesh Gulhane:** What are your thoughts on that?

**Margaret Akers:** The bill is supposed to be responding to a current and pressing public order problem, but I am saying that protests are not happening—vigils are what happen outside all the providers. The regular events that you might see from 40 Days for Life or other groups are vigils. The bill is supposed to be getting at a current public order problem, and the events that are happening are vigils, not protests, which is why I draw that distinction.

Even banning protests would have implications for human rights legislation, and that would have to be carefully considered. The distinction I mean to make is that what is currently happening and what this bill is aiming to get at are vigils, which is why we keep coming back to the idea of these vigils and what happens.

**Sandesh Gulhane:** I am sorry, but I was asking about something specific. You would not be against the use of placards that showed aborted fetuses, for example, and you would not be against people shouting in the street outside clinics.

**Margaret Akers:** I would be against those things, but current legislation already gets at that.

**Sandesh Gulhane:** Okay—that is fine. I just want to be clear. There is a distinction between protest and silent vigils, which is something that we need to look at.

**The Right Rev John Keenan:** In principle, following what Margaret Akers said, we need to be careful about the word protest. There is protest; it is a legitimate human right to protest—for example, at Faslane and Dungavel. Protest is a human right, but you are not talking about protest. You are asking whether we think that it would be wrong, improper and unacceptable to use particularly violent images. That is the question that you are asking, is it not?

**Sandesh Gulhane:** I am also asking about shouting in the street—

**The Right Rev John Keenan:** Shouting in the street—right.

**Sandesh Gulhane:** —and shouting at people going into a facility or—

**The Right Rev John Keenan:** I will not use the word “protest”—I think that that is confusing the matter. If you are asking whether we would be against shouting in a harassing or abusive way, the answer is yes, we would be against that.

**Sandesh Gulhane:** I use the word “protest” because Isabel Vaughan-Spruce spoke about protest and the difference between protest and what she does with vigils.

**Dr Pickering:** There is a legitimate distinction between protest and the other things. I would not support the things that you have raised, such as shouting and the use of pictures of aborted fetuses. I do not think that any of my colleagues around the table would support those either. Those are covered by current harassment legislation, and the police are well able to deal with that.

I do not think that any of us would support anything that is calculated to make a woman feel bad. If the intention is simply to make somebody feel bad for doing what they have decided to do, I would not see that as productive, and I do not think that many of my colleagues would either. The challenge is how you would police that. The bill is a sledgehammer to crack a nut—a nut that does not even exist, as far as we are aware. I am not aware of shouting and pictures of dismembered fetuses being used in Scotland. If that was happening, the police would know about it and would have stopped it.

Again, so much of what this is coming down to is not actually about what we traditionally think of as protest; it is about influence. It is almost like the owners of a vegan cafe wanting to ensure that there is not a Kentucky Fried Chicken within 200m of them, because it might make their users feel bad and provoke feelings in them that make them uncomfortable. I accept that, but that does not mean that we should go to those lengths. As I said, I do not think that the kinds of protests that you are referring to are happening. We certainly would not support them, but that would not be the effect of the bill and, really, that is not the effect that those who support the bill and campaign for it are looking for. That is not really what they are trying to stop—because that is not happening.

**Sandesh Gulhane:** It was important to draw that distinction and to understand your point of view on what you and Isabel Vaughan-Spruce termed “protest” and what was being said about silent prayer, which are two slightly different topics.

In the evidence session with the police and the solicitor last week, the committee heard that, if this bill were to pass, there would be no distinction between protesting in relation to abortion—both for and against—or any other forms of protest, regardless of what the protest is. For example, it could be a protest against Eljamel, the health board or whatever. What are your thoughts on that?

**The Right Rev John Keenan:** I think that there was a case in Tayside where there was a protest outside a hospital regarding a healthcare worker who had some kind of case against him—

**Sandesh Gulhane:** It was Eljamel.

**The Right Rev John Keenan:** I think that the police were saying that, if there was a zone within which someone may not protest about abortion, that other protest could not take place either.

**Sandesh Gulhane:** Yes.

**The Right Rev John Keenan:** The implication is that it would have the effect of stopping any and every protest. There are a number of reasons why people might have concerns about what happens in a healthcare facility. People might be concerned about low pay or working conditions, for example. Therefore, the zone would have a bigger effect in the police’s mind than might be countenanced.

**Sandesh Gulhane:** Do you feel that that is right, or that it is wrong?

**The Right Rev John Keenan:** I think that it is a matter for the police. They are the ones who will be policing it.

**Sandesh Gulhane:** I am asking whether you feel that it is right that we are not able to protest other things outside of a hospital.

**The Right Rev John Keenan:** As Ross Greer was saying, there is a balance to be struck when it comes to protests. In principle, though, it is important that people are able to make their protests at relevant facilities, albeit with a balance of rights.

**Sandesh Gulhane:** I want to end on this theme. We have people who go to work in hospitals, and they should be able to do so without feeling distressed. We have people who are accessing healthcare. It does not matter what that healthcare is—we accept that they should be able to access it without distress. Do you accept that what is happening around Scotland—and potentially around the UK, although we really care about Scotland, because that is where our Parliament is—can and does cause distress to healthcare workers, as we heard from other panels? Do you think that that is fair?

**Margaret Akers:** I would certainly accept that it would or could cause distress, as would having to

witness any protest at one's place of work, whatever that may be, for example Faslane. I saw a protest outside Barclays at the weekend. Having to see that as you attend your place of work is distressing. However, it is important to remember the Handyside case at the European Court of Human Rights in 1976. The judgment in that case said:

"Freedom of expression ... is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population."

The fact that something is distressing is, alone, not reason enough to criminalise it. I accept that it may be distressing—I will not accept that it is necessarily distressing for everybody—but that is not reason enough to curtail that freedom of expression.

**The Right Rev John Keenan:** Existing legislation already allows the police to intervene in circumstances of distress. The legislation allows discretion to the police. They are able to say, "The legislation allows us to intervene where there is distress. Do we consider this to be distress that relates to a public order issue or distress that relates to someone accessing a service?" The police already have that discretion in the law.

Why use a measuring tape, which is kind of a blunt instrument that, as you alluded to, already captures a whole lot of other people, when it is probably much better to allow the police discretion? Until now, the laws have tried to factor that in.

**The Deputy Convener:** We have covered a lot of ground, but we still have a great deal to cover, so, if the witnesses are amenable, I am minded to extend the evidence session by 15 minutes, to 11 am.

We have not yet covered an issue that was brought up in a previous evidence session, which was a concern that information distributed to people accessing abortion clinics by those engaged in activities covered by the bill is not always factually accurate—I am thinking of, for example, the medical consequences of the procedure. Do any of the witnesses have a view on ensuring that clinically accurate—and not necessarily sensationalist or alarmist—material is distributed?

10:30

**Margaret Akers:** It is my understanding that none of the pro-life vigils that currently take place in Scotland involves leafleting people going into clinics, and that that has been the case for years. My understanding from people who attend vigils is that they do not hand things to people who are

going into clinics. They might have certain things on hand—which I believe might have been presented to the committee—just in case a discussion starts and somebody asks a question, to direct them to further sources of support. However, people do not hand out leaflets to everyone who passes.

**The Right Rev John Keenan:** We were able to source examples of the leaflets that were referred to, and we have them here, if you would like them. There is a blue leaflet, a green leaflet and a pink leaflet; they have a London telephone number, so we think that, in the past, they were handed out in England. When I look at them, I can see that they tend to be factually accurate. The references are NHS sources and fairly reputable journalists. If you would like them, we would be happy to pass them on to you.

**The Deputy Convener:** Thank you.

**The Right Rev John Keenan:** As I have said, we will do so, only to help the committee with the leaflets that have been referred to. Others will know better than I do, but our understanding, from having spoken to organisations, is that those leaflets are not used at all in Scotland.

**Dr Pickering:** As I have said, there is the question of ensuring the accuracy of the information that is given. I think that all of us round the table would want women to be given accurate information. This is a highly contested and polarised space, and there is an active campaign among academia and the media to shut down anything that suggests that a woman might have a negative consequence from an abortion. There are campaigns to retract journal articles—I recently listened to a *British Medical Journal* podcast about that—and there is a Supreme Court case in the USA that hinges on contested evidence.

We want to make sure that the information is accurate. The Christian Medical Fellowship works with some pregnancy crisis centres to try to make sure that the information that they provide is defensible, accurate and appropriate, but we must not assume that abortion providers and abortion campaigners are neutral in that sense. There is very much a polarised opinion about the issue.

If I may, I will briefly go back to Dr Gulhane's previous question. An important question is whether the bill will ban people from protesting about very legitimate and separate concerns at an abortion clinic. If a particular abortion clinic or provider is shown to have been giving poor or unsafe care, or if there are other quality or governance concerns, people should be able to highlight that. There is a danger that the bill will give certain abortion providers carte blanche to provide poor care, because there will be a sort of world-view protection as a result of their operating

in a contested space and nobody being able to question them. That is a real concern.

**Emma Harper (South Scotland) (SNP):** Good morning, everybody. We have heard a lot about abortion clinics from various witnesses. My understanding is that we do not have stand-alone abortion clinics in Scotland; we have premises that provide healthcare for women. I am interested in hearing about purposeful influencing outside premises that provide a range of healthcare, which could include counselling. Would vigils be needed outside premises, if you could be guaranteed that women were being provided with the range of counselling, other services and knowledge to allow them to make the best and most informed healthcare decisions?

**Margaret Akers:** That is an interesting question. We would need some sort of standard to ensure that women had the full information. The trouble, though, is that there is already informed consent legislation, which should mean that all those things are covered, yet what I am seeing consistently is the women whom I work with still not sufficiently getting the information that they feel they are entitled to. Even where those procedures are in place, it seems sometimes like they are not being followed. I speak from working with a significant number of women on exactly that issue, particularly in cases where coercion has taken place.

We would need to be fully satisfied that information and support were being given and that abortion providers had the information at hand to signpost women to other sources of support. One interesting thing about abortion compared with other medical procedures is that a woman considers abortion often because of external circumstances rather than specifically health-related circumstances, although that is not exclusively true. The informed consent needs to be about not only the medical things around the procedure: it should include questions such as, "Are you having this for financial reasons?", "Are you aware that this financial support is available?", "Are you aware this housing support is available?", and "Do you need to be directed to a shelter or somewhere you can be safe from a partner or family member from whom you are at risk?"

Those are the sorts of things that women need to be provided with. If we could be fully satisfied that those things were being met, you would find, first, that there would be fewer abortions and, secondly, that people would feel less need to have a vigil. The issue of informed consent is a lot more complicated for abortion than it is for a lot of other procedures, which is why it is such an emotive issue and why the conversation about what consent looks like in the context of abortion is really important.

**Emma Harper:** Thank you. I am not sure whether others want to come in.

**The Deputy Convener:** I believe that Isabel Vaughan-Spruce, Alina Dulgheriu and Dr Pickering wish to respond.

**Isabel Vaughan-Spruce:** I will add to what Margaret Akers said by, in a way, reiterating what Dr Pickering said: it is very hard to find a neutral space on this issue. It would be hard to have a leaflet that everyone agreed was okay, that presented the issue fairly and which gave all the information, because even the way in which some information is presented cannot be neutral. Certainly those who support providing alternatives to abortion would be very concerned whether neutrality was really happening.

Many of the groups that provide help to pregnant women are not big registered charities or large bodies. The organisation that I work with is very small and low-key, in a way that just makes sure that whatever anyone needs is provided. The women whom we help often do not have recourse to the state. Sometimes, they might be here illegally and just really be struggling, with no one else to give them basic help with their babies. Those are the sorts of women whom we help and who will not get help from other people. Even if they get help from other registered bodies, that can take a long time. That is one issue.

As we have said, the people outside abortion centres are often there to pray, too. Even if other help were being offered to women inside centres, we would still want to be there to pray about the situation. That is very important. In fact, I would not want to be handing out information if I was not allowed to pray. Obviously, from a Christian and a Catholic perspective, prayer has to be coupled with all our work, so it is important to be there and to be able to pray.

**Alina Dulgheriu:** As one of the many mothers who has received help and participated in vigils, I can tell you from my experience and from interacting with mothers in front of abortion facilities that such facilities are extremely biased. I asked whether specific help was available, and I was told that there was nothing. There was no financial help, and there was not even someone who could provide emotional support; the facility offered only abortion. Even when I called again to ask it for help, I was given the same answer.

I have met mothers who have been coerced into having an abortion and who have even jumped windows in terms of abortion, because stuff that should have been reported was not. There was an adult woman whose parents forced her to take a pill. In so many cases, women are not being dealt with inside. There is no help. If it had not been for the vigil, I would not have been helped.

**Dr Pickering:** I think that the question that was asked was whether we could be reassured about the information being provided. There is an excellent way of reassuring the different sides about what is being provided, and that is through dialogue. As we heard from Isabel Vaughan-Spruce, when the opportunity is provided for dialogue between the police, providers and people who feel compelled to pray or give information outside abortion facilities, providers often do not come. Abortion campaigners and providers are often not willing to have a dialogue. I think that all of us at this meeting would be very willing to have more dialogue.

There has been discussion in the Westminster Parliament about the effect of the UK Government's two-child benefit cap, and there is certainly concern that some women in England and Wales are going for an abortion purely because of that cap. When I reached out to the chief executive of one of the major abortion providers and said, "We could work together on this. Here is something that we could go to the Government about, and we could have a dialogue with them", they were not interested. They responded and acknowledged the issue, but they did not want to talk to us about it.

There is real disconnect and distrust. The way to build trust is to have better dialogue through the kind of panels that we have talked about. However, both sides of the discussion need to want to have a dialogue.

**Ruth Maguire (Cunninghame South) (SNP):** Good morning. I thank the witnesses for their evidence so far—I appreciate it. My questions were going to be about human rights considerations, but I think that we have already covered that issue quite a bit. However, you can come back in if there is anything further that you wish to say on the matter.

Isabel Vaughan-Spruce, you talked about your arrest for silent prayer. Could you describe exactly what happened in that situation?

**Isabel Vaughan-Spruce:** Sure, and thank you for the opportunity to do so.

As I have mentioned, when I was first arrested, I was standing near an abortion centre, silently saying my prayers—I was not manifesting that in any way. A police officer asked me whether I was protesting, and I made it clear that I was not. He asked me whether I was praying—he had to ask me because he obviously could not tell—and I said, "I might be in my head, but nothing out loud." I was arrested on the basis of what I might be praying about. I was very heavily searched on the street, which could be a very humiliating experience. I was then taken to a police station and locked in a cell for hours before being quizzed

about what I was praying about, what I had been thinking and what was going on in my head. As I have described, I eventually had to go to court for that, and I was acquitted.

Two weeks later, I was standing in exactly the same spot, doing exactly the same thing. This time, six police officers came in a van and told me that my prayers were an offence. When I said that I did not think that prayer was offensive, they became more emphatic and said, "It is an offence." I was arrested and put on bail for months afterwards. I was investigated for six months.

It was a really difficult experience to go through, but I have highlighted and publicised it, because people need to know the reality of what buffer zones really mean. I find it really concerning that we are going to criminalise prayer throughout the country, first in England and Wales and now in Scotland. I think that that is discriminatory against people of faith, because our prayers are simply our thoughts directed towards God, but there are clearly serious human rights concerns, too. Our thoughts are simply being censored now.

10:45

**Ruth Maguire:** Thank you for sharing that. I wonder whether other panel members have any comments on the human rights aspect and the balancing of rights. As I have said, we might have had the opportunity to work some of that out through earlier questioning, but I just want to open it up.

**The Right Rev John Keenan:** As I have said, we should all be cognisant of the fact that we are dealing with human rights in terms of the Universal Declaration of Human Rights and the European convention on human rights—specifically, the rights to freedom of expression. Freedom of expression includes, specifically,

"the right ... to receive and impart information and ideas"—

which is all about the idea of influencing—

"the right to ... freedom of association",

and

"the right to freedom of thought"

and

"conscience",

which, as we have said, is not balanceable but absolute. You will also be aware of the right to privacy in family life and home life, which will include the homes in those buffer zones.

We talk about rights as being innate—they are not given or taken away by Governments. Instead, they are to be respected by Governments in what they do. We talk about rights being inalienable, in that I cannot get rid of them myself, and inviolable,

in that no one can take them from me. In practice, all of that means that taking away or limiting those rights should be a last resort and that doing so should have been established as being necessary.

That is why we would encourage the Government to release the Rocket Science research. The committee could benefit from that objective research. You face a difficult dilemma; you need all the help and evidence that you can get, and that independent research was commissioned by the Government. We welcome the fact that the Government commissioned that research—getting independent and credible research was a really good thing—but we would encourage the Government to release it to you so that you have an idea of what is happening and can see whether what is proposed is really necessary. Again, I say that the police do not think that it is.

Taking away or limiting a right also has to be proportionate, and minimally so: you do only the very least that you have to do, in order to preserve that right, and, as I have said, there has to be a facility whereby, once the issue has passed, any restriction is taken away. Perhaps I am anticipating what will be said next, but that is why those who are concerned about human rights say that probably the last thing that you would want to use is the criminal law. That is why, as Mark Pickering said, we want to use dialogue and other more discreet and collaborative means by which we can all not just balance but understand each other's rights.

**Ruth Maguire:** You have referenced it, so you might well have seen that, last week, I asked a Police Scotland representative whether they would be comfortable with policing people's thoughts in terms of prayer, and they responded clearly that they would not, and that they would not anticipate asking somebody what they were praying about. If the legislation should go ahead, is protection needed through an exemption for silent prayer?

**The Right Rev John Keenan:** Yes.

**Ivan McKee:** I want to raise a couple of points for clarification. Bishop Keenan, you referenced research; I assume that the committee is aware of that and that the clerks can provide us with information on it. They are nodding in the affirmative, so that is good.

My second very quick point of clarification—and I am sorry if I missed this—is for Isabel Vaughan-Spruce. When you were arrested, were you carrying no placards, signs or visible information about why you were there? Was your arrest purely on the basis of your silent prayer?

**Isabel Vaughan-Spruce:** That is correct. I had no signs and no leaflets—I was simply standing in

the street. I believe that I am not the only person whom that has happened to.

**Ivan McKee:** Thank you very much for that clarification.

**David Torrance (Kirkcaldy) (SNP):** Good morning, panel members. My questions are about criminal offences and penalties. Are the offences in the bill suitably clear?

**The Right Rev John Keenan:** No, they would not be. I am glad that you raised that point. We have discussed a number of issues, but your question gets to the heart of the matter.

We have spoken about what “influencing” means. One of the requirements of criminal laws is that they be clear. Citizens are free to go about their business unless there is a justifiable criminal law, which should be clear. The meaning of “influencing” is not clear in relation to prayer. What is prayer? Is it a bad influence? That is not clear at all.

Another point that has not been mentioned is that the bill will require signage. If there is a 200m zone around, for example, the Queen Elizabeth university hospital, that would mean that there would have to be signage all the way around the circumference that says “Abortion safe access zone”. We cannot see any way round that. If someone happened to have on a pro-life T-shirt that they bought at a conference a year ago and walked into the zone between two of those signs, they could be breaking the law. Inadvertently, they could find themselves becoming a criminal.

Clarity is a big concern. We are not sure that a bill that talks about zones can adequately get over that difficulty.

**Margaret Akers:** I will add an example to what Bishop John said. In England, somebody having a pro-life bumper sticker on their car that was parked within a public spaces protection order area was raised as an issue of concern. It is not that the sticker was put on intentionally for the car to be parked in that spot. It was just something that they had on their car. It is very important to be aware of that.

I raised at an earlier stage of the bill the point that, if somebody might be in breach of the criminal law, they need to know that the action that they are taking is in breach. That is very important. However, the bill is vague about what would qualify as a breach of the legislation. That is unfair on citizens. It is very important that that clarity is given. I was told in answer to that point that it was important that the bill capture a wide range of activities that we might not anticipate and I thought, “Well, people need to know if they are breaking the law.” That is plain and would be true for the bill.

**Dr Pickering:** The question also relates to signage. We would need absolute clarity publicly on what can and cannot be done within a zone. I give the example of how, as I understand, by-laws in Scotland can prevent the consumption of alcohol in certain public places. To make that effective, you need to have signs up that tell people about things that are normally legal but which they cannot do in a certain zone. That would be absolutely necessary for clarity but it would also highlight the problem to women who were going into the abortion clinic. They would need to know that they were entering the abortion safe access zone. That in itself might produce feelings of distress in them, because it would highlight the fact that they were doing something that some people might want to protest about and that a law was needed to ban that. It would be counterproductive while bringing clarity on what the bill meant.

**David Torrance:** The bill would create an offence relating to behaviour from property within safe access zones that could be seen or heard. What is your opinion on the issue of properties, including churches, that would be in safe access zones?

**The Right Rev John Keenan:** Thank you for raising that point. This is what happens when you take a measuring-tape approach. As we understand it, a 200m zone around the Queen Elizabeth university hospital or the Chalmers sexual health centre in Edinburgh would take in bus stops, churches, schools, a convent and private residences.

As Margaret Akers said, someone who is pretty committed to pro-life might always have had a little pro-life sign in their window. Once you create a zone, if someone complains to the police about that sign or raises that issue with them, the police will have to knock on that person's door and ask them to justify why they have an "I am pro-life" sticker or transfer on their window. Once you start to have measured zones, that would be inevitable.

I remind you that the bill has unlimited scope and would cover, as Emma Harper mentioned, counselling services, medical centres and pharmacies. The idea of having signage all round those places—the bill does not say that that cannot happen—would mean that half of Scotland could become a safe access zone and anyone within it could be inadvertently criminalised. That is why we would say again that there is a wisdom in the laws that are already in place, because they try to balance rights, as Ross Greer said, but in a way that does not require a measuring tape to be part of the police kit; it just requires the police to use their discretion.

When it comes to human rights, the common good and collaboration and cohabitation in society,

there needs to be dialogue. Part of a local authority's approach when facilities are applying for licences will be to ask who all the stakeholders are. Let us have a requirement to go round the table to get views. We think that that is a better way of doing it. We just see too many unlimited, unpalatable and maybe even unworkable consequences from measured no-go areas.

**Isabel Vaughan-Spruce:** The fact that there is even a possibility of the zones extending into either private dwellings or churches in the area is a big worry. Churches have been around a lot longer than legalised abortion and the idea that we should even want to censor what goes on inside or outside them should not even be up for question. Certainly from the Catholic Church's perspective and from that of many Christian churches, being pro-life and opposed to abortion is an essential part of their teaching.

I come back to the discussion about influencing. It is very worrying that the word "influencing" is even being discussed as suitable for inclusion in law. That just leaves the door open for concerning scenarios. Are we going to criminalise a loving mother who just happens to be talking to her daughter on the way to the abortion centre for saying something along the lines of, "Do you know that your father and I would happily help you look after this new child?" Everyday family conversations could suddenly be viewed in a different light because of how we look at the word "influencing". As I said, people would end up becoming criminals without even realising that what they are doing could possibly have that implication.

What is that approach based on? In 2018 we had an in-depth review of what happened around abortion centres and Sajid Javid concluded that buffer zones were not a proportionate response. The Scottish Government has not released the research by Rocket Science, as has been described. The proposed legislation is based, in effect, on hearsay, because there has been no evidence of harassment or intimidation around abortion centres. I find it all very concerning.

11:00

**The Deputy Convener:** We have 10 seconds left. Dr Gulhane has a very quick supplementary.

**Sandesh Gulhane:** I will be quick. Bishop John, you have handed me some leaflets. I am a doctor, and I think that facts matter. There is really concerning misinformation in the leaflet that I am holding up. It says that one in 17 women ends up in hospital following an abortion, that 100 abortions fail and that evidence suggests that abortion may increase the risk of breast cancer. I could go on. The leaflet that I am now holding up

also talks about breast cancer. This next leaflet is factually incorrect. I have googled the figure that it refers to and one of the things that that organisation says on its website is that, with God's help, it has closed 100 abortion centres. You might disagree with me on whether the leaflets are factually correct, but are they acceptable?

**The Right Rev John Keenan:** That is the point that I was making. That is why it is important that the Rocket Science research be made available. I sourced those leaflets for you because it was led in evidence that they are given out in Scotland. They are not. It is important for you to know that.

The issue has come up because there has been dialogue. I have handed you those leaflets and you have told me that there are things in them that you find concerning or inaccurate. If we had the culture that we are proposing, that sort of dialogue would be happening in the mediation meetings that we are suggesting. Someone like you or someone from the hospital could say, "These are things which we think are not accurate and therefore need to be changed," or they could say, "These are things that are concerning." A dialogue could be had about those things. The end result of that would be that those who might have such information are better informed.

**Sandesh Gulhane:** Thank you.

**The Deputy Convener:** We are right out of time. I really appreciate that the witnesses have stayed longer. It was a worthwhile exercise. If there is any additional information that you would like to share with us in relation to our scrutiny of the bill, please write to us.

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

11:02

*Meeting suspended.*

11:07

*On resuming—*

**The Deputy Convener:** We resume our scrutiny of the Abortion Services (Safe Access Zones) (Scotland) Bill. Our second evidence session will explore human rights considerations. I welcome to the meeting Eilidh Dickson, who is the policy and international officer at the Scottish Human Rights Commission and is attending virtually. All other witnesses are here in person. I welcome the Rev Stephen Allison, who is the public engagement co-ordinator for the Free Church of Scotland, Rob Gowans, who is the policy and public affairs manager for the Health and Social Care Alliance Scotland, known as the ALLIANCE, and Dr Catriona McMillan, who is

former convener of the health and medical law sub-committee of the Law Society of Scotland.

We will move straight to questions from members and I invite Ivan McKee to start.

**Ivan McKee:** Good morning, panel. We have had a long session, but it is still morning. Thank you very much for coming in. I would like to explore issues around balancing human rights, which is a very important part of our consideration. The Scottish Human Rights Commission's submission described the task of balancing ECHR rights in the context of the bill as "challenging". What do you think about that? Are changes to the bill, or other steps, required to make the bill human rights compliant—or more likely to be human rights compliant? Eilidh Dickson, do you want to lead off on that? Then we will go from there.

**Eilidh Dickson (Scottish Human Rights Commission):** Good morning. I am pleased to be here. I have watched all the evidence sessions that the committee has held over the past couple of weeks and found them very helpful and informative. That is relevant because a key part of the proportionality assessment that the Parliament will have to carry out is the balancing of competing interests between people who wish to hold protests or vigils or assemble in some other way outside of a premises that provides termination of pregnancy services, and people who access termination of pregnancy services for healthcare reasons as prescribed by law. That also includes people who work in those settings and people who accompany someone who is attending a clinic for the medical procedure of termination of pregnancy or for related information that may be provided.

The committee is well aware that we are talking primarily about qualified rights under article 8, predominantly, on the part of those who wish to seek termination of pregnancy or who provide termination of pregnancy as part of their work, and the article 9, 10 and 11 rights, to a greater or lesser extent, of the protesters. Those are not the only rights that are relevant—there are rights beyond the ECHR that might be relevant and, in some edge cases, there might be other absolute rights at play—but we are talking predominantly about a balancing exercise between the article 8 rights of some users and the article 9, 10 and 11 rights of other users.

We described the process of balancing those rights as "challenging" because the rights in question are extremely important rights. They cannot be qualified on a whim—they have to be justified. However, it is entirely appropriate for justification to be pursued by the Parliament.

We are fortunate in that the Supreme Court has now considered the legislation in Northern Ireland, which gives us a good foundation on which to

move forward. In its review of the Northern Ireland legislation, the Supreme Court was acutely conscious of the fact that the Scottish Parliament was considering introducing legislation in this space. That is referred to throughout the proceedings at the Supreme Court. Obviously, the Lord Advocate took the case on a public interest ground. That is also referred to in the judgment. Therefore, we can use the judgment in a helpful way to clarify some of the considerations.

However, there are competing interests that must be heard by the committee and the value and scale of the evidence that is before the committee will be extremely helpful in that regard.

In general, qualified rights such as those under articles 9, 10 and 11 can be restricted by a general measure of the Parliament—we know that that is the case from Strasbourg case law and domestic case law—even though that would create edge cases or hard cases in which a more detailed proportionality assessment would need to be done. A general measure is allowed. In this case, that would include the introduction of criminal sanctions and the introduction of safe access zones.

In determining whether a measure is a justified and proportionate restriction of article 9, 10 and 11 rights, the court gives us a clear framework for how to do that. We will probably discuss elements of that, but, essentially, it involves asking whether the relevant provision restricts the rights that are protected by—in this case—articles 9, 10 and 11. We can say yes, more or less. In some cases, those rights will not be covered by the convention—for example, article 17 does not protect violent instances of expression. In addition, there is some conflicting case law about whether article 9 is necessarily engaged. However, broadly, we can say that articles 9, 10 and 11 are engaged.

We also need to ask whether the restriction is prescribed by law, which means that it must be in common law or in the statute that is being pursued, and whether it is clear and able to be understood. We might pick up on some of those themes. In addition, it must be asked whether the restriction pursues a legitimate aim. The Supreme Court's decision on the Northern Ireland legislation is really clear in that respect, and it helpfully articulates with some clarity that the purpose of protecting women who are seeking termination of pregnancy is a legitimate aim.

The next question is whether the restriction is necessary in a democratic society. That includes sub-tests such as whether the aim is sufficiently important to justify interference with the fundamental rights in articles 9, 10 and 11; whether there is a rational connection between the means that are being pursued and the aim that the

Parliament is pursuing; and whether there are less restrictive alternative means that might achieve the aim. In some cases, the least restrictive means would involve doing nothing, but that might not achieve the aim. It is necessary to go through the options in that way. The Supreme Court has done that with very similar legislation, so we can answer some of those questions with some certainty, although there are elements of the bill that the Parliament needs to consider.

It is worth stressing that, ultimately, we are talking about a parliamentary decision that involves weighing up all the conflicting factors in relation to the bill as a whole. The level of evidence that the Parliament has received is vital in that respect. There will probably be some edge cases if the bill is pursued, even if amendments are made to some of the more uncertain elements of it. It was useful that the Supreme Court clarified that the police will have to do a proportionality assessment on a case-by-case basis, that the courts will have to do a court proportionality assessment if a case reaches that point and that a certain level of fine might be disproportionate. Therefore, we are not able to say absolutely that every single case will be proportionate, but the legislation as a whole seems, on balance, to at least consider all those options, and it is perfectly within the Parliament's discretion to do that.

11:15

**Ivan McKee:** Thank you very much. There is a lot there and I would like to come back on some of the points, but I will first give the other witnesses an opportunity to comment.

**The Rev Stephen Allison (Free Church of Scotland):** It is very challenging to balance the various rights and there is a lot of detail that needs to be considered.

Specifically on the point that has just been raised in relation to the Northern Irish Supreme Court decision, it is important to recognise the areas where the legislation before the Scottish Parliament is not completely identical to the Northern Irish legislation. Some of those factors should be given serious consideration by the committee.

First, the context in Northern Ireland is different because of the recent changes to abortion law there. Particular evidence seems to have been found in the international rights agencies that went in of a significant pressing social concern, and I am not convinced that there is the same level of evidence in Scotland on that issue. You have heard evidence from those who engage in such protests—the Free Church of Scotland as a whole does not, but we are concerned about the broader human rights considerations of this legislation.

The context is different, and the distance in Scotland is much greater than what was proposed in Northern Ireland—200m, which is double the length of Murrayfield, is quite an extensive area. It was 100m with the option of an extension of 150m in Northern Ireland. The provision for extension without an upper limit is quite concerning to us—that is quite a broad power that has no real limitations on it. Potentially, you could apply for judicial review of such a decision, but going to court would put an ordinary citizen to huge expense. It would be better if there was more clarity in the legislation. The provisions in the Scottish legislation about private property also need to be looked into in a lot of detail.

There are a number of areas where we are not on a complete par with the Supreme Court decision, so there should be more discussion on some of those areas.

**Ivan McKee:** That is hugely helpful, thank you.

**Rob Gowans (Health and Social Care Alliance Scotland):** There is a balance of competing rights. In our view, abortion is healthcare, and a person's choice to have or not to have an abortion must be voluntary. The decision might not be voluntary if it is coerced or unduly influenced by demonstrators. It is important for anybody's ability to enjoy their right to health that they are able to access a healthcare facility without intimidation.

We know from the Chalmers sexual health centre that 56 per cent of people felt very uncomfortable attending if there were protesters present, and we also know from work on the right to health and research that we did to investigate people's knowledge and understanding of the right to health that stigma and discrimination can act as a barrier when people are trying to access information about their rights, and that negative experiences of health services can play into that.

We acknowledge that there is a delicate balancing act to maintain people's right to privacy, right to health and right to freedom of expression; however, in line with the legal and policy precedents that Eilidh Dickson referred to and the UK Supreme Court's decision, we feel that the balance has been met and that it would be a proportionate restriction on people's rights.

**Dr Catriona McMillan (Law Society of Scotland):** We would underline that the Government needs to meet both tests. First, the legislation needs to meet a legitimate aim and, as has already been raised, the Supreme Court has held that this would be a legitimate aim. The other thing is that it needs to be proportionate. Both those tests need to be met in order for the legislation to be compliant with human rights law and to prevent it from being open to challenge.

A number of things have been taken into account with regard to that balancing exercise, many of which were raised in the case on the Northern Ireland legislation. Member states that have legislation for the provision of abortion services are under a positive obligation to provide a procedural framework effectively to enable access to those abortion services. Adverse health consequences and mental health effects on healthcare professionals going into buildings, regardless of what they are doing there, have been accounted for, in case law, under article 8 rights.

Something else that we drew attention to in our response is the article 8 right of those working in abortion services to access their working conditions in privacy and dignity. Of course, article 8 is a qualified right and, as you have heard, it has to be balanced with articles 9, 10 and 11. Although, broadly speaking, the legislation is similar to legislation that has been held to be human rights compliant by the Supreme Court, we highlight a few proportionality issues that might be worth review to ensure that the legislation is not open to challenge.

I am sure that we will come back to this, but there was a comment earlier on the size of buffer zones, which is an issue that we noted in our response. Although the initial size of buffer zones is larger than those provided for in the Northern Ireland legislation, the Supreme Court review of the legislation specifically said that even a zone of up to 250m would not be

“an unjustifiable restriction on the rights of protesters”.

**Ivan McKee:** An issue that we heard evidence on this morning and previously is that of silent prayer. I am bearing in mind the Northern Ireland experience and the Supreme Court ruling, but I am also taking on board the evidence that we heard this morning—which I am sure that you heard—about the woman who was arrested for praying silently, with no visible signage or anything to connect her to any protest, and the interaction that took place with the police. We have taken evidence from Police Scotland on that. I do not know to what extent you can comment on individual cases, but perhaps you can respond in the generality. Is there a danger that, although a ruling may say one thing, when something is implemented on the ground, it ends up being in a different place? Do you have any other comments on the pertinent issue of the right to silent prayer, the ECHR rights on that and how that applies in the legislation and the Supreme Court ruling?

**Dr McMillan:** Generally, that is one of the specific issues that has come up as being quite difficult with regard to measuring proportionality. It is quite dependent on the definition of silent prayer and what silent prayer activity includes—whether,

for example, as was mentioned earlier, it is just standing there. Definitions of silent prayer have also included things such as signage. The important thing to highlight from a legal perspective is that, although freedom of thought is an absolute right, freedom to manifest religion is not. A degree of scrutiny is required on the ins and outs of the boundary with regard to silent prayer. It is an issue that the Law Society wants to develop a position on—we can get back to you after the meeting.

**Eilidh Dickson:** I mostly agree with Catriona McMillan on that point. I cannot speak to the specific instances, but, in general terms, it is absolutely right that article 9 protects what happens inside one's head. It is an absolute—you cannot restrict that. The evidence that we heard from Police Scotland last week about how they envision being able to judge whether silent prayer is actually happening was really helpful, although, as Catriona highlighted, it also raises some challenges.

The first thing to consider is the appropriateness of Police Scotland asking someone what is going on in their head. The second thing to consider is the sort of evidence that would be required to deduce that somebody was engaging in silent prayer with a particular purpose or was being "reckless as to" the consequences for someone seeking abortion or someone providing abortion services. You would need to consider the presence of religious artefacts, signage or things that the person was saying out loud, even if it was not related to prayer. It would be a bit of a challenge, and there would have to be a proportionality adjustment in every case and also as a general rule.

The police and the courts are both subject to section 6 of the Human Rights Act 1998, which requires them to comply not just in their understanding of the legislation but in how they enforce it. We would expect that to be the case, and that speaks significantly to what the representatives from Police Scotland were saying last week.

I will pick up on the related theme of the distinction between silent prayer and protest, which is challenging when we consider it purely in relation to the European convention on human rights. We are talking about freedom of expression and freedom of assembly. What one person may regard as a vigil might be regarded as a protest by another person, and the legislation does not seek to draw that line anywhere; it seeks to cover the manifestations of those two rights. It is tricky to understand. In relation to silent prayer, we would be discussing what evidence there was to suggest that somebody was doing something with the purpose of influencing somebody else in the safe

access zone. I do not think that it would be an offence, in that article 9 rights would protect people from any interrogation about what they thought. If somebody was walking through a safe access zone with no religious or political affiliation visible on them, we cannot judge what is going on inside their head. You would have to look for some evidence of there being an intention for their prayer to be heard by others—perhaps not heard, but picked up by somebody else.

**The Rev Stephen Allison:** The issue around private prayer deeply concerns us as a church, noting the precedent that it is setting and the question whether it could be extended to other areas. It raises the huge issue about the grey areas of the bill. Eilidh Dickson has just raised the question whether prayer is influencing someone if it is private prayer in a certain context. That crosses a line into areas that are deeply personal. I heard some of the discussion during the previous evidence session about the nature of prayer, place, presence and so on, but prayer, and how individuals feel called to pray in certain areas, is deeply personal. Some people may pray in public; some may not. We are getting into a difficult area here, trying to make law about theology and specifically telling people that a certain kind of religious practice is acceptable in one area but not in another area.

Prayer opens up a whole area of concern for us about the intention of the bill and whether prayer amounts to influencing or not. Religious symbols are connected to that, but even religious symbols that are not necessarily about a pro-life stance but are just religious symbols can be perceived as being connected to the issue before us. We all know that the vast majority of those who are engaged in this kind of behaviour come from a religious perspective, so any religious symbols could be seen as influencing someone.

We might discuss the question of buildings within the private property area and what could be outside a building. People have talked a lot about having a pro-life poster, for instance. What about general religious leaflets, such as a message to repent and be forgiven of your sins? Would such a message outside a church potentially influence someone making a decision on abortion? I think that it could.

It is not clear how far such provisions would extend or what the limits are, because the legislation has deliberately been drafted in a broad way to catch as many things as possible.

11:30

**Ivan McKee:** That is an interesting point. I do not recall our having heard being raised the issue

of religious messages that are not about abortion specifically. I will reflect on that.

I will drill down a bit further into the issue of silent prayer. Catriona McMillan said that the definition of silent prayer can be broad, in that it can include other activities. To parse that out, let us say that those other activities—for example, using signage, audible prayer or using symbols—will be dealt with in another way, and we will look purely at the issue of silent prayer. The example that we heard about this morning was in that space, where there was apparently no other manifestation to link it to any other activity. Is there a risk that that would be problematic?

**Dr McMillan:** There is a certainly a risk that including such situations could be open to challenge on the basis of proportionality. I think that the Law Society of Scotland has noted that it would like to get back to the committee on that.

**Ivan McKee:** Eilidh—is there anything you want to say?

**Eilidh Dickson:** No. I think that I have covered what I wanted to say. I cannot speak to the specific case and how it was handled by the police, but I think that my previous remarks speak to the general issue.

**Ivan McKee:** Thank you.

**The Rev Stephen Allison:** I want to raise something on the specific case that you heard about earlier. My understanding is that there was not a successful prosecution, in that there was no conviction. However, the case relates to a broader concern about police and prosecutors having felt the need to bring it and the effect that such cases have on people who are not guilty under the criminal law.

I heard what Police Scotland had to say on that point: it was encouraging that that was the general view of Police Scotland, but individual police officers might ask questions in different ways. If someone asks me whether I am praying, I will say yes if I am praying, because I believe in being honest to someone if they ask me directly. I do not think that there is a right for them to know, or need for to tell people, that I am praying, but if they ask me, I will tell them.

I think that the issue is the chilling effect of the threat of prosecution. The follow-up to that incident was really concerning, in that six police officers turned up the next time. What is being done might not be criminal, but the impact of the legislation is a broader chilling effect on activity.

**Ivan McKee:** Thank you.

**The Deputy Convener:** That is an interesting point. Are there practical scenarios to consider?

Do you see, for example, hospital chaplains potentially being impacted by the legislation?

**The Rev Stephen Allison:** Yes—I am quite concerned about that. There are exceptions in the legislation for healthcare workers in the hospital context, and for people who have been asked to accompany someone and are voluntarily doing that. However, what would happen if someone asked whether they could speak to a chaplain? Under the legislation, would the chaplain be allowed to have those discussions in the hospital? A person might ask to speak to a Roman Catholic chaplain, or another type of chaplain, who would have their own views. Are such people healthcare workers under the bill? Are they covered by the exceptions? I am not sure, and I think that the committee should look into the chaplaincy issue more.

**Ross Greer:** The Rev Stephen Allison's comments respond in part to questions that I posed in the earlier part of the meeting, and were really interesting. I agree that, in general, we should not legislate on the basis of theology. However, some religious practices are prohibited in law for reasons that we would all generally regard as justifiable, because they are about the balance of rights, protection of vulnerable groups and so on.

I am interested in the Free Church of Scotland's perspective on a question that Dr Gulhane posed to the previous panel. Do you agree that it is unacceptable for protests that display graphic images to take place in proximity to a hospital or an abortion provider? In the previous session, Dr Pickering mentioned images of dismembered fetuses. I am interested in your perspective on that, given the previous panel's very valuable evidence, which was largely from the perspective of the Catholic system of belief.

**The Rev Stephen Allison:** On that issue, there will be a lot of overlap between the Free Church and the Catholic Church: when it comes to life issues, we tend to be in agreement with the Catholic Church.

We would condemn many practices and say that they are not appropriate. The existing law on threatening and abusive behaviour and various breach of the peace measures would cover many of the issues. When it comes to the specifics of displaying graphic images of dismembered fetuses or anything like that, I would have serious concerns about that, in the same way as I would have concerns about people showing pictures of someone who had been murdered. We would not want our news to broadcast beheadings or anything as horrendous as that, because of the issue of the dignity of the person. If I believe that the baby in the womb is a person, that dignity protection applies and means that I would not

want to show images of a dead person. Therefore, I would condemn such practices as being out of order and say that that should not be the nature of these things.

As I said, there might be individuals in the Free Church who engage in some of those practices, but, on the whole, we do not consider that to be the best way of discussing abortion or engaging with the issue. Our concern is that we would not want to stop someone from doing that. You talk about different readings of the Bible and definitions of prayer. You and I might disagree on aspects of theology, but I would not want the state to come in and decide that that is not allowed, unless there was a very good reason for its doing so, such as on the basis of cruelty to animals or some of the horrendous practices in some religions that we would obviously all agree should be illegal.

There is a balance to be struck. On the whole, I agree with what was said in the previous evidence session by the Catholic Church and others. There are things that we would not condone and that we have just as many concerns about, but the bill is broad enough to cover any attempts to influence. I am nervous about the idea that we cannot persuade, influence and have dialogue: that is going too far.

**Ross Greer:** That takes us to quite an interesting place. There is a large amount of overlap between what you and the previous witnesses have said. We have heard quite a lot of evidence that existing laws cover breach of the peace, harassment and so on. The challenge is that Parliament has been presented with instances, which have been well covered in the media, that the vast majority of the population would regard as unacceptable behaviour, and in which they would consider that harassment and intimidation had taken place, but the police felt unable to intervene under the current legislation.

I am not talking about the vigils, protests, prayer groups and so on that take place; we have heard about images being projected on to the wall of a hospital and into a hospital. We heard evidence about instances outside the Sandyford clinic in Glasgow, where people have used a speaker system so that, as well as their having harassed people who were going in, people inside the building could hear the people outside as they said very provocative things.

The challenge for the committee is to assess why action was not taken in those instances. Was it because the law as it stands is inadequate, or is there a barrier to enforcing the law as it stands? I am interested in Catriona McMillan's and Eilidh Dickson's perspective on that. Many of the discussions come down to questions about how we expect the bill to be enforced and about the

judgment that would have to be made, as per the example that was given in the previous evidence session about the arrest that did not lead to a conviction, which Stephen Allison mentioned.

I would be interested in your perspective on the extent to which this differs from other areas of law, where we expect, in the first instance, the police to make a judgment and then the procurator fiscal to do so at the next stage. How many of the concerns could be addressed not in the bill but through guidance, which could be either Lord Advocate's guidance or operational guidance for Police Scotland?

**Dr McMillan:** The first thing that we point to is the evidence that has been given by various stakeholder groups, healthcare practitioners and folk seeking termination, on how effective the current legislative landscape has been in preventing intimidation and harassment.

Secondly, we point to the evidence for a real need for the bill, which is important for the proportionality assessment. In England, although the upcoming legislation has not yet been tested in court, the legislative landscape enabled safe access zones but, for one reason or another, needed to go one step further because the existing provisions were not enough.

All that suggests that the legislative landscape at the moment is not necessarily adequate. There are various ways to help with that. For example, that could be rectified by putting principles in the bill, which we have recommended, or by producing additional guidance.

**Ross Greer:** What is your perspective on that, Eilidh? To what extent can the concerns about judgment be addressed through guidance from the Lord Advocate on prosecution or operational guidance for Police Scotland, and are there parallels with other areas of law?

**Eilidh Dickson:** I remind the committee of what I previously noted on section 6 of the Human Rights Act 1998, which requires public authorities to exercise all their decision making in conjunction with that act and with the tests that we have outlined. There is a framework within which all this happens, which was discussed at length in the Northern Ireland reference at the Supreme Court.

There are many parallels. I do not want to get into talking about them off the top of my head, but the general safeguard of section 6 of the 1998 act applies to all. It would be better for the committee to get an answer from the Scottish Government on how it wants prosecutors to handle decision making, and how it will work with them to ensure that it is exercised in a way that is proportionate and applies the balance test appropriately.

Obviously, the clearer things are in the bill, the less room there is for hard cases, but a level of discretion can also be helpful. There is a judgment call for the committee to make about the extent to which you want to be incredibly precise and the extent to which you want to allow for interpretation to deal with novel ways of manifesting expression, assembly or religious belief in ways that are harmful to, or are perceived to be harmful by, people who are trying to access termination of pregnancy.

**Ross Greer:** Thank you all.

**Emma Harper:** Good morning. I am interested in pursuing questions on the definition of “protected premises” in the bill. There is a future-proofing aspect that might, down the line, include general practices and pharmacies. What do you think about the definition of “protected premises”?

**Dr McMillan:** I am sure that you are all aware that the way in which abortion care is delivered in Scotland and elsewhere has changed a lot in recent years. To be concise, I say that the proposed definition and the scope to modify what is included in it are appropriate. That is partly because the landscape is changing with regard to abortion care and the legislation surrounding it, but it is also about enabling cessation where, for example, abortion care is no longer provided at a particular premise.

**Emma Harper:** I see Eilidh Dickson nodding.

**Eilidh Dickson:** I am happy to answer, although I do not disagree with the previous answer. Flexibility is needed, given the speed at which things are changing. Safeguards around determinations could be put in the bill—for example, a requirement to consult or to undertake the fair-balance test.

I think that we will come on to this, but on how safe access zones are defined, a discussion might be needed about variability depending on the types of premises that are added. However, it is perfectly acceptable to have a degree of future proofing.

**Emma Harper:** My next question is on allowing flexibility for the 200m zone to be reduced or extended, depending on where healthcare is provided. Last week, we heard that the Chalmers sexual health centre is next to a high school. The situation in an urban area might be different from that at Dumfries and Galloway royal infirmary, which I know well and which is pretty rural. It is more than 200m from the perimeter of the campus there to the front doors. There are two front doors—one for midwifery and maternity and one for general visits.

What are your thoughts on the proposal to have a 200m zone, and the ability to extend or

otherwise alter it, depending on where the healthcare facility is located?

11:45

**Eilidh Dickson:** The commission has not stated a preference for a particular size of zone. We continue to note that the zone that is proposed in the bill is larger than what was consulted on, and is larger than the zones in the comparable jurisdictions of Northern Ireland and England and Wales. There might be good reasons for that, but I am not sure whether there are—I apologise for the fact that I have not read every submission. It would be helpful to be clear about the necessity for having that extension specifically for Scotland. I have heard a suggestion that it could be to do with the particular circumstances around the Queen Elizabeth university hospital, in which case there is perhaps an open question about whether it is better to set a lower default with the capability to extend it to meet particular need, if a 200m zone is deemed to be necessary for one premise but not for others. The issue needs to be looked at in the round.

As Stephen Allison noted earlier, the area of the zone is a matter in which the bill differs from the Northern Ireland legislation, and the context in which healthcare is delivered is different from elsewhere, too, because termination of pregnancy healthcare in particular is delivered in Scotland in a different way from how it is delivered in England and Wales. That means that there are not perfect parallels to be drawn, so the issue has to be considered in the round.

I add that some of the particular processes around extension or reduction of the area of buffer zones perhaps leave open the opportunity for a future Government to reduce the default size from 200m to zero. There is no upper limit, but there is also no lower limit. Such a decision being taken by a minister would, obviously, be judicially reviewable under the Human Rights Act 1998, because it would require ministerial discretion. However, as Stephen Allison and others have noted, taking such a judicial review case through the courts would be quite challenging.

The committee might wish to look in some detail at the need for a 200m zone and why that departure from what happens in other jurisdictions is justified. It might well be justified: as Catriona McMillan noted with regard to the Northern Ireland legislation, the Supreme Court did not say that 250m would necessarily be disproportionate, and said that, in some cases, it might be entirely reasonable.

The critical points concern what is the default that is necessary for all cases, how the default

would be expanded or reduced and what would be the limits on the power to do so.

**The Rev Stephen Allison:** We have raised concerns about the 200m default, and we also noted that that was an increase from the figure in the consultation proposals. That is concerning, given that there were perhaps many fewer responses to the call for views than there were to the consultation, which means that people have not really engaged with that jump.

I think that 200m is greater than the figure in just about every jurisdiction internationally that has done something like this. The Supreme Court talked about 250m being proportionate in some cases, but that concerns cases in which, for certain reasons, there has been a decision to extend the 100m default by 150m.

Because this is a blanket proposal, I am quite concerned that most of the discussion has been about the Queen Elizabeth university hospital and the needs there, rather than about what is needed for all of Scotland. If you decide to go down the road of having buffer zones—although we do not think that that is the most appropriate approach—a lower starting point would be preferable.

It is important to note that concerns have been raised about the fact that there is a high school near the Chalmers sexual health centre, which raises an issue about legitimate activities that take place in a school also being activities that could influence people. What if there was a debating society meeting or a class discussion on the topic, and there were people in the class who might be wrestling with some of the issues? That activity could be thought of as one that would influence people, but I do not think that we want school pupils to be unable to engage in such discussions.

There is a lot more nuance needed in the approach that is taken, but in general the bill is a very hard instrument that deliberately takes quite a broad approach. More nuance is needed in relation to a lot of the detail—for example, the area of the zone in certain places, and whether some places do not need safe access zones.

Would the proposed approach, in some local contexts, draw attention to the fact that a person is going for an abortion? In a normal hospital, people will not think that that is what a person is doing there. Would the approach raise the thought in people's minds that that might be why someone is going in? Many difficult things and practical concerns must be thought about.

**Emma Harper:** How would we communicate to the public that a safe zone exists?

**The Rev Stephen Allison:** That is a problem.

**Emma Harper:** It might bring attention to an area that is providing healthcare for women. The

subject of signage has come up, for example. What are your thoughts on how we should communicate with the public on zones and behaviours?

**The Rev Stephen Allison:** That is really difficult, because I do not think that we can necessarily be clear as to what is and is not permitted in these areas. For example, we are worried about exclusively private prayer, because it is not clear that that would influence someone. Would we really want to raise that in signage on what is and is not allowed?

In that regard, I think that the existing legislation is sufficient. If a problem arises and it is assessed that there is an issue, because the existing provisions are not sufficient, they could be extended in response. If a protest is hijacked by two individuals who start speaking very loudly with loudspeakers or projecting images, the police can make a decision in that case. You might need to extend some of the provisions to make it clear that they cover such things, but I think that a blanket approach would be really difficult to communicate to the wider public.

**Rob Gowans:** I do not have any particular comments to make on signage. I think that 200m is an appropriate distance, based on the geography of the sites. As was referred to earlier, and as BPAS and Back Off Scotland have said, there are no stand-alone clinics in Scotland, so the sites are generally larger. That is certainly true of the geography of the Glasgow site, and there is a need for national consistency.

With regard to protected premises, we agree with part of the bill's proposals, but we would welcome as a way of strengthening things a power that required changes to be made by regulations. It is important that the legislation be future proofed and that things can be added, and that approach would enable Parliament to scrutinise proposed regulations in the future. One thing that we have considered is that people protesting outside hospitals might start congregating around bus stops and public transport hubs. We recommend that post-legislative scrutiny be undertaken once the act has been in operation for some time in order to see what has changed in practice, whether we should add provisions to cover other cases and whether the legislation needs to be changed to reflect different circumstances around facilities in Scotland.

**Dr McMillan:** I just want to add to the discussion on the size of zones and signage. On the size of zones, my comments will be similar to Eilidh Dickson's. The Law Society does not have a specific position on how big the zones should be, other than that any approach be informed by evidence. Again, that is important to make sure that the legislation is proportionate.

In our submission, we highlight and draw to your attention to the unlimited scope for reduction and extension. With regard to reduction, our point is that having unlimited scope in that respect might potentially undermine the bill's very purpose. At the other end, if there is unlimited scope for extension, our concern is that the bill could be open to challenge on a human rights basis. We have recommended that reasonable limits be placed on the minimum and maximum zones, informed by evidence from other jurisdictions—say, evidence gathered by stakeholders—proving that that is necessary, as the evidence seems to suggest. On signage, our comment is that, ideally, it is important to have clearly marked zones, so that folk know that they are entering a zone where they cannot protest.

**David Torrance:** Good morning to the witnesses. The bill would create an offence relating to behaviour that can be seen or heard from properties in the safe access zones, and we heard in the earlier evidence session that that could cover churches. Do you have any concerns about the extent of the offences and whether they comply with the European convention on human rights?

**Dr McMillan:** We are generally quite happy that the offences in section 4 are in line with the precedent that has been set by English case law, Supreme Court judgments and so on. We have raised concerns about the offence in section 5 and the range of activities that could be visible or audible from what seems to be an indefinite perimeter. Going back to my point about ensuring that the legislation is not open to challenge, and with a view to ensuring that the legislation is proportionate, I think it important that there is an objective and verifiable radius within which forbidden activities are restricted and that that is made clear.

**The Rev Stephen Allison:** I will return to what I have already said: due to the lack of clarity on what kind of behaviour the provision could cover, there are questions whether it will go into other areas of rights. An example that someone gave me was about what would happen during a political election process if certain candidates or parties put forward a pro-life position. Would the bill prevent such posters from being displayed on a private property, if they could be seen?

There are issues with religious symbolism and how that is perceived by people. In general, it comes down to the fact that a lot of this verges into subjective perception influencing—in other words, what influences you might not be what influences someone else. We have to be quite concerned about that. A lot of posters, Christian communication and so on impact people

differently, based on their upbringing and what they have experienced in life.

It is very hard to know what might or might not be caught by the provision, particularly when the buildings could be churches or other spaces. There is a lot of concern about that. As I said previously, that is not covered by the Northern Ireland decision in the Supreme Court, so it could be an area of challenge; a church could be concerned about that, depending on where it is based.

**Eilidh Dickson:** I agree with Catriona McMillan, broadly, and with Stephen Allison's overall perception of the issue.

It is worth drawing attention to section 4, which is broadly similar to comparable provisions in Northern Ireland that have already been tested. The section 5 offence of

"influencing, preventing access or causing harassment etc. in area visible or audible from safe access zone"

is where we run into problems around signage and scope, what is audible in the safe access zone and how far away that might be. We did not go into this in our submission, but it is worth highlighting that both offences can be committed with the intention to influence or where somebody is reckless about it. An open question for the committee is whether that is appropriate for both offences equally. We do not have a view on that, but it is worth flagging that there might be a difference between someone who does something from a private property with the intention of influencing or otherwise preventing or harassing and somebody who engages in conduct in their private home that has the unintended consequence of doing that. Perhaps a different test could apply, which might be where the committee would wish to look further.

12:00

**David Torrance:** Are the fines that will be imposed for breaching the conditions in the safe access zones appropriate? As many of the fines will be paid by well-funded anti-abortion campaigners, will they have the effect of stopping activity in those zones? In relation to human rights, would prison sentences be appropriate for people who continued to offend?

**Dr McMillan:** The fines seem to be in line with what happens in other jurisdictions. I might be wrong, but I think that Northern Ireland has a limit of £500. We do not have a particular position on the issue, other than that the fines are clearly in line with what happens in other jurisdictions.

**Rob Gowans:** We think that the penalties are appropriate. It will be for the courts to decide the level of sanction or penalty on a case-by-case

basis, and that is captured in the bill. For instance, the courts will determine whether there have been repeat offences that have caused physical or mental harm and whether someone's intention was to get arrested and have their fine paid by someone else or to not pay the fine in an attempt to get imprisoned. We are happy with that part of the bill.

**Eilidh Dickson:** As others have noted, the bill provides for sanctions that are considerably higher than the maximum penalty under the legislation in Northern Ireland. We did not cover the issue in any great detail in the evidence that we submitted to the committee, but we looked at sanctions quite carefully in our initial consultation response. We reflected that there is quite a broad range of possible sanctions in comparable legislation. For example, French law on the subject is not exactly similar; it relates not to termination-of-pregnancy sites but to attempts to prevent the practice of interruption of pregnancy by disrupting access to establishments. That is the language that is used in France. Under French law, the maximum penalty is €30,000 and two years' imprisonment; that was certainly the highest penalty that I found, but there seems to be a broad spectrum.

Rob Gowans has carefully outlined the issue of people perhaps choosing not to pay a fine in order to receive a prison sentence and thereby highlighting their concern about the way in which the bill's provisions were being implemented, if they became law. It would be useful if somebody from the Government set out what they expected the fines to be, but we would expect them to be considerably lower than £10,000. Provision on fines and what they might look like is common across Scottish legislation. It is not something that relates directly to this bill—it is just the standard default—but someone should set out what they expect the fine to be in these sorts of circumstances.

**Ruth Maguire:** I thank the witnesses for being with us. Do you or your organisations think that there might be wider implications for other places or types of protest?

**The Rev Stephen Allison:** That is one of our biggest concerns about the bill, as we highlighted in our response. Abortion is a contested issue in society, and a lot of pressure is already applied to people to not speak about these issues. One of the ways in which the Free Church responds to such consultations is by inviting its members in a variety of professional contexts to meet me to discuss the proposals, and I then prepare a response. The people I meet at such sessions are anonymous—they would have to be anonymous to meet me to talk about this issue.

In fact, I think that just about everyone whom I spoke to, other than ministers, who are women

involved in the legal, healthcare or counselling professions felt that they could not speak publicly in relation to the bill. They were very concerned about speaking publicly. I know that an organisation was set up to oppose the bill, and only one of the five people who set it up felt that they could speak publicly because of what they do.

Therefore, there is already an issue, and it has got worse in Scotland since *Roe v Wade* in the United States. That case is not really relevant here in the same way, but, suddenly, abortion has become an even more difficult issue for people to talk about in a professional context. I can talk about it as a minister because my employer does not care, but a lot of other people are concerned about this. There is a chilling effect and the symbolism of anti-abortion views being wrong, but I feel that that could be applied to other contested areas where there are differences of opinion. We have many areas in the church that I am sure you would disagree with us on, but part of our freedom of speech is the ability to talk about them, have dialogue about them and discuss them. I fear that you are setting a precedent here by saying that a particular thing is out of order in a particular place, because maybe other things could be out of order in other places in the future. It could become the precedent for future attempts to pass legislation in a whole host of areas.

We have a fear due to the language of persuading and "influencing", which we think is quite helpful language. We seek to persuade people of our beliefs and to follow our beliefs. They can reject that and they can say what they like in response, but we fear that you are crossing dangerous ground here by pushing in this area. Abortion might be the accepted norm in society today, but what if other things also become the accepted norm in the future?

**Ruth Maguire:** Thank you. I will ask Eilidh Dickson the same question.

**Eilidh Dickson:** I will start by saying that I have not seen any evidence of an intention to create similar restrictions around other premises, so we are speaking in the abstract. It is not impossible or without precedent. I am aware that there have been buffer zones around abortion clinics in parts of Canada for many years. There was some discussion, although I do not know whether it happened, about replicating them for Covid vaccine premises. That was obviously in the context of a very publicly contested debate around the use of vaccines at a point in time. I am not aware of that being the case in Scotland. The general slippery-slope arguments would apply, but it is not an issue that I am particularly concerned about at this moment in time.

Whatever proposal there was to extend—

**Ruth Maguire:** I am sorry—I am catching your eye, but you are on screen, so I was trying to interrupt you via the system. I wanted to ask about the wider issue. I cannot imagine another situation in which we would even be discussing policing what people are thinking. We have examples quite close to home of protesting that would probably be seen as more mainstream being cracked down on. Do you have any views on that?

**Eilidh Dickson:** I go back to saying that I do not think that there is anything in the legislation that can or should be used to interrogate what someone is thinking. It is about the manifestation of how that is presented externally, which is a slightly different, but important, legal distinction in relation to what is absolute and what is qualified.

I do not think that this legislation tries to police what people think. If it was applied in such a way, that would almost certainly raise ECHR compliance issues because article 9, regarding what is within the forum internum, is absolute.

I have no evidence that the proposal is being considered elsewhere for other issues, but you might be more aware of that than I am. However, even if somebody introduced legislation in five or 10 years to replicate buffer zones in other areas, we would still have to apply the same legal tests around fair balance, necessity and proportionality—all the things that we are discussing today. Therefore, you would look at that proposal on its own merits, and if one did not, it would be capable of being challenged within the current legal framework under the Human Rights Act 1998.

**Ruth Maguire:** What do other panel members think?

**Rob Gowans:** Eilidh Dickson's point about vaccination was interesting because, when we consider the use of such a restriction, we must ask whether it is too broad or too narrow. The bill is focused on the issues around abortion services, but there is a possible parallel with vaccination. If people were providing misinformation outside vaccination facilities or were trying to dissuade people from being vaccinated, that would be a concern, but I am not aware of that happening outside vaccination centres. The protests that have occurred and the balance of rights are specific to the particular issue that we are considering. We contend that the bill would not open up unwanted possibilities in other areas.

**Dr McMillan:** We broadly agree with the previous comments on the issue. The case for any interference with human rights must always be made on a case-by-case basis. As has been raised with the committee, the rights that are being balanced here are the health rights of the folk who access abortion care and the other rights that we

are discussing. So, in a way, it is a unique circumstance.

It is important for us to underline that we do not think that the bill should be seen as setting a precedent for curbing other kinds of protest. If it were to be seen as setting such a precedent, any similar attempts would need to go through a similar process of scrutiny, so it should not be viewed as a slippery slope.

**The Deputy Convener:** Eilidh Dickson has an additional point to make.

**Eilidh Dickson:** I apologise—I have remembered an example that could be useful in this context. Members might recollect that, when there were discussions about restrictions on protests outside the Scottish Parliament, the commission provided dedicated advice on that, in which we highlighted the freedom of expression implications of any such decision for people's article 10 rights and their article 11 rights relating to assembly. In that example, the process that we have discussed happened in that human rights were looked at in context. An important distinction was made between the rights of people to protest and the rights of service users.

That issue is discussed at length in paragraphs 125 and 126 of the Supreme Court's judgment in the reference case, which considers the specific context of a woman or a girl who is trying to access termination of pregnancy. The judgment talks at length about the fact that, because of their particular personal circumstances, although it was an incredibly private and perhaps upsetting experience, some women and girls had no choice but to run the gauntlet of the protests.

Protests can also take place against organs of the state or at political forums. In Russia, there was a general prohibition on protests at courts, which was challenged. That provision went to the European Court of Human Rights and was found to be disproportionate.

I am sorry—that came to mind as soon as I had finished speaking. A careful distinction was made between the users and the intended end recipients of the activity.

**Ruth Maguire:** That is helpful.

**The Rev Stephen Allison:** I have a small supplementary point to make. Human rights operate differently from other law in Scotland. There is often a legislative framework that sets out very clearly in black and white what is covered, but human rights are more nebulous. When a lot of the early human rights treaties, such as the United Nations Universal Declaration of Human Rights, were written, there was no suggestion that access to abortion was a human right, but that has

moved. We might not be quite there yet, but some cases are moving in that direction.

There is the potential for the bill to be extended to other areas because rights that are so broadly defined could later, as society changes, be applied in different areas than they are today. That is how the bill might start to set a precedent with abortion. I accept that it does not cover other areas, but it might set a precedent in one area that people who want to make the arguments could use in others. Safe access zones have, in a relatively short period, arisen around the world all at once because people have moved to discuss the issues. We do not know what the next thing around the corner will be.

12:15

**The Deputy Convener:** The Citizen Participation and Public Petitions Committee is considering petition PE2049, which calls on the Scottish Parliament to urge the Scottish Government to introduce buffer zones outside migrant accommodation to protect occupants from demonstrations by anti-migrant groups. Although it noted that there were a number of issues to be dealt with, the Scottish Government has committed to looking into the feasibility of that proposal, so that is another case that might be worth considering.

**Ivan McKee:** I was going to cite that case, plus some others. One of the earlier witnesses cited protests at Dungavel, which relate to the same issue as PE2049 but from the opposite perspective. Faslane protests have been cited. We have protests against arms manufacturers outside places of work in the context of the Israel-Gaza conflict.

Questions have already been aired about the scope for the bill to catch protests against cuts to health services—I have protested outside hospitals, where I have argued against closures—or malpractice. Even ministerial visits have been cited as a legitimate reason for protesting outside healthcare facilities. The UK legislation, if I understand it correctly—some of the witnesses are lawyers and I am not—was in the context of broader legislation on protest.

I ask the witnesses to reflect on some of that to give us more comfort, or not, about the scope for scope creep.

**The Rev Stephen Allison:** The term “protest” has come up but, because the bill talks about “influencing”—persuading—it goes beyond protest. That is one of the reasons why I feel that the provisions about influencing people and persuading people on certain issues could be applied in other areas. As a church, we are concerned about that. We want to have the

freedom to persuade people. The bill is not exclusively about protest, and that is one of the reasons why I am concerned about extension.

**Ivan McKee:** Likewise, as politicians, we are in the influencing business.

**Sandesh Gulhane:** I declare an interest as a practising NHS GP.

Catriona McMillan, I will focus on you quite a lot. I am sorry about that. I will ask about other protests that could be stopped. We heard previously from the police and a solicitor that the bill might stop any protest about anything—for example, about Eljamel. Is that your understanding?

**Dr McMillan:** I am not clear that that is necessarily the case. If there is a query about that, it should be made clear in the bill. There are legislative frameworks for other forms of protest—for example, trade unions. If that is not clear, I encourage the committee to make sure that it is clarified.

**Sandesh Gulhane:** Could you write to us to help us come to a form of wording to make that clearer?

**Dr McMillan:** Absolutely.

**Sandesh Gulhane:** Obviously, this is Scotland, but do you have some understanding of whether that is the case in other jurisdictions, such as England and Wales and Northern Ireland?

**Dr McMillan:** We can add that when we write to you.

**Sandesh Gulhane:** I will also ask about private homes. Our understanding is that, if you are in a private home within the buffer zone, you cannot put graphic images or other such protest material or pro-abortion material—it goes either way—in your windows or around your garden to influence people. Is that proportionate and is it the same in other jurisdictions, such as England and Wales and Northern Ireland?

**Dr McMillan:** As far as I am aware, the legislation in England and Wales, which is not yet enforced, covers activities that can be visible or audible. I do not think that anyone is suggesting covering anything that takes place inside private homes—not here nor anywhere else.

On whether it is proportionate, I would put a question mark on that for now. It is another topic that we are quite keen to review in the Law Society and come back to you on, as something that may not be quite so clear.

**Sandesh Gulhane:** I will open that question up to the rest of the panel. Do you feel that the private home section of the bill is proportionate?

**The Rev Stephen Allison:** As I have already made clear, I feel that it is probably not proportionate. It goes beyond what other jurisdictions seem to have done and what was considered in the UK Supreme Court case. Due to the lack of clarity as to what exactly might be covered, it could quite easily be disproportionate in some cases. It is not as clear cut as it could be. It seems to have been tagged on to the legislation as an extension and there is a potential impact, so we do not feel that it is proportionate.

**Sandesh Gulhane:** I will also pick up on some of the questions that I asked at the very end of the earlier evidence session, about groups giving out information to people who are going past. The leaflets that I was provided with in the earlier session had gross medical inaccuracies, which is quite concerning, and there is no policing of that type of information. What are your thoughts about the information that is potentially being given to people?

**The Rev Stephen Allison:** It is quite complicated. We would condemn the leaflets that are inaccurate. As I said, we are not really engaged in such activities. We would not be using such leaflets or giving people inadequate information.

There is a broader concern about the impression being created that only healthcare professionals can give out any information about any issue, but particularly abortion, because there are ethical and moral concerns as well, which are not going to be developed scientifically. Some of the issues to do with mental health are also disputed in the scientific community, so there are challenges there. There are also issues to do with coercion in the wider context. What Rob Gowans said about not wanting someone to be coerced or unduly influenced is quite interesting, but that is happening both ways. There is evidence of people being coerced in various ways by other family members to have an abortion. In our submission, we cited the research that the BBC conducted and issues to do with deprivation and poverty.

There are a lot of factors beyond medicine connected to abortion that the NHS is not necessarily able to provide information on, and there is not the money or resource to provide certain types of support to women facing such decisions. Certain organisations are doing some amazing work—it is not necessarily those that are involved in protesting, but there are organisations that provide helplines and support to people to consider other options.

I do not think that you should restrict it by saying that only medical professionals can decide what is appropriate medically. We have to be able to enter into debate and discussion about some of the more contested issues. However, I think that we

would all agree that, where something is clearly misleading, that is awful—for example, the breast cancer claims are just awful. I have heard someone attempt to justify why they thought that that would be allowed. Although I would condemn those particular leaflets and condemn misinformation, I would add that we should all strive to be as accurate as possible. Truth matters as a value to us, as a church, and abortion is not just a medical issue.

**Sandesh Gulhane:** I have people coming to me as a GP, and I know that there are clearly a lot of factors involved. It is not simply a medical procedure.

I have another question for you, Stephen. The information in one of the leaflets took me to the 40 Days for Life campaign. On the website that I landed on, it says:

“With God’s help, here are the proven results in 30 coordinated campaigns: over 100 abortion centres closed.”

Is that the point of the protests—to close abortion centres?

**The Rev Stephen Allison:** That is a difficult question to answer, as someone who does not engage in these protests at all. There are probably a multiplicity of reasons why people engage in this kind of behaviour. Some people I have spoken to have a huge concern for the women involved and very clearly want to care for the individual women they encounter.

If people are pro-life, they believe that abortion clinics should be closed, but that may not be the direct issue that they are campaigning about. There are differences of opinion within the pro-life movement between those organisations that want full abolition of abortion and those that want an incremental reduction of the limits, for example, and there are various views on what the correct approach to campaigning should be. People are involved in these practices for a huge range of reasons. In general, though, we have to accept that people are allowed to have multiple motivations for engaging in such campaigns and exercising their rights.

To be honest with you, I am slightly sceptical that that campaign’s claim that it has closed so many abortion clinics is true, based on what I have seen. If it is the same organisation that seems to have made other misleading claims, you may not want to place trust in that claim, but it is hard to know.

On what you said about your experience as a GP, I have had positive reports from GPs about the conversations that they have had with people who are considering termination. I think that GPs tend to know their patients more and know the wider circumstances, and that is very positive. I

guess that there are concerns about what information is provided by the service providers and about whether people go directly to service providers, but GPs seem to be better in that area, so that is encouraging.

**Sandesh Gulhane:** That is why primary care is the best type of care.

Thank you very much for that response on what is a very complicated question.

**The Deputy Convener:** I thank our witnesses for attending. Are there any other points that you wish to raise that you do not think we have covered so far in the evidence sessions? No, everyone seems content to stop there. If there are any further items that you want to correspond with us on, you are more than welcome to do so. There has already been some discussion about some items of correspondence that we will follow up on. I reiterate our thanks for taking the time today to come to the committee and help us scrutinise this legislation.

At our next meeting, on 19 March, we will conclude our evidence taking in our stage 1 scrutiny of the Abortion Services (Safe Access Zones) (Scotland) Bill. We will hear from the Minister for Public Health and Women's Health and then from the member in charge of the bill, Gillian Mackay MSP. That concludes the public part of our meeting today. Thank you.

12:28

*Meeting continued in private until 13:01.*

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