



OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities and Human Rights Committee

Thursday 16 November 2017

Session 5



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Pàrlamaid na h-Alba

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EQUALITIES AND HUMAN RIGHTS COMMITTEE
27th Meeting 2017, Session 5

CONVENER

Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP)

DEPUTY CONVENER

*Alex Cole-Hamilton (Edinburgh Western) (LD)

COMMITTEE MEMBERS

*Mary Fee (West Scotland) (Lab)

*Jamie Greene (West Scotland) (Con)

*Gail Ross (Caithness, Sutherland and Ross) (SNP)

*David Torrance (Kirkcaldy) (SNP)

*Annie Wells (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Safia Ali (Council of Ethnic Minority Voluntary Sector Organisations Scotland)

Linda Fabiani (East Kilbride) (SNP) (Committee Substitute)

Dr Angela O'Hagan (Glasgow Caledonian University)

Chris Oswald (Equalities and Human Rights Commission)

Judith Robertson (Scottish Human Rights Commission)

CLERK TO THE COMMITTEE

Claire Menzies

LOCATION

The Sir Alexander Fleming Room (CR3)

Scottish Parliament

Equalities and Human Rights Committee

Thursday 16 November 2017

[The Convener opened the meeting at 09:19]

Draft Budget Scrutiny 2018-19

The Deputy Convener (Alex Cole-Hamilton):

Welcome, everyone, to the 27th meeting in 2017 of the Equalities and Human Rights Committee. I remind everyone to switch their phones to silent mode. We have received apologies from our convener, Christina McKelvie.

Under agenda item 1, we will continue our budget scrutiny process and consider the Government's draft budget for 2018-19 with a panel of witnesses. I am pleased to welcome Judith Robertson, who is the chair of the Scottish Human Rights Commission; Safia Ali, who is the race equality mainstreaming officer for the Council of Ethnic Minority Voluntary Sector Organisations Scotland; Chris Oswald, who is a member of the equality and budget advisory group and the head of policy at the Equalities and Human Rights Commission; and Dr Angela O'Hagan, who is also a member of the equality and budget advisory group and a lecturer in the women in Scotland's economy research centre. Gosh! What long titles you all have. *[Laughter.]* You are all very welcome. I remind the panellists that they do not need to press the microphone button in order to speak—our audio tech guys will see to that.

I declare an interest: I was previously on the leadership panel of the Scottish national action plan for human rights.

I will open with a general question. As a country, how are we doing in getting equalities and human rights into our budgeting process? Who would like to start us off?

Judith Robertson (Scottish Human Rights Commission): I will. Basically, our budget would be deemed not to be delivering in relation to international human rights law because it does not take into account explicitly in its processes the norms and standards of international human rights law. It is not analysed with that in mind; it does not come from that analysis and understanding in respect of how the process is formulated, and even less so in respect of what it seeks to achieve. There are aspects of the process and what is being done that talk to delivery in relation to progressive realisation of human rights, but the budget does not sit firmly within that context.

Dr Angela O'Hagan (Glasgow Caledonian University): I will follow on from Judith Robertson's comments. It is about the starting point and the extent to which equality and human rights are central to the process of how we allocate our public resources and how we raise public revenue. Those frames are not yet dominant.

Scotland has been a pioneer over the years, but then it became a bit of a laggard. It could pick up again. A lot of good work is going on behind the scenes, as it were. There are analytical developments, as well as developments in the equality evidence finder. We also have the inclusive growth drive and the narrative and discourse around that.

Over many years we have, for example, seen being included in the equality budget statement encouraging statements that have recognised the limitations of the modelling that is used in our management of finite public finances. However, we need to move beyond that position. We consistently see a disconnect in that some of the very positive discourse and the positive work that is going on behind the scenes are not being fully implemented in spending departments. That is where we are being persistently let down.

Equality impact assessments and human rights impact assessments processes are not used effectively. Although there is very good work going on in trying to think about the budget as part of the mainstream policy process—in iterations of the budget process, that work is increasingly evident—we are not seeing the portfolio departments keep up with that approach, and we have seen big omissions in the past year or so. Maybe we can talk about those.

If we look across Europe, we have, in comparison with other countries, led the field in many ways. The political structures in Scotland mean that there are opportunities to encourage parliamentarians and the Government policy departments to think about equality and human rights. We are envied internationally for having that openness and access, and for being able to have those conversations, but we need to move from having the conversations to application and the implementation of the analysis in which we have sought to develop competence across the piece.

There is a lot more to say about where we are in relation to our European neighbours. Some countries have taken an approach that gives equality and gender or human rights budgeting a legal underpinning. We have not yet taken that step, but we have lots of other levers that could be applied to reinforce the approach, as Judith Robertson has outlined.

Chris Oswald (Equalities and Human Rights Commission): I agree very much with Judith Robertson and Angela O'Hagan that progress is encouraging. However, although we may be ahead of other countries, we need to ask whether that is sufficient. At the moment I would say that it is not. I agree with Judith Robertson that human rights analysis is largely absent from the budget. There is equality analysis, but the issue is whether the budget drives policy or policy drives the budget.

As Angela O'Hagan said, if the component parts of spend from departments have not been viewed appropriately through the lens of the public sector equality duty or of the Human Rights Act 1998, the result is a bag of unanalysed things. If the equality budget statement is a post hoc analysis, it becomes a reactive statement that says, "These are positive things that are happening for women," rather than equality and the position of women, ethnic minorities and disabled people driving the budget and elements of spend.

I will give an example. We aim to build 50,000 houses under the affordable housing programme. We have 15,000 wheelchair users in Scotland who are inappropriately housed, and we know that ethnic minorities are four times more likely to be in overcrowded housing. We could resolve those issues through that programme if we chose to do so, but we do not see that type of driver coming through from the department to feed into the budget.

Safia Ali (Council of Ethnic Minority Voluntary Sector Organisations Scotland): I agree with what everybody has said—that is the benefit of speaking last.

To pick up on Chris Oswald's point about housing, I will say that ethnic minority communities contribute and are a huge asset to Scotland, and Scotland is a driving force for race equality at the moment, but we lag behind when it comes to having a good equalities process, as I mention in our submission. Unless equalities is pre-planned, it is a reactive step at the end of the budget. People say, "We haven't done anything for ethnic minorities, so we'll include them, and that means we've done everything." Even though we are driving forward and doing well, lots of things are not pre-planned. Unless public bodies have equalities pre-planned in their budgets and are taking on the need to address ethnic minority issues and race equality issues, whatever is done will be reactive, at the end of the budget process. That is our main concern.

The Deputy Convener: Before I open up the meeting to my committee colleagues, I want to explore the disconnect between political rhetoric in Parliament and elsewhere and the reality of spend on the ground. The example that I always come

back to is the Children and Young People (Scotland) Act 2014, part 1 of which includes some lofty ambitions for children's rights and making children's rights real, but the year after the act was passed the total number of children's rights officers across Scotland's 32 local authorities was cut by half. That struck me as being a perfect example of how the rhetoric is not matched by budgeting reality. Why does that disconnect exist? Is it to do with the presumption against ring fencing or is it just that talk is cheap, and we have other priorities and are living in a hostile budgeting environment?

Judith Robertson: I suspect that there are many reasons: there is a complex picture. From the perspective of this conversation about human rights budgeting, I would say two things. The first is about where the policy is set, up front. Policy work, thinking and analysis are done at all levels of government—the United Kingdom Government, the Scottish Government and local authorities. Budgeting and decision-making processes being looked at from a human rights perspective would tend not to lead down that route. If the processes were aligned throughout our systems in Scotland, we could have systematic analysis and understanding. One of the strengths of the human rights framework is that it provides standards, norms, language and a framework for processes that incorporate non-discrimination and equalities analysis, which could help in not leading to the outcome that Alex Cole-Hamilton described. That is one way of looking at it.

09:30

Another genuine concern is the need to promote understanding of the implications of legislation and to resource effectively the processes that it is intended to deliver. The Community Empowerment (Scotland) Act 2015 is a case in point. The Social Care (Self-directed Support) (Scotland) Act 2013 is another example of very good rights-based legislation that is intended to advance and progress people's rights, but allocation of a budget that would be necessary to ensure effective delivery on the ground is outwith the gift of the Scottish Government that made the decision, or effective delivery is, at the very least, threatened by lack of resources. In addition, the policy-making process does not ensure that local authorities comprehend the implications of legislation. There is a disconnect, and it would be a reasonably big job to tackle that.

Chris Oswald: Again, I agree. Another example involves Gypsy Travellers, which I know is an issue that is dear to the committee's heart. The Scottish Government has, in the past, set aside money for site development, but because of the concordat with local authorities and the loosening

of ring fencing, such aims are not achievable without the full consent and buy-in of local authorities.

We see that happening across a range of public policy issues. It is not unique to the budget—it is a consequence of the deliberate relationship between the Government and local government.

Safia Ali: We know that budgets being ring fenced can have a positive impact because the money goes to the designated area. I will give another example. When we had positive action for race equality in employment, we could, if we knew that there would not be enough ethnic minorities coming in, ring fence certain posts. However, that has all been removed, so our dilemma is how we ensure representation.

One of my roles involves mainstreaming. When I look at organisations' procurement, policies, procedures and interviewing in that context, I can see all the gaps. I can identify where they are going wrong, especially in advertising: organisations cannot keep on advertising in only one paper and expect that everybody will read it.

We can get round the table and say, "We need to engage with communities", but unless there is ring fencing and we proceed positively towards our aim, we will not target ethnic minority communities and we will leave them out. As I said in a previous answer, the process must be thought through: it cannot be simply reactive.

Dr O'Hagan: I am not sure what is left to add to my colleagues' excellent contributions. To my mind, equalities and human rights budgeting should activate mainstreaming, because that completes the whole policy process to which spending allocations and revenue decisions are entirely integral. It is partly a question of following the money. Are resources being allocated in such a way that the intentions behind a policy or a legislative intervention will be realised?

Committees in scrutiny roles, and policymakers, in their role of formulating and putting forward proposals, need as the starting point to ask whether a policy or a legal intervention will advance equality and realisation of rights. If it will not, they should think again, and should ask whether they are allocating resources in a way that will realise common objectives.

As Judith Robertson said, there are many reasons for the problems, and the picture is very complex. We have some powerful levers in Scotland, including the public sector equality duty, our political commitment to human rights and the human rights legislation itself. However, we see some weaknesses in the links between progressive ideas such as the national performance framework, the discourse around the social contract, and inclusive growth as part of our

economic strategy. We need to be a lot better at making those links and at using equality and human rights impact assessments much more rigorously and robustly than we do, across public authorities and not just within the Government.

Chris Oswald: The public sector equality duty was mentioned. The Equalities and Human Rights Commission's sense—this does not apply uniquely to the Scottish Government; it applies across local government and to other public bodies—is that there are three parts to the public sector equality duty: elimination of discrimination, advancement of equality of opportunity, and fostering of good community relations. I think that most public bodies get the first bit: they ask whether they are doing things that are bad, assure themselves that they are not, and then they tend to stop. In particular, the analysis is stopped at issues to do with how we advance equality and human rights, which are germane to the discussion. We can look at apprenticeships or city deals, for example, which are policies that appear to be neutral, but they could have a major impact on advancing equality of opportunity for groups that have been held back over time. There has not been analysis and monitoring does not kick-start revision of policy or approach.

The Deputy Convener: Thank you. I will open up the discussion to committee members.

Mary Fee (West Scotland) (Lab): Good morning, panel. My question follows on nicely from the previous line of questioning. It is quite straightforward, but I suspect that the answers will not be.

How do we follow that money? Figures appear in budgets, but how do we assess whether the money that has been put aside has delivered the outcome that we were looking for? It can be difficult to follow through a budget figure, because Government tends to be quite good at being opaque about where money goes. Angela O'Hagan talked about asking whether money will deliver. I suspect that, if we questioned any Government minister with any portfolio about whether they were delivering with the allocated amount of money, the answer would be yes. How do we follow the money to assess whether it is delivering?

Chris Oswald: We can use the example of modern apprenticeships in Scotland. We have a very successful programme, with around 25,000 young people going into employment and training in it. However, we have known for many years that there are occupational segregation issues that have largely not moved. The Equalities and Human Rights Commission published research in 2014, I think, that uncovered for the first time that ethnic minorities had fewer than 2 per cent of apprenticeships, which is at least half of what we

would expect the figure to be on a level playing field. It is remarkable that there were 75 disabled people in the 25,000 modern apprenticeships that were in place across Scotland. To be fair, Skills Development Scotland has taken ownership of that and moved forward on the disability issue, but it appeared to be blind at that point. It did not focus on that.

The issue is about scrutiny, using data and monitoring. It is clear that a policy that was intended to benefit all young people was significantly failing disabled people and young ethnic minority people. Nobody set out to exclude them but, equally, nobody set out to include them. That is a useful example of trying to analyse what went wrong. The element of advancing equality and inclusion is missing from a number of programmes, so significant scrutiny is needed.

Mary Fee: Is there not enough collection of in-depth data, or is not enough focus put on what should be collected?

Chris Oswald: I am sure that, in that case, there was no analysis of the data that was collected, which is extremely disturbing. In other areas, it is more difficult to collect data. There are sensitive personal data on religion and sexual orientation, and we accept that that data will not always be complete, but disability, race, gender and age data are usually fairly complete. If agencies do not use the information that they generate to inform future policy, we end up in such situations.

Mary Fee: That is helpful. Does anyone else want to comment?

Dr O'Hagan: Mary Fee's question was about how we follow the money. As Chris Oswald has outlined, there are questions around building the knowledge and competence of our policy makers across the piece. The starting point is challenging the assumption of neutrality and the idea that spending allocations are not about real people and will not have an effect that reinforces existing inequalities, be those structural inequalities or the outcomes of other people's actions. We need to build knowledge and confidence in using the analytical data that already exists and applying that to policy development.

In general, we are not good at evaluation and measuring how effective implementation has been. The budget review group made its recommendations with all those considerations in mind, alongside the challenge of devising a new budget process. I should declare an interest as a member of that group—you will forgive me for bummin' up our recommendations. The report has been accepted by the Parliament and the Government and included some very positive recommendations on opening up multiple entry

points for equalities analysis in the budget process. There is an emphasis on outcomes and pre-budget scrutiny so that we have a year-round process that looks at what we are spending and at the consequences and results of that spending and asks whether that is shifting the needle. Are we seeing progression against where we want to be for our equality outcomes and, if not, do we need to reorientate?

As well as those multiple entry points for that analysis in the revised budgetary process, there are recommendations for the committees to be much more engaged across the piece and to draw on a much wider range of information, including the equality outcomes in mainstreaming reports of public authorities. That will help to bring the public sector equality duty mechanisms into closer scrutiny and may improve performance. That helps with the question of following the money.

Linda Fabiani (East Kilbride) (SNP) (Committee Substitute): I have been trying to formulate my thoughts as I have been listening to what you are saying. What strikes me is the difference between the theory and the implementation and how we link together all those who have an interest. I am finding it difficult to work out how we can succeed if we do not have the very basic way of working at public authority or local authority level, even if central Government has good policy and we are monitoring, gathering data and analysing it. That becomes very difficult. How do we bridge that gap? Is it as simple as ensuring regular proper staff training on how to do such things or do we need much deeper analysis of the practice on the ground?

Judith Robertson: Under international human rights law, all public authorities, including government and public authorities across any state, have an obligation to deliver against the laws that have been signed up to. In Scotland, we are signed up to all the treaties that the UK has signed up to, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which make up the international human rights framework. Ideally, all our public authorities in Scotland should be able to articulate, understand and deliver against those international standards; indeed, they are under an obligation to do so.

09:45

The treaties are high-level instruments but, underneath those instruments are clear, considered and thought-through processes, standards and norms that support states and all the actors within states to determine whether they are delivering against their international treaties.

They are actually non-political, because they have been signed up to by state actors.

Apart from delivering on our obligations as a state, we must also build our approach using a framework that recognises that intrinsic to society is the fact that some people will do worse and some people will do better, and that the people who do worse are vulnerable and need additional inputs and supports. We know, early doors, who those people are, and we have an obligation, as a state, to ensure that those people's lives are improved. That is true of all states, although we know that it happens to a greater or lesser extent in different states.

The basis on which those international standards are established involves having that common language enshrined in the analysis and the way in which public authorities and Government approach policy development, and understanding that if we get the approach right in relation to the people who are most vulnerable, everybody will benefit. However, we are a long way away from that—it seems almost idealistic to talk about that, because we are so far away from it. However, the standards are clear and they provide a framework.

For example, the commission talks endlessly, because we have to, about what we call the PANEL principles—PANEL stands for participation, accountability, non-discrimination, empowerment and legality. Those are fundamental principles of international human rights law that cut across all the treaties. If our thinking, analysis and perspective were incorporated in the generation of policy, the approach to modern apprenticeships, which Chris Oswald used as an example, would have been completely different. We would still have modern apprenticeships—that policy is a good one in that it supports those who need that support—but the policy would have been developed with that analysis in train, the data would have been monitored and there would have been an accountability process built into it. There would have been an understanding that, to target people who are currently being discriminated against, we need to do certain things. That would have happened, because we would have asked those people and we would have known up front what their needs were and what the best route was to help them. Safia Ali will know exactly what it takes to get into those communities and get people who are not accessing those processes to do so. Why is that not happening? It is not rocket science, but it is not built into our processes in a systematic way.

I have seen many good and well-intentioned policies and laws coming from the Scottish Government and the Scottish Parliament, and I

think that things are improving—we are on an improving trend. However, we are also being deeply undermined by some policies and practices that are coming from the UK Government—that is absolutely clear—and that places an additional responsibility on the Scottish Government to respond to the needs of its population.

It is a bit of a moving feast, but it is important to bear in mind that budgeting is the end of the process, not the beginning—in fact, it is cyclical. If we had that common language and if we integrated human-rights standards, norms, analysis and understanding of processes into our delivery through our public authority processes, we would be having a different kind of conversation at the moment. That language would be much better understood and, when we said something, it would be understood right down the line, and we would not all come at issues with our different priorities and processes.

The equalities framework gives us a huge amount in that respect and it goes a long way to doing that. However, there are things that it does not do, and there are bits missing within the framework that do not effectively deliver some of the human rights standards. We can have a conversation on that if you want. We are not nowhere—I do not want to say that we are—but we have a long way to go.

The Deputy Convener: Wow. Thanks, Judith. That is quite a comprehensive diet of information.

Judith Robertson: Sorry.

The Deputy Convener: You have sparked something here, as Chris Oswald, Angela O'Hagan and Mary Fee want to come in.

Gail Ross (Caithness, Sutherland and Ross) (SNP): And Safia Ali.

The Deputy Convener: And Safia Ali, too.

Chris Oswald: I will be brief in adding to Judith Robertson's analysis.

We would expect the Convention on the Rights of Persons with Disabilities, for instance, and its commitment on independent living, to which the United Kingdom has signed up, to have full expression in terms of self-directed support and to be reflected in housing, transport and digital infrastructure policy, which are areas where we know there are significant barriers to disabled people's full participation in society. There is a Government framework around disabled people's rights and independent living, but it is entirely predicated on the delivery by local authority, health and other agencies, which are rightly independent of Government. However, there is no checking.

I come back to the point that I made at the start. The 50,000 affordable houses that we are seeking to build in Scotland could make a significant impact on people's right to live at home in dignified situations, but that will happen only if we approach that purposefully. What is missing from Government at the moment is a sense of setting the pace, whether that is about apprenticeships or other areas. How many disabled people do we expect to be in apprenticeships? We could ask that question, rather than just leave it to chance. How many of the houses that we are going to build will be fully accessible? How many buses will be accessible? When we are considering franchising or approving tenders, what is the commitment to fully accessible transport? We need to build those things up. It is lovely to have the statements, but they are dependent on other actors. That is the problem and it is where much of what we aspire to can fall down.

Dr O'Hagan: I return to Linda Fabiani's question about whether the issue is about deeper analysis, practice on the ground or training. It is about all those things. It is about building competence that can result in the purposeful approach that Chris Oswald has spoken about. As colleagues have rightly said, there are many positive levers. We have a positive disposition in Scotland, from the Government and the Parliament, towards advancing equalities and human rights. The key thing is to make the crossover and linkages much stronger.

Although some very good policy can come out, there is inconsistency. I will give two quick examples. The Scottish national investment bank is a great and interesting idea, but the consultation on it makes no reference to equalities and human rights, whereas we should be talking about our investment in the wellbeing of our country and taking a much more expansive view of investment than just bridges, roads and things that we can point at and count.

The expansion of childcare that has taken place in the past few years, enormously welcome as it is, has started from a different discursive and conceptual place, expanding from investment in the physical facilities of the childcare estate—capital investment—to that bigger investment in early years, labour market participation and the tax base. There has been an argument in the round, although we have not always managed to hold it in that space. However, we have not seen that read-across at the start of the conversation about the national investment bank. The Scottish women's budget group, Engender, Close the Gap and other organisations have come up with some principles, which the committee will no doubt see when it examines the consultation responses on the national investment bank.

The point is to see the frameworks and the concepts that we are talking about as enabling mechanisms rather than compliance mechanisms. That is a big part of the issue with public authorities' implementation of the various proposals. I am seeing that with the evaluation that I am doing on participatory budgeting, where the public sector equality duty, in all its components, is not viewed as an enabling platform for participatory budgeting. There are many examples.

There is a new, positively initiated debate on the role of tax. Again, although the Scottish Government has produced a very good and well-informed discussion paper, it is framed around a set of assumptions, and one needs to question the extent to which such assumptions are considered to be neutral and whether all their intersecting implications have actually been looked at.

I could go on, convener, but I will not. I will just leave you with this phrase—city deals.

The Deputy Convener: Don't even start!

Safia Ali: I liked the question about how we follow the money, and I would like to give some examples in that respect. The problem that arises with a lot of public bodies when the money is given out is consistency of data. There is not enough data, and what data there is, is not accurate. When we ask for data, the bodies do not have the statistics, or the figures are not broken down in terms of ethnic minorities or, if they are broken down, ethnic minorities are lumped in with protected characteristics, which is not very helpful to us if we are trying to break down the figures even more to find out how diverse the workforce is.

I do not know whether you have heard of Keep Scotland Beautiful, but when it had to meet race equality targets under the terms of its climate challenge fund tender, it sought a partnership with CEMVO Scotland, because it wanted to increase ethnic minority access to the fund. Because KSB was told that that had to happen, it came to us. If we want money to be used to create a diverse workforce and diverse communities, we should perhaps ensure that such things are set out right at the beginning of the tender process. That will mean the bodies in question having to come to the table and involving certain organisations and groups in making themselves accessible.

The problem is that we are not actually enforcing these things. As Judith Robertson and everyone else on the panel have made clear, we have the legislation, but it is not being implemented at the bottom. It might be happening at the top, and it might be filtering down nicely to certain levels of management, but it is not getting down to the bottom. Training, which I carry out, is

really important, because we have a workforce that does not understand its communities. Now that Scotland is getting power over some social security benefits from Westminster, we are about to see a huge implementation of the financial inclusion programme. However, a lot of ethnic minority communities do not understand how that is going to impact on them. CEMVO Scotland delivers a financial inclusion programme that is targeted at helping not only small communities but established organisations understand the whole system and at helping those organisations understand their communities.

The Deputy Convener: Mary, do you still wish to ask a supplementary?

Mary Fee: Yes, convener. It is just a brief question.

Quite often Governments will say, on the one hand, "By this or that year or 10, 15 or 20 years from now, we will have achieved X," and, on the other, "We will spend X in the budget." Is enough of a connection being made between the rhetoric of "In 20 years, we will have done this or that" and what is in the budget annually? Do the two constantly match up and are they constantly assessed, or should there be more analysis of whether the amount of money that is being set out is going to achieve what the Government has said that it will achieve?

Dr O'Hagan: I refer back to the budget process review group's proposals for a revised budget process. The push is for a year-round scrutiny process set within a multi-annual financial framework in order to address some of those questions about the ability to look at the spending period not only longitudinally but incrementally—in other words, year on year—and see whether the changes have been delivered and what has been achieved. One thing that happens in a political process is that the parties want to expose things and engage with one another in a very political way, but the fact is that policy change and implementation take time, and sometimes that implementation can get a bit out of sync with the politics of the situation. Having longer periods of scrutiny and more continuous monitoring will allow us to see the extent to which the desired changes are or are not happening, but within a reasonable timeframe.

Judith Robertson: With regard to the question of how this might be seen to be delivering and, indeed, how it would deliver in international human rights terms, the commitment to understanding whether we are achieving progressive realisation—in other words, whether we are making progress—needs constant monitoring. Indeed, that is one of the standards in the International Covenant on Economic, Social and Cultural Rights.

Also, there should be no regression. It is not just about measuring progress; it is about ensuring that we are not actually going back. We have a state obligation for no regression so, if we are going back in key areas, immediate remedial action is needed to change that.

10:00

That is a key issue when money is being extracted from public sector delivery on the ground in communities. We are not in a position to do this kind of budget analysis, but I imagine that local authorities are experiencing a context in which their delivery is regressing in relation to international human rights standards. However, in relation to those standards, the language of accountability is not used—we do not think in that way or see the outcome of our activities and decisions in that way. That means that, when we do the analysis down the line, we do not consider the impact on the communities that we know will experience more acutely the impact of spending decisions. It is a whole-system picture, and the budgetary process is an important part of it.

I am glad that Angela O'Hagan brought up taxation, because the issue does not exist in isolation from the means by which we raise revenue. If there is regression, we need to factor in the revenue-raising capacity of the Scottish Government and Parliament and hold to account the UK Government and Parliament in relation to those issues. We have a duty to ensure that we are making progress. We can put terms on what that progress would be. For example, we can say that we can do it in a certain timeframe but, in order to say that, we need to be able to measure and check that we are actually doing that.

We therefore support all the recommendations of the budget review group, as ultimately they would contribute to the delivery of a human rights-based analysis. Those recommendations do not go the whole way, because human rights are not explicitly mentioned, but they go a long way to helping Government and Parliament to do that.

The Deputy Convener: I have a question on your point that local authorities may be regressing because of their constrained budgetary realities. As you rightly said, Scotland is signed up to a number of human rights treaties, which make up the broader rights framework. However, in many cases, we have not incorporated those obligations into law and, consequently, there is no access to justice and no penalty for local authorities that allow rights to be impinged or denied or that do not take sufficient steps to ensure that human rights are in place. Is that the X factor? For example, is the incorporation of the United Nations Convention on the Rights of the Child, which would give children access to justice, the X factor that would

make local authorities take the issue seriously and realise that, if they did not, they could end up in court?

Judith Robertson: It is certainly the backstop of protection. If we incorporated the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women or the Convention on the Rights of Persons with Disabilities, legally, we would be bound. However, from my perspective, the impact of incorporation is not just about the backstop of protection in the courts; it is about what it would do in the policy-generating process.

The commission is already brought into conversations on the duties in the Human Rights Act 1998, which incorporates civil and political rights. We are asked, "Do we have to comply with that?", to which we say, "Yes, you do." We help people to analyse and understand what is required to comply with the act although, to be honest, it would be much better if they could do that themselves. I am talking not just about people in this room but people in many other rooms. It is a good thing, because it means that people have the 1998 act at their back and do not want to be subject to judicial review or a legal process at the end of the day so, up front, they make policy that delivers against the obligations of the act.

The situation would be exactly the same if we were to incorporate economic, social and cultural rights. People would be required to consider whether they were meeting the standards and norms of the treaties and whether provision was accessible, available, adequate and of good enough quality to ensure that rights were being met. If they were not, we would have to think about how, up the line, they could be.

For me, the issue of justiciability or incorporation of the treaties is not just about having a court action. It would make people think about the treaties upstream—that is actually the most important implication. We do not want things to get to court. We want things to be better up front.

The Deputy Convener: Linda Fabiani, did you ask the question about race that you had in mind?

Linda Fabiani: No, not yet. Maybe I will later.

The Deputy Convener: Jamie Greene, did you want to come in? We do not have a lot of time, so I ask witnesses to keep their answers succinct.

Jamie Greene (West Scotland) (Con): I will pick up on something in the WISE submission in order to clarify the terminology that it uses. It says:

"WiSE research ... reaffirms ... arguments on the importance of developing tax policy based on gender analysis that highlights the differentials in ability to pay"

and

"the different economic status of women",

and that, as a result of that analysis, there should be consideration of progressive taxation. What does that mean?

Dr O'Hagan: It means that what kind of tax system we set up affects women and men differently. Women and men have different sources of income and different lived experiences. Their different sources of income, and the inequalities within them, have an impact on the ability to pay and the extent to which tax is a proportion of income. The formulation of words is, I think, a consequence of having to be very succinct in evidence. Basically, it is about removing the assumption of neutrality in tax systems. Tax systems have a highly gendered dimension.

Therefore, as I said, we should look at the very positive paper that the Scottish Government put out in the past couple of weeks on the role of tax in the budget process, the options that are set out therein and its beginnings of an exploration of the impacts. The paper usefully highlights different occupations to help people orientate and see themselves in there. Behind all the different job clusters—childminder, police officer, solicitor and the other examples that are given—I see big occupationally gendered groups of workers. I am reminded as well that there are 300,000 fewer women taxpayers in Scotland. We need to look at the impact of taxation on incomes from those different income sources.

If we look at the budget, we see that 1 per cent of the current budget's expenditure is on employment, skills and fair work. There is a big issue of using public money to foment and advance attachment to and participation in the labour market, which allows people to pay tax.

We are looking at what is coming down the line from the UK Government. Judith Robertson alluded to the damaging consequences of UK Government actions. Just yesterday, colleagues at the UK women's budget group and the Runnymede Trust produced data that shows the horrendous impact of cumulative cuts and changes to benefits for women, particularly black women, for whom £5,000 a year in income has been lost.

We need to look at the intersections of the characteristics of women and men in terms of sources of income and how tax design will affect people's incomes.

Jamie Greene: Maybe I can be more specific. Is your statement advocating differential tax rates for men and women, or for different groups of employment?

Dr O'Hagan: The statement is about ensuring that there is effective and robust gendered analysis of whatever tax design proposals are put forward.

Chris Oswald: Can I give a practical and positive example of how this might play out? Angela O'Hagan and I are both members of the wonderfully named EBAG—the equality and budget advisory group.

We looked at the introduction of stamp duty, which one might think would have been neutral. We looked at it through a range of lenses, from age to gender and race. To be fair, there was not a huge amount of data. We were looking at how often someone will bump up against stamp duty, based on who is most active in the housing market. The data clearly confirmed that younger people were going to do that.

Knowing and being conscious of the impact of your decisions enables you to take mitigatory action or say whether something is acceptable. In a very simple way, that starts to uncover the consequences of the path that we choose to take. It is about the Government being conscious of what it is doing rather than unconscious of the ripple effect of policy.

The Deputy Convener: I am afraid we have to stop there. The witnesses' answers have been excellent and very thorough. If there are things that you would like to have said—I know that there were questions that my colleagues did not have time to ask—or if you have additional information, please supply it to us in writing. I will keep this dialogue open. Thank you for your time today.

We will move into private session.

10:10

Meeting continued in private until 10:37.

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

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