



OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities and Human Rights Committee

Thursday 19 January 2017

Session 5



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EQUALITIES AND HUMAN RIGHTS COMMITTEE

2nd Meeting 2017, Session 5

CONVENER

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

DEPUTY CONVENER

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

COMMITTEE MEMBERS

- *Jeremy Balfour (Lothian) (Con)
- *Willie Coffey (Kilmarnock and Irvine Valley) (SNP)
- *Mary Fee (West Scotland) (Lab)
- *David Torrance (Kirkcaldy) (SNP)
- *Annie Wells (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Kavita Chetty (Scottish Human Rights Commission)
Judith Robertson (Scottish Human Rights Commission)

CLERK TO THE COMMITTEE

Claire Menzies

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Equalities and Human Rights Committee

Thursday 19 January 2017

[The Convener opened the meeting at 09:32]

Decision on Taking Business in Private

The Convener (Christina McKelvie): Good morning and welcome to the second meeting in 2017 of the Equalities and Human Rights Committee. I make the usual request that mobile phones and digital devices be switched to flight mode or silent, please. No apologies have been received.

Under agenda item 1, is the committee content to take items 4 and 5 in private?

Members *indicated agreement.*

The Convener: Thank you.

Subordinate Legislation

Civil Partnership, Marriage Between Persons of Different Sexes and Same Sex Marriage (Prescribed Bodies) (Scotland) Amendment Regulations 2016 (SSI 2016/427)

09:32

The Convener: Item 2 is subordinate legislation. Members have a paper from the clerks that sets out the purpose of the regulations. I make members aware that the Delegated Powers and Law Reform Committee had no comments on the regulations.

Do members have any comments?

Members: No.

The Convener: That is noted. Thank you.

Scottish Human Rights Commission (Annual Report and Strategic Plan)

09:32

The Convener: Item 3, which is our substantive item this morning, is a focus on the Scottish Human Rights Commission's annual report and third strategic plan. I am delighted to welcome our witnesses. We have heard from them many times on many subjects, but this is their organisation's first opportunity to speak to the committee in a formal capacity. We are delighted to have with us from the Scottish Human Rights Commission Judith Robertson, chair; Kavita Chetty, head of strategy and legal; and Clare Nicolson, business manager.

Members have copies of the commission's annual report and strategic plan in their papers. I ask Judith Robertson to make an opening statement to give us an insight into her report and forward plan.

Judith Robertson (Scottish Human Rights Commission): Thank you, convener. As this is the first time we have been here, I thought that I would take the opportunity to say a few words about the establishment of the commission and its overall role. We can then come to the details of the strategic plan and the annual report during the meeting, if that is okay.

We are Scotland's national human rights institution and we were established in 2008 under legislation that went through the Parliament. We are, in effect, a body of the United Nations. We are part of a global network of national human rights institutions. The UN encourages states to support organisations such as ours in order to support the domestic protection and promotion of human rights. That means that we are considered to be a bridge between the international framework of human rights laws and their implementation domestically in Scotland. We are also tasked with being a bridge between Government, Parliament and civil society, and with highlighting and drawing attention to human rights issues within the country.

We are assessed against the Paris principles, under which we are accredited, on the extent to which we meet the principles of independence and plurality, and on the breadth of our mandate. We are an A-status organisation in the UN accreditation system, which means that we have speaking rights at the UN Human Rights Council. That is important, because it means that we can comment independently on the record of the Scottish Government in that context.

As the committee will know, our legislation provides for a general duty to promote awareness, understanding and respect for human rights, and in particular to promote best practice in relation to human rights. It comes with certain powers to publish advice, guidance and ideas, to conduct research, and to provide education and training. The commission may also review and recommend changes to law, policy and practice. We also have additional legal powers to conduct inquiries and to intervene in civil proceedings before a court in certain circumstances.

That is the broad context in which the commission operates. We are one of more than 100 national human rights institutions around the world, and we are one of the three NHRIs that operate in the United Kingdom; the other two are the Northern Ireland Human Rights Commission and the Equality and Human Rights Commission. We share our mandate in different ways, which I can talk about in detail if the committee is interested in that.

We value our status. We were established as an A-status institution, and that was reaffirmed in 2015. Every five years, we go through that process. That is an important part of our perspective as an organisation, and it is something that we work to maintain.

Rather than go into the detail of the strategic plan, I will give members the opportunity to ask us questions, which we will attempt to answer.

The Convener: Members would like to explore specific areas of your annual report. Mary Fee will go first.

Mary Fee (West Scotland) (Lab): Good morning. I want to ask you about your commitment to mental health. In your report, you say that you will work with the Scottish Government's implementation group for the Mental Health (Scotland) Act 2015 and that you will use that opportunity

"to support a rights based approach to implementing the Act."

People suffer from a huge range of mental health difficulties and problems. In practical terms, how do you see that work progressing?

Judith Robertson: Do you mean the work that the commission is doing in relation to mental health?

Mary Fee: Yes.

Judith Robertson: As you might be aware, we made a submission to the consultation on the development of the mental health strategy. In that submission, we called on the Government to take a rights-based approach to developing the mental health strategy. The key thing that we think has

been absent up until now is the participation of people with lived experience of mental health problems in supporting the development of the strategy.

We know that there is an appetite for that. As you know, I worked in the area of mental health before I took up my current post. The commission has a role to play in engaging in the implementation group. Along with the Mental Welfare Commission for Scotland and the Government, it is looking at the key issues that people with lived experience of mental health problems have identified and care about, and—in relation to the rights framework and the right to the highest attainable standard of mental and physical health—where the gaps that Scotland needs to respond to are.

In taking a rights-based approach to developing the mental health strategy, we must incorporate increased and sustained participation of people with lived experience of mental health problems. The legal framework around the right to health must be understood and must serve as the framework through which we look at the mental health provision in the country. Good and strong accountability mechanisms must be built into the mental health strategy so that people can actively feed back and hold the Government and our health boards to account for their provision. People should be empowered to claim their rights, and we must ensure that, within that process, we do not discriminate against anybody when it comes to their ability to participate actively to claim their right to the highest attainable standard of mental and physical health.

The rights-based approach to mental health that I describe should apply across Government policy—it is not exclusive to the mental health strategy. We have made that proposition and are meeting the minister either next week or the week after to discuss that. That piece of work is in progress. I can give more detail on that.

Mary Fee: I will come on to a question about detail in a moment. Before I do, could you say whether that strategy will be constantly monitored and whether you will be able to change the strategy if you come across something that is not working properly or is not delivering the outcomes that you expect?

Judith Robertson: No. We have the capacity to understand what is happening on the ground. Principally, we do that with our collaborations with other organisations. There are many mental health non-governmental organisations that have direct access to that lived experience. If the Government establishes a strategy that we consider does not have a human rights approach at its heart, our role is to highlight that, identify the gaps and suggest how it can be changed. We also highlight the

issues for people on the ground in a variety of ways as part of our overall approach. However, we do not have the power to change the strategy.

Mary Fee: I have a specific question on individuals who are subject to detention orders for their own safety. How do you balance the protection that is put in place for the person's own safety, with their human rights, to ensure that they fully understand? How can you influence that?

Judith Robertson: That is quite a detailed and technical question. I will approach it initially from a more general perspective. We have a broad accountability role in relation to detention issues. Under the optional protocol of the United Nations convention against torture, we are part of a UK monitoring forum, called the national preventive mechanism, and when people are detained in Scotland and the UK under the mental health legislation, we are part of a monitoring process to understand how detention is being applied and to monitor the track record. The Mental Welfare Commission for Scotland has the principal mandate to investigate and fully report on aspects of detention as they relate to mental health. The commission is a member of the national preventive mechanism, which is a forum of 20 organisations across the UK. The role that we play in that forum is to bring those human rights indicators into play.

In Scotland, there are practices within the legal framework of the Mental Health (Care and Treatment) (Scotland) Act 2003 that currently allow decisions to be made in relation to people's detention under a monitored process. Protections are built into the current act. However, the Mental Welfare Commission has said that the Mental Health (Care and Treatment) (Scotland) Act 2003 needs to be reviewed in order to be compliant with the UN Convention on the Rights of Persons with Disabilities. We agree with that. One of the key issues that we would highlight is the emphasis that is given to supportive decision making within the processes that are used to detain people. That does not apply just to detention, which is the extreme end of mental health provision, but applies also to decisions through the route of people's care and treatment.

At the moment, we give the power for someone else to make decisions on behalf of someone who is being treated. We believe that much stronger processes could be put in place to ensure that, instead of decisions being made on people's behalf and their not being involved, people are more proactively engaged to their full capacity in decision-making processes. There is a range of issues regarding who decides that someone will be detained and how the decision is taken. There are also capacity issues in Scotland around the processes for detaining people. For example, we

are aware that there is a shortage of mental health officers in Scottish local authorities, which is a key issue that we have highlighted. We are therefore alert to those issues and bring attention to them through a range of processes, including our treaty monitoring processes and the national preventive mechanism, which we are part of in the UK.

09:45

Mary Fee: Will you be involved in the review of the Mental Welfare Commission?

Judith Robertson: If that happened, we would expect to be involved, whether directly or through submitting evidence.

Mary Fee: You will be able to feed into it.

Judith Robertson: Absolutely.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Can you give us a flavour of your organisation's key achievements and successes in the past year and of how you or, indeed, the public can measure what value for money and success we get from the endeavours of your team in the human rights arena?

Judith Robertson: I will hand over to Kavita Chetty to take you through that.

Kavita Chetty (Scottish Human Rights Commission): I will focus on the 2015-16 annual report, which you have in front of you, and draw out a few examples of successful impacts. I will work across a law, policy and practice frame to give you a sense of the type of work that the commission engages in.

You will see highlighted in the annual report the fact that we engaged in the development of an apologies law for victims and survivors of historical abuse. In fact, it was a year ago today that the Apologies (Scotland) Act 2016 was passed. The commission's role in the historical abuse agenda, on which we have been working since 2009, was key in the development of that law, which we see as one of our key successes. In addition, we were very vocal in 2015-16 to the Scottish Parliament and Government and to the UN Human Rights Council in Geneva about the use of non-statutory stop and search powers. Just last week, a code of practice was published that will end the practice of non-statutory or consensual stop and search where there is no reasonable suspicion that a crime has been committed. If the Scottish Parliament passes the code of practice, non-statutory stop and search will end later this year. Those are discrete legal successes in two areas, and the commission's voice contributed something to the debates on them.

You will see from the annual report that we reached into a broad range of settings where

policy is designed and delivered on the ground: training over 100 Police Scotland officers on how they embed human rights in their decision making; working with independent prison monitors; working with the national health service; working with the Scottish Public Services Ombudsman on complaints mechanisms; and working with Mental Welfare Commission staff on how they embed human rights in their decision making. We therefore worked in a range of delivery settings to see how human rights could be put into practice.

On practice and culture, there was a bit of a change in 2015 in the commission's focus on economic, social and cultural rights in order to look more concretely at how human rights relate to poverty issues, for example through the right to an adequate standard of living, the right to housing and the right to health. We did a lot of work in that general area that is part of changing the terms of the discussion in Scotland about what human rights are all about and seeing them in a more holistic fashion across the range of rights, from civil and political to economic, social and cultural. We held a number of awareness-raising and profile-raising events in that regard in 2015-16. We had a large innovation forum and a number of fairer Scotland round tables that looked at issues such as human rights budgeting and integrating human rights in our national performance framework and aligning that with the sustainable development goals. There was a particular focus in that year on economic, social and cultural rights, and changing the debate around them.

We also continued with our housing project, which many of you are familiar with, focusing on the right to adequate housing. That was another shift in the commission's practice and culture.

In quantifying our success, it is difficult for us always to understand individual levels of impact. As for the impact of our range of work, our hope is that, for instance, a prison officer will have increased confidence that they are acting in a rights-compliant way when using restraint, solitary confinement and so on; that an older person will be better able to navigate a human rights-friendly complaints system; that a younger person on the streets is less likely to be stopped and searched in a way that is unduly intrusive into their rights; that a resident of substandard housing has more confidence about exercising their rights; or that a survivor of abuse can receive an apology and some sort of partial closure for the abuse that they have experienced. That is the type of success that we look for in the work that we do, working across a range of issues from law policy into practice and delivery settings.

Willie Coffey: Wow. That is an extensive set of interventions. Some of them are direct and some

of them are more about influence, awareness raising and so on.

Might there be an opportunity to engage with people so that they can help you to assess your own performance and to get some feedback on your operational plan, taking into account people's and groups' priorities for the future? Other organisations, particularly in the public sector, try to get an external assessment of their performance fairly routinely. Do you see a role for the organisation in embracing that agenda a bit more in the coming years?

Judith Robertson: We do. That was a good question. That is a key priority for the commission. We have done it in the past—the big research piece that we did, “Getting it Right?”, engaged people directly on questions such as whether or not their rights could be accessed well. It is not that the commission does not engage or has not engaged previously, but a key priority for us is for engagement to have a much stronger role in guiding the commission's work.

One significant measure that we are planning over the coming year is to establish a series of processes across the commission whereby we will proactively engage with people. We do not want to make an assumption about people's rights; we will ask questions about them because another of our priorities is to help people understand what human rights mean, including in people's own contexts.

The rights framework provides plenty of scope for people to look across the different rights and to understand how a particular right might impact on them, whether positively or negatively. That can be a complicated process. For someone to identify a human rights issue and understand how it is affecting them needs conversation—it needs time and dialogue, and it needs people's levels of understanding and awareness to be raised.

We ask the Government, and indeed the Parliament, to prioritise the most vulnerable groups of people, who are encountering a range of challenges in the effective realisation of their human rights.

We are building on that engagement process and we are using it to guide our work and our recommendations to the Government.

Kavita Chetty: In many ways, Mr Coffey's question strikes at the heart of what the commission strives to be. The essence of taking a rights-based approach is to put the individual and their rights, interests and lived experience at the centre of decision making. That has always been core to what we try to live out. In developing the strategic plan, which the committee has before it, we tried to reach out across the country as much as possible, within our resources. We did a number of engagement events with a wide variety

of groups, who understood the issues that were important to them.

If you look back through the history of the commission, you will see that we have always sought to take a consensus-building, collaborative approach to understanding what the issues are, what a rights-based approach is and the value that such an approach adds.

We have done that through Scotland's national action plan for human rights and, as Judith Robertson said, through the research that we have done. The commission wants to build on that now as much as possible within its resources by bringing in and understanding the voices of those with lived experience of the issues that we work on.

In 2015-16, we established a reference group of those with direct experience of poverty to help to inform the action plan and the commission's work. We want to build on that, as Judith Robertson said.

David Torrance (Kirkcaldy) (SNP): Good morning, everyone. There is a bold statement on page 6 of the annual report. It refers to

“Empowering people to realise their rights through promoting greater awareness and respect for human rights”.

If we read further down the page, we see that three events were held between August and September to engage with “100 people and organisations”. Is that adequate engagement with communities, organisations and individuals across Scotland? Will you expand on what those groups were?

Kavita Chetty: I think that I alluded to that in my previous answer. The real answer is that I do not think that that is sufficient. We would love to engage further, do more, speak to more people and address more issues.

In the consultation on our strategic plan, we reached out as far as possible, from Shetland to the Borders. We also reached out through social media and other means. That built on the work that the commission has done that is core to how it functions. We drew on those views, but the commission is continually responding to and responsive to the issues that are experienced by people in Scotland through all our work and the partnerships that we build with a range of organisations, including civil society organisations. That is core to how we try to work. It is just part of the process.

Judith Robertson: I will give another couple of examples of how that works to reassure members and expand that story.

Through our legal officer, who has a responsibility for developing the human rights-based approach, the commission engaged with a number of organisations that were developing a mental health strategy and process and a charter of rights for people who experience mental health conditions in Scotland. That process, which the commission was actively engaged in and supported and developed, reached out to hundreds of people across Scotland. There was a conversation and dialogue about rights, including the right to the highest attainable standard of physical and mental health, which I mentioned earlier. Therefore, it is not always about the work that we are actively and directly doing; work that we are involved in also reaches out to people. That is one of several examples.

To add to what Kavita Chetty said, I highlight our previous communications work. We have talked to a range of audiences and people about rights and engaged people in less direct discussions about rights. We seek to build on and develop that approach in the strategy in order to meet the principal objective of our mandate. Promoting and building understanding and awareness of human rights involves using as many of the tools and instruments that we have at our disposal as possible to reach into communities and empower people to claim their rights.

As well as our direct engagement, we engage in a range of indirect ways that are a very good use of our time and energy.

Alex Cole-Hamilton (Edinburgh Western) (LD): Good morning, everybody. I declare an interest. Before I was elected, I was a past convener of the Scottish Alliance for Children's Rights. I also sat on the Scottish national action plan leadership panel.

We as a committee have sought to discharge our human rights remit by looking to the various and numerous concluding observations of the various United Nations rapporteurs. Will the panel give us an idea of how the Scottish Human Rights Commission works with the various UN committees and rapporteurs? To what extent do those concluding observations shape your work?

10:00

Judith Robertson: As a national human rights institution, we have a responsibility to report to the UN treaty bodies. At the moment, we do that across most of the treaties. I think that there are two treaties that we have not reported on, for various reasons. However, in the year covered by the annual report, we reported on a number of the treaties. We consistently do that and analyse the concluding observations. We are working

proactively with the Government to deliver aspects of that work.

We can talk in some detail about the incorporation of economic, social and cultural rights in particular, which the Committee on Economic, Social and Cultural Rights reported on. From our perspective, that is a real priority in relation to how Scotland can best deliver effective human rights protections within the country.

Reporting to treaty bodies is a key part of our work and we will build on that through the current strategic plan. Kavita, do you want to add to that?

Kavita Chetty: Certainly. Judith has touched on the reporting, which is core to our mandate. Last year, we reported to the United Nations Committee on the Rights of the Child and to the UN Human Rights Committee on the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. This year, we will report against the universal periodic review process, which is a state peer-to-peer process.

That is the reporting side of our work, but the question was potentially about the implementation of the recommendations from the treaty bodies and the UN Human Rights Council. We are looking much more closely at how to follow up those recommendations. I believe that there have been previous discussions with the committee on that and we welcome the fact that the committee wants to use the recommendations as a vehicle to shine a light on some of the key issues that need to be addressed in Scotland. We hope that that approach will permeate the whole of the Scottish Parliament in its particular role as a human rights guarantor. The recommendations certainly provide a focus of attention where they have come about as part of a fairly systematic process of feeding in from the state, civil society and us, as the national human rights institution.

The concluding observations of the treaty bodies permeate all our work. We certainly draw on them in all our work on law and policy, and we consider them carefully in relation to our other strategic priority setting. In the future, we want to ensure that we are doing that systematically and that other actors are also drawing on them, are aware of them, and are using them in their own lobbying work and priority and agenda setting. The commission certainly wants to focus on that increasingly in the future, and we are pleased that the committee is doing so too.

Alex Cole-Hamilton: That is very helpful. I think that I speak for the rest of the committee when I say that, after we had our first discussion about using concluding observations as a weather vane to direct the work of this committee, we discovered that there were something like 900 concluding

observations across the various UN treaties. That approach then looked like drinking from a fire hose.

I come from the children's sector and I have my particular hobby horses around the incorporation of the United Nations Convention on the Rights of the Child—children having equal protection from assault being one. I know that other committee members have other particular favourites and focuses.

How do you, as a commission, triage what is achievable? Do you consider the low-hanging fruit, what you can do tomorrow to make good on those commitments and what is a little bit harder?

Kavita Chetty: You have hit on the crux of the role that we see for Scotland's national action plan. Part of the thinking behind the national action plan was to draw on best practice from such plans from around the world. National action plans for human rights have been promoted by the UN since the early 1990s and a number of countries have them. The key principles of such a plan are that it should be evidence based, collaborative, participative, monitored and evaluated—those are not unchallenging things to achieve.

The commission saw that a way to collaborate on setting priorities was to triage the concluding observations and treaty body recommendations; the views of civil society and those with lived experience of the issues; and the priorities of Government and Parliament. The idea is that the point at which those interests meet will show which issues have the most traction and will help to set the agenda for Scotland.

In practice, the process has not been simple, but that is the vision behind it. We are continually trying to build on that work in Scotland's national action plan, which provides a forum through which to carry out that triage and set priorities. It is one of the vehicles to enable us to set priorities from among the huge range of concluding observations from the treaty bodies.

Another thing to say is that there is a huge amount of duplication in the concluding observations—some can be weeded out.

Judith Robertson: Alex Cole-Hamilton's question highlights the nature of our challenge. We too have to make strategic choices about aspects of various issues and processes, and say how we as a commission will marshal our resources to achieve the best and biggest impact with the most value for money and further advance the cause of human rights in Scotland.

That is one of the reasons why we have chosen to focus on the incorporation of economic, social and cultural rights. At that level, our focus sits above a whole range of issues—which are all very

real—and enables us to do a number of things to increase people's understanding of what the rights framework gives them.

The Human Rights Act 1998 mostly deals with civil and political rights. To a certain extent, incorporating economic, social and cultural rights—to the degree that we can do that with the powers that are devolved to this Government—would enable us to put in place a much more complete domestic rights framework in Scotland that our citizens could access and use.

More constructively, that would send a clear message to public bodies and institutions in Scotland that the Government and our Parliament are taking the rights of our citizens very seriously. I am not saying that you do not do so already, but that would send out a clear and strong message to that end.

From our perspective, there is an opportunity at present because there is a willingness in Government to have that discussion and to take progressive action. There is also a more negative opportunity; given that aspects of the 1998 act are in question and we are coming out of Europe, there is an increased need to strengthen the domestic rights framework.

That would not reduce the need to deal with the other aspects of the concluding observations, but strategically, if we get that area right, it could have an impact on all sorts of other areas. It is not the silver bullet that will deliver a rights-respecting public life in Scotland, but it is an important component, which is one of the reasons why we are prioritising that in our work as we move forward.

Alex Cole-Hamilton: That is incredibly helpful. I am sure that I speak for the rest of the committee when I say that I would like to engage far more with the commission in the coming five years, as that will help us to practice the art of the possible and distil what we should prioritise. You are doing the leg work to triage the concluding observations so that we do not necessarily have to—we will obviously do our own due diligence, but I think that we will be seeing a lot more of you.

Judith Robertson: We will be very happy to do that. We see the distillation of the concluding observations as part of our role, but your willingness to engage actively in the process and to participate in discussion and dialogue, rather than just being on the receiving end of our wisdom, is really important. You are key actors in the Parliament in that respect, although we would consider that work to be the responsibility not only of this committee. The concluding observations have an impact right across the committee structure and the responsibilities of the Government and Parliament in Scotland, so

having those dialogues and conversations across the committee structure would be not only healthy but an important aspect of the Parliament's responsibilities.

The Convener: I agree with that final point. With regard to Mary Fee's question, for example, our immediate thought was that we needed to highlight the issue to the Health and Sport Committee. Part of our role will be to ensure that we highlight anything that comes up at this committee to subject committees, and we will continue to do that.

Annie Wells (Glasgow) (Con): My question is more specific, because it is about spotlighting specific issues and holding people to account. At the moment, we are looking at the Government's anti-bullying strategy, and the big thinking in that relates to human rights with regard to inclusive education for people with disabilities and lesbian, gay, bisexual, transgender and intersex people and how bullying affects people's human rights at school. Have you looked at that issue? As we are going to do a bit of work on it, we would appreciate your input on the human rights aspect with regard to young people.

The Convener: I should say that our inquiry on school bullying kicks off next week and we will be talking to some of the umbrella bodies in relation to the matter. The Scottish Government has delayed the implementation of the bullying strategy, following evidence that the committee received from a number of young people's groups on the need for the strategy to be a bit more focused. The Scottish Government agreed with the committee, and we are taking forward that piece of work, starting next week.

Judith Robertson: This raises an issue that I think is important for the committee to understand and with which we grapple on an on-going basis: non-duplication, which is key in our legislation. I am fully aware that this is not just an issue in schools and that it goes much wider into, for example, social media. At the moment, however, we consider the matter that you have raised to be the principal responsibility of the Children and Young People's Commissioner Scotland. It is not that we would not necessarily be able to contribute a human rights perspective on some of that but, again, we are a small organisation seeking to marshal our resource effectively and our legislation contains a provision on non-duplication. I am not saying that we would not address the issue—indeed, we highlight it in some of our concluding observations and bring it into our analysis and dialogue—but in this instance and in this context we would not make a contribution, because we would expect the children's commissioner to have responsibility for that. Does that make sense?

Annie Wells: Yes.

The Convener: We will be speaking to a number of organisations in our inquiry to get to the bottom of the issue and see where we can make some changes.

I want to ask you some questions about your relationship with the Equality and Human Rights Commission and with other organisations, including the United Nations, which you said that you had a relationship with. What is the interface between those relationships? What systemic parts work or do not work together, and what parts of it could work better?

In response to Alex Cole-Hamilton, you mentioned concerns about withdrawal from the European Union. The other day, the Prime Minister talked about withdrawal from not only the single market and the customs union but the European justice system, which will have a huge impact on people's ability to get recourse to justice by going down this route. We have heard about a potential repeal of the Human Rights Act 1998 and its replacement with a British bill of rights, and now a manifesto commitment to withdraw from the European convention on human rights by 2020.

I know that I have raised many issues, but they perhaps relate to some of the organisations that you interface with. What are some of the pitfalls and challenges in that respect?

Judith Robertson: There is a lot in that question, convener.

The Convener: That is why I kept it until the end. [*Laughter.*] Just start with the basics of your relationships with these organisations.

Judith Robertson: Okay. I do not want to assume members' knowledge or give them information that they do not need, but perhaps I should let you know this: the Equality and Human Rights Commission in Scotland is principally the equalities regulator and its principal mandate with regard to human rights is in relation to Westminster and the reserved powers. The principal mandate for the Scottish Human Rights Commission is dealing with human rights issues in relation to the competence of the Scottish Government and Parliament. In simple terms, that is how the landscape is carved up.

However, as will become immediately apparent, there is a lot of scope for overlap and concern. In simple terms, to give just two examples, there is first the impact of welfare reform, which is reserved legislation but has a direct impact on how the Scottish Government, Scottish Parliament and Scottish public authorities deal with people who are experiencing poverty and having to access benefits. That is not a simple line to draw.

The second example is issues in relation to asylum seekers and refugees, where the principal aspects of the immigration legislation are reserved and the Scottish Parliament has no competence over it. There are, however, lots of implications for what actually happens in Scotland to asylum seekers and refugees.

10:15

At one level, that looks simple but, because of such issues, we collaborate. An active example is a conversation and a piece of joint work that we are doing at the moment around an equalities and human rights-based approach to developing the new social security powers in Scotland. We are collaborating with the EHRC, which is undertaking a piece of research on international comparisons of equalities and human rights-compliant social security provisions and we have had a meeting this week with civil servants in the social security division to see how that could be integrated into their plans. Underpinning that relationship is a memorandum of understanding with the EHRC in recognition that there will be instances when, if they are doing investigations across the UK on specific issues, aspects of which are devolved to Scotland, we will need to give consent for them to undertake that work.

A live example is a housing inquiry that the EHRC is about to start, or has just started, reviewing the experience of people with learning difficulties and their access to housing. That will include a Scottish component and Scotland will be part of that investigation. Because the EHRC is looking at that through an equalities and human rights lens and it is devolved legislation, we have given our consent for them to undertake that work, effectively lending the EHRC our mandate. It is entirely within our gift and theirs to have that dynamic.

We meet them frequently and regularly; we have on-going dialogue and conversation over aspects of the work. We are meeting in a couple of weeks to look at our forward plans for this year to see how we can best add value to each other's work, see where the synergies are and avoid duplication. It is important that we are not doing something that someone else is doing and they are in the same position: they do not want to do something that we are already doing. That is the landscape.

We also meet the cross-UK and Ireland human rights commissions annually. I met the Northern Ireland Human Rights Commission in Belfast on Monday 16 January, along with the Irish Commission for Human Rights and Equality, the Equality Commission for Northern Ireland and the EHRC. We looked at our shared agendas as organisations and—you will not be surprised to

know, directly addressing the second part of the convener's question—Brexit, a potential British bill of rights and the talk around withdrawing from the European convention on human rights were high on that agenda.

There are different implications for the different jurisdictions in the UK and for all the organisations: we are very alive to that and it is a good forum in which to have those discussions. We agreed that the organisations in the UK would collectively seek a meeting with the Department for Exiting the European Union in the UK Government—Ireland felt that they could not contribute to that conversation—to highlight the real human rights concerns that we have. I am pleased that we are doing that. It is important that we collaborate on the issue because it will impact across the UK jurisdictions.

That is a partial answer to your question. If you want us to go further into the Human Rights Act 1998 and Brexit, we can do that, but that is the initial answer to your question.

The Convener: We would appreciate some feedback on your meeting with representatives from the UK department on Brexit, if that is possible. That would be helpful.

Judith Robertson: We are looking to meet before the summer, but not immediately.

The Convener: I will ask about a specific aspect of withdrawal. Yesterday, I hosted an event on Brexit and human rights that the Scottish Parliament information centre organised. One of the speakers on the panel was David Cabrelli from the University of Edinburgh, who gave an excellent presentation on labour laws, workers' rights and aspects of workers' rights under articles 18, 19, 42, 43 and 153 of the Treaty on the Functioning of the European Union, which are on the right to equal pay, the right to paternity and maternity leave and other rights. Those things would come back to Westminster, because the bulk of labour law is reserved to Westminster and involves Westminster legislation—EU directives have no influence on that.

However, many of the other things that I mentioned relate to EU directives that we adopted. David Cabrelli painted quite a gloomy picture of that, given the experience of the impact that changes that were made to employment tribunals had on people's access to recourse to justice. Are there aspects of Brexit where you can do work on repatriation of powers or taking back control?

My concern is that some of the detail will be lost in the great repeal bill, but that detail matters every single day to people's lives, especially in their workplaces, so that they are not discriminated against and not paid inadequately, rather than having equal pay for equal work. Will you be

working on such detail in your collaboration with other organisations? I am concerned that such detail might otherwise be lost.

Kavita Chetty: There is a lot in there. I will start with broad reflections on what Brexit and the proposals on the Human Rights Act 1998 and the European convention on human rights could mean for us.

As the committee is well aware, Brexit poses significant human rights risks through the disapplication of the charter of fundamental rights and the protection that it provides within the scope of EU law for data protection, privacy, a fair trial, bioethics matters and a range of other areas where the rights in the charter go beyond the European convention on human rights. As you said, convener, in the broad spectrum of EU law, there are risks particularly to equality protections, workforce protections, consumer rights and environmental protections that come from the EU in the form of directives, regulations and decisions from the Court. Sitting alongside all that is the ongoing threat to protections under the Human Rights Act 1998 and the mooted withdrawal from the European convention on human rights, which is deeply concerning.

At this point, it is difficult to predict what the human rights landscape will look like. It will largely depend on the relationship that the UK has with the EU, on what further devolution might look like and on what changes are made to our human rights laws. In broad terms, the commission's strategy for dealing with that means two things. One is that we have to be proactive and look at the strongest rights protections that we can have in Scotland. What will they look like in a changing future landscape? Part of that will mean looking at the full range of rights, from the civil and political to the economic, social and cultural.

As you identified, two of the areas that are potentially most under threat through Brexit are employment protections and equality protections, which are reserved. As Brexit unfolds, we need to consider the strongest backstop for human rights protections that we can have in Scotland, so I want us to be proactive on the laws.

Part of that is about a greater and deeper public understanding of the risks that are posed by Brexit and withdrawal from the ECHR. The conversation is relatively technical, but it needs to happen more broadly across Scotland. For example, we want to hold a public event next month that examines the risks, responsibilities and opportunities of Brexit and discusses them more publicly.

We must address the terms of the debate. Collectively, we need to consider how we have arrived at a place where there is fertile territory for

such regression and what part we all play in changing the terms of that debate.

In broad terms, those are two things that the commission will consider.

Judith Robertson: Labour laws and employment rights fall principally in the remit of the Equality and Human Rights Commission in relation to equalities. In relation to labour, the position is much less clear. The trade unions, for example, have a significant role to play. We are having a meeting with the Jimmy Reid Foundation—the public meeting to which Kavita Chetty referred—to begin to explore some of those issues in a more public forum.

I am not surprised that the predictions were gloomy in the conversation that you had, convener. On holding the Westminster Government to account, the great repeal bill will do something. At the moment, the principle seems to be that it will not imply regression on the first day. We need to be alert to and aware of what will happen after that, when the responsibilities to which it relates sit wholly within the UK Government's competence.

The SHRC is mandated to focus primarily on the competence of the Scottish Government and Parliament. Any powers that were repatriated from the EU to Scotland would come within our competence. However, we can also comment on and highlight issues from Westminster if they cause concern in relation to human rights. We will continue to do that and, through collaborations with other partners, we will keep alive in conversations the human rights dimensions as well as the specific issues on equalities, labour rights, environmental protections and all the other dynamics on which our coming out of the EU could have knock-on effects.

A reasonable amount of work has been done on that. The standing council that is supporting the First Minister has commissioned papers on a range of issues, which we can share with the committee if it has not already seen them. They are good summaries of some of the issues that are at stake. They go beyond labour and equalities into a range of other areas.

The Convener: This is a moveable feast. Your last couple of comments feed into my final questions. Have you used your power to conduct inquiries or intervene? If you have not, why not? In the moveable feast of the future landscape, do you see opportunities to do so?

Kavita Chetty: In its simplest form, the reason why we have not used our legal powers of inquiry and intervention is that there has been no real need to. I should say that that is my subjective view. Our reading of the Scottish Human Rights Commission Act 2006 and the debates that

happened when it was passed is that our primary duty under section 2 is to promote awareness of, understanding of and respect for human rights. Our legal powers sit underneath that; the commission values those powers as giving it the teeth that it needs to do its work properly and has always had an open door to using them.

10:30

In the commission's early days, the focus—as I think that I have said—was very much on understanding what the human rights-based approach was and what value it would add. It was about reaching into different settings, particularly in health and social care, to understand what that meant and how in practice rights would be implemented. Part of the strategy was a counter narrative to the more regressive debate that was emanating from Westminster about the Human Rights Act 1998 and its future position in the UK.

To an extent, although the doors have always been open to us, when we have identified an issue and gone to talk to the relevant public body about it, we have seen a willingness to engage in a human rights discussion to understand how that body can embed human rights in its policy development and delivery of services, which has been welcome. As I said, that has fed our approach.

However, there is always a concern that we see superficiality or complacency in how bodies take account of human rights. We see human rights inserted in the top line of strategies or proposals mooted as being human rights based but, when we dig under the surface and see whether the core principles of such an approach are there—particularly the participation of those who are experiencing the issues and the link to the legal framework and the rights that it contains—they simply are not.

The commission has to counter that. We therefore take a complementary approach that shines a light on the issues and the lived experiences of them. For example, in our housing project, that means going to the houses of people who are experiencing substandard conditions, seeing and feeling what that looks like in reality and then saying to the duty bearer, “This is why you have to implement a human rights-based approach, and this is what it means in practice.”

There is an interest in using the powers of inquiry to shine a light on areas of concern as a complementary power to our general duty to promote awareness, understanding and respect for human rights.

Willie Coffey: You mentioned a public event next month. Where will that take place? Do you plan to webcast or film it and put it on your

website, so that a wider audience can participate in or see it?

Kavita Chetty: I hope that we will be able to confirm with the Jimmy Reid Foundation the date and the venue in the next week or so. The event will be Glasgow based and we hope that it will take place towards mid-February. We will think of ways of making it as public as possible.

The issues are technical and the risks are quite complicated to digest, but there is a real need for public understanding of what exactly is at stake, so we will be looking to message that publicly as far as we can.

The Convener: I have a couple of other quick questions. Your organisation works slightly differently from the Children and Young People's Commissioner Scotland. You have one chair and three part-time commissioners. How does that set-up work compared with how a single commissioner works?

I have touched on resourcing, which you have spoken about in your strategic plan. Are your resources sufficient to do the work that you need to do?

Judith Robertson: I will start with the resourcing question. Like that of many other public authorities over the past few years, the commission's budget has been reduced. We are fairly clear that we will deliver our strategic and operational plans with the budget that we have. However, the budget is small and we have a big mandate. We have to make—sometimes daily—strategic, hard choices about what we can and cannot do because of the organisation's size. As you would probably hear from any organisation, we could always do more with more—that is absolutely the case.

There are things that the commission does where I could use the resource differently; some of that could happen within our budget parameters. It would assist us to have flexibility in relation to staffing and the balance of staff costs in relation to non-fixed costs. Ensuring that we have the flexibility to marshal our resource as best we can within the constraints that we have is primarily an SPCB responsibility. We have not made a specific request for more money yet, but we are keeping that under review and, if there was the opportunity to get more, we would ensure that that was spent on delivering the organisation's mandate.

The one point that I will make explicitly, which is very relevant, is that the increased devolution of powers to the Scottish Government increases the scope and the mandate of the commission. The budget does not explicitly acknowledge that we will be dealing with a wider range of issues. For example, there is the significant development of the new social security powers and the new

taxation powers, which could be two key planks of human rights delivery in Scotland.

We are responding to those new powers, but we have had no increased capacity to effectively take them into account. If members have scanned the 900 concluding observations—or however many of them there are—they will have seen that that point has been highlighted. In fact, in our letter of accreditation from the UN in relation to our category A status, it is clear that any further devolution of powers would require a look at our resource base, as we would need to take that into account. We would welcome that, should it be on the agenda.

That is my fundamental answer to the resource question. We may come back to the committee with a more proactive conversation about that in the coming months and years.

In relation to the commission's structure, I will be honest with the committee—it is not like anything else. It is a unique structure. My limited experience of national human rights institutions around the world is that they are all unique structures—they are all uniquely unique, if that makes sense, so there is not a single model that is the best model. All of them have their challenges, whether they have a single commissioner or a hybrid structure such as ours, where we have a small number of commissioners who support a full-time chair. The structure is not without its challenges, because we have to manage effectively the dynamics not of the individuals but of the relationship between the strategic and the operational.

The commissioners' time is two and a half days a month, which is why they are not here today—they are busy people with other commitments. It is not that the commission is not a priority but, towards the end of the financial year, the commissioners do a lot more than their set hours to support the process.

To ensure that we talk as a commission rather than simply as the chair of the commission, we have to engage commissioners in frequent policy conversations. That in itself is time consuming and requires them to engage proactively in the discussions that we are having. We are careful about that. I am always mindful that it is not me but the commission speaking—it is a group of people—and that in itself is a draw on resources.

That is the situation at the moment and we are managing that reasonably well. The commissioners are engaged in the processes of the commission and they support our work proactively. They bring different skills and competences to the commission. I have not had a conversation directly with the commissioners about this, but I am very open to truly looking at

the structure. There is value in it, but it also brings challenges, so there are pros and cons.

The Convener: As with any organisation.

Judith Robertson: Absolutely.

The Convener: I think that we have exhausted our questions for you today, although not our relationship with you, as a lot of the work programme that we have decided to take on will ensure that we have constant engagement with you, which we look forward to. On the committee's behalf, I thank you for your evidence, your report and the work that you will continue to do.

Judith Robertson: Thank you—I appreciate that.

The Convener: That concludes the public part of our meeting.

10:40

Meeting continued in private until 11:14.

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