



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Equalities and Human Rights Committee

**Thursday 2 February 2017**

**Session 5**



The Scottish Parliament  
Pàrlamaid na h-Alba



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**EQUALITIES AND HUMAN RIGHTS COMMITTEE**

**4<sup>th</sup> 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:**

Rebecca Hilsenrath (Equality and Human Rights Commission)

Chris Oswald (Equality and Human Rights Commission)

**CLERK TO THE COMMITTEE**

Claire Menzies

**LOCATION**

The David Livingstone Room (CR6)



## Scottish Parliament

### Equalities and Human Rights Committee

Thursday 2 February 2017

*[The Convener opened the meeting at 09:30]*

### Decision on Taking Business in Private

**The Convener (Christina McKelvie):** Good morning and welcome to the fourth meeting in 2017 of the Equalities and Human Rights Committee. I make the usual request that mobile phones are switched to silent or flight mode.

Agenda item 1 is a decision on taking items 3 and 4 in private. Is the committee content to take those items in private?

**Members** *indicated agreement.*

## Equality and Human Rights Commission

09:31

**The Convener:** Item 2 is our substantive agenda item this morning. We will take evidence on the Equality and Human Rights Commission's United Kingdom business plan and how its priorities relate to Scotland. I thank our witnesses for copies of the business plan; I was up at 6.30 this morning and read it from cover to cover.

I welcome from the EHRC Rebecca Hilsenrath, who is the chief executive officer, and Chris Oswald, who is the head of policy in Scotland. Chris has been before the predecessor committee and we welcome him back. This is Rebecca's first time: we are grateful to you for coming and interested to hear what you have to say. I understand that you have a brief opening statement.

**Rebecca Hilsenrath (Equality and Human Rights Commission):** I am grateful to the committee for inviting us here today. As the convener said, it is my first time at the committee, and my first time in the building, although it is not my first time in Scotland. I have been the commission's chief executive for 18 months and, before that, I was its chief legal officer. I come to our Glasgow office very regularly, and the work of our office here is very important to me. I would be happy to talk more about that and I am sure that I will do so in the course of questions this morning.

I appreciate the opportunity to talk to you and understand more about your concerns and perspectives. It is also an opportunity for us to explain more about what we are doing.

**The Convener:** This committee is in a relatively new guise, which was created because of new responsibilities that have been conferred on the Scottish Parliament. The remit of the former Equal Opportunities Committee has been expanded to equalities and human rights. It covers all those aspects and we are taking on the work with some vigour in the inquiries that we have launched.

I see that you have a couple of strategic aims in your business plan that relate to Scotland, and there are some UK-wide aspects of the work that you are doing that affect Scotland. Will you give us an overview of your strategic plans for the whole of the UK, focusing on the ones that are specific to Scotland?

**Rebecca Hilsenrath:** I am happy to do that. Chris Oswald and I might play a bit of a double act: it is easier for me to talk about the commission as a whole and for Chris to talk specifically about how it operates in Scotland.

We have four objectives in our strategic plan. The first is to look at evidence. It is important to ensure that there is a sufficient evidence base for what we are doing. Our equality and human rights outcomes report, "Is Britain Fairer?", which covers Great Britain, was a five-yearly report, but it will now be produced every three years. We are looking at changing the measurement framework for that report and identifying the gaps in "Is Britain Fairer?" and "Is Scotland Fairer?" to ensure that our evidence base improves.

The second objective is to ensure that there is an appropriate and robust infrastructure for equality and human rights. That is about our treaty monitoring work and it is also about our access to justice project, which is looking at how we can ensure better outcomes across Great Britain.

The third objective—I may have got them in the wrong order—is to have a significant impact on human rights and equality issues. That is about our strategic litigation work, our inquiries work and our investigations.

Our fourth objective is to increase our own capability in terms of how we operate as a Scottish, Welsh and GB-wide organisation. That is about the work that we are doing on our structure, systems, information technology and offices.

We are in the business planning stage, as you will appreciate, looking forward to the year 2017-18. Chris Oswald may wish to talk specifically about Scotland in that regard.

**Chris Oswald (Equality and Human Rights Commission):** Absolutely. It may be easier at this stage if I just reel off a list of things that we have an interest in. If the committee wants more detail on any of them, I am more than happy to talk you through that.

Our work programme in Scotland is very much driven by the publication that we released last year, "Is Scotland Fairer?", which was a compendium of the big data about equality and fairness in Scotland. We take our working priorities from that.

There are seven priorities. The first, which will be very familiar to the committee, is about the lack of evidence in Scotland on diversity and human rights. We have particular concerns about attainment in education. There are particular issues around employment, such as recruitment, retention and reward in employment. We are also very interested in community relations, particularly issues around hate crime and targeted crime. We have a strong interest in public participation, again through the lens of the nine protected characteristics that we work with and the human rights aspirations around participation. Access to justice is perhaps not as strong a priority in Scotland, given the very welcome commitments

on employment tribunal fees. There are concerns around health and concerns around basic issues of harassment, security, and the ability to live independently.

To break that down into specifics, on employment work, I am sure that the committee is aware that we will be doing a lot of work on pregnancy discrimination. We estimate that in Scotland 5,500 women lose their jobs every year because of pregnancy discrimination, and we are doing a lot of work with the Scottish Government on that. We have a strong focus on equal pay and pay gaps and we also have a strong interest in board diversity, whether in public sector boards or the boards of private companies.

On our legal work, we accept cases, make interventions in courts, and take cases in our own name. You may well have seen that last week we were in the Supreme Court on what is known as the buggies against wheelchairs issue. In Scotland, we do legal representation and intervention.

We have a strong emphasis on transfer of expertise, which is about skilling up unions, citizens advice bureaux and other advice agencies to understand equality and human rights law so that they can represent people themselves.

We are coming towards the end of the first four-year cycle of the public sector equality duty phase. On 30 April, public bodies in Scotland have to publish what they have been doing and what they have achieved over the past four years, as well as a new set of equality outcomes. We have just signed off a review of what we will look at, which involves the activities and the outcomes achieved by each of the 250 bodies and is a major piece of work. We anticipate reporting back publicly on that in September, with some recommendations on what is working, what is not working and what we would suggest for the future.

We have been doing some work on the outcomes of "Is Scotland Fairer?", particularly around targeted hate crime, feeding off Duncan Morrow's review and the Scottish social attitudes survey. We are about to do some work on participation, where we are very interested in the Scottish Government's support for the one in five campaign and about how to get greater diversity, whether in a tenants association, a community council or elected office.

Then there is the issue of attainment. Although we support the Scottish Government's aims for the attainment challenge, we are concerned about differences in attainment between, for example, boys and girls and disabled and non-disabled people. In particular, issues around Gypsy Travellers may not always be picked up in what is predominantly an anti-deprivation strategy.

There are loads of things to talk about; I will be brief in discussing my other points. A particular interest, on which my team are working at present, concerns the opportunities that new investment brings to Scotland. In our view, the affordable housing programme and the city deals represent major opportunities to progress critical policy areas. There are 17,500 wheelchair users in Scotland who are inappropriately housed, and ethnic minorities are four times more likely than anybody else in Scotland to live in overcrowded housing. We have a real opportunity through the affordable housing programme, in which we are building 50,000 affordable houses, to start to accommodate people's needs and take some of that demand out of the system. Equally, we have a real opportunity to bring women, ethnic minorities and disabled people into the construction industry, where they are currently very much underrepresented.

We are looking at initiatives such as the city deals and investment programmes as opportunities that allow us not only to change the physical infrastructure of the places where we live and work but to look at who has the opportunities to work in the associated industries. At present, we are in conversation with the Scottish Government and ministers about how to co-ordinate all that. There is a real sense that we want to go beyond simply eliminating discrimination and seize the opportunity that some of that work presents for Scotland. We want to help public bodies—through procurement, planning or monitoring—to get it right and seize those opportunities themselves.

As you probably know, I could go on for ages, but I will not.

**The Convener:** There are a lot of questions from committee members. I want to pick up on two issues that Rebecca Hilsenrath raised with regard to some of the committee's own work.

You mentioned your litigation work. Can you give us some examples? I am aware of the wheelchair-versus-buggy case; we know that one quite well. I think that Lothian Buses had similar issues. Has the frequency of that type of work increased over the past couple of years?

**Rebecca Hilsenrath:** Chris Oswald stole my thunder by talking about the outcome of the Doug Paulley case, which we were very pleased about.

Other recent cases in which we have been involved have included a case on the application of what is known as the bedroom tax to families with disabled children; it was held that the tax was unlawful in relation to its impact on children.

In the past year, we have been involved in various cases relating to Gypsy, Roma and Traveller families, including a case against

Wetherspoon for refusal of service on that basis. The year before, we had a case on the referral of planning applications in relation to Gypsy and Traveller sites on the green belt. Applications were dealt with under administrative arrangements that meant that they were recovered centrally as opposed to decided locally, and that was held to be a breach of the public sector equality duty. We have taken various cases on immigration issues; there is currently a case relating to the amount of welfare that is paid to child immigrants.

09:45

With regard to the amount of cases that we take, there are cases in which we intervene as a neutral party and as an expert body, and cases that involve a breach of the Equality Act 2010 that we are able to fund in full. Looking at such cases together, we are taking round about 30 cases a year. We used to take more. One of the issues for us is how strategic cases are referred to the commission, and we have done an awful lot of work with stakeholders to try to increase the number of cases that we take. One problem relates to where cases originate. We have struggled in the past to develop a full pipeline of cases coming through from the helpline since it was outsourced. Also, the advice services with which we work to encourage a pipeline of cases are struggling with capacity because of cuts that have been imposed on them.

In January, February and March this year, we are piloting a slightly different approach, particularly in relation to disability discrimination cases. There are two reasons for that. One is that we are able to provide extra support in relation to disability. We know that there are particular issues with disability and we think that taking on disability cases will help with various bits of work that we are doing in that field. For example, we have just launched a housing inquiry that is looking into disability-access housing throughout GB. We hope that taking more disability discrimination cases will help us to identify more contextual evidence of problems that people experience in relation to that. We are also about to report on the UK's compliance with the United Nations Convention on the Rights of Persons with Disabilities and we have a report on disability throughout GB coming out in early March.

That is the reason for considering disability specifically but, to come back to the question that you asked, we hope that taking cases at a less strategic level—considering not just appeal cases but first-instance cases—will help us to understand how a slightly different approach to litigation may help us to adopt a different way of taking on cases in the future and perhaps help to get more cases to go on further into the year. After

the pilot has completed, we will identify the impact and see whether it helps us to increase the pipeline.

**Chris Oswald:** I will give a brief illustration of how it works in Scotland. A couple of years ago, we were approached by a profoundly deaf woman who required to use a signer. She told us that she had been rushed into hospital for an emergency operation and was in hospital for seven days and at no point did the hospital provide a signer. She left hospital not having consented to the operation and not knowing what procedure had been carried out on her. It was the second time that that had happened to her in two or three years.

We felt that the issue was so serious that we commenced litigation and issued a writ against the health board. As is often our experience in Scotland, the health board wanted to work with us. We agreed what is called a section 23 agreement, whereby the health board signs a legally binding agreement with us that says that it will do a certain amount of things over a set period, which we can take back to court should it not. However, we did not just leave it there. We had concerns that the situation was not unique to that health board so we looked at the practices and policies of every health board in Scotland on signing in particular. We are now working with the health department to try to get a common approach to providing basic levels of communication support to people who have no other option.

We tend to use litigation where we have to. Where the respondent is willing, we will enter into agreements with them but the aim is then to take those to scale so that we do not have to keep going through every health board every month.

**Rebecca Hilsenrath:** To operate as a strategic litigator means that we use our functions in a way that identifies cases that will make a bigger impact. We have a strategic litigation policy that identifies the criteria we use in taking on a case, which includes whether there is an opportunity to clarify the law and consideration of what the impact of the issue is. There is also a practical issue. When we take on first-instance cases, people tend to settle. Therefore there is a decision to be made about the practical and purposive use of our resources. The majority of the work that we do is slightly under the radar in the sense that it leads to an impact, a settlement and addresses the issues in a case, although it may not lead to a case that goes to court.

**The Convener:** We might come back to capacity issues later and one of my colleagues will certainly pick up on the disability issues. I want to pick up on a point in your strategic plan about protecting and promoting the human rights of refugees.

You will know that the committee has put out a call for evidence on destitution and asylum. We have had many responses, including one from a family in a refugee camp in Turkey. When it comes to the way in which refugees are treated, we are looking across the Atlantic with horror, but we should also be looking to our own back door with horror. We are still the only country in the European Union—while we remain in the EU—that has no time limit for detention and, as you said, there is the issue of children of asylum seekers plunging deeper and deeper into poverty, which will probably feed into some of the evidence that we receive on destitution and the impact that that has on vulnerable families. Can you give us some insight into the work that you will do to highlight that?

I worry that we are in a situation in which, because certain world leaders have given permission for people—especially refugees—to be treated in a reactionary, right-wing and horrible way, that becomes normalised. We have serious issues in this country with regard to how we treat people who are seeking sanctuary. What work are you doing on that? How can we work alongside you or complement your work with our inquiry on asylum and destitution?

**Chris Oswald:** You have caught us at a point when we are in the middle of business planning. We have particular well-known concerns about the housing of asylum seekers. In England, there is more of an issue with health and access to healthcare. We are developing plans and we have shared concerns. As I am sure you know, we have quite a strong history of looking at human trafficking in Scotland. The committee and the commission have carried out inquiries and investigations into that.

I am sorry, but I cannot put my hand on my heart today and say exactly what we will be doing in two months' time. However, I can make the commitment that we do not want to replicate the work that the committee is doing, which has a strong focus. We share the same concerns around destitution, intolerable standards of housing and the physical and mental harm that is done to people who seek asylum in the UK. We also have a strong concern about the public discourse on refugees, asylum seekers and minority groups in general. We have seen very strong responses in England, Wales and Northern Ireland post-Brexit in terms of increases in hate crime. We have not seen that to the same extent in Scotland—I am not saying that it did not happen, but I am assured that the police figures are accurate and that something different has happened in Scotland, which is fascinating in itself.

That is all a long way of saying that we share the same interests as the committee and that it is



very much in both our interests to have further discussion as we work up our plans and you firm up the plans for your inquiry.

**The Convener:** The committee would appreciate that greatly.

**Alex Cole-Hamilton (Edinburgh Western) (LD):** Good morning, panel, and thank you for coming to see us today. I have two areas to discuss. Rebecca Hilsenrath mentioned several times her organisation's role in treaty monitoring and, when we reformed as a committee in the summer, we looked to the concluding observations of the various United Nations treaty bodies as a weather vane to show us where we should direct our work. Considering that there are more than 900 concluding observations, that could be like drinking from a fire hose.

How do you triage those observations? How do you use them to shape the work of your organisation? Which ones are the low-hanging fruit and which ones are the absolute, golden priorities? Maybe you could help us in shaping our approach to the concluding observations.

**Rebecca Hilsenrath:** Our treaty-monitoring work lies at the heart of our organisation, and I am very proud of that particular function, which has quite a high regard in the country.

There are lots of different ways of answering that question. Structurally, we have recently allied the treaty-monitoring function with our research function, and those functions have been brought together in the same team. We look across the board at what our evidence base is and what comes out of the concluding observations so that we can use that information to inform our policy work much more clearly.

A lot of the work that we are doing in our restructuring is about having the ability to look much more clearly across the organisation to ensure that our work informs what the various teams are working on instead of being back in a silo culture. Internally, it is about looking at the concluding observations and mapping them across the work that we do using the internal criteria that we use to prioritise work.

Because we work across all the international human rights treaties, which we report on the country's compliance against, we are, of course, keenly aware of what the overlaps are. We have the advantage of not being tied to one specific treaty.

I will give an obvious example. We consider access to justice issues and the impacts of legal aid reform and employment tribunal fees on different groups. Because the impacts on women are disproportionate and the impacts on disabled people and ethnic minorities have been found to

be disproportionate, that will come up in different treaties as a concluding observation, and we can identify where the overlaps are and what issues we would want to look at as a priority.

We are talking to Westminster about our relationship with Parliament in taking forward those concluding observations. A conversation on that with the committee is really helpful. My sense is that, although that piece of work has been extremely important for us, we have perhaps not been as strategic as we need to be in finding a structure within which we can flag up the concluding observations and take them forward while working closely with select committees to flag up our concerns around them. Members will find that they are referred to in our casework, our reports and our other work, but we would really welcome an opportunity to work with you on them. Perhaps there could be a regular report or a structure whereby we could flag up what we regard as the key concerns under concluding observations and work with you to bring them to the Scottish Parliament's attention.

I do not know whether Chris Oswald wants to add to that.

**Chris Oswald:** I will give a very practical example. The committee and the commission share significant concerns about identity-based bullying in schools. That issue comes up in a number of treaties, and we have done a lot of research on it. We have worked very closely with LGBT Youth Scotland and respectme, Scotland's anti-bullying service, among others, and we have recommendations that we are putting back to the education department about how we think that the responsibilities of schools and education authorities could be adjusted to give greater information and protection to children who experience that bullying.

**Alex Cole-Hamilton:** Thank you both very much for those answers. I am certain that we will return to that subject.

I want to pick up on maternity discrimination, which Chris Oswald mentioned specifically in his opening remarks.

**Chris Oswald:** I am really sorry, but I have a bit of a hearing problem today.

**Alex Cole-Hamilton:** I apologise; I will speak up.

**Chris Oswald:** Thank you.

**Alex Cole-Hamilton:** I want to return to something that you said in your opening remarks about maternity discrimination and the number of women who lose their jobs as a result of their pregnancy. I have been working with a constituent who has a blog called "A Stay At Home CEO". She is an astonishing person who was largely

managed out by a very unprogressive board as a result of her maternity situation when she was the chief executive of an organisation. She really opened my eyes to the scale of the problem.

What astonished me was the number of blue-chip companies that are household names that practise maternity discrimination as a matter of systemic concern. What role do you have in calling out such companies? I could name them right now, but I might be sued in the morning. It strikes me that we really need to shine a light on that maternity discrimination—I was astonished to find out how prevalent it is. In many ways, the victims of the discrimination in those big companies are not aware of one another. To my mind, one of the first steps towards ending maternity discrimination is to shine a light on it and name and shame. Can you offer some reflections on that?

10:00

**Chris Oswald:** Absolutely. We published extensive research on the issue of maternity discrimination last year and it has been a major theme of our work. Two distinct groups of women are affected in quite distinct ways: younger women who are often in low-skilled, non-unionised workplaces, who are often simply fired when they are pregnant in a bald, straightforward way; the other group of women are more like the woman in the situation that you described in that they are professionals who find that they are overlooked for promotion or downgraded, or come back to work to find that somebody else is doing their job. The discrimination is different depending on the sector in which women work. We find that there are particular issues in the leisure, caring and finance sectors, so we need to take slightly different approaches to those.

Maternity discrimination is not an issue that is devolved to the Scottish Government, but we have been working closely with it on the issue and are very pleased that Mr Hepburn has taken it up strongly and that the First Minister has made commitments on it. Inevitably, we have a working group, but it is a group of good people who are plugged in; they include representatives from the Scottish Trades Union Congress and ACAS. We are looking first at how we can let women know what their rights are. To me, it is unimaginable that maternity discrimination is going on in 2017, but it is sometimes so ingrained in the workplace culture that women just keep their heads down. We know from our research that the more someone knows about their rights, the more likely they are to be able to negotiate with their employer and put them right.

There is a big emphasis in our work with the Scottish Government on letting women know that maternity discrimination is wrong and that there

are remedies for dealing with it. The tribunal situation is problematic, because for many women—particularly those who are younger and lower paid—maternity discrimination is simply not an issue that they will go to a tribunal on. Again, we support the Scottish Government's move towards more arbitration-type measures, but we are also interested in positive incentives. We reckon that about 80 per cent of companies are doing the right thing, so it is about focusing on the 20 per cent that are doing the wrong thing and using levers such as the fair work convention and the business pledge to get them to shift their practice.

Employers sometimes discriminate out of ignorance and sometimes they do it out of malice. Where it is done as a result of ignorance, we want to try to help them to understand the issue. We have a pile of helpful resources on our website that employers can use. Obviously, there are cases in which the employer's behaviour is so high-handed that we reserve the right to take legal action, should we need to. We are very much in persuading mode in Scotland on the issue just now and are grateful for the support of the Government, which was the first in the UK to come out clearly against maternity discrimination. It is very clearly a matter of principle in Scotland, which we are very heartened by. I suspect that it will take time to resolve the issue of maternity discrimination, but we think that we are on the front foot in addressing it.

**Rebecca Hilsenrath:** Just to add to that and to endorse what Chris Oswald has said, we are working with the business sector to identify what good practice looks like. There is some fantastic good practice out there. For us, it is about helping people to learn from one another; it is definitely about identifying the carrots. We published a report last autumn that looked at what the financial penalty is for maternity and pregnancy discrimination, because it is not inconsiderable; I mean not only the financial penalty for individuals but that for companies.

It is an interesting reflection on the use of litigation that, when we undertook the research into pregnancy and maternity, in which we focused particularly on trying to pick up litigation in the area, we picked up some cases but they all settled. Such cases can rarely be taken through because, by their nature, the employers will pay off the individuals. It is therefore quite difficult to make a mark in that way, which is one of the reasons why we are focusing on the key issue of making people aware of their rights. We have called for employment tribunal fees to be reduced in the area and for the deadline to be delayed to allow women to take cases. We have also looked at measures to improve health and safety in businesses, which are sometimes as basic as

having an awareness of people's physical environment and the importance of making them safe.

**Jeremy Balfour (Lothian) (Con):** Good morning, and thank you for coming. I would like to ask two questions, one at a reasonably high level and one about an issue that Chris Oswald has raised. I am still fairly new to this, but I notice in your report that some financial cutbacks are coming. What effect will those have on Scotland? What relationships do you have with other organisations that are doing similar work in Scotland so that you do not duplicate one another's work?

**Rebecca Hilsenrath:** I will talk about money and Chris Oswald will talk about other people.

We have had a cut of 25 per cent imposed on us under the latest spending review. We were asked to model cuts of 40 per cent and 25 per cent. We resisted the cut fiercely and hoped not to be cut or to be cut by less, but a 25 per cent cut was imposed on us. I am happy to talk about that as it affects the commission as a whole, but your question related specifically to Scotland, and the cut has not impacted on Scotland in any negative way.

A particular approach to the remodelling of our organisation has strengthened the Scottish resource considerably. One of the ways in which we are looking to remodel the organisation is through ensuring that we have a more coherent approach to the devolved Administrations—as you know, we also have an office in Cardiff. We are always concerned to ensure not only that the work that we do in Scotland is targeted and effective in relation to the Scotland-specific issues but that, as a GB organisation, we operate effectively so that neither Scotland nor Wales is forgotten and we offer a coherent, effective whole.

Therefore, we have appointed an executive director. The three executive directors are the highest officials in the commission and report directly to me. Each of them has a specific responsibility for one of the countries of England, Scotland and Wales. Scotland thus benefits from having an executive director as well as a new individual who is coming in to lead the team specifically at the Scottish level.

I am happy to talk about the changes in the commission that affect the commission as a whole and how they impact on Scotland, but that is the single biggest change. I regard it as a big plus for Scotland and hope that it will help us to work more effectively with Glasgow going forward.

Chris Oswald will pick up the other point.

**Chris Oswald:** There are many examples of organisations that we work with. The fundamental

point is that we are a relatively small organisation in Scotland—there are 17 or 18 of us—and we are reliant on working with and through other people to achieve our aims. Therefore, our relationships with stakeholders are enormously important to us in using the influence and leverage that we have.

On the pregnancy and maternity work, we have been engaging closely not just with the Scottish Government on the business pledge and the fair work convention but with the voluntary sector around working families and with Engender and Maternity Action. We have also been looking to the national health service for other opportunities for health visitors or midwives to reinforce messages to expectant or new mothers. It is about cutting the cloth of what we are doing and mapping who else is doing what, so that we do not end up replicating work.

I would say that our most critical relationship is with the Scottish Human Rights Commission, where there is a potential for the blurring of roles. The Scottish Human Rights Commission has primacy over devolved human rights matters, while we have primacy over reserved human rights matters. When we look at issues such as human trafficking, however, it is not as simple as that. Human trafficking is not just an immigration issue; it is a policing and a health issue in Scotland. Before we engage in any new major piece of work, we have to look around and see who else is active in the area, who is doing what and how we can best use the resource that we have to work with the flow in Scotland rather than taking oppositional positions.

We are lucky in Scotland in that the voluntary sector, the public sector and other regulatory bodies are quite coherent. There is quite a strong sense of partnership, so it is not a difficulty. However, we are very conscious of the resource that we have and of the need to play to the particular strengths that we can bring to a table, which might be a research strength, a particular legal perspective or a particular policy input that other people do not necessarily have.

**Jeremy Balfour:** Thank you. My second question picks up on your point about the one in five campaign and disabled people. I am interested to know what work you are doing at a more grass-roots level. We hear a lot about work with the Scottish Parliament and local authorities, but you have also talked about community councils and tenants organisations. Is there data on the representation on community councils and things like that from different diversity groups? There may well be such data—if so, maybe you can point me in that direction. Have you done any work to scope where councils across Scotland sit with regard to diversity?

**Chris Oswald:** First, I stress that we are not a community development organisation. With a staff of 17 people, we simply cannot do that type of work. We work very much through and with organisations that have that remit and interest, such as the one in five campaign.

We pick up on the issue of participation in “Is Scotland Fairer?” We pull together the data that exists, but the data is not strong in Scotland. We do not know the composition of community councils. There is no requirement on them to collect monitoring data. I am interested in things such as tenants associations and the ladder of participation whereby people cut their teeth on something local and then move on through. After every local government election, the Convention of Scottish Local Authorities does a diversity survey of elected members, but not of candidates. It is interesting that we know who gets through, but not who does not. In addition, the survey is not always well completed, so there are data gap issues.

Anecdotally, we can see that there is a clear gender imbalance at the local level in local authorities. There is also a lack of ethnic minority candidates and a lack of people with declared disabilities, although we suspect that there are a number of people with hidden disabilities that they do not necessarily share with our colleagues.

As we move into the public appointments system and the new regulations that are coming with it—we have been working closely with the Government on that—it is about having better information to enable non-departmental public bodies to know the composition of their boards and, if they have nobody who is lesbian, gay, bisexual or transgender or nobody who is under 30 or under 40, consider what planning they are going to do. There is an emphasis on succession planning, on which the Government published documentation a couple of days ago.

The commission has a strong interest in the area, but it is not our sole responsibility. We work with the appointments commissioners and we are interested in engaging with the parties, the Parliament and others who are doing the same work. It will be a collective effort that gets us there.

When COSLA completes and publishes its research, we will consider the results and ask how we can improve things so that we have a more reflective form of local democracy than we perhaps have at present.

**Jeremy Balfour:** Thank you.

10:15

**Mary Fee (West Scotland) (Lab):** I want to ask you about strategic aim 2.2, on developing levers

for change. Where are you with the pilot programme? The report mentions

“a two-year project to improve our understanding of the levers that are effective in reducing discrimination”,

and it goes on to say that you

“will use this research to help us pilot and evaluate the effectiveness of ... interventions.”

Will you update us on the programme? When will you start the practical work and when will you be ready to report back?

**Rebecca Hilsenrath:** That piece of work will inform how we operate across the board. Last year, we commissioned a piece of work to look at what influences people’s discriminatory behaviour and what takes them from having a prejudiced mindset to carrying out unlawful acts.

We have produced an interesting piece of research on hate crime, which partly takes us back to the earlier question about what we are doing in relation to the refugee crisis. We have done a lot of work to look not just at the spike in hate crime but at what works in trying to address it, and what we discovered about causation was complex. There are lots of different kinds of hate crime depending on the motivation, the situation and the locality of the crime, as well as on the kind of victim. A victim of a hate crime might be victimised because they are disabled or from an ethnic minority, for example. All those things influence how the hate crime comes about and the motivation for it. Through that piece of work, we also found out that little has been done to try to understand which interventions work.

Some successful work has been done on identity bullying in schools, and we know that, overall, bringing people together tends to be effective. It often helps to overcome prejudice if we can bring people face to face with people who look different or are different in other ways.

That is an example of a piece of work where we looked at causation and what has been done across the piece. Generally speaking, we found that there is a low level of understanding in that area, particularly in relation to different protected characteristics. I might have got this wrong, but I think that most of the issues are clustered around gender. With regard to understanding what prejudice looks like across the field, not enough work has been done to determine what works. That is my response to the first part of your question.

On looking at the issue going forward, as Chris Oswald said, we are in the middle of business planning, so we are looking at the areas of work that we are going to engage in. That will include working with other organisations and using our research to ensure that we identify the right levers

in order to make sure that we approach the issues as effectively as we can. At this stage, I cannot be more specific than that, but we are happy to keep you up to date with our thinking.

**Mary Fee:** That would be helpful. Under strategic aim 1, you talk about stereotyped media reporting. There is almost a link between what you have been saying and how you will look at that area, because the plan says that you are going to seek to build your understanding of

“factors contributing to environments in which open expressions of prejudice against particular groups increase”.

That has angered and perplexed me for a considerable time. The language that is used, particularly in the print media, to describe certain sectors of society or groupings of people—two that come to the front of my mind are offenders and their families, and Gypsy Travellers—do nothing to quell or remove discrimination. I have spoken to print media representatives who have told me that that is the language that the people who buy their newspapers want to read.

How will you take that forward in conjunction with the rest of the work that you are doing?

**Chris Oswald:** As you know, we share a strong concern about attitudes and behaviour towards Gypsy Travellers. We have published and republished guidance for editors in Scotland on how to report on Gypsy Traveller issues without prejudice. The fact that that is unique and we have not felt the need to do that for any other group signals our deep concern. A fairly obscure European case that emanated from Latvia, oddly, confirmed recently that print and online media are responsible for hate speech that is posted on their blog spaces. That has been really useful and we have circulated it to editors.

I have been involved in Gypsy Traveller work for a long time, and there seems to be a tempering in the media now. Some of the stuff that we saw five or 10 years ago—for example, when newspapers put fake Gypsy Traveller caravans outside council offices—has seemed to dissipate. I do not know whether a different cadre of editors has come in. In particular, I have noticed that a number of the newspapers that were previously the worst offenders no longer have bulletin board comments underneath Gypsy Traveller stories. That stuff is still going on on social media and Facebook, but we have made some progress, and it is heartening that I do not see the same stuff that, perhaps, both you and I viewed years ago.

Linking back to your previous question, I add that we are very interested in what works. One of the big problems around prejudice and hate crime is that, when something bad happens, there is a community response and people set up a project

and do more contact work, but then the project shuts down and nobody documents it. When we published on the rehabilitation of hate crime offenders a few years ago, we found that nobody knows what works. We have therefore commissioned a body that you will all be familiar with—the Coalition for Racial Equality and Rights, which is based in Glasgow—to design tools to help small projects to evaluate and document what they do.

Everybody feels good when we hold a demo or whatever, but my concern is about whether it has a long-term impact. Three years down the line, will we have to go back to fight the same problem just round the corner? We are really interested in knowing what works in practice to reduce prejudices and tensions so that we can recommend those practices.

Hearteningly, the most recent Scottish social attitudes survey—which we co-fund, and have co-funded all the way through—showed that negative attitudes towards lesbian, gay, bisexual, transgender and intersex communities in Scotland have collapsed. It is quite remarkable. I think that that is to do with better media representation, soap operas and many other things. However, negative attitudes persist towards some communities, such as Muslims, Gypsy Travellers and people with mental health problems. We are really interested in that.

We are not the only players in the market and we do not have all the solutions but, by working with the Government, the police and local authorities, which have a duty to promote good community relations, we want to crack it. However, the situation is volatile. As the convener said, it is sometimes subject to events that happen many thousands of miles away.

**Rebecca Hilsenrath:** Some of that goes back to our earlier comments about political discourse and the work that we see coming out of the Brexit referendum. We are working with political parties across the piece and we have written to them to suggest that some work needs to be done on words that can be used quite casually on the political stage but have a magnifying impact. It is not just about what happens in the media; it is about looking at the situation as a whole and how the issues interrelate. We are hoping to persuade political parties to consider a voluntary pledge or code of conduct. That is absolutely not about impinging on freedom of speech, and it is not about the criminal space, which is dealt with separately. Instead, it is about recognising the impact of words.

There is also the issue of websites' responsibility for the material that they host. I come back to the issue of treaty monitoring. The United Nations has recommended a more robust

duty on internet service providers and website hosts to look at the material that they host and at their responsibilities under the law.

As Chris Oswald said, it is important to ensure that we do what works and that we identify the right levers. One of the changes that we are looking at as part of our restructuring is to have a more systematic and robust look at measuring the impact of what we do, which is something that we are very conscious of. We have been looking at a theory of change across all our business planning. We are looking at the ways in which we work to ensure that we have a more unified and effective framework within which we are accountable for everything that we do to ensure impact. The issue of discourse and the impact on the lives of disadvantaged communities such as Gypsy Travellers is part of that.

**Mary Fee:** Thank you. That is very helpful.

**Willie Coffey (Kilmarnock and Irvine Valley) (SNP):** Hello. In general terms, how do you decide which organisation does which pieces of work? How is responsibility divided between your organisation, Rebecca, and the Scottish organisation? I am looking at your business plan, and one page out of 38 pages is specifically on the Scottish programme of work. Is there enough here to give members of the Scottish Parliament and indeed the Scottish public a grasp of the Scottish programme of work?

**Rebecca Hilsenrath:** I will answer briefly from a high level and then I will ask Chris Oswald to talk more about some specifics.

It is probably fair to say that the Scotland office has two roles: it supports what the organisation does at a GB level and it does things that are Scotland specific. That is about our recognising that some of the issues that surface for the commission and that we look at across the board look different in Scotland. There are also some things that the Scotland office does that are germane or relevant only to it.

It is enormously important to me that the work that goes on in our office in Scotland is robust, effective and properly resourced in proportion to the rest of the organisation. That ties in with what we have done recently to change the way that we work and ensure that we have not only proper resource but proper communication across the board. It means that what happens in Scotland is tied in at a senior level to what the commission does. That has been helped recently by the fact that we have a new commissioner here in Scotland. We are looking at new ways of working that involve a more coherent dialogue between me, the commissioner, the chair of the commission and the executive directors.

Perhaps Chris Oswald would like to pick up on some specific examples.

**Chris Oswald:** I will give the committee an example of where that is relatively easy and an example of where it is becoming more complex. The work that we are doing on pregnancy and maternity relates to reserved legislation, and human resources practice is largely the same north and south of the border, so we can generate the same sorts of messages with the same sorts of tools and resources. The responsibility of the Scottish team is to determine who in Scotland, in the Government or the voluntary sector, we should rely on to move that message. That is probably one of the most coherent GB parts of what we do.

If we consider criminal justice, "Is Britain Fairer?", which is the overarching analysis of Britain, shows that, particularly in England, ethnic minority people are hugely overrepresented among people who are stopped and searched, and that there is a worrying concentration of Afro-Caribbean people in locked wards under psychiatric detention. I am assured from looking at the stop and search figures and working with the police that, in Scotland, there is no disproportionality on race in terms of stop and search. As we all know, however, we have had a worrying issue about a concentration on young people and the impact on relations between younger people and the police. On psychiatric treatment, while there is strong evidence of overintervention in England, which results in black people being sectioned, I would argue that what we see in Scotland is almost underintervention, in that people from ethnic minorities experience mental distress without support at home.

10:30

We try to agree in our planning that there are big themes and concerns such as health, criminal justice and stop and search, but we try to leave sufficient room for England, Scotland and Wales to deal with their own specific issues. Arguably, some of the issues on stop and search in England are predominantly urban issues that affect only London, Birmingham and Manchester. We try to be sensitive, responsible and flexible about what we are presented with.

I return to the point that, in Scotland, it is about working in partnership with other agencies. That is critical. It is not desirable for us simply to tell people, "You must do this." We have to work through people to help them to understand. Ultimately, they run the housing department or the psychiatric ward; we do not. We can only advise on the equality and human rights principles.

I hope that that goes some way towards answering your question.

**Willie Coffey:** It helps. When you do a piece of work on a reserved matter, how do people in Scotland and Wales know whether the message is applicable in Scotland or Wales or whether it is just applicable in England? Do you make that clear when you are reporting? It is a bit like when people hear reports on issues on the BBC and are left wondering whether they are about NHS England or the situation in Scotland or Wales. Do you make it clear who you are talking about when you report your findings?

**Chris Oswald:** I am sure that Rebecca Hilsenrath remembers many conversations about that. I also do communications, and I go back and say, "Actually, that press release is talking about England."

I accept that we do not always get it right, but we try very hard, and we are precious in Scotland and in Wales about the distinctiveness of the messages that we need. It is not a unique problem. As you say, the BBC routinely broadcasts items and people think, "That isn't Scotland that's being talking about." With the best will in the world, we are a small country that is attached to a much larger country, and sometimes the nuance and the subtlety get lost.

We try to counter that by being communicative and engaging with our stakeholders, and I think that most of the people that we work with in Scotland get it. If you listen to the "Today" programme, you know when they are talking about England and when they are talking about Scotland. People in Scotland and Wales are often more constitutionally literate in that sense than, perhaps, some of our colleagues down south.

That is perhaps not a fair comment. I think that I should be quiet now. [*Laughter.*]

**Rebecca Hilsenrath:** I will not comment.

**Willie Coffey:** Thank you for that response. Another question that you may not be able to answer is about a report on the EHRC's website about disabled access to soccer grounds. It is an English issue, because it was the English Premier League that was involved. The commission did not do that work, although you were involved in it. The frightening message that came from the report was that a third of the clubs in the Premier League are unlikely to comply with guidance on disabled access. That is astonishing: huge amounts of money go into many of those clubs, yet they cannot comply with basic things like that. Why are organisations such as the EHRC not involved when clubs are building their shiny, fancy new stadiums? You deliver your messages by commenting after the fact. If those messages were delivered at the design stage, they would be so much more helpful. Are you ever invited to participate in design, whether for a football

stadium, for new housing or for a new school? Are you involved at the sharp end? If not, how can we achieve that involvement?

**Rebecca Hilsenrath:** I completely agree that it is mind-boggling that disabled access to Premier League clubs is not better—or, in fact, that it is not perfect, given the resources that are available. We are working closely with the Premier League on that and we are gathering information. We will seek to enforce compliance in any gaps that we find.

It is an important area for a couple of reasons. First, it is very important that disabled Premier League fans have the same rights as anyone else has to go and watch a club perform. Secondly, the Premier League, which operates in such a high-profile area of life, sends out an important message. If it cannot get it right, that sends a message to other people. If the Premier League takes the issues seriously, there are gains to be made outside the sporting sphere.

I have mentioned our work on disabled housing, which is one of the areas that we want to look at; we have just launched an inquiry on the subject. We have identified a finance gap between adapting after the fact a house that was not built to comply with disability access and building a house with that in mind from the get-go. That is exactly the kind of issue that we want to identify and flag up.

As we always say, and as Chris Oswald said—it is a sad thing to come back to—we are a limited number of people, so we have to act strategically. The ability to influence things at the start will always be far more effective than picking up bits of enforcement work after the fact. I do not know whether there is a specific Scottish angle that Chris Oswald wants to discuss.

**Chris Oswald:** Earlier, I mentioned opportunities through investment. There are 50,000 affordable houses being built in Scotland, and 17,500 wheelchair users who are inappropriately housed. We have a real opportunity to get this right, but I have a real fear that we could get it wrong. I look at local housing plans and I see need being profiled quite well, but I do not see resource being moved.

It is not just a social and moral issue—it is also an economic issue. For example, we end up with people being inappropriately located in hospital beds. It is in everybody's interest to design 21st-century towns and neighbourhoods, so we are interested in spatial planning, housing planning and investment so that we can squeeze every bit of equalities benefit out of that work.

As I said earlier, the opportunities might involve building houses that people can live in or considering who will build the house, and the

economic opportunities that that brings. I am quite excited about that because there is a real opportunity to get things right, but that will not happen unless we pay attention. That is why we need leadership: the committee, other politicians and senior people in the professions should say, "We all have a shared common interest in getting this right, so can we just get it right this time?"

**The Convener:** I want to pick up on that point. One of my bugbears concerns equality impact assessments and the quality of the information that they contain. Last week, as you will know, the Scottish Government issued a consultation on its review of the planning system. It seems to me that the issues that you highlighted could be resolved at the planning stage if an equality impact assessment was done properly with good-quality information.

Will you insert the EHRC in the consultation process for the planning review in order to ensure that equality impact assessments and the building of accessibility into the infrastructure are included? I see from your report that you are disbanding your disability committee. How can you realise the actions that the CRPD report recommends without having a discrete committee to undertake that work?

**Chris Oswald:** Shall I deal with the first part of the question?

**Rebecca Hilsenrath:** I will do the second.

**Chris Oswald:** I completely agree with the convener on the subject of her first question. The vision that we are putting to the Scottish Government on city deals and investment has three essential points: planning, equalities analysis and information, and procurement. We have real opportunities.

My frustration about many of the equality impact assessments that I see is that people focus on the first part of the duty, which is about whether we are doing harm and whether we are eliminating discrimination, and then they stop. They do not think about whether we are advancing equality of opportunity or fostering good community relations, which is the opportunity part of the duty. It is not just about not doing bad things; it is about doing things better and doing them inclusively. That is where we want to place the emphasis in the work. I have seen equality impact assessments from other Governments on city deals, for example, that say that there will be no equality impact. I find it almost impossible to understand how they can have reached that conclusion, because there must be opportunity.

We are very much talking the same language. Capacity and capability are sometimes limited. I would like greater senior management and MSP scrutiny of equality impact assessments, and I

would like the assessments to be used more actively in decision making. It is a process.

The situation is better than it was when equality impact assessments were introduced and we are getting better at assessment. Part of what we want to do is identify good practice and share it with people so that they understand really good ways of approaching the EIA process. We came a bit late to the table with the Aberdeen city deal, but we were able to work with the Scottish Government and tell it what it could do. We want to take that forward into the next city deals to start to drive home exactly the issues that the convener has raised.

**The Convener:** Will the EHRC take part in the review of planning?

**Chris Oswald:** I met Planning Aid Scotland on Monday to have a chat about what it is up to. We fully intend to provide evidence and engage in committee sessions on that. We have some suggestions to make—some of which relate to Gypsy Traveller sites—about different ways to consider the issues.

**Rebecca Hilsenrath:** As I am sure you are aware, convener, the disability committee was the subject of an independent review and a decision by Government to end its statutory footing.

**The Convener:** I am sorry, Rebecca: did you say that it was a decision by Government to end the disability committee's statutory footing?

**Rebecca Hilsenrath:** Yes. The statutory instrument on that has now been passed. We are currently considering a transitional model. The disability committee still exists in its statutory form until 31 March. Thereafter, we will be in a transition stage, which we are in the middle of modelling.

It is absolutely not the case that disability is not an important issue to the commission. Our chair, David Isaac, holds it as one of his key priorities and has spoken to that theme on a number of occasions. We have committed to either his or my attending every meeting of the disability committee while it continues to exist—in fact, I would be there now, but chose to come here instead.

The change in status and the transition modelling have afforded us the opportunity to examine the disability committee and ask what does and what does not work. I pay tribute to its members because they have engaged with that. We had a long meeting with them just before Christmas to review what it does and to identify the strengths and weaknesses of the current way of working. A headline point is that we have struggled with a model that has separated the disability arm of the commission to a group of people who have considered the work slightly



outside what has happened historically in relation to other protected characteristics.

To go back to new ways of working, I say that we are trying to embed much more joined-up ways of working across the organisation. That relates to every protected characteristic. What we want to do—what we are doing—is identify leads in the commission to examine how every single protected characteristic plays out in our work, and ensure that our work is consistent, effective and robust where it needs to be. We think that that will embed disability as a key priority protected characteristic.

10:45

You asked about the work that needs to be done in relation to the CRPD report. We think that it will be done much more effectively by not having it sit under a disability committee that has not, it is probably fair to say—it would say this itself—necessarily been connected as effectively as it ought to have been to the leadership and the work of the commission as a whole.

In addition to that, we are looking at upskilling—I do not like that word, so I will say that we are looking at developing and training—staff as a whole so that the people working in disability will be able to take up the work very effectively. We are not considering moving away from the very important aspect of our work that is about stakeholder engagement. The disability committee has been very important in relation to stakeholder engagement and is something that we will continue; it will just look a bit different. Stakeholder engagement has been one of the key skills that we have been looking at identifying in people who are moving into our new operating model. It is an area that I expect to be very much at the forefront of our work.

**The Convener:** Given that there is a rolling back of many of the rights that we currently enjoy—there is talk about withdrawal from the Council of Europe and repeal of the Human Rights Act 1998, and there is the Trade Union Act 2016, which all seem to undermine and weaken our current rights—can you see why there would be such concern about the disability committee losing its statutory footing? I understand about disability being placed with all the other protected characteristics, but if there is no statutory force behind that, how will we ensure that it maintains its importance and its drive?

**Rebecca Hilsenrath:** I completely understand where you are coming from. As you have mentioned it, I am more than happy to talk about the implications of Brexit and the work that we will do around the lack of that constitutional framework. I am absolutely on the same page as

you. I entirely understand what that change looks like, which is why I started off in the meeting by saying that it is fabulous to have an opportunity to come and talk to the committee and to understand each other's perspectives better.

However, to step back a little bit and to pick up on the earlier questions on Gypsy and Traveller disadvantage—this is relevant—it is perhaps fair to say that four or five years ago the commission was not doing as much work as it could have done in that area. We have now done an enormous amount of work with the Gypsy and Traveller community. A large number of the cases that we have taken up over the past two or three years, since I have been at the commission, have been in that area. I think that our relationship with the community is very effective and the amount of information that has been passed to us through our relationship with it is incredibly useful. That enables us to take a strategic and impactful approach to disadvantage in what it may be fair to say is, in some ways, the most disadvantaged ethnic group in Great Britain.

However, we do not have a statutory committee for race. We undertake that work by being an effective commission; we are networked and it is about how to take forward something that we think is really important and have an impact. That is how I would see us working in relation to disability as well.

**The Convener:** Mary Fee will come back in next. I will just make the point that I would rather have seen all those protected characteristics having statutory force than a withdrawal of statutory force from one of them.

**Mary Fee:** I have a brief supplementary on the disability committee. It is my understanding that the House of Lords Select Committee on the Equality Act 2010 and Disability recommended to the commission that the disability committee be reconstituted, but the commission decided not to do so.

**Rebecca Hilsenrath:** The statutory instrument has already been passed. That is not in our gift.

**The Convener:** You have talked a wee bit about some of the reorganisation that is going on. As you can imagine, there has been some discourse about the reorganisation and how it happened. One of our concerns is the fact that the reorganisation and the changes that have come about from that, including possible compulsory redundancies, were not discussed with the devolved Administrations. I do not know whether you can answer this question, Rebecca. Can you give us any insight into why the decision was taken not to discuss that reorganisation with the devolved Administrations, especially in Scotland,

where additional equality duties have just been conferred on the Scottish Parliament?

**Rebecca Hilsenrath:** It is certainly not the case that we declined to discuss those issues with the Scottish Parliament. I am more than happy to come and talk about them in more depth to identify where the decisions came from and what the thinking was. To be honest, though, my position is that the restructuring was an internal matter. It is right and appropriate that we make the best efforts possible to engage and consult, particularly with the devolved Administrations and Westminster, about for example, our strategic plan and the priority areas in our work—we have done that today and on other occasions. However, we are independent by statute and it is important that we are seen to be independent and that our internal ways of working are properly consulted on internally and with—obviously—the trade unions.

On an informal basis, I am always more than happy to talk about what we are doing. A key driver for our organisation was our strategic plan, which was publicly consulted on. We would say that, because of that, all our key stakeholders have fed indirectly into what we are doing. However, we would not regard it as proper to consult externally on how we organise.

**The Convener:** We have heard claims about how you undertook the selection process with regard to cutting posts and about people being left in precarious employment situations, a number of whom are basic-grade members of staff. I am playing devil's advocate here, of course, but it has been claimed that an equality impact assessment might not have been conducted to the depth that it should have been and was certainly not shared. Can you respond to those points?

**Rebecca Hilsenrath:** I am more than happy to do so. It would probably help if I spent a couple of minutes talking about the restructuring as a whole to put it in context but I entirely welcome the question. Although I said that I do not think that it is necessarily appropriate for an independent body to discuss how it organises itself with the Government, that does not mean that I am not happy to answer questions on that, because I welcome the interest.

It is important to understand that there were three drivers for the restructuring and that it was not simply a matter of shrinking the organisation. First, two or three years ago, we undertook an internal survey of the commission and identified that our staff have a keen interest in cultural change and a change in the ways in which we worked. Secondly, shortly after that, because we were statutorily obliged to consult on and lay a strategic plan, we laid a new strategic plan in April 2015 that identified new ways of working. Thirdly, as I have already said, a cut of 25 per cent was

imposed on us in late 2015 through the spending review.

Sadly, the restructuring has partly been about having to reduce our headcount. However, it was also about—and was primarily due to—looking at a new way of working. We have not just lost 25 per cent of our headcount in the spending review but, during the 10 years of the commission's existence, we have more like 70 to 75 per cent in total. Since 2006, nobody has ever looked at the best way of spending the money that we have, the best way of having an impact and the best way of doing what we want to do. However, our strategic plan was about asking what our role was and identifying that we need to have a national voice and be an independent expert body.

We identified various roles for ourselves around being an influencer and information provider, and having a national voice. It was very much about moving away from more front-line activities and more about asking where our real impact was. Yes, it has been about moving away from some things and having to lose a small number of our roles, but it has also been about creating a whole new organisation.

Therefore, in close consultation with the unions and our staff we came up with the new model. If you look at the roles that we sought to move staff into, you will see that they required higher skill sets or different skill sets. Some jobs were lost because, in the new way of working, there were particular areas that we did not need to take forward, and some jobs looked different. I will give you a couple of examples of that. We have spoken a lot this morning about impact and strategic working, which plays into this. We have also spoken a lot about the importance of working in partnership—some of your conversations with Chris Oswald have played into that. Every person who works for the commission now has to pass a key competency in stakeholder management because of the importance that we attach to that particular way of working. Where once it was something that we did in a particular silo, it is now an example of how we look at staff across the board taking on a bigger role.

I am afraid that I have had to ask all my staff to act a little bit outside their comfort zone, and everybody is doing a bit more. I do not mean that they are working longer hours—I do not want them to do that—but they are taking on bigger and more strategic roles. An example of that is how we are looking at the responsibility for protected characteristics, which is about identifying a group of people in the commission for every protected characteristic who will lead work across the piece to ensure that we are joined up and effective in that place. We had never done that before—we had been much more ad hoc in what we were

doing on race, for example. That will not be the case going forward.

That all adds up to higher skills and more autonomy. We are looking at a smaller senior management team and fewer directors, which means having to push down the responsibility and autonomy for work that had, to be honest, been escalated inappropriately so that too much responsibility sat at a higher level. We cannot do that any more, and it would not be right to do it anyway. We are looking at able staff at a lower level taking on that work going forward.

I have said all that at some length because it is important to understand that the process has not been just about losing people; it has been about the need to adapt in an incredibly important area at a vital time—you have mentioned some of the external drivers in the world today—and to be more effective.

It is important to say that, at every stage of the way, we have looked at the equality impact of what we have done. The senior members of staff—the executive directors and I—have sat down and looked at every decision at every stage. We have taken an enormous amount of time and have agonised over what we can do. We have made all possible adjustments for our disabled members of staff above and beyond what compliance looked like. For example, at the last round, we decided to create two completely new posts that had not formerly been in the operating model so that we could keep two profoundly disabled members of staff on the payroll. That was a very important thing for us to do.

We have looked at the equality impact assessment, and it was—I emphasise this—compiled, drawn up, updated and shared with the staff in a timely manner. We first updated and shared it in, I think, the autumn of last year, as that was the first time that we had been able to identify what the impact was because that was when we undertook the first stage of the selection process. Because we have looked at it at every stage, I am confident that the process that has been implemented has been fair, robust, transparent and evidence based.

I need to add two things to that. The EHRC cannot be proud of a result that sees some black and minority ethnic staff and some disabled staff without a job. I am not saying that I am proud of that or pleased about it—I am not. Anybody losing their job is a matter of great sorrow for me. It was an incredibly difficult decision to make and perhaps the hardest thing that any of us have ever had to do. However, particularly in that space, I believe that we need to do better. I need to separate the present, the past and the future, and that is what the model that we have adopted and the approach that we have taken have been

about. I am quite clear that the process was lawful, compliant, fair and undertaken with all possible reasonable adjustments made.

There are historical reasons for how we ended up where we did. The issues are hard to address. Indeed, when I came to the commission a couple of years ago, no positive action was being taken and there was no work being done to mentor or to develop anyone at the lower level, let alone disabled people or those from ethnic groups. We should have been doing that work, but because we were not doing it, we ended up where we are now.

11:00

The most important thing is that we get that right going forward. Consequently, I have asked my senior executive directors to set up a group, which has started to look at positive action work in the commission, including the provision of appropriate mentoring, coaching, secondment, shadowing, development and learning opportunities. That is very much at the heart of our new way of working, but it is important that we see more diversity, particularly at the senior level, with members of ethnic communities and disabled staff sharing the work to take forward the commission.

**The Convener:** That is all very welcome, indeed, but it gives no comfort to the people who are facing redundancy. Do you know, off the top of your head, how many vacancies you are carrying?

**Rebecca Hilsenrath:** I think that we are carrying 25 vacancies.

**The Convener:** You have talked about the great work that is going on to develop staff. Are there opportunities to develop the staff who are facing redundancy to fill those vacancies?

**Rebecca Hilsenrath:** I have talked about looking at the equality impact at every single stage of decision making when selecting people for posts; I have also talked about identifying new posts for profoundly disabled staff members. We also looked at the issue of development when considering every single member of staff and vacant post. For example, if a person does not operate at a particular level or another person does not do a particular role, we looked at whether they could be developed into it. That thinking has been done; it has been a key part of our thinking. The work is on-going; the process has not come to an end.

**The Convener:** Would that be an olive branch for those people who are facing redundancy?

**Rebecca Hilsenrath:** They are aware that we have had those conversations.

**Mary Fee:** It has been reported to us that the majority of people who are at risk of losing their job are clustered in the lower pay grades. Is that correct?

**Rebecca Hilsenrath:** Not all of them, no; some of them are, yes.

**Mary Fee:** Would that be the majority of them?

**Rebecca Hilsenrath:** Probably a majority, yes.

**Mary Fee:** A majority. How many people in higher grades in your organisation are disabled or black and minority ethnic?

**Rebecca Hilsenrath:** I could only take a guess, but I would rather check that and write to you. Can I do that?

**Mary Fee:** Yes, that would be helpful. What assessment has been made of how the new operating model will work in practice? I appreciate that it might be difficult to give me an answer because the model is new. We have been told that a domain model will operate across Great Britain, which means that staff who are based in Scotland will not just work on Scottish cases or issues. Will that be a problem? Is it a good way forward?

**Rebecca Hilsenrath:** I see it as being a good way forward, but I would say that. I will talk a little bit about the issue, then leave it to Chris Oswald to talk about the answer from the coalface.

We are positive about working across domains. It is an answer to the age-old problem of how to deal with a commission that has such a broad remit. The idea is to look at six domains and, as I have mentioned, what the protected characteristics look like across the piece. That enables us to carry out our own internal strapline, which is about doing fewer, bigger and better things, identifying specific aims in each domain, and ensuring that the work across GB is focused in that place. That takes us back to the earlier questions about looking at our impact. We will only be able to measure that and have the impact that we want if the work is focused. However, within any one of those domains, the work will be both GB and Scotland-specific, depending on what the area is. I will ask Chris Oswald to come in here.

**Mary Fee:** I am sorry, but just before Chris Oswald comes in, I want to ask a question that he will be able to answer. I take on board Rebecca Hilsenrath's answer and perhaps Chris Oswald can address that issue, but he could also address another issue. I think that there will be a spike in inquiries, queries and issues in Scotland because of the new powers that are coming here. How will the domain model impact on that? How will the staff in Scotland be able to deal with that?

**Chris Oswald:** That spike has already started. We are getting lots of calls about board

appointments, for example. That is business as usual in Scotland for us. A group of people—a couple of my colleagues in policy, a couple of the lawyers and I—have a specific public sector duty role and responsibility. We meet every two weeks and consider issues to do with the public sector duty. That is just an on-going issue. The law changes. It is not just a matter of the new powers that are coming to Scotland; other changes come in. We have issues with private companies of more than 250 people having to report publicly. We just have to absorb those issues, and we treat that work as core work. It is just a matter of peaks and troughs, and we have to deal with it.

On the domains, there is always anxiety when there is a shift to a new way of working. To me, the issue is how tightly defined the priority is. I go back to the example that I used earlier. If we were to concentrate inside our health domain on an Anglo-specific issue to do with Afro-Caribbean men in psychiatric detention to the exclusion of all other things, I would have enormous difficulty in contributing to that or in having people in Scotland benefiting from it. However, if we accept—which we do—that there is a general issue to do with mental health and ethnic minorities across Britain, that that impacts differently in Scotland, and that people in Scotland have the freedom, resources and autonomy to explore and work on that, that makes sense.

That is very easy with some issues, such as pregnancy and employment, as it is really much more of a marketing exercise. The housing inquiry is also interesting. We now have three sets of housing laws in England, Scotland and Wales, different forms of practice, and different ways of funding and resourcing social care. The situation is immensely complex. However, the advantage of a GB model is that there are three different ways of doing things. We can draw from our work in Scotland on dignity and respect in social security to inform our practice elsewhere. It is never about being distinct or absolute; it is about ensuring that we have the internal flexibility to work in a devolved manner, and I think that we largely do that.

**Rebecca Hilsenrath:** I agree with that. We think that our organisation is horrendously complicated, and I am sure that other people think that about their organisations. For us, it is not just about the devolved Administrations; it is about connecting up across the piece. We think that having a networked organisation, which the new operating model is, is about connecting people together better.

Two things have come out of that way of working. One is that, in looking at the domains and the business planning around them, we are connecting with Scotland. The Scotland and

Wales teams and other teams in the commission are very much part of that process in a way that has not really worked particularly well before.

Leaving room for other stuff is always important. It is not just about Scotland. I have this conversation with the legal team. It is about wanting room to react responsibly, taking cases that come up that we cannot possibly plan for, and being able to leave room to be agile. No business planning process will say, "This is exactly what you're going to do and nothing else." That applies just as much to Scotland as to anywhere else.

**The Convener:** We have dramatically run out of time, as usual. We end up having really good discussions across the table about things that we are interested in. I thank you for coming to the meeting and for your current and on-going work, on which we will, I hope, work with you closely.

I reiterate that we would appreciate seeing the regular reports on the concluding observations, as we have taken a keen interest in them. Anything that helps us to understand them would be very welcome.

We would like to have brought up other issues with you this morning, but we have been unable to do that. If the committee supports this, we will write to you to seek clarification on some points. We would have been here until the afternoon if we had touched on all of them. That is maybe the way to do things, if you are happy with that.

**Rebecca Hilsenrath:** We would absolutely welcome hearing from you, and we would welcome writing back to you to clarify. I would also welcome another invitation after my first visit here today. Thank you very much for having us.

**The Convener:** Thank you very much. That concludes our business in public.

11:10

*Meeting continued in private until 11:28.*



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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