

EQUAL OPPORTUNITIES COMMITTEE

Tuesday 26 March 2002
(*Morning*)

Session 1

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EQUAL OPPORTUNITIES COMMITTEE

7th Meeting 2002, Session 1

CONVENER

*Kate Maclean (Dundee West) (Lab)

DEPUTY CONVENER

Kay Ullrich (West of Scotland) (SNP)

COMMITTEE MEMBERS

*Mrs Lyndsay McIntosh (Central Scotland) (Con)

*Mr Michael McMahon (Hamilton North and Bellshill) (Lab)

Mr Gil Paterson (Central Scotland) (SNP)

*Cathy Peattie (Falkirk East) (Lab)

Tommy Sheridan (Glasgow) (SSP)

Elaine Smith (Coatbridge and Chryston) (Lab)

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

*attended

WITNESSES

Kathleen Bolt (Commission for Racial Equality)

Rhona Carr (Scottish Executive Development Department)

Mick Conboy (Commission for Racial Equality)

Tim Ellis (Scottish Executive Development Department)

Dharmendra Kanani (Commission for Racial Equality)

Rosemary Lindsay (Office of the Solicitor to the Scottish Executive)

Yvonne Strachan (Scottish Executive Development Department)

CLERK TO THE COMMITTEE

Jim Johnston

SENIOR ASSISTANT CLERK

Richard Walsh

ASSISTANT CLERK

Roy McMahon

LOCATION

Committee Room 4

Scottish Parliament

Equal Opportunities Committee

Tuesday 26 March 2002

(Morning)

[THE CONVENER *opened the meeting at 10:19*]

Item in Private

The Convener (Kate Maclean): We will start. I have received apologies from Tommy Sheridan, Kay Ullrich, Elaine Smith, Jamie Stone and Gil Paterson.

Item 1 is to ask whether the committee will take item 5 in private, as it is consideration of a draft paper on an approach to an inquiry that the committee has not yet signed off. Is it agreed that we take that item in private?

Members *indicated agreement.*

Subordinate Legislation

Race Relations Act 1976 (Statutory Duties) (Scotland) Order 2002 (SSI 2002/62)

The Convener: Item 2 is to take evidence from the Commission for Racial Equality and the Scottish Executive equality unit. This is a continuation of the evidence that we took last week.

First, we welcome Dharmendra Kanani, Mick Conboy and Kathleen Bolt from the Commission for Racial Equality. Do you want to say a few words to the committee before we open it up to questions?

Dharmendra Kanani (Commission for Racial Equality): Thank you for having us before the committee again to discuss race equality and, in particular, the Race Relations Act 1976 (Statutory Duties) (Scotland) Order 2002. This is a first, as we have not had a similar opportunity down south. We welcome the opportunity to speak to the committee to discuss the order and its implications for the Parliament and Scotland as a whole.

It may be helpful if I highlight the roots of the order and the Race Relations (Amendment) Act 2000. The rationale for the 2000 act came from the Stephen Lawrence inquiry. Crucially, the Stephen Lawrence inquiry revealed the absence of practice in relation to policy commitments. It unearthed the absence of leadership and the failure to meet specific needs. It demonstrated the inability of public authorities to engage with targeted needs and specific issues related to communities of interest—in particular ethnic minority communities—and the inability of public services to co-ordinate their activities on racial equality. The inquiry was forceful in its recommendation that the full force of the Race Relations Act 1976 should cover all public institutions and that, although it should cover policing in particular, it should go further than policing.

The Race Relations (Amendment) Act 2000 is a creative piece of legislation that responds to some of the issues that were identified by the Stephen Lawrence inquiry. It places a specific and a general duty on public authorities across the board to be much more proactive on racial equality and much more focused on the job at hand, which is to target needs, meet specific needs and tackle racial inequality in a specific way. One of the challenges for Scotland in response to the Race Relations Act 1976 (Statutory Duties) (Scotland) Order 2002, which was laid a month ago by Scottish ministers to establish a specific duty for public authorities in Scotland, will be to engage in a process of

learning, delivery and development around racial equality across the board.

I will not go into the detail of the specific duty, as the committee already has reams of paper on that. The order provides an opportunity for public authorities to be specific about the issues. The specific duty moves away from simply avoiding discrimination to promoting racial equality. That is the critical step change in attitude that is required by the 2000 act. The issue will no longer be to do with how a public authority safeguards its interests against discrimination; it will be to do with promoting race equality across the board, for all communities. The critical aspect will be to engage with white communities across the board on racial equality. As Scotland is mostly rural, there will be a job of work to engage with public authorities, the body politic and communities on that specific responsibility under the law. We look forward to working with the Parliament—the duty applies also to the Scottish Parliament—and other institutions to ensure that we provide effective and appropriate resources and guidance to enable effective delivery across the board.

We will welcome questions. I have with me Kathleen Bolt, who is our head of legal affairs, and Mick Conboy, who is our head of public policy. He is leading on and managing the public duty work in Scotland for the CRE.

Mr Michael McMahon (Hamilton North and Bellshill) (Lab): I thank Dharmendra Kanani for his opening remarks, which gave us a few pointers. We have had information from various sources about policy in general and about where we should go. In its response to the race equality advisory forum's report, the Scottish Executive said:

"Put simply, it is a duty under the Race Relations (Amendment) Act to monitor our policies for any adverse impact on the promotion of race equality. The successful implementation of this obligation requires us to analyse and make decisions as to how well our policies stand up against that criterion."

That implies that we require monitoring. We always hear that we must have monitoring. If we are to achieve a positive impact, what must be monitored and measured? How far should we go to determine outcomes when assessing impact, positive or otherwise?

Dharmendra Kanani: I will take that question a bit at a time, as it was extensive. My colleagues will chip in.

Monitoring must be key. Without an infrastructure for monitoring, the duty on public institutions will fail to have an impact. Public authorities need a clear infrastructure for ethnic monitoring. Whether that infrastructure is technology or paper based, we must be clear

about the framework for ethnically monitoring employment and service delivery.

I will describe how public authorities should examine policies. In housing allocation, for example, we will require an authority to monitor who applies for housing, who receives housing, where people are housed and the quality of housing. In that context, an authority will also have to consider the rate of racial harassment in the areas involved and the housing department's clear-up rate of racial harassment—how it tackles racial harassment on an estate.

In education, we would like authorities to monitor pupils' national position, educational outcomes for all communities and particularly ethnic minority communities, the incidence of racial harassment in and around schools, whether parents are accessing schools and whether ethnic minority parents participate in schooling and are involved in schools' governance structures.

We want to ensure parity and equity in employment and education outcomes. Pupils should achieve what they are able to achieve, regardless of their skin colour or nationality, for example—I am thinking of the definition of ethnicity on racial grounds. We want to ensure fairness and equality across the board of service delivery and employment, regardless of skin colour or ethnicity. We are considering such outcomes.

Mick Conboy (Commission for Racial Equality): It is clear that hard-and-fast data are part of ethnic monitoring. In addition—this is not an alternative—we are considering softer information that might appear in good practice for engaging with communities, such as feedback from communities in customer satisfaction surveys and what targeted research tells us about quality of life and quality of services. In addition to the hard-and-fast facts that we can provide, we need to consider the softer angles.

Mr McMahon: Would those softer angles relate to existing general policies, such as the right to buy and its impact in reducing the amount of housing stock that is available to black and minority ethnic communities? Is the order likely to have an impact on such an assessment?

10:30

Mick Conboy: The hard-and-fast data that are available through monitoring systems provide a reasonable amount of information that suggests that ethnic minority communities are over-represented in the owner-occupied sector and, almost by dint of that, under-represented in the local authority and public rented sector. The right to buy would be akin to any other policy, as we consider any potential adverse impact of the roll-

out of a policy. We ask what assessment has been done to equality proof a policy, to ensure that steps have been taken to minimise the potential for, if not the fact of, adverse impact.

Mr McMahon: Last week, a representative of Black and Ethnic Minority Infrastructure in Scotland said to the committee:

"there is a need for all chief executives to say that race equality has to happen and that the current situation is not good enough."—[*Official Report, Equal Opportunities Committee*, 19 March 2002; c 1393.]

If a chief executive said that, but did not put in place what was required to ensure that those underneath him or her delivered the policy, what would the CRE's position be? Monitoring could show that a policy is right, but who is responsible for service delivery?

Mick Conboy: The commission needs to work with some of its key partners to identify potential and actual adverse impacts. We must work as well as we can with those agencies to put matters right. The other angle that we can take is through our legal powers under the 2000 act. We can and will use those powers when appropriate.

Dharmendra Kanani: We should not forget that when Parliament debated what became the Race Relations (Amendment) Act 2000, it was clear that members wanted two aims to be achieved. One purpose was to promote racial equality and equal opportunities, but the other was to correct behaviour. The order provides opportunities to achieve both those purposes.

As Mick Conboy said, we will use our legal powers as and when necessary, but we will also engage in learning and development across the board. When an authority consistently fails to meet its responsibility, we will meet our statutory responsibility by using our legal powers to their full force to ensure that there is racial equality. There are several measures that can be taken, but the ultimate sanction will also be used.

The Convener: Dharmendra Kanani mentioned consultation in rural areas. The Executive's initial response to our consultation on the 2000 act was that the CRE would publish a statutory code of practice for public consultation. Now, Scottish ministers say that the Executive will not depart from the approach that has been taken down south. What do you think about that? Will that mean that sparsity in Scotland's rural areas will not be taken into account, as it may not be present in areas down south?

Dharmendra Kanani: We firmly believe that the 2000 act established once and for all that numbers do not matter. The size of an ethnic minority community is irrelevant to the delivery of the specific duty. It is important to bear that in mind.

The law enables us to issue statutory codes of practice on several matters. That is our right in our legal mandate. A bit of discussion is occurring about whether a separate code for Scotland on the specific duties is required. Our understanding, which is based on the law, is that we will issue the code of practice that we are working on, which relates to the order in Scotland.

Colleagues from the Scottish Executive are present and the committee may want to clarify that matter with them. As I understand it, we are working on a statutory code of practice for Scotland. It is obvious that there will be a read-across. We will establish the same legal framework, because the subject matter of the 1976 act is reserved, but differences in education are sufficient to merit a code for Scotland. Scottish ministers have met their obligation and responsibility to establish an order, so it is right, proper and reasonable to establish a code of practice for Scotland, which we plan to do.

Cathy Peattie (Falkirk East) (Lab): I want to pick up on what Michael McMahon said. We clearly want to avoid the provisions ending up like the equal opportunity policies that I remember councils used to have—if you asked councils for their equal opportunities policy, they would find it in their filing cabinet. As councils will deliver some of the racial equality policies, I want to probe a little more on how the equality indicators will be scrutinised. Sitting in Edinburgh or Glasgow, we might think that a council's race equality policy looks fine, but the reality on the ground might be quite different. How will the policies be scrutinised? What role will local people have in doing that?

Dharmendra Kanani: I will give a general response and my colleagues can provide further detail.

The 2000 act provides a number of opportunities to ensure that the policies work. I take on board the point that equal opportunities have historically simply collected dust on shelves. That was one of our primary concerns about the amendment to the 1976 act. However, the beauty of the race equality schemes that are provided for by the order is that the specific duty is enforceable by us as the statutory body. By using our legal powers, we will ensure compliance with the duty.

On another level, we are working closely with the audit inspection bodies that are subject to the legislation to ensure that, in their regular and routine audit inspection work, they pick up on the specific duty and the contents of race equality schemes. In that way, race equality policies should become part of the main stream of the general inspection framework for public sector services. The race equality policies that are provided for by the order will have a different flavour from previous

policies. We hope that the audit inspection work will pick up whether the policies are being followed.

The voluntary sector, too, has a key role. We are doing a lot of work with that sector to ensure that we build up its capacity to understand what the new law will mean. The voluntary sector will have a role in scrutinising public authorities and in holding them to account. The voluntary sector on the ground will pick up on whether things are working.

Obviously, the other route will be through individual complainers, who will be able to approach us to complain about services that do not meet their needs or are discriminatory. If a person complains that his or her employment is based on discriminatory practices, we will address that through our legal work. If we see trends and patterns emerge, we will engage in more robust legal activity either by carrying out a formal investigation or by issuing compliance notices as and when appropriate.

Kathleen Bolt (Commission for Racial Equality): I will say a little more about the legal side. The 2000 act not only put in place the positive duties and specific duties that have been mentioned but widened the scope of the 1976 act to make it unlawful for a public authority to discriminate in the provision or operation of any service or the carrying-out of any function. That means that, if individuals believe that they have been unlawfully discriminated against in the service that they receive, the remedies that are available to them are stronger than they were. Obviously, people will come forward to us.

Cathy Peattie: I understand that, but what I am getting at is whether local scrutiny will exist. There is an issue to do with the strength of voluntary sector infrastructure at local level. My experience tells me that, although some people will raise issues, a whole host of people in communities—such as women from ethnic groups—will not feel able to stand up and complain when they do not receive the services that they need. Such people find it difficult to say, “We need this good community care service,” or, “This health service is not meeting our needs.” Often, the very folk who need to raise issues are those who will not do so. I want to probe further how we ensure that such people receive the appropriate services. How do we ensure that their voice is heard on the things that they think are important? I believe that the voluntary sector has a key role, but I am not sure that most of our communities have the infrastructure to facilitate that.

Dharmendra Kanani: We need to consider the issue in terms of incremental change. We will not have a brand new structure on the ground overnight. We will not have communities that feel

confident overnight. We need to ensure that we work in partnership, because we will not be able to deliver the change on our own. As an organisation, we rely on leverage to bring about change. We need to ensure that our social partners on the ground work effectively with us and that we work effectively with them.

We have planned and prepared a programme of activity with the voluntary sector that will help partners to build capacity, understand people's rights, scrutinise processes and understand what the order means. As I mentioned, we work within the broader framework of best value and community planning to ensure that the Executive and the other bodies that work on the ground mainstream racial equality into all that they do.

We have produced a leaflet on people's rights, which we hope to launch fairly shortly. The leaflet explains in plain English what people's responsibilities and rights are. The document has been translated into 15 languages to take account of new and diverse asylum-seeker and refugee communities. We hope to promote the leaflet throughout Scotland to ensure that the legislation is taken account of by local structures, such as councils for voluntary services, community voluntary organisations and racial equality councils.

There will be a process of incremental development. We are using a number of techniques to ensure that the people who are most isolated can access their rights effectively.

Mick Conboy: I want to underline a point that might have been lost in what Dharmendra Kanani said. It is absolutely critical that, from the word go, the key developments such as best value and community planning build in the implications of the Race Relations (Amendment) Act 2000. If the act is to have an impact over time, the mainstreaming developments will need to send our public authorities to consult all communities, not just the traditional ones that have always been consulted. The newer communities and the voiceless groups that have never been talked to also need to be addressed.

Cathy Peattie: In my community, it tends to be the men who are consulted, not the women. I am concerned about women being consulted.

Dharmendra Kanani: Absolutely.

It is interesting that the specific duty establishes a sort of accountability loop, in that, as of November this year, every public authority must clearly set out its arrangements for consulting. Public authorities will need to say how they will make their services accessible across the board. They will need to think much more critically about reaching the hardest-to-reach local communities. The CRE can provide guidance on that, but it will

be a huge job of work for public authorities to think much more creatively and not rely on the usual suspects. They will not be able to assume that they need consult only a group of men—inevitably, it is men—who have historically been based in a community. The specific duty does not allow them to work on that basis, but requires a step change in the way that consultation and access operate on the ground.

Mrs Lyndsay McIntosh (Central Scotland)

(Con): In your response to Michael McMahon's questions, you said that numbers do not matter. Public bodies that employ an aggregate of 150 people will have duties imposed on them. Those duties include monitoring the number of those who have received training and of those who have been involved in grievance procedures. What are your thoughts on the distinction that is drawn between bodies based on the number of employees? For example, the same restrictions, limitations, rules and regulations would not be imposed on a body that employs 440 people on short-term contracts. The figure of 150 has been plucked out of the air. What are your thoughts on that?

Dharmendra Kanani: To unpick the question, are you concerned that such bodies might fall by the wayside in their employment responsibilities?

Mrs McIntosh: Exactly. That might happen simply because of that figure.

10:45

Dharmendra Kanani: When the debate took place in the House of Commons, there was an issue about how burdensome the whole approach should be, so a line was drawn. It is safe to say that, for the totality of matters, the law will mop up a range of bodies and employers, so not many will be left by the wayside. Obviously, there is an issue about the fact that the private sector has been left out of the game, as it were, but we will need to wait and see how the implementation unfolds.

Let us not forget that the private sector will be included if a public function is being fulfilled for an authority. Our guidance will be that, regardless of the size of the employment population—the work force—most authorities ought to be taking on such responsibilities across the board because, if the broader equalities agenda that is emerging in respect of article 13 is considered, a number of responsibilities will kick in. Employers should take account of such issues. It is obvious that, in respect of size, some bodies will fall by the wayside, but they will be picked up in other ways. If the duty does not apply to them, that does not mean that they will be free from not discriminating. The legislation still applies to them and they will still be responsible for not discriminating, as

employers, on the grounds of race, regardless of the monitoring duty—it still kicks in and is still there.

Mrs McIntosh: So numbers do not matter.

Dharmendra Kanani: Absolutely.

Mrs McIntosh: I want to say something about one of my other jobs. I am a member of the Social Justice Committee, which often hears about the length and effectiveness of consultations. A message that the committee has received loud and clear is that there should be something to recognise the voluntary sector's crucial role in delivering services to ethnic communities and empowering those communities. Will the order improve funding for voluntary sector groups that work with ethnic minority communities? Will it reach the right end-place?

Dharmendra Kanani: We would like it to—that is our intention—but perhaps you could pose that question to the next witnesses. In any policy or response to the legislation, the Executive and all other public authorities must take full account of promoting race equality. That means being clear about the route to achieving race equality. The issue is not simply about increasing funding to the ethnic minority voluntary sector. We must ensure that mechanisms for funding, accounting and monitoring agreements—for example, in the budgeting processes of some sponsor departments—are clear. What is happening in respect of scrutinising budgets and the outcomes of, for example, health and education services? Are departments clear that promotion of race equality is taking place? In funding to the SCVO and other bodies, it must be ensured that race equality is being promoted. The issue cuts across the whole swathe of delivery.

The Convener: As there are no more questions, I thank the witnesses for coming to the meeting to give evidence.

The next witnesses are Yvonne Strachan, Tim Ellis, Rhona Carr and Rosemary Lindsay. I do not know who will kick off, but perhaps someone will give a brief introduction. Perhaps some of the points that the CRE raised about voluntary sector funding and the statutory code of practice could be clarified.

Yvonne Strachan (Scottish Executive Development Department): I thank the committee for inviting us to the meeting. I will not say much by way of introduction, as the committee heard evidence at its previous meeting and has heard from the CRE. The committee is familiar with the provisions of the order and the provisions of the Race Relations (Amendment) Act 2000. Perhaps it would be easier for us to answer members' questions.

The convener suggested that we could address some points that were raised by the previous witnesses. We will endeavour to identify which of those points the committee is most interested in.

Tim Ellis is head of the race equality team in the equality unit, Rhona Carr has worked specifically on the order's provisions and Rosemary Lindsay has provided legal input. I hope that we will be able to answer the committee's questions.

Tim Ellis will deal with the voluntary sector first. We could then identify the other areas that the committee wants us to discuss.

Tim Ellis (Scottish Executive Development Department): The convener is right to mention the voluntary sector, which is crucial. We have acknowledged that. We published a response to the REAF voluntary issues plan a week or two ago, and our review of funding, which the committee has probably seen. The review sets out a strategy for proceeding with work in that area and complements the increase in funding.

I think that Dharmendra Kanani said that increases in funding are not enough on their own. We acknowledge that, but it is also important to recognise that the ethnic minority grant scheme budget will almost double to £0.5 million from next year and there is extra support for the SCVO's core business. We need to get at the grass roots and encourage the Executive and other bodies to consider more creatively and systematically how to engage with the voluntary sector. We will set up a working group, which will include representatives from the sector to see how we can best develop funding arrangements. The group will be chaired by the Executive, but will incorporate a wide range of community bodies and voluntary sector bodies to ensure that we get things right.

The Convener: Does that answer your earlier question, Lyndsay?

Mrs McIntosh: It does. I am grateful to the witnesses for coming in straight after the first set of witnesses. It is nice to hear both points of view.

I want to ask about community planning as a mechanism for integrating action at community level, which we discussed earlier. What role does the CRE see for groups? Why did you put that into place? Why community planning?

Yvonne Strachan: Would you repeat the question? I am not sure what you mean.

Mrs McIntosh: I am curious about your view of community planning. We heard the CRE's version. Do you have a response to that?

Yvonne Strachan: There are two issues, one of which was raised in the context of how to extend and involve communities in the process. The Executive is keen to ensure that there is maximum

involvement in respect of understanding the provisions of the Race Relations (Amendment) Act 2000 and the opportunities that are provided, and engaging as fully as possible. It is obvious that community planning and best value, to which I think that reference was also made, are important for public authorities. On best value, it is important that public authorities can deliver public services as effectively as possible.

The committee will be aware of the forthcoming local government bill, which will consider issues relating to community planning and best value. Other issues such as equality will also be debated. In the context of the Race Relations (Amendment) Act 2000, it is obvious that there is a requirement on public bodies to promote race equality and to be proactive in that stance in delivering public services. We are anxious to ensure that that is done in the most effective way possible.

If you are asking whether there will be an awareness of race relations, the need to abide by the Race Relations (Amendment) Act 2000 in delivering community planning and best value means that one would have to assume so. If such awareness is to be part of the functions of public authorities, they will need to conduct those functions in the context of the law's requirements.

Mrs McIntosh: Who else will be involved in monitoring the implementation of the provisions?

Yvonne Strachan: The provisions of the Race Relations (Amendment) Act 2000 make it clear that, in the establishment of race equality schemes, people are required to consider what monitoring arrangements ought to be put in place by public authorities. Following our discussions, our task will be to consider how authorities—both the Executive and public authorities—will seek to deliver those arrangements. That is the process in which we will be engaged between now and November, to ensure that we can implement those arrangements as required by the order.

Cathy Peattie: Thank you for your answer on the voluntary sector. I am sure that you agree that, although delivery at a national level is important, local infrastructure is vital in ensuring that issues around advocacy, education, fora, participation and community planning are addressed. In community planning, there is a danger that, although the plans are there and the structure is right, there is a lot of lip service—people saying that they are doing this, that and the next thing without actually speaking to the people on the ground whom the planning is about. How do we ensure that the voluntary sector at a local level has money to start to build that infrastructure?

How do we ensure some kind of stakeholder monitoring so that local people can say whether the community planning is working? I am

concerned that we will still have chief executives signing off reports to say what is happening and that community planning is wonderful, even if the delivery on the ground is not making any difference. How do we ensure that the monitoring works and that the good intentions that exist in the ethnic minority and black sector and the voluntary sector at a local level, around community planning and building, achieve results?

Tim Ellis: The order is about achieving a change in culture. It is not a tick-box approach. Although we have to have this specific order on duties, it is about providing a framework. The key things to come out of the Race Relations (Amendment) Act 2000 approach are transparency and accountability. The act imposes a requirement on bodies to set out what the position is, what they have done and what the outcomes have been. That enables people to access that information and to hold bodies to account in a general sense. There are specific issues around accountability and implementation. The CRE commented on some of those, and it has a specific role in addressing those issues.

It is difficult to get to the grass roots in a number of areas, and we are trying several approaches to do that. For example, we have a research project that is trying to get the views of minority ethnic groups at grass-roots level. The project is trying to get beyond the usual suspects by holding a series of focus groups throughout the country. It is trying to pick up on the rural issues that were mentioned earlier, for example, and the views of mothers with young children. We recognise the need to do that research and processes are in place for us to get there, but that will not happen overnight. We need to change the culture of the way in which public services look at those issues.

Cathy Peattie: Do you agree that the voluntary sector could do that? Is the voluntary sector well placed to work at grass-roots level?

Tim Ellis: Yes, the voluntary sector is crucial to that work.

Cathy Peattie: Resourcing the infrastructure is also important.

Tim Ellis: Yes. That is why we have increased the resources for the voluntary sector as much as we can. As was said earlier, it is not just about resources going to the voluntary sector from the centre; it is about all the departments in the Executive being involved. That is what we will have to address as we build up our race equality scheme over the coming months.

11:00

Mr McMahon: I have a couple of technical questions about how the order will work. We have

heard in evidence that there is concern that, because the order is reserved to the Home Secretary at Westminster, it will be difficult to place newly formed organisations under its scope. Specific concerns have been voiced that the Scottish Commission for the Regulation of Care and the Scottish Social Services Council will not be subject to the order. Recently, the Crown Office, the office of the solicitor to the Scottish Executive and the office of the Scottish parliamentary counsel have come under a new body, with a new title. How will the order be evaluated to allow it to be kept up to date? How often will orders be laid to allow that to take place?

Tim Ellis: I have two points to make. First, if a body or agency is part of the Executive, it will be covered by references to the Executive. Changes in agencies that remain part of the Executive will not affect the duty. As far as other bodies are concerned, there will be periodic opportunities to update the order. For a body to be subject to the specific duties order, it must be listed in schedule 1A to the Race Relations Act 1976. That can be done only by an order at Westminster. To that extent, we are dependent on Westminster, but we know that the order will be updated periodically and that it will be open to us to approach Westminster to do that for us.

Secondly, you mentioned a couple of specific bodies. There are issues around timing. The legislation was going through at the same time as the changes and we intend to pick those up. Notwithstanding that, we expect those bodies to act as if the order applied to them and we will make that clear to them.

The Convener: How often will “periodically” mean?

Rhona Carr (Scottish Executive Development Department): The Home Office’s intention is to revisit the general duty order at least once a year, although it could do so more often if it felt the need.

Mr McMahon: I have another technical question. What impact will the Scottish Executive’s use of the phrase “in writing” in legislation and guidance have in respect of a listed body’s freedom to consider the format—including Braille and other accessible formats—in which the race equality scheme will be presented?

Tim Ellis: That issue has not been raised with us. In law, “in writing” generally covers a range of media. Rosemary Lindsay may want to comment on that.

Rosemary Lindsay (Office of the Solicitor to the Scottish Executive): That is right. The term “writing” is developing as methods of communication develop. If the member wants more detail on that, I could write to him.

Mr McMahon: It would be useful to clarify on the record exactly what will be permissible or expected in respect of that phrase. The committee has made great play of the phrase in the past and we should not miss an opportunity to raise the issue again.

Tim Ellis: It is important to recognise that the standard is a minimum. As long as there is a written statement, any other forms will be supplementary and so acceptable.

Mr McMahon: But we will have to ensure that they exist.

Tim Ellis: Yes.

Mr McMahon: Another bone of contention for the committee is the fact that Gypsy Travellers are excluded from the Race Relations Act 1976. Lord Avebury mentioned that in the Lords debate on homelessness earlier this year, but that is the only reference that has been made to the issue. In our inquiry, we asked the Scottish Executive to improve matters. The Executive's NHS report, "Fair for all", mentions the issue, there is a paragraph on it in the consultation on the revision of the national planning policy guidelines and there is a paragraph on it in the consultation on community planning. Are there any other references, or is that the extent to which Gypsy Travellers will be mentioned in what the Scottish Executive is doing?

Yvonne Strachan: There are two issues. The extent to which Gypsy Travellers will be identified separately in lists will depend on the issue. The key issue—and I know that the committee feels strongly about this—is that, following discussions with the committee and the debate on Gypsy Travellers, the Executive is aware that there are still some areas that need to be developed and is working on those. The question of what specific references will be made, in policy and so on, will be made as work on each of those areas moves forward.

It is clear from today's discussions that there is no provision in the Race Relations (Amendment) Act 2000 for Gypsies in Scotland and no test case that enables such a provision. However, the 2000 act covers ethnicity, so there are questions about whether Gypsy Travellers are an ethnic group. The Executive's view on the matter is twofold. We are committed to improving the situation for Gypsy Travellers; work is on-going to explore how we can best do that. In the broader context of delivering the Race Relations (Amendment) Act 2000, the work relates specifically to race equality.

As members will know from our response, we see an opportunity to extend and encourage public bodies to think about broader equality areas as they introduce their race equality provisions. Public bodies will not be required to consider

those broader areas by law, but we expect and hope that they will do so in the context of our equality strategy and our general provisions for mainstreaming equality. Gypsy Travellers are part of that process and we hope that, in much the same way as has been done elsewhere, the issue will be followed through, although there will not be a legal requirement to do so. Does that answer the question?

Mr McMahon: Yes.

The Convener: Who will publish the statutory code of practice and how will it be publicised? What will happen next?

Tim Ellis: The code will be produced by the CRE and will be subject to approval by the Westminster Parliament, after consultation with Scottish ministers and with the National Assembly for Wales. A draft code already applies to bodies south of the border. The code will be published shortly and will then go through the Westminster system.

My understanding is that the CRE proposes that there should be a separate code for Scotland. Technically, it will be part of the same code, but we expect it to be a separate code in practice. The detail is still to be worked out. The CRE will be responsible for promulgating the code, but we will give our support. The code will be a core part of providing the guidance that public bodies will require to ensure that they carry out their duties properly. The primary responsibility will rest with the CRE, but we will work with it to ensure that the code is promulgated.

The Convener: I thank the witnesses for their evidence.

That concludes the evidence session on the order. Item 3 on the agenda is to consider what action to take on the order. Members have a paper from the clerk. I remind members that we cannot amend the order, although we must decide on what recommendation, if any, to make in our report to Parliament. The clerks will answer any questions on the process.

Cathy Peattie: A theme that runs through the evidence on the order is that we must monitor the measures to ensure that they work and that they go somewhere. The measures must be made to work nationally and locally. They must be monitored; we must go further than simply reading the documents that are published once a year.

Mr McMahon: If we are to make a recommendation, we must also make a statement about the order. The committee must put it on the record that the order should not be simply a paper exercise. We seek concrete outcomes. Under the Scotland Act 1998, it is our responsibility to ensure that we deal formally with legislation from

Westminster but, beyond that, the committee is obliged to say something to Parliament. I know that we cannot change the order, but perhaps we can submit an accompanying letter.

The Convener: I ask the clerk to tell the committee what the options are.

Jim Johnston (Clerk): The committee has been asked to consider the order under the negative procedure, which means that the committee may, in its report to Parliament, recommend to annul the order. However, if the decision is to make no recommendation to annul the order, the committee might want to emphasise its views on the order's significance. The committee should consider that option. The clerks can produce a draft statement for the committee.

Mr McMahon: It is vital that we make such a statement.

Cathy Peattie: We should say that we welcome the order, but it is important that it is implemented in full and that appropriate monitoring mechanisms are put in place.

The Convener: Do members agree to add such a statement to the report?

Members indicated agreement.

Gypsy Travellers

The Convener: Item 4 on the agenda is a response from the Deputy First Minister and Minister for Justice to Michael McMahon's letter.

Mr McMahon: When I attended the Holocaust memorial service, I discovered that the Gypsy Traveller community felt that it had been excluded and was not allowed to participate in a way that adequately reflected the impact of the Holocaust on the community. Five hundred thousand Gypsy Travellers died in the Holocaust, which was a substantial proportion of that community. However, during the memorial service, representatives of the Gypsy Traveller community were allowed only to sit in the hall while—quite rightly—representatives of a range of organisations lit candles in a specific ceremony. Why were those organisations involved when the Gypsy Travellers were not?

In spite of the Executive's warm words in response to our report on Gypsy Travellers, it appears that the Gypsy Travellers have again been overlooked and were not given their proper place at an important event. Jim Wallace's response to my letter contains warm words, but it completely misses my point. The letter states that Gypsy Travellers sat in the hall and that that is a recognition of the Holocaust's impact on them, but the point of my letter was that sitting in the hall was not good enough—I sat in the hall. The way in which the Gypsy Traveller community was affected by the Holocaust was not reflected in their treatment at the event.

Jim Wallace's response is full of platitudes and warm words, but it does not address the significant question: when will Gypsy Travellers have their proper place in matters that affect their lives? That community was affected dramatically by the Holocaust, as were a range of other communities. The service was not only about the Holocaust; it was about Bosnia, Kosovo and other terrible tragedies of the past century. The Holocaust affected the Gypsy Traveller community as much as any other community, but that was not reflected in the community's position at the event.

I was looking for a commitment from the Scottish Executive that the position of Gypsy Travellers would be addressed. The Executive recognises that the Gypsy Traveller community might be disappointed, but it has not told us what it intends to do to address the situation—

Mrs McIntosh: To prevent them from being disappointed.

Mr McMahon: Absolutely. The letter says nothing about that, and I am bitterly disappointed. The letter simply indicates once again that the

Scottish Executive is not taking seriously what we said in our report and that members of the Gypsy Traveller community are still being treated as second-class citizens.

Cathy Peattie: What does Michael McMahon think we should do now? Should we write back to the Executive?

Mr McMahon: I ask the committee to write back to the Minister for Justice. I am bitterly disappointed with his response and, if the committee agrees with me, I would hope that we could write back to say that we are bitterly disappointed.

For two years in a row, the same service involving the lighting of candles has taken place and all sorts of agencies and organisations have been represented at it. We want a firm commitment about next year's service. Surely a place can be found for one representative from the Gypsy Traveller community to go up on to the stage and light a candle. Surely it is not beyond the Scottish Executive to organise that. That is all that is being sought; we are not seeking a dramatic change to the way in which the ceremony is conducted. That would make a big difference to how the Gypsy Traveller community feels that it is being treated by the Scottish Executive.

The Convener: I suggest that I write to Jim Wallace on behalf of the committee to put forward that point of view and to ask him for a commitment that, in future, Gypsy Travellers will be involved in the way suggested by Michael McMahon.

Mr McMahon: I would be happy with that.

The Convener: Is that agreed?

Members *indicated agreement.*

The Convener: We now move into private session.

11:16

Meeting continued in private until 11:21.

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