



OFFICIAL REPORT  
AITHISG OIFIGEIL

DRAFT

# Equalities and Human Rights Committee

Thursday 16 May 2019

Session 5



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**Thursday 16 May 2019**

**CONTENTS**

	<b>Col.</b>
<b>DECISION ON TAKING BUSINESS IN PRIVATE .....</b>	<b>1</b>
<b>SCOTTISH HUMAN RIGHTS COMMISSION AND EQUALITY AND HUMAN RIGHTS COMMISSION .....</b>	<b>2</b>

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**EQUALITIES AND HUMAN RIGHTS COMMITTEE**

**13<sup>th</sup> Meeting 2019, Session 5**

**CONVENER**

\*Ruth Maguire (Cunninghame South) (SNP)

**DEPUTY CONVENER**

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

**COMMITTEE MEMBERS**

Mary Fee (West Scotland) (Lab)

\*Fulton MacGregor (Coatbridge and Chryston) (SNP)

\*Oliver Mundell (Dumfriesshire) (Con)

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

\*Annie Wells (Glasgow) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Kavita Chetty (Scottish Human Rights Commission)

Rhoda Grant (Highlands and Islands) (Lab) (Committee Substitute)

Alastair Pringle (Equality and Human Rights Commission)

Judith Robertson (Scottish Human Rights Commission)

Lynn Welsh (Equality and Human Rights Commission)

John Wilkes (Equality and Human Rights Commission)

**CLERK TO THE COMMITTEE**

Claire Menzies

**LOCATION**

The James Clerk Maxwell Room (CR4)



**Scottish Parliament**  
**Equalities and Human Rights**  
**Committee**

*Thursday 16 May 2019*

*[The Convener opened the meeting at 09:00]*

**Decision on Taking Business in**  
**Private**

**The Convener (Ruth Maguire):** Good morning and welcome to the Equalities and Human Rights Committee's 13th meeting in 2019. I ask everyone to ensure that their mobile devices are switched off and put away. We have apologies from Mary Fee, and I welcome Rhoda Grant, who is substituting for Mary. We also have apologies from Alex Cole-Hamilton for the first part of the meeting.

Agenda item 1 is a decision on taking business in private. Do members agree to take agenda item 3 in private?

**Members** *indicated agreement.*

**Scottish Human Rights**  
**Commission and Equality and**  
**Human Rights Commission**

09:00

**The Convener:** Agenda item 2 is consideration of the work of the Scottish Human Rights Commission and the Equality and Human Rights Commission. I welcome Judith Robertson, who is the chair of the Scottish Human Rights Commission, and Kavita Chetty, who is head of strategy and legal at the commission. I invite Judith Robertson to make a statement of up to five minutes.

**Judith Robertson (Scottish Human Rights Commission):** Thank you for the invitation to be here. We really appreciate the Parliament and the committee spending time on understanding the commission's work. We are Scotland's national human rights institution. We are an A-status organisation, which means that the way that we work and the law that governs our work comply with a set of guidelines called the Paris principles. We are a body of the United Nations and of a recommendation by the UN that nation states have a responsibility to ensure that human rights are progressed in their countries. The establishment of national human rights institutions was designed to do that.

As you are aware, we have a foundation in national law—our legislation. We are independent of Government and we have a mandate to cover a broad range of international human rights standards. We need to demonstrate pluralism—I find it hard to say that word—and independence in the selection and appointment of our members, and we have a responsibility to work with civil society and the state. We need to have adequate resources to function well and we need adequate powers of investigation. Those are the standards that the UN has established as the principles with which we have to function. As we are deemed to have met those standards, we have been given A status, which entitles us to speak at the Human Rights Council and to represent the human rights landscape in Scotland to the bodies in the UN.

We are the only Scottish organisation that can make direct contributions to the Human Rights Council on issues affecting people here. We act as a bridge between human rights in Scotland and the international human rights system, and we monitor the implementation of international human rights treaties as they apply in Scotland. We work closely with civil society and others to gather evidence and produce recommendations for change.

Our mandate is a general one. We have a general duty to promote awareness, understanding and respect for all human rights, for everyone in Scotland—economic, social, cultural, civil and political rights—and to encourage best practice in relation to human rights. I will talk briefly about our powers, just so you know, and then we can go into that later. We have additional powers to conduct inquiries, enter some places of detention in the context of an inquiry and intervene in civil court cases. Those are the commission's general duties.

Last year, we were 10 years old. We have been functioning since 2008, and have been operating to deliver that mandate and build a culture of human rights in Scotland in partnership with a range of organisations. Over that time, we have seen a development of the human rights landscape in Scotland. The good output from that is a greatly increased level of debate that includes and involves human rights and a much better understanding of human rights in some settings. Specifically, there have been state commitments and commitments from the First Minister to make significant progress on the incorporation of human rights into domestic legislation in Scotland. There is a commitment to fully incorporate the United Nations Convention on the Rights of the Child and a commitment to take forward a task force to deliver on the recommendations of the First Minister's advisory group on human rights leadership.

The second aspect of the context that I consider to be very favourable for human rights—there is a lot more to come on this, but I want to highlight it now—is this committee's inquiry into how the Scottish Parliament could show more human rights leadership and produce evidence of itself as a human rights guarantor. That inquiry was extensive and covered the bases in terms of how to progress the issue in Parliament. From our perspective, that is part of the evidence of significant progress.

There is a strong context in Scotland, which we will talk about further, but I want to highlight some of the surrounding context that is not so positive. That includes the implications of Brexit, in terms of the actual rights that would be lost and, what is more concerning, the potential impact on people's livelihoods and lives and the country's economic status, and the potential reduction in people's enjoyment of their rights as a result.

The wider international narrative on human rights has often been negative in recent years. That threatens the human rights framework and the willingness of countries to support the rule of law. We have seen that willingness decline in some settings internationally, which threatens compliance with international human rights

standards and, more importantly, affects people's lives and how they can live them.

One thing in Scotland that threatens people's rights is our relationship to accountability. In some settings, we have a strong and positive relationship to accountability but, in other settings, we seek to weaken it and we potentially undermine it by not resourcing accountability processes well enough and by failing to understand that by delivering robust accountability processes, we actually enhance people's capacity to achieve their rights. There is a job of work to do to support people to understand that effective and positive accountability mechanisms help us all.

Have I exceeded my time, convener?

**The Convener:** You are perfectly on time.

I will start the questions by asking about your strategic plan. How are you prioritising the aims in it? More importantly, how will you measure outcomes and success?

**Judith Robertson:** We are currently developing our new strategic plan, as we are in the last year of the current plan. We have developed strategic priorities and we are about to consult on those priorities, which have been published today. We will briefly talk you through where we are on that and how we will take forward that work.

The development of the draft strategic priorities involved an extensive process of consultation. We have had internal consultation and conversation to look at the environment. Clearly, we have looked at the Paris principles to determine what our role is in relation to progressing rights in Scotland and, in the context, how we should use our resources to best enhance what is happening. A range of strategic decisions will be made. I think that the committee convener has been invited to contribute to the process to support us in developing the strategic priorities.

I ask Kavita Chetty to go into the detail.

**Kavita Chetty (Scottish Human Rights Commission):** We launch our draft strategic plan for 2020 to 2024 today, to coincide with this evidence to the committee. As Judith Robertson said, we have tried to ground our priorities in the current context and what we see as the emerging challenges in the coming period. As Judith highlighted, many challenges will arise in the period 2020 to 2024, including economic, environmental, technological and constitutional challenges, and we think that human rights need to play a role in anchoring us through these uncertain and challenging times. We are trying to respond to the challenges that we see in the coming period.

As a result, we have four emerging strategic priorities. The first is around progressing our

understanding of economic, social and cultural rights and strengthening them in law. We would like to see that taken forward in the next four years, and we see potential to do that through the implementation of the First Minister's advisory group recommendations. However, even without that, those rights should be a priority for us here in Scotland. We hear that from our stakeholders when we talk to them in consultation. With the loss of protections through Brexit and the potential impact of that, anchoring devolved power in Scotland by putting economic, social and cultural rights into the law can help us navigate those challenges.

The second strategic priority is strengthening accountability for meeting human rights obligations. Judith Robertson has already talked about the challenges around accountability, and our understanding of it as a full spectrum of things from the everyday conversations that people have in healthcare settings or social care settings, through to the judicial enforcement of rights, and everything in between, including scrutiny here in the Parliament. We would like to see work being done with accountability bodies across the country to embed human rights into their processes.

**The Convener:** What do you mean by "accountability bodies"?

**Kavita Chetty:** In recent years, we have worked with HM inspectorate of prisons for Scotland and the Care Inspectorate on their standards. We are in conversation with Audit Scotland about how it embeds human rights, and we are having conversations with the Scottish Public Services Ombudsman. We have the Scottish Commission on Social Security and the Poverty and Inequality Commission. How do those accountability bodies across Scotland use the human rights framework to enhance the work that they do?

Our third strategic priority is around building wider ownership of human rights. We think that there is a real opportunity to do that and it is an essential part of the human rights culture in Scotland. Research that we released last year that was conducted by YouGov showed that there is considerable support for human rights in Scotland and the situation is slightly more favourable than it is south of the border.

There is a swathe of people who are conflicted about rights, but we know that when they are provided with accurate information, they can be persuaded to support human rights, so we can have a Scotland that respects rights. We would like to build on that research, communicate effectively about rights to holders of those rights and reach them with the messages that we know are important to make them supporters of rights for everybody.

The fourth strategic priority is for us to show global leadership in human rights as a national human rights institution. We are small compared to our sister national human rights institutions around the world—we are one of approximately 100—but we seek to look to international best practice and emerging international standards to see how we can use them in Scotland. For example, we have looked at how the commitment to the sustainable development goals can be used in concert with human rights protections to advance rights protection in Scotland. That is seen as international best practice and, as a national human rights institution, we have sought to learn from others and bring that learning into Scotland. We want to continue to be a bridge between international emerging best practice on human rights and Scotland.

Those are the four strategic priorities as published today, as Judith Robertson said. There will be much more consultation and we would welcome the committee's views on those emerging strategic priorities. We have further work to do to consider how we implement them in practice in accordance with our resources.

**The Convener:** The second part of my question was about measuring success. You talk about ownership of human rights, and part of that is about making them real for people. If people are achieving their human rights through the accountability bodies that you mentioned, that makes it real for our constituents. How do you measure success?

09:15

**Judith Robertson:** We do it structurally through a range of means. We look at the outcomes that we are seeking to achieve under all our strategic priorities, the final version of which will represent what the commission is seeking to do in Scotland. Under that, we will identify key outcomes that we want to get.

We will then start to pick up on how we do that. I will use the example of the conversations that we are having with Audit Scotland. An indicator of success in working with Audit Scotland will be that some of its audits start to bring human rights standards into the conversations that it has with public authorities in Scotland. We can track that. One of our success indicators is that Audit Scotland will make that explicit and that the questions that it will ask of all the public authorities in Scotland will start to draw out how we are meeting those human rights standards. That will enable an organisation such as Audit Scotland, which has reach into public authorities across Scotland, to bring those authorities on board in a way that we would never have the resources to do. From our perspective, that is a strategic

approach. Our measurement of that is to track it and see explicit evidence of it as we go forward.

That is one route. The other side is to ask what difference it makes. We have had some impact, the amount of conversation has increased and Audit Scotland has taken that forward, but what impact does it have for people in communities? In honesty, that is a much harder thing to assess. I am trying to think of an example in which we would be able to track that change. We can come back to that if it is helpful. In terms of the standards, for example, the commission has worked with the Care Inspectorate and Healthcare Improvement Scotland to transform the health and social care standards as they are currently framed in Scotland. The new version was launched last year.

That has completely turned around the way that the Care Inspectorate asks questions of bodies in social care and health settings about how people are experiencing the care that they are receiving. Rather than saying, "Here is the standard that the Care Inspectorate expects", it asks, "How does that impact on the individual's experience of that care?", whether that be healthcare, social care or whatever. From our perspective, that has turned the standards approach in the accountability mechanism on its head and put human beings at its heart. It is not about the standards that they expect, but about what it feels like for the person, and that is what is being measured. Over time, we will be able to see what difference it makes to ask the question differently and have different expectations of what good looks like.

I am trying to give the committee examples to highlight our processes.

**The Convener:** That is helpful, thank you.

**Gail Ross (Caithness, Sutherland and Ross) (SNP):** Good morning. Judith Robertson mentioned a couple of human rights issues that we are now facing in Scotland, Brexit being one of them. Do you see there being any rolling back of human rights standards if we leave the European Union?

**Kavita Chetty:** Brexit-related law reform, the securing of a renegotiated relationship with the EU and the positioning of our political leaders and parties at both UK and devolved level have the potential to have a profound and long-lasting impact on our human rights laws and culture. The commission stands by its position that any changes to our laws in relation to our rights need to progress forwards and not to regress back in the coming years, to build a stronger society.

We have some key principles to guide us in that forward journey. We want to see non-regression of standards for protected rights; we want measures to be taken that enable us to keep pace with

progressive developments, both across the EU and globally; and we want to see Scotland lead the way in advancing the international collective commitment to human rights. Therefore, we are concerned that, as a consequence of the European Union (Withdrawal) Act 2018, the Charter of Fundamental Rights of the European Union will no longer apply directly in the UK or Scotland.

It is notable and of concern that the charter was singled out as the only aspect of EU law not to be retained as part of domestic law upon withdrawal from the EU. That does, indeed, result in a substantive loss of protections immediately, and a loss of evolving protections over time, as well as remedies for all areas that previously fell within the scope of EU law such as privacy, data protection and a fair hearing.

Without the charter, there is also that loss of potential fuller protection of social rights, which might evolve over time, such as workers' rights and access to social security and healthcare. Even where current standards beyond the charter that have been transposed into domestic law, such as discrimination law, environmental protections, consumer rights and wider social protection, have been replicated, they remain vulnerable to future repeal or regression and there is no guarantee that they will keep pace with any progressive developments that are made at EU level. That concern about regression or diminution of rights is exacerbated by the so-called Henry VIII powers that allow ministers to manage legislative change to retained EU law by statutory instrument. There is no other mechanism with which to protect retained rights from amendment over time.

We welcome the attempt through the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill to retain the charter but, as you all know, the Supreme Court found aspects of that bill, including retention of the general principles of EU law and the charter, to be outside the legislative competence of the Scottish Parliament. In any event, the bill's scope would have been relatively limited, in that it would have applied only as far as devolved, retained EU law is concerned and where Scottish authority is deemed to be implementing that devolved, retained EU law. For current standards of rights to be maintained, the Westminster Parliament would have to take similar steps.

However, we think that that move was in line with where Scotland is at; it is in line with the Scotland declaration on human rights, which was signed by, among others, more than 150 civil society organisations. It expressed united support, as we embark on our journey of leaving the European Union, for Scotland to be a leader in human rights protection and implementation.

**Gail Ross:** Will that have any effect on the priorities that you laid out in your strategic plan?

**Kavita Chetty:** As we said earlier, it will. In particular, we are interested in the implementation of the recommendations of the First Minister's advisory group on human rights leadership. One of those recommendations is that there should be an act of the Scottish Parliament to provide human rights leadership and a new framework of rights to improve people's lives. That does not fully mitigate the loss of protections through the charter or broader EU law. However, it advances our human rights protections. We were pleased that the First Minister said that she shared the group's ambition for the recommendations that would lead to that act of the Scottish Parliament, but we now have concerns that no concrete steps have been taken and no announcement has been made on the advancement and implementation of those recommendations.

**Gail Ross:** One of your priorities is building wider ownership of human rights. How do you plan to do that?

**Judith Robertson:** That is a big question.

**Gail Ross:** How can we help you to do that?

**Judith Robertson:** I will move on to how you can help. The inquiry and its recommendations will enable the building of the wider ownership of rights. The Scottish Human Rights Commission intends to continue to support the Parliament and this committee in ensuring that those recommendations are delivered as effectively as possible.

We can talk about the detail of that. The Parliament absolutely has a role. The more explicit that the Parliament and all its committees make human rights in their conversations, their scrutiny, their legislative processes and their engagement with all organisations, the stronger the public ownership of human rights will be. You have a unique and significant role in providing leadership on that. Our role is to support you as best we can within the resources that we have. I will talk later about how we will do that.

In effect, all that we do has the capacity to build that public ownership of the rights agenda. Specifically, we recognise the challenge of reaching rights holders whose rights are being infringed by the process that they are encountering but who are not the kind of people who engage with this Parliament, who are visible in community settings or who walk into members' surgeries on a day-to-day basis. Those people are harder to bring on board as part of that public ownership.

In the past few years, we have been developing more accessible ways to communicate with

people, such as videos that explain what people's rights are. We are about to embark on one that looks at the right to food, which will help people to understand what the right to food means, what their rights are and some of the implications of how that is being delivered, or not, in Scotland today. We are talking to communities and engaging with people to ask what it feels like and how, if they have those rights, they can be better realised.

That brings me to the accountability gap. We have a problem with accountability. We can raise people's awareness of their rights, but they may have no means of gaining access to them or holding anyone to account for the lack of their delivery, so that is our second strategic priority. We need to support our public authorities and institutions in Scotland to recognise that they have real responsibilities in relation to rights and we may need to think about how we prioritise our resource allocation.

We are looking at people's rights and how they are best being delivered in communities. That idea of public ownership is quite broad. It will happen through all our activities, to be honest, but some specific activities will be targeted at reaching people for whom it is a much harder conversation to access, if that makes sense.

**Gail Ross:** Yes, absolutely. Thank you.

**Oliver Mundell (Dumfriesshire) (Con):** I was interested in the comments about Brexit. I hear the points that you are making, but is it inevitable that leaving the EU means that human rights would be eroded? I certainly recognise significant domestic and international protections that would remain in place, and there is no reason to suppose that human rights law would not continue to develop and be enhanced, as it did prior to the United Kingdom joining the EU.

**Kavita Chetty:** First, we are concerned about the loss of the charter, the broader EU protections and their evolution over time. Further to that, we still have deep concerns about the position of the Human Rights Act 1998 and our relationship to the European convention on human rights, and, indeed, to the Council of Europe.

In recent correspondence between the EU justice sub-committee and the current Government, the stated position was that the UK has no plans to withdraw from the ECHR. However, that is to some degree an insufficient reassurance, because it leaves open the possibility of weakening accountability for human rights through changes to the 1998 act. The chairwoman of the sub-committee noted that the Government still had not given assurances that it will not repeal or reform the 1998 act, which essentially incorporates the ECHR into our

domestic law, and we know that it has previously been the intention of the Westminster Government to do that.

Historically, the various proposals that we have seen and ideas that have been mooted for the future of the Human Rights Act 1998 and our relationship to the ECHR have been troublesome, in that they talk about limiting the application of the convention, reducing its extraterritorial effect and diminishing the role of the Strasbourg court, making its judgments advisory only. The SHRC's view is that that would undermine the collective enforcement of human rights across Europe and put us on a collision course with Strasbourg, because the convention says that states need to abide by the final judgments of the court. Our position is that we need to maintain, in full, the protections that are provided for in the 1998 act. Those are currently embedded in the Scotland Act 1998 and devolution, but there is probably no room for complacency. Progress notwithstanding, we still have concerns.

To some extent, EU membership and the application of the charter have acted as a deterrent to withdrawal from the ECHR. The notion of stepping back from the ECHR and accountability is deeply concerning, because it is one of the most effective regional protection mechanisms for human rights globally. We have concerns about the existing protections, as well as the loss of other protections as a result of Brexit.

09:30

**Judith Robertson:** I was in Geneva a few weeks ago with the Global Alliance of National Human Rights Institutions and we met the UK ambassador to the UN mission, who said that it was seeking to increase its profile in the UN and to double the size of the embassy. That gives some assurance that Britain's commitment to the international human rights system is seen as important and valuable. However, everything that Kavita Chetty said applies about the loss of protections and the backstop that EU membership provides in our on-going membership of the Council of Europe and commitment to the European convention.

**Oliver Mundell:** Is it not the case that the right to withdraw from international organisations and reform relationships with them is a democratic right of a fully sovereign state and is not particularly unusual?

**Kavita Chetty:** There are 47 nations and 800 million people in the European human rights system. It arose out of a post-war situation in which it was recognised that there was a need for collective enforcement of human rights internationally. No democracy has ever withdrawn

from the convention—although I recognise that every state has a right to do so.

The convention has enabled a raft of progressive things in our country, including ending corporal punishment in schools, protecting our privacy against intrusion, protecting our right to protest, putting in place protections in mental health detention settings, and creating positive obligations to safeguard people from harm and to protect their right to life. The Human Rights Act 1998, through the Scotland Act 1998, has also had significant impact in the Scottish courts and in case law as well as in the broader culture of human rights in Scotland. The impact of the Human Rights Act 1998 and our adherence to the convention has been felt by people in many settings, sectors and spheres, from prisons and police custody to the media and safeguards on personal data.

Although it is in the gift of any state to withdraw from the convention, we would argue that it would be a regressive step, not only for the citizens of that country, but globally: it would send a truly damaging message across Europe and the world if the UK were to withdraw from the supranational protection of human rights. The commission is heartened that there is little appetite for that in Scotland—as we saw when the debate around the Human Rights Act 1998 took place and through the Scotland declaration and so on. In general, we are pleased that it has been welcomed that human rights compliance is built into the fabric of devolution in Scotland through the Scotland Act 1998. We want to see that secured and progressed.

**Annie Wells (Glasgow) (Con):** Earlier, we spoke about success and what gets measured. What is the commission's biggest success and how does it measure that?

**Judith Robertson:** Thank you for the question. We have a lot of successes. Our biggest success is progressing the understanding of human rights and the need and capacity for human rights protections in Scotland to the extent that the First Minister established an advisory group to look at how better we could develop human rights leadership and fill that accountability gap by protecting the economic, social and cultural rights that remain unprotected in domestic law. The Human Rights Act 1998 primarily protects civil and political rights, so there is a gap.

When we talk to people in communities about their rights, the things that they talk about first are their economic and social rights; people care about health, housing and education and their income to support their lives in general. Those are economic and social rights, rather than civil and political rights. Therefore, the things that people care about in Scotland and—I would argue—

across the UK are those that are least protected in our domestic law. From the commission's perspective, the translation of what happens in a local setting to the response from the First Minister and the Government, who say that they want to protect those rights, has been a huge success.

I joined the commission three years ago, but I had been aware of it since its establishment. When the commission was established 10 years ago, there is no way that such a conversation would have taken place. We did not know what "incorporation" meant or about the notion that rights could be protected through domestic law. Although people were clear about the Human Rights Act 1998, which was enshrined in the Scotland Act 1998, they did not know about the notion that economic, social and cultural rights deserve the same protection. The shift from understanding economic, social and cultural rights generally to turning that into potential protections in domestic law has been a huge achievement.

The commission has played a major role in achieving that shift, but I recognise that a number of other actors have engaged actively in the process, which has been really important. Our capacity to work with others is another key success, because we would not have made many of the achievements without that capacity, which has been a key part of our strategy since the commission was established.

**Kavita Chetty:** I will talk briefly, in internal governance terms, about how we measure success. All our operational planning under our strategic plan has a strong focus on outcomes. The organisation works across 10 broad outcomes, and every project or activity has its own set of outcomes that we want to achieve and, where possible, key performance indicators, so that we know whether we have achieved those outcomes. We report to the commission against those outcomes on a quarterly basis. Our measurement of success is proportionate to our size and function and is tailored to the type of work that we do.

In some instances, we have more substantial in-built evaluation of our work. For example, the University of Glasgow carried out an independent evaluation of Scotland's national action plan for human rights, and our internal researcher has done work on assessing our housing project in Leith. Therefore, in some instances, there have been what we regard as relatively clear and measurable impacts. For example, we gave evidence to the commission on parliamentary reform, which led to the Equalities and Human Rights Committee's inquiry into how the Parliament could be a human rights guarantor. We hope that that work will lead to an implementation plan and progress.

To answer the original question, it is hard to measure success in terms of the impact on individuals on the ground. However, we want human rights to be embedded more systematically through the Parliament's work and for there to be more regard to international obligations and treaty body recommendations. We are beginning to see that happening.

Another example relates to the Social Security (Scotland) Act 2018. Throughout the passage of that legislation, we raised the profile and understanding of the right to social security with the Government, the Parliament and civil society, and we think that our interventions contributed to the inclusion of enhanced accountability mechanisms. For example, we consider the establishment of the scrutiny body that must exercise its functions in accordance with the right to social security, as set out in international law, as an outcome of our interventions.

We also worked with the Government to secure, in the national performance framework, an explicit human rights outcome, which says:

"We respect, protect and fulfil human rights and live free from discrimination".

That adds to the idea of human rights being part of the fabric and governance of Scotland, and we see that as a direct result of our interventions.

There are other areas of the organisation's work in which it is more difficult to measure success, particularly given our size. For example, with the Scottish Independent Advocacy Alliance, we provided extensive training for those in advocacy settings. However, only after looking back at our success measures over the 10-year period could we speak to advocates on the ground who had used the training and understanding. They were able to say how that direct experience had helped the people whom they support.

As Judith Robertson said, there is also the much broader picture. We think that the commission has made a difference in raising the profile of economic, social and cultural rights and in improving our understanding of incorporation and how we can strengthen our laws and put them into practice. Again, that impact is less measurable. However, I have worked for the commission for 10 years and, 10 years ago, we would not have had many of the debates that we now have.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** You mentioned the Scottish national action plan. Outcome 8 in the SHRC annual report says:

"SNAP is achieving its medium-term outcomes".

Can you expand a wee bit on how SNAP is achieving those outcomes and give us an update on that?

**Judith Robertson:** One of the medium-term outcomes of the first iteration of SNAP was to strengthen the protections in domestic law. It was about Scotland fulfilling its international obligations on human rights. We have said that SNAP is achieving some of its medium-term outcomes because of the commitments that have been made about enhancing those protections, which were not there when SNAP started. That is an indication of the progress that has been made.

In terms of an update, we have hosted and facilitated a development working group made up of about 20 organisations and individuals, some of whom were part of the original iteration of SNAP, some of whom are new. The group is drilling down into what priority actions the next round of Scotland's national action plan can undertake.

In the last year of the previous action plan, we had a full participation process in which we engaged with communities around Scotland to ask them about their priorities. There were some quite interesting outcomes. Again, most of them related to people's economic and social rights, but we identified 25 themes from that process. I will share all 25 themes with you. We have systematically been going through the themes to work out the priority actions that would best progress them in human rights terms. It is not too big a task to do that work, but there is a need to prioritise and then identify the key actions that we think are important in Scotland over the period of the next iteration of SNAP.

One of the key challenges of the first iteration of SNAP was in relation to the resources that were made available to make that as successful as it could be. We made significant progress, but the lack of an explicit resource base for SNAP is a real constraint. Unless resources are made available to ensure that the next phase of SNAP goes forward, we will not see the progress that is required in Scotland.

We have identified a number of quite urgent areas of action and clear priorities for activity. We have come to the end of the analysis of the key actions and we will do some work to further prioritise those actions, but we need clear engagement from the Government on developing that prioritisation and supporting the process. I am not saying that such engagement has not been there—the Government has engaged with the process—but engagement with the idea that delivering a national action plan on human rights for Scotland is a priority needs to be extended right across Government.

Providing human rights leadership is explicit in the first recommendation of the First Minister's advisory group. It was very much integrated into that conversation. From our perspective, delivering a new act of the Scottish Parliament on economic

and social rights is a significant part of what should be included in the national action plan.

**Fulton MacGregor:** You said that you engaged with a wide range of people across the country. Did you notice a difference in people's priorities in different geographical areas and locations? Do you feel that you reached out to communities that can sometimes find it harder to engage with these issues?

**Judith Robertson:** We covered cities and rural areas. We sought to go into the rural communities because they find it harder to engage in national processes by dint of the distance, although I know that there are lots of endeavours to make engagement better across Scotland.

We went to different places and locations such as Dumfries and Galloway, Inverness and Dundee to have those conversations. I would say that we achieved limited success. We achieved success in reaching out into some of the groups that find it harder to engage. We had on our group representatives from the Gypsy Traveller Community, which has lots of historical discrimination stacked against it. Their engagement is therefore important.

09:45

There is no doubt that there was a difference in people's analysis in different geographical areas and locations. Rural areas in Scotland are very differently impacted on by the delivery of public services. This Parliament is well aware of that and has good analysis and understanding of it. That issue came out again and again. One of the top issues that came out in relation to people's ability to access services was transport and the lack—although it is not a complete lack—of effective and integrated transport systems around rural areas in Scotland. That really impacts people's capacity to access the services that deliver on their rights, such as employment, health provision, education and further education.

There was a difference in the different geographical locations in Scotland in the analysis and understanding of the different needs that groups have, and of how they are met and served. To be honest, it was not much of a surprise that those issues came out.

We needed to have done more to reach into other settings, such as black and minority ethnic communities and the children and young people's sector. We have more to do in those areas, both as a commission and in relation to the national action plan. We have good engagement with the national action plan, particularly from the children and young people's sector, which is well organised and has a strong understanding of rights, but we

need to ensure that engagement with children and young people happens.

**Fulton MacGregor:** Thank you for that robust and honest appraisal.

**Oliver Mundell:** The annual report demonstrates that the SHRC has had a busy year. Is that sustainable in the longer term? What issues might there be in relation to resources, which you have already mentioned?

**Judith Robertson:** Over the 10 years of its existence, the resource base of the commission has declined slightly in real terms. That is principally as the result of the 15 per cent reduction in all public sector bodies four or five years ago, which was before I started work at the commission. The small increases that we have had to our budget over time have been to accommodate percentage salary increases and pay deals and such like, rather than representing any actual increase in the resource base of the commission.

When we first started, the budget that we have—around £1 million—was sufficient to establish the organisation and set it up on a solid footing. Over the 10 years of our life, we have been, as Oliver Mundell said, very busy. We cover a lot of areas and it has been a successful process. Scotland and, indeed, the Parliament can be proud of having a national human rights institution that has supported the country to make such progress in relation to human rights.

However, I totally recognise that, 10 years on, the commission needs to grow. We need to be able to respond to the increased demand as understanding of human rights increases; as we succeed in delivering our mandate, the demand on the organisation to respond increases. For example, the Parliament is keen to see the capacity of MSPs grow in relation to engaging around human rights standards and international instruments, and monitoring the treaty body recommendations and how progress is made. We expect the commission to be fully engaged in that process. However, although we will endeavour to do as much as we can, if we did that now, it would seriously displace other activities that we have been developing over the years. The positive side of that dynamic is that we really want to be in a position as an organisation to respond well to the human rights context in Scotland, and that dynamic has come about as a result of the work of the past 10 years.

The delivery of an act of the Scottish Parliament in relation to economic, social, cultural and environmental rights requires support in Scotland. If that process is to be a good one in which there is consensus and an understanding around the country of what is at stake and why that outcome

is important, the commission needs to be fully engaged in it and in working to build capacity to ensure that that understanding exists and that the legislation is as strong as it can be. Those are the positive settings where we see opportunities for progress and, from our perspective, they really justify looking at and growing the commission's resource base.

The negative context is the potential reduction in rights as a result of Brexit. We do not know how that will pan out, but there is the potential for either a short or medium-term economic impact—I do not know how long it will last—as we leave the European Union. If that pans out in a negative way for communities and individuals around Scotland, there will be a need for rights to be protected and for a strong human rights institution that is able to effectively monitor, understand and report back on that impact. If there is a negative economic impact over time, whether or not it is the result of Brexit, we need to be able to see that and support the understanding of the role that human rights have to play in that respect.

Given that we are developing a new strategic plan, now is the time to put a new resource proposal to the Scottish Parliamentary Corporate Body and then the Parliament. We will be developing that proposal over the summer and then submitting it to the SPCB.

**Oliver Mundell:** Given what you have just said, it is perhaps unfair to ask this question but, in general, what do you envisage being required? You talked about the UK mission at the UN increasing by a third, I think—

**Judith Robertson:** It is actually doubling.

**Oliver Mundell:** In that case, do you envisage doubling in size, too?

**Judith Robertson:** I would envisage celebrating if that were the case. I said yesterday to Sandra White MSP, who is the SPCB office-holder representative, that we would not necessarily expect to double in size. However, expectation is a wonderful thing, and perhaps we should ask the question.

The honest answer to your question is that I do not know. We are still pinning down our strategic priorities and, once we have done so, we will look at what it will take in terms of the commission's size and resourcing to deliver them really well. We have not fully answered that question yet, but as soon as we have, we will give the committee the same information that we will give to the SPCB, if that will be helpful. Having mentioned the UK mission at the UN, I should perhaps indicate that the Northern Ireland Human Rights Commission, whose budget is slightly bigger than ours at £1.1 million—when I say “slightly”, I mean “slightly”—is also anticipating a doubling in size over the next

year in response to a range of things, including Brexit.

I am not expecting the commission to double in size—I think that that would be ambitious. It is not that we could not absorb that increase—we absolutely could—but the financial realities would make that challenging. However, should the Parliament decide that such a move was necessary, we would genuinely be in a position to provide a really positive programme for enhancing people's rights in Scotland.

Another part of the conversation that we are aware of relates to our powers as a national human rights institution, but I do not know whether you are going to ask about that.

**The Convener:** Rhoda Grant was just going to come on to that.

**Judith Robertson:** That was a good segue.

**Oliver Mundell:** I have one more tiny question, convener, so that I am absolutely clear about the first part of the previous answer. Is it going too far to say that, if your resources did not increase, you would not be able to do your job adequately?

**Judith Robertson:** We have been operating extremely effectively on the money that we have, and we will continue to operate effectively on the money that we have. We will just have to cut our cloth to ensure that the job that we do is doable for an organisation of our size. It will just mean that the resources that we put in to progressing some of the processes will be reduced. We will absolutely function as well as we can within the resource that we are allocated.

**Rhoda Grant (Highlands and Islands) (Lab):** In her opening statement, Judith Robertson said that you have the power to intervene in civil proceedings. At the evidence session in 2017, you said that you had not used that power. Have you used it since then?

**Kavita Chetty:** You are right: we have the power, with the leave of the court, to intervene in civil proceedings when they are relevant to our general duty and when they raise a matter of public interest. To date, we have not used that power. However, we are about to make an application to the court to intervene in proceedings against Serco, the private provider of asylum accommodation, in relation to its lock change policy of evicting asylum seekers who are believed to be no longer entitled to asylum accommodation. Our first intervention is imminent.

We would like to increase our use of the power to intervene more in matters that are relevant to our strategic priorities and to raise matters of public interest. We consider that our legal powers are an important part of our mandate, as they give us the teeth that we need to hold public bodies to

account on rights. Although, as I said, we have not used them to date, we are ambitious to use them in the future.

It is worth reflecting, as I might have done in our previous evidence session with the committee, on this Parliament's views on our powers when the legislation that set us up was going through the Parliament. In debates at the time, it was considered that our primary function would be to support bodies to meet their human rights obligations and to raise awareness of human rights in line with our general duty to promote awareness, understanding and respect for human rights and best practice. The legal powers were considered to be, to some degree, secondary to that primary purpose. Nevertheless, as I said, they are important because they give us the teeth that we need.

The fact that we have not used them probably reflects the strategic positioning of the commission over the past 10 years, its relatively limited resource pool, in terms of its staff team and budget, and the need to make the most astute strategic choices that we can make, which Oliver Mundell mentioned in his question. However, the commission has always remained receptive to using its powers when issues are identified, and the intervention that we are embarking on at present has been instructive for us in relation to both the impact that we can make and, internally, the resource base that is required for us to take forward interventions in civil litigation.

**Rhoda Grant:** The report "Getting Rights Right: Human Rights and the Scottish Parliament" talks about a review of your powers. Do you agree that there should be a review? If there was one, what further powers do you envisage needing?

**Kavita Chetty:** As, I think, was alluded to earlier, we undoubtedly have fewer legal powers than comparative bodies and other national human rights institutions globally. The 2018 report of the Joint Committee on Human Rights, "Enforcing human rights", sets out a helpful summary table of the powers that we have relative to those of our sister bodies the Equality and Human Rights Commission and the Northern Ireland Human Rights Commission. For example, we do not have the power to take judicial review or any other legal proceedings in our own name, nor do we have the power to give assistance to individuals in relation to proceedings concerning the protection of human rights. We welcome the committee's recommendation, and we believe that, in the future, careful consideration needs to be given to extending the commission's powers commensurate with our resources and to allowing us to fulfil the full breadth of our mandate, recognising the type of resource that is required to fulfil those types of functions.

10:00

It is perhaps worth touching on our inquiry power, which is far reaching but gives us less flexibility than the analogous powers of other institutions. Our inquiry power allows us to look at public bodies of one nature. For example, we cannot look at just one local authority; we would have to look at all local authorities or a public body that was providing a unique function. We have to set out our terms of reference and methodology, and all our inquiries must be conducted in public.

Other institutions have different powers. For example, the Northern Ireland Human Rights Commission has an investigation power that allows it to conduct investigations however it deems it expedient to do so. The Children and Young People's Commissioner Scotland has both a general and an individual investigation power, which allows further flexibility in the scope and subject matter of its investigations. As the committee and the commission undertake that work in the future, and as our powers are considered, those and many other considerations will have to be carefully looked at. Meanwhile, the commission will continue to look for ways to exercise its existing powers while fulfilling the full breadth of our mandate.

**Rhoda Grant:** Obviously, it is a matter of powers versus resources. We talked earlier about the workload growing and the need for more resources. If you had those powers, would you need more resources to exercise them? It seems to me that that could open up a number of investigations, especially with local government, which has considerable powers to exercise at will, which all councils use differently. Thinking about my mailbag, I imagine that there would be cases in which individuals or groups of people would look at the practice of one council and then look for support from the Scottish Human Rights Commission.

**Kavita Chetty:** Over the past year, we have led detailed internal scoping work on the methodology, resources and potential subject matters for the use of our inquiry power. We have had direct and extensive engagement with the Northern Ireland Human Rights Commission on its experience of conducting a public inquiry into the accident and emergency services in Northern Ireland and its investigation into Gypsy Traveller accommodation—primarily to understand the resources that it took to conduct that work. The resources that it took were considerable. The inquiry into A and E absorbed almost all of the organisation for almost two years. Therefore, although the Scottish Human Rights Commission could make such a choice, it would divert resources from the rest of our work.

The commission has an interest in using its inquiry power, and we are keeping that under review. We are continuing to hone our methodology in a way that is commensurate with our resources and that will still be meaningful and have impact. The commission is grappling with that challenge and will take it into consideration in our review of resources and structure.

**Judith Robertson:** The underpinning message from Kavita Chetty's response is that, if our powers were to be enhanced or we were to be given additional powers, we would require more resources to exercise those powers effectively. For example, if we were to have the power to take cases in our name, the resources required to do that would be significant. Even with the resources related to making interventions in civil cases, we found that we have limited resources not in staff time but in the costs of engaging counsel in those processes. There are practical matters relating to staff time, and there is the matter of having the financial resources to support the process. We welcome the prospect of our powers being reviewed, but we recognise that that could have resource implications.

**The Convener:** In your opening statement, you mentioned the recommendations of the reports from this committee and from the First Minister's advisory group on human rights leadership. What should the next steps be to move those recommendations forward?

**Judith Robertson:** Broadly, both processes require clear action plans and a commitment to resource them to deliver against the recommendations of both reports. Kavita Chetty has the specific details. For me, that is the next step. In both processes, we see ourselves as active participants in developing the action plans and in being involved in their delivery. We have a clear interest in seeing them progressed.

**Kavita Chetty:** Specifically, recommendation 6 of the report from the First Minister's advisory group on human rights leadership outlined that there should be a "process of implementation" and that a "national task force" should be established. As I said, that national task force has yet to be announced, but we hope that the announcement will be imminent. If it is not, we will have concerns. In a broad public participatory process and in the capacity building that is required for the implementation of such an act, we see ourselves playing a role in increasing understanding, across all actors, of the rights that we seek to enshrine in an act of the Scottish Parliament.

To reiterate Judith Robertson's point about the recommendations of this committee's report, "Getting Rights Right: Human Rights and the Scottish Parliament", we look forward to seeing an implementation plan to take those forward. In this

operational plan year, we are committed to working with officials in the Parliament to look at advancing a human rights-based approach to scrutiny and human rights capacity building within the Scottish Parliament. The Scottish Human Rights Commission looks forward to working imminently with the Parliament to do that.

**The Convener:** That brings us to the end of this evidence session. I thank you both for your evidence. I will suspend the meeting for five minutes to allow a change of witnesses.

10:06

*Meeting suspended.*

10:12

*On resuming—*

**The Convener:** On our second panel, we have three representatives of the Equality and Human Rights Commission: Alastair Pringle, the executive director; Lynn Welsh, the head of legal for Scotland; and John Wilkes, the head of the commission in Scotland. You are all welcome, and I invite you to make an opening statement of up to five minutes.

**Alastair Pringle (Equality and Human Rights Commission):** Thanks for giving us the opportunity to share some of our highlights from 2018-19 and to talk about our priority aims for the year ahead. We have sent you some background documents that cover all the key points that we want to make, including a bit of background about the fact that our organisation covers Great Britain, so I will not go into that just now.

The past year has been one in which we have reviewed our organisation, defined the way in which we operate and refocused on the work that we do. That is set out in our soon-to-be-published strategic plan, which we have sent you on a single page. We went through a periodic tailored review, which is something that is undertaken by all arm's-length bodies. That highlighted a number of our successes and recognised a number of the improvements that we have made over the past three years. It also, understandably, identified a few key areas for improvement—in particular, how we prioritise, how we show the impact of our work and how we influence and engage with our stakeholders. The review also recommended that we be much clearer about the use of our unique powers and the levers that we have at our disposal. That is a key theme that has also been picked up by the Westminster Women and Equalities Committee, which is undertaking an inquiry into the enforceability of the Equality Act 2010 and the role of the EHRC as the enforcement body.

10:15

Before I say a little bit about how all of that impacts on our work, I will share some of our highlights from the past year. We launched “Is Scotland Fairer? The state of equality and human rights 2018”, which is a three-year review of progress on equality and human rights. It contains a significant body of evidence and is part of our “Is Britain Fairer?” reporting. We concluded work on the Scottish city deals, influencing and embedding equalities in the inclusive growth policy agenda in Scotland. Over the past year, we have engaged with and influenced all city region deals and the Ayrshire growth deal.

We have carried out research on the impact of Brexit on the benefits of European Union funding for equality in Scotland and on the need for future arrangements to continue to support equality. We undertook a major review into the effectiveness of the public sector equality duty, which found that compliance with the specific duties is not having the desired effect of driving change for people with protected characteristics. We will use that evidence to inform the forthcoming consultation on the specific duties.

We completed our inquiry into the accessibility of homes for disabled people, and we have called on the Scottish Government to set a 10 per cent target for accessible housing. We have also undertaken a growing number of successful compliance, enforcement and legal interventions.

Looking forward, the breadth of our remit and the size of, and the reduction in, our budget mean that we will have to make some difficult choices about what we work on. We have based our priorities for the next three years of our new strategic plan on evidence around the most challenging equality and human rights issues that society faces, which are set out in the 2018 editions of “Is Britain Fairer?” and “Is Scotland Fairer?”. We consulted widely on those priorities and received a great response from our Scottish stakeholders.

Our priorities reflect our dual remit as a national equality body and an A-status NHRI. Of course, they also respect the mandate of the SHRC in Scotland in terms of devolved areas of human rights. We have a close working relationship internationally and domestically with the SHRC, which allows us to complement its human rights work where appropriate—for example, in our criminal justice inquiry.

As you will see from our strategic plan, we are now working to achieve change through five priority aims, which cover work, transport, education, access to justice and institutions. We also have a core overarching aim to maintain strong equality and human rights laws that protect

people and to have the data available to show what is happening to people in practice. Our main areas of focus in that regard will be on safeguarding laws after Brexit, seeking a strengthened and a more impactful public sector duty, supporting work to incorporate United Nations treaty rights into Scots law and influencing the collection of data across our aims on protected characteristics so that we can measure progress. We are happy to share more information about the specific work that we are planning in any of those areas.

I will finish on how we will work. You will see in our plans that there is an increased focus on compliance and enforcement. A key plank of our new strategic plan is legal support projects, taking multiple cases on particular areas of life that are aligned to our aims. That will create a critical mass that will make it clear that areas of life are regulated space.

We are also creating new compliance and enforcement teams, which has led to increased staffing in Scotland—Lynn Welsh will be able to tell you a bit more about that. Further, we have increased our investigations and inquiry work. We are currently running two inquiries, with more in the pipeline. Previously, we would have had one only every few years. Of course, I would defend the full range of our powers and levers.

We are part of the architecture for equality that goes beyond legal enforcement and litigation. Many of the root causes of inequality require other types of activity, such as encouraging good practice or providing evidence of the sort that we set out in “Is Scotland Fairer?” We are clear that we need to focus on prevention as well as on cure.

**The Convener:** You say that you are working on how you can improve how you prioritise your aims. Can you expand on that? How will you go about it?

**Alastair Pringle:** As I said, the challenge for many people is in being clear about the work that we do as an organisation. Our “Is Scotland Fairer?” evidence provided us with some of the key areas of significant inequality in Scotland, and we have used that as the backdrop for our engagement with stakeholders. John Wilkes might want to say a bit more about the work that we have done around engagement, based on that evidence.

**John Wilkes (Equality and Human Rights Commission):** We produced the report in the latter part of last year. The report built on the 2015 report, and the process of developing the reporting and gathering of evidence takes a couple of years.

We feed into “Is Britain Fairer?” reports where that is appropriate. We mine the relevant data sources and we work with loads of stakeholders

for other sources and to get the impressions that people have. After the first cut of the evidence, we held a series of round tables with key stakeholders from education, work and participation, in order to test whether the evidence met their experience. That was very helpful in producing the final report.

If we compare “Is Scotland Fairer? The state of equality and human rights 2018” to the 2015 report, in which we looked at similar things, we can see that progress has been slow. There are very few areas where there has been improvement.

**Alastair Pringle:** We started with an evidence base and the next step was to look at the areas of work that, given our powers and duties, we were uniquely best placed to undertake. That was also part of the tailored review process. Then we went out and consulted on—I think—10 priority aims. On the back of that consultation we narrowed them down to five aims.

**The Convener:** Who are your key stakeholders and who did you consult?

**Alastair Pringle:** We consulted very widely and received more than 1,000 responses to our consultation. We were somewhat overwhelmed by that and had to put more researchers on the case. Perhaps John Wilkes can talk about Scotland specifically.

**John Wilkes:** There were, proportionally, a lot of good responses from Scotland to our plan. The consultation period ran from the middle of summer 2018 to December 2018. There was a general questionnaire on our website and lots of people completed that, both as individuals and on behalf of organisations.

We spoke to individual key stakeholders, including protected characteristic organisations, and we had meetings with the Government and other interested parties. We had two stakeholder events, at which there were a range of organisations, to test out our thoughts about what we might put in the plan. As Alastair Pringle said, we narrowed that down to produce the plan that we are currently implementing.

**Alastair Pringle:** We received a disproportionately high response to the consultation from Scottish stakeholders, which was great for us, as a Great Britain organisation. There was strong consensus on ranking of issues—we asked people to prioritise the 10 issues and they did not prioritise the issues as we had thought they would. It was interesting to hear the evidence from the Scottish Human Rights Commission this morning on transport. Transport was high on people’s agenda, but it was not something that we had thought we would be prioritising in our plan. However, we were

committed to taking an honest approach to the consultation.

Technology was quite high on our list—as it would be for many organisations—but we found that it was not high on people’s agendas. Social security was another issue that was high on our agenda, but people ranked it low. That was perhaps because they recognised that we are not best placed to campaign on increasing funding in social security, but are well placed to tackle issues such as accessibility of transport, which is a major gateway for people to participate in life. It was a very interesting exercise.

We are looking at technology in every aspect of our aims, so we have not dropped that forward look. For example, in our work aim, there are some interesting and potentially challenging human rights issues around microchipping people in the workplace and in use of algorithms in interviewing people to see whether they are a fit for a company.

**Gail Ross:** Oh!

**Alastair Pringle:** Yes—we were surprised as well. There are algorithms that are used to identify whether individuals fit an organisation’s culture. However, when we look at who designs and builds those algorithms, there is often an in-built gender bias. There is some really interesting stuff that we need to keep an eye on.

We have also had an interest in the gig economy for some time, and have taken some cases in relation to that.

**The Convener:** I will let Gail Ross come in.

**Gail Ross:** I think that the convener and I are at the moment reading the same book on algorithms and gender bias in data gathering, but I am still shocked that you mentioned microchipping of individuals in the workplace. I need you to expand on that, please.

**Alastair Pringle:** Perhaps Lynn Welsh has details on that; it is something that we have talked about, but I do not have evidence to hand.

**Lynn Welsh (Equality and Human Rights Commission):** Sometimes a company will argue that the purpose of microchipping employees is so that they can open doors easily—instead of having a pass, the employee has microchip. However, in some instances, the microchip lets the employer know where the employee is at any time in the workplace.

**Alastair Pringle:** The chip is not implanted—it is in a badge.

**John Wilkes:** It is not a new concept. I worked in the electronics industry in the early 1980s in Scotland and, in those days, the company that I worked for chipped our badges so that it could

track us and see where we were. It was promoted as a health and safety thing, but it was used for other purposes, before it fell out of favour.

**Gail Ross:** I can see why.

**Alastair Pringle:** I am happy to send some background information on our priority aims.

**Gail Ross:** Please do—and please put our minds at rest that companies are not actually implanting chips in people.

**Lynn Welsh:** They are—I am sure that that was the case in one example.

**Gail Ross:** We would appreciate more written information on that. Gosh! That has really thrown my train of thought off track.

You were listening to the evidence that we took in the first session. What is the biggest human rights and equalities issue that we are facing in Scotland at the moment?

**Alastair Pringle:** It is quite hard to identify one issue. The 2018 “Is Scotland Fairer?” report shows the state of progress on a range of issues for a range of groups of people in Scotland. Although there are areas of progress—for example, aspects of gender equality and reporting of, if not the reduction of, the gender pay gap—there is a range of areas of life and groups of people for which there has been no progress. The evidence pointed in particular to lone parents, disabled people and Gypsy Traveller communities, so there is not one specific issue. For British and Scottish society in a time of austerity, and of more divided—politically or economically—communities, there are significant challenges in respect of people’s ability to participate equally in aspects of life.

I think that you will agree that “Is Scotland Fairer?” is not an easy read. The areas that we have identified to work on are those in which we think we can make the biggest impact. Those five priority areas include people getting fair access to work, being treated well in work and being able to participate in life through transport. We identified that transport for disabled people and transport in rural Scotland are important, but the gendered nature of how transport is run is also important.

Given the evidence that was given earlier by the Scottish Human Rights Commission, and given that public views of equality and human rights are becoming more disparate, we think that the education system has a key role. Previously, we looked at quite specific issues in education—for example, bullying. Now, we are more interested in the role of schools in building better societies, so we will focus our attention on issues such as who gets into school and who is kept in school, because we believe that contact with diversity—rather than people being pulled apart—improves people’s understanding of difference. Therefore,

the role of schools in tackling what eventually becomes hate crime is important.

Access to justice remains a significant challenge and issue; I am sure that Lynn Welsh will be happy to say more about that. Even though there have been significant improvements and interventions in Scotland, we are still concerned about people's ability to access justice, and the justice system's ability to evidence that it is making improvements for different groups of people.

Those are the key areas of inequality, rather than a single big one.

**Gail Ross:** I want to explore one specific aspect of the evidence that we heard, which is about city region deals. Is the investment—welcome though it is—going to rural areas as much as it should?

10:30

**John Wilkes:** There are, I think, 15 city deal partnerships across Scotland at the moment. Over the past two years, we have worked with them to ensure that, whatever they are doing in their areas, they take fully into account that they can use those significant investments from the Scottish and UK Governments over a long period of time to address barriers for various groups. Some projects can address long-standing issues of access to employability for certain groups—for example, women's employment in some areas of technology.

There is also an opportunity to address through building programmes some of the housing needs that our housing inquiry threw light on.

In our work with the city deal partnerships over the past two years, we have had some great support from the Convention of Scottish Local Authorities, and there has been good engagement on the opportunities for each partnership to look clearly at equality and human rights aspects in addressing the issues that they want to address in their local areas. Our work on the pilot phase has finished, and our understanding is that the ministers and Government have committed to providing resources for continuing the work that we started.

**Alastair Pringle:** In direct answer to Gail Ross's question, we have not been looking at rurality; it has been more about how we can use procurement and investment to address issues that are important to us. A plank of our new public sector equality duties strategy is that procurement and positive action could be used much more to drive the sort of change that we want. That aligns to what I said earlier about needing more compliance and enforcement, rather than just gentle hand holding.

**Gail Ross:** You heard the evidence from the Scottish Human Rights Commission that it would welcome added powers and resources. Would it help you if it had more powers and resources?

**Alastair Pringle:** Yes, because the arguments that the SHRC makes about additional powers and resources to further promotion and progression of human rights are absolutely aligned to our aims. In comparison with the SHRC, we are fortunate with our resources. Although we have seen a cut from £70 million down to £17 million this year—which is why we have had to make some tough choices—we are still far better resourced than the SHRC is, given its mandate. People might think about that in terms of proportion, because Scotland is smaller, but we are all dealing with the same issues across the same breadth of areas of life, so I would say that the SHRC needs to be adequately resourced and to have adequate powers for it to do that.

The EHRC would also like more money and powers, but that debate is for a separate room.

**Gail Ross:** That is another question.

**Annie Wells:** I will put the same question to you as I did to the SHRC. What have been the commission's biggest successes and how do you measure that success?

**Alastair Pringle:** It is nice to go second. That is a good question. I am happy to start; my colleagues might want to say something about legal and policy successes.

One of our successes as the Scottish part of a GB organisation is that we have a strategic plan that is fit for purpose for three countries, and which properly reflects the devolved aspects of our role and remit. That feels like a success because it is not an easy thing to come by in a big GB organisation that is trying to respond to three very different countries' aspirations on equality and human rights.

The new "Is Scotland fairer?" report is a big success, because this time it sets out some key recommendations for action. It is not just a report, but a major driver and indicator that puts a spotlight on the significant issues that Governments should be worried about if they are worried about equality and human rights. The recommendations say what we think they need to do if they want the picture to look different in three years, and our strategic plan says what we will do to try to hold them to account on the issues that our constituents feel are most important.

I also include in successes the 100 per cent compliance on gender pay gap enforcement last year, and our new approach to shining the spotlight on non-compliance this year. I say that because we were established as a statutory body to undertake high-level strategic cases; we were

not established to do regulation and enforcement, en masse. Gender pay gap reporting and enforcement represented a significant challenge for us. The issue links to the powers and tools that we have. We have had to use our investigation powers as a threat to ensure compliance with the gender pay gap reporting requirement. Our investigation powers have been used on, for example, the Metropolitan Police in respect of bullying, and we are currently using them on the BBC on equal pay. They are not designed to enable us to go after every organisation in the land that is subject to the regulations. Despite that, we achieved 100 per cent compliance through some creative working and a lot of focused resource. Therefore, 100 per cent compliance on the gender pay gap is a highlight.

Another highlight is the fact that, against the backdrop of the budget cuts that we have faced over the past 10 years, we have increased compliance and enforcement. We have two inquiries running and a major investigation, and there are more in the pipeline. The fact that we are dealing with big and visible headline issues allows people to see who we are and what powers we have. I remember being here a couple of years ago and being told that we were not using our powers and that we did not have teeth. We are now showing our powers and our teeth in a time of constraint.

The business plan, which we have shared with the committee, sets out the success measures for all our work. We have an organisational theory of change, which sets out the aims that we are trying to achieve, what the intermediate changes are—in some cases, we are talking about long-term, lifetime changes—and what the measures of success on the way are. Some of those are quite specific. We expect to see changes in legislation and 100 per cent compliance.

If we go down the route of ethnicity pay gap reporting, we would expect our recommendations about what would make that effective—which are not the same as those on gender pay gap reporting—to be implemented.

Although the success measures are quite high level—we are developing separate ones for Scotland—they are good impact measures that we will be able to report on.

John Wilkes or Lynn Welsh might want to add highlights; those were mine.

**Lynn Welsh:** On Scotland specifically, we have always had 100 per cent compliance with the PSE duties over the period in which they have been in place, which has sent a good message to organisations about what is expected of them. We think that the duties could be improved, but we keep them on people's agendas, and they know

that we look to see whether they are complying with them.

Some of our legal enforcement work in the past year has been extremely effective in bringing about real change for individuals, which is what we want to see on the ground. As a result of the work that we have been doing with the Royal Bank of Scotland, all of its mobile services across Britain will be entirely accessible. We have helped a lot of people through that relatively small piece of work. Our work has wide implications.

The same is true of our section 23 agreement with Police Scotland on flexible working. It is difficult for such an organisation to work flexibly, but when such agreements are achieved, they have a wide effect. The agreement with Police Scotland will have a wide effect on who can get into the police force and how they will be treated there. Some of that work has been excellent this year.

**John Wilkes:** Alastair Pringle mentioned the housing inquiry. That was GB wide, but specific evidence was received on the situation in Scotland, because of the different context here, and we made some recommendations to the Scottish Government. After some months, we have just received a response. Some of the recommendations that we made will be taken forward. One of the headline recommendations was about setting a 10 per cent target, but the Government decided that it was not appropriate for it to do that and that it would adopt a different approach, which is disappointing.

I can give another example. Last year, we did a piece of work to look at asylum seekers' right to health—again, that was GB wide. That area involves a mix of reserved and devolved matters. Our work showed that the situation in Scotland with regard to access to healthcare is much better because of the different policies that have been adopted here. In England, there are issues to do with charging, access, data transfer and so on. However, our work picked up the fact that, in Scotland, there was confusion among primary care providers and general practitioners about who had access to health services, some of which was caused by the Home Office. As a result of what we said, the Government committed to produce new guidance—I think that it has now done so—for primary care providers and GPs to make the situation a lot clearer.

**Annie Wells:** So there have been lots of successes. Thank you very much for that.

**Oliver Mundell:** When you previously gave evidence to the committee back in February 2017, the impact of restructuring on some staff was discussed. Can you give us an update on that situation?

**Alastair Pringle:** Yes. Restructuring is never easy, particularly when you are facing a financial cut. We went through fairly major restructuring to ensure that we were fit for purpose for the future. We got through that—although not without some scrapes and bumps—and we now have the operating model fully in place. In fact, since we were last here, we have refined the model somewhat with the establishment of a compliance and enforcement team and increased staffing.

Our budgets are quite restricted in terms of the amount of administrative money that we get, and we have much less choice over what we do with that money. As the programme funding that we get gives us more choice, we have used some of that to increase our staffing in Scotland and Wales and at the GB level.

I would say that we are now fully through that process; all our staff are in place, and the new operating model is working effectively. In fact, it is working much more effectively across GB. One of the key planks of our approach was to identify an executive director who would have responsibility for a third of the organisation and a country; in other words, we all have to champion a country as well as fulfil our functions. Thankfully, I cover Scotland—which is kind of handy—and I am also responsible for delivering our business plan across GB. As a result, I am able, at the highest level, to ensure that we build in a nation focus.

The restructuring was a difficult process, but I think that we are in a much better place. A recent staff survey showed that we are pretty much in line with civil service averages, which is not bad, particularly given that, two years ago, we would not necessarily have had the same result.

**Oliver Mundell:** Do you feel that the structures that you have now identified are fairly stable, even in light of potential changes as a result of the UK's decision to leave the EU or other challenges that you might be facing?

**Alastair Pringle:** Yes. The whole point of the exercise was to try to future proof the organisation. The danger previously was that we were quite siloed, and Scotland was not necessarily built into the fabric of how we were working across GB, so a big bit of our work and the strategic plan has been to ensure that our aims are fit for purpose for all of us. Historically, one of our priorities might have been the overrepresentation of black and ethnic minority people in prisons. As that is not an issue in Scotland, we would immediately have been excluded from that activity. In short, we are working on aims that are fit for purpose for all countries and an operating model that is networked.

We are about to go into another spending review round, so who knows what we are going to

face? A bit like the Scottish Human Rights Commission, we feel that we have trimmed as far as we can to be effective, and with new expectations for us on the horizon such as on website accessibility and, potentially, ethnicity pay gap regulations, we will struggle if we have to put all our resources into that activity instead of our aspirations for the much bigger compliance and enforcement work that we think will have the sort of impact that people want.

That was the long answer. The short answer to your question is yes, we are fit for the future.

**Rhoda Grant:** I have some questions about the public sector equality duty, which Lynn Welsh said could be improved. Can you give some more detail on how, in your opinion, it could be improved?

10:45

**Lynn Welsh:** Shall I start, then? [*Laughter.*]

Last year, we reviewed the duty at a general GB level as well the specific duties in Scotland, and we were left with a number of concerns at the end of that work.

It was absolutely right for the duties to have an outcome focus, but that does not seem to have been effective. Authorities do not seem to understand how to set a measurable outcome that is aimed at individual protected characteristics. They tend to be along the lines of “We will train staff and help everybody” rather than along the lines of “We will help the black and ethnic minority group,” for example. The aims are too wide and homogeneous, and we cannot see the outcomes that are supposed to be achieved. Although having outcomes sounds like the right idea, the approach has not been effective in practice.

We are therefore looking to the Government to take a more leading role in setting the outcomes that it wants to be achieved in Scotland. It could take the lead in showing authorities the areas where there are the worst inequalities in health or in the provision of local government support. Those were the main issues.

We also have issues relating to employment reporting. For some reason, authorities seem to find it incredibly difficult to monitor the number of people with protected characteristics whom they recruit, retain and develop. That would seem to be fairly basic information crunching, but the information does not seem to be collected, so there is a fundamental problem in how that duty is working.

In principle, equality impact assessments are a great idea, as they allow us to look at the effects of policies and practices. However, there is always the danger that the focus becomes more on ticking

boxes than on outcomes. Perhaps there needs to be a bit of thought about how the system is developed and regulated.

**John Wilkes:** We should also strengthen the roles and responsibilities of regulators, inspectorates and ombudsmen in relation to their assessments of how public bodies are faring against the public sector equality duties.

**Alastair Pringle:** Public authorities set thousands, if not tens of thousands, of equality outcomes, which are all disparate and do not combine to achieve an impact in an area, given that it is up to individual authorities to set them. That makes it impossible—or at least very difficult—for us to monitor progress against the set of duties. For example, the due regard duty is very general and difficult to enforce in any meaningful way.

The “Is Scotland Fairer?” report sets out the significant inequalities in life. If they were set as the areas in which we were to undertake work on public sector equality duties, we could say how we would tackle the gender pay gap or improve disabled people’s access to employment, or that public authorities should be required to set out what they will do to achieve such goals. That would be a much more effective mechanism that would allow us to look specifically at the experience of people with different protected characteristics, instead of having to go through tens of thousands of outcomes to try to identify what is being done for people.

Unlike with human rights, we do not have to fight to gain an understanding of why equality is important or of what the equalities framework looks like—generally, people get it. However, the slight danger is that this has become an industry. I have sat in meetings in which someone has proudly pushed over boxes of files of their equality impact assessments. Pushing them aside, I say, “Tell me one thing that’s changed as a result of that,” and I can see the bead of sweat appear on their brow. That makes me think, “Why are we doing this?”

When we review the public sector equality duties and think about how we make the incorporation of human rights a practical and realised aspect of decision making in public authorities, let us not just bolt on more stuff to things that are not working particularly well. Let us take a fresh look.

**John Wilkes:** On the other side of the coin, some major strategies and policies have not had an equality impact assessment, and we have had to follow that up with certain public authorities when that has been drawn to our attention. It is a mixed bag.

**Rhoda Grant:** There has been some criticism of your role in relation to your power to ensure compliance by public authorities. You are talking about the problems in getting public authorities to work with the duty. Might that be why people are criticising your role in ensuring compliance? Is it difficult to do that? What do we need to change to make sure that the duty works and that your role in ensuring compliance also works?

**Alastair Pringle:** It is that breadth piece. We have looked at how we monitor, let alone enforce, and we have struggled to do that. It has almost felt like bean counting over the years and it makes it difficult to identify specific areas in which we might take action, although we have taken action over the years.

Under our new strategic plan and our new approach to the public sector equality duty, we will focus specifically on the duty across our aims. Rather than looking at compliance across all public authorities, we will, for example, take the transport aim, look at the role of public authorities in providing accessible transport, and use every lever that is at our disposal to achieve change.

The public sector equality duty is built into each of our five big aims. It picks up on John Wilkes’s point about the role of regulators, inspectors and other agencies in overseeing the delivery of those plans. It is about holding them to account on their public sector equality duty. The approach will be much more focused and targeted.

As well as focusing on compliance and enforcement, we are communicating much more widely and loudly about these cases. In the past, we were more likely not to publicise when we took action in the hope that it would encourage people to do the right thing. We are more likely to publicise it now, because it lets people know that this is a regulated space.

What sits under that is taking as many legal cases as we can on each of the aims. We will be going out with advice clinics and saying to communities that we are looking for cases on transport. We want to know if people have experienced discrimination or have not been able to access the transport system. We want to take on as many cases as we can. We want to hold regulators and inspectors to account. We want to focus on the strategies, such as the national transport strategies.

We think that combined use of our powers and levers will achieve change and show people that we can use the public sector equality duty effectively.

**Lynn Welsh:** I think that it is also true that, although we do it, it might not be evident to people. We would not do any piece of work that relates to the public sector in which we would not

ask PSED questions. If we had some concern about anything that those organisations do, our first question would be about where its EIA was and the outcome relating to that. All that is built into a lot of what we do.

However, it takes a lot of resource to directly enforce the PSED. We have been enforcing the publication of it over the years and that takes a ridiculous amount of man hours, because there are 250-odd public authorities. There is therefore something about the strategic nature of the duty that we would point to.

As Alastair Pringle said, going forward we will look at regulators that we do not believe are meeting their own equality duty and are not regulating the duty when they are going into the organisations that they regulate. We will also look at where the strategic plan is biting and using our PSED powers more in relation to those areas.

**The Convener:** You have provided us with some examples of cases that you have supported. Do you want to talk a little bit more about them? I am interested to know whether you are seeing an increase in the number of potential cases. From what Alastair Pringle said, it sounds as though you are going to go out and get more cases.

**Lynn Welsh:** We are. Last year, we also ran a specialist project for education cases and then broadened it out to services cases. That gave us some lessons about how better to find those cases. The bottom line is that, in Scotland, only 25 to 30 services cases have been taken on in 10 years, and that is a ridiculously tiny number. There are employment cases and a few more education cases are coming through, but basic service provision cases are rarely in court.

There are a lot of reasons for that but, sadly, one of them is not that there is no discrimination in services. People are not particularly litigious in Scotland, strangely enough. Also, it can be difficult to speak about the issues that have to come out in discrimination cases—for example, speaking about your disability or outing yourself as gay. That plays into the low numbers.

We are going to do a targeted bit of work on transport to start with and then probably go back to education and reasonable adjustments and exclusions in that area. We will say, “We are here and we will offer you support.” We will be actively going around Scotland, especially up north to the Highlands for the transport stuff, because there is a double whammy there, as you mentioned. We are trying to build people’s understanding of what their rights are, which is fundamental. We need to show that there is something that we can do about these things and then make clear that we are offering that direct support for them.

We still do not see as many individual cases as we might want to, where we can help individuals. We are doing more enforcement work, where we are using our own powers, and I think that we are being more effective about it. A bit of that will be in our annual report. There is our work with the Royal Bank of Scotland and Police Scotland and the case that we had in relation to Kilmarnock Football Club.

We spread the learning from all of that so it is not just one case or one individual who gets helped. We try to expand out by contacting other organisations and saying, “Do you know that this is what happens when you do not comply with some of this work?”

We are using our judicial review power—we have the power to take judicial reviews in our own name when we think that authorities are breaching either equality duties or human rights. We are looking to do a bit more of that, because it takes the pressure off individuals having to claim discrimination if we can look at it more strategically. We have one review running at the moment and we are hoping to have more next year.

**Fulton MacGregor:** I had a couple of questions, but I think that the detail in the responses has covered a lot of ground already. We heard quite a lot about how difficult it can be for folk to access justice. You were just talking about that. Can you expand a wee bit more on the legal support project that you have got going just now?

**Lynn Welsh:** That is about going out and saying to people that we will do cases and give advice and support—particularly on transport at the moment. Two or three staff will be focusing on that quite strongly for the next little while, building people’s knowledge by going out to local disability organisations, for example, and explaining what people’s rights are in relation to transport or discrimination more generally.

We are also doing some research into the legal aid that is available. We want to make sure that those who have discrimination claims are not being stymied by the fact that they cannot fund them. We are working with the Scottish Legal Aid Board to look at some of its figures on who is applying for legal aid for discrimination issues and how often they get it.

Part of the problem is that not enough data is being collected. We are not sure how much information the Legal Aid Board has, for example. Certainly, the courts do not seem to be looking at who is using them and what kind of cases are getting brought there, so a lot of the information that we have is fairly apocryphal.

We are supposed to be told when a discrimination case is raised, which is where we

get our figures from, but we are not certain that every case is covered. A bit of work is being done by our research colleagues to tell organisations that they have to start gathering that information because, to be blunt, how are they meeting their equality duties if they have no idea who they are serving? That is a fundamental issue, and addressing it will help with access to justice in the longer term. The biggest thing for us in the short term is to say to people that we are here to support their individual issues.

**Fulton MacGregor:** Is the SHRC involved in that as well, given the potential overlap?

**Lynn Welsh:** The SHRC is not directly involved in that project, because it is mainly going to be about equality cases, but we are reaching out to the same organisations and we share areas of interest, so there may well be a lot of good synergy. That would be helpful.

**Alastair Pringle:** It is probably worth reiterating that we are not going out and taking every case in every area. We are funded and set up to be strategic so the cases that Lynn Welsh has referenced already, such as the RBS and Police Scotland cases, are ones where we think that we can have greater impact or where we will test the law. The legal aid projects are specific to our aims; they are a way of building up a body of evidence and shining a spotlight on what is regulated.

**The Convener:** That brings us to the end of the session. Thank you very much for your evidence. We will now move into private session. Our next meeting will be on 30 May and details will be published on our website in advance.

11:00

*Meeting continued in private.*

11:54

*Meeting suspended until 13:30 and continued in private thereafter until 13:44.*

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