

EQUAL OPPORTUNITIES COMMITTEE

Tuesday 15 June 2004
(*Morning*)

Session 2

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EQUAL OPPORTUNITIES COMMITTEE

12th Meeting 2004, Session 2

CONVENER

*Cathy Peattie (Falkirk East) (Lab)

DEPUTY CONVENER

*Margaret Smith (Edinburgh West) (LD)

COMMITTEE MEMBERS

*Shiona Baird (North East Scotland) (Green)

Frances Curran (West of Scotland) (SSP)

Marlyn Glen (North East Scotland) (Lab)

Marilyn Livingstone (Kirkcaldy) (Lab)

*Mrs Nanette Milne (North East Scotland) (Con)

*Elaine Smith (Coatbridge and Chryston) (Lab)

*Ms Sandra White (Glasgow) (SNP)

COMMITTEE SUBSTITUTES

Jackie Baillie (Dumbarton) (Lab)

Patrick Harvie (Glasgow) (Green)

Carolyn Leckie (Central Scotland) (SSP)

Tricia Marwick (Mid Scotland and Fife) (SNP)

Mr Jamie McGrigor (Highlands and Islands) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

THE FOLLOWING GAVE EVIDENCE:

Adam Gaines (Disability Rights Commission)

Tim Hopkins (Equality Network)

Helena Scott (Age Concern Scotland)

Isabel Smyth (Scottish Inter Faith Council)

John Wilkes (Equal Opportunities Commission/Commission for Equality and Human Rights Task Force)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Ruth Cooper

ASSISTANT CLERK

Roy McMahon

LOCATION

Committee Room 1

Scottish Parliament

Equal Opportunities Committee

Tuesday 15 June 2004

(Morning)

[THE CONVENER *opened the meeting at 10:33*]

Commission for Equality and Human Rights

The Convener (Cathy Peattie): Good morning. Welcome to the 12th meeting in 2004 of the Equal Opportunities Committee. I have received apologies from Frances Curran, Marlyn Glen and Marilyn Livingstone.

This morning, we will take evidence on the white paper "Fairness For All: A New Commission for Equality and Human Rights". I offer a warm welcome to our witnesses: Helena Scott, from Age Concern Scotland; Adam Gaines, from the Disability Rights Commission; Tim Hopkins, from the Equality Network; John Wilkes, from the Equal Opportunities Commission and the CEHR task force; and Isabel Smyth, from the Scottish Inter Faith Council. In order to allow enough time for questioning and for the witnesses to give the views of their organisations, we will go straight to questions.

The committee understands that during previous consultations there was concern that a new body would bring a risk of a hierarchy of equalities, where certain strands were given priority. What are your views on that in relation to the proposals in the white paper?

John Wilkes (Equal Opportunities Commission/Commission for Equality and Human Rights Task Force): Over the past couple of years, there has been a debate in Scotland in the run-up to the white paper and as a single equality commission has been on the horizon. One of the early concerns was about a potential hierarchy of equalities. That is partly driven by the fact that there are different platforms of legislation. That situation will continue, as the Government has not proposed, in the white paper or elsewhere, that the different equality legislation that affects principally the six strands will be harmonised. That is one factor that will make addressing all the different equality issues quite difficult, as some of the legislation applies across employment and goods and services for some groups, whereas other legislation applies only to employment for other groups. A number of people have recognised that that will be a challenge.

Much will depend on how the proposed body deals with the issue of priorities. Concerns have been expressed in Scotland about how the body will do that on a Britain-wide basis and how it will meet Scotland-specific objectives. That was the background to some of the proposals from Scotland on the need, given that the body will be Britain-wide, for enough flexibility and autonomy to enable specifically Scottish issues to be determined within Scotland.

From that perspective, the white paper reflects to some degree the proposals that have emerged from Scotland. The detail has yet to be worked through, but principally there is a commitment to setting up a Scotland committee in the new body that will have devolved power on issues to do with Scottish objectives and priorities and a role to feed in Scottish perspectives on emerging Great Britain priorities. How the detail of that is fleshed out will be crucial in determining how effective the body will be.

Isabel Smyth (Scottish Inter Faith Council): I recognise that all that John Wilkes says is true, but I will speak from the religion strand. We are a new strand, so we do not have the experience or expertise that some of the other strands have.

It seems to me that we already have a hierarchy, of which we are aware in all our negotiations and involvement. However, that is not necessarily a complaint—hierarchies are not always bad. We can certainly learn from the expertise and experience of our colleagues. From the perspective of our strand—I am sure that this is also true for the other newer strands—there is a fear that we could be forgotten or subsumed. There is certainly a fear that the religion strand could be subsumed under race, for example. Some people can find it quite scary to engage with faith communities; they tend to skirt round it by going to an umbrella body or a person whom they know, who might have no real authority to speak for the faith communities. We sense that a lot of work needs to be done in our strand—I cannot speak for the others, but I am sure that they feel the same way—to enable us to come up to speed and stand as equal partners with the others.

Tim Hopkins (Equality Network): I will add one more comment from the perspective of one of the new strands. Within the new strands, the majority of the organisations that are doing the work are Scottish voluntary sector bodies, such as the Scottish Inter Faith Council, Age Concern Scotland and the Equality Network. In that respect, we are different from the existing strands, as the existing commissions are GB bodies. That means that in the transitional period, as we move towards the establishment of the CEHR, work must be done specifically in Scotland, and not only in London, to bring the six strands together.

Otherwise, the Scottish element of the new strands will get lost.

The issue goes beyond the six strands. In Scotland, we have been working—and the Equal Opportunities Committee works—to the Scotland Act 1998 definition of equality. Another concern of ours is that that broad definition of equality should not get lost by an excessive focus on the six strands defined by the European Union.

Adam Gaines (Disability Rights Commission): People who approached the original proposals from a disability perspective were concerned to ensure that the new body would take account of the distinctiveness of disability and particularly of issues such as physical barriers. We welcome the fact that the white paper contains specific proposals for the establishment of a disability committee.

On the broader point about the hierarchy of equalities, we hope that proposals on the harmonisation of legislation will go further. The proposal for a public sector duty on gender represents a step towards that. However, we remain concerned that there might be a difference between the strands of disability, race and gender and the new strands in relation to access to goods and services. Further progress in that area would be helpful.

Helena Scott (Age Concern Scotland): I endorse the point about there being concern among the new strands about the potential for a hierarchy of equalities. The white paper proposes a duty to promote access to goods and services, particularly around the new strands, but we are concerned that the existence of such a duty might not in itself be effective or lead to harmonisation. For example, the voluntary code of practice for employers on age, which is promoted by the Department for Work and Pensions, has not had much effect—certainly not in Scotland.

I am here to represent Age Concern Scotland, but I draw the committee's attention to the danger of polarisation in relation to the age strand, so that perhaps only the aspects that relate to older or younger people are considered, rather than a composite approach that recognises age issues as diverse. That is very much reflected in the white paper and we need to address the issue to ensure that there is parity between all the age aspects and to ensure that we recognise that age is a continuum and that discrimination affects people of all ages.

The Convener: What role do you hope that the new commission will have in building capacity within the new strands? Do the proposals represent an opportunity to build capacity?

Tim Hopkins: That is a good question. There is a big gap in relation to sexual orientation and

religion, which are the strands for which there is legislation for the first time, because there is no body that can enforce the legislation and support people. Last year, the Department of Trade and Industry made available a relatively small amount of money for bodies that work in those fields, but very little of that money was available in Scotland and there seemed to be no understanding that we work in a different context in Scotland—the pattern of employment is different and further and higher education, which are covered by the new regulations, are completely devolved. Things seem to be better this year; it has been announced in the past few days that organisations in the religious belief and sexual orientation strands may bid for money from the DTI for one year. I hope that that will help to encourage focused work on the regulations that have just come into effect.

We also need to work towards somehow bringing together the bodies that work in the three new strands and the commissions, so that we can get from where we are now to where we will be in three years' time, when the proposed new commission for equality and human rights will be the main body to which people will turn for advice. The role of the organisations that work in the three new strands will probably have to change and the difficulty will be in managing that change. Over the next two years, those organisations will need to get together around the table to talk about how their roles will change and how the new system will operate.

Isabel Smyth: I hope that capacity building will happen long before the proposed commission is set up, because if it does not happen some strands will not be ready to participate. The work that Tim Hopkins talks about is needed.

Tim Hopkins mentioned the DTI funding that has just been made available for work under the strand of religion, but an organisation such as the Scottish Inter Faith Council, which employs one and a half paid members of staff and one full-time volunteer, would need to build its capacity just to be able to cope with applying for DTI funding. However, who will take on board equality and awareness raising as far as religion is concerned, if not a group such as ours? There are not many groups in the country that are involved in interfaith relations or that act in the interests of faith communities, rather than in the interests of just their own faith community. It seems good that money is being made available, but that also causes problems for us, because it makes us panic and think, "Should we leave off what we are doing and go down another avenue?"

10:45

The Convener: Are voluntary organisations concerned that they might almost have to change their identities and become something different? That seems to be a particular issue for you. Is there a threat to your organisations?

Tim Hopkins: We have certainly considered that. The context in which we work will be different in three years' time, if the CEHR is set up. We are thinking about how that might change the way in which we work—perhaps our focus will be slightly different. I do not regard that as a threat; it might be an opportunity, but we must consider our role in partnership with other organisations.

Isabel Smyth: We regard the proposals as an opportunity, too. We were set up only five years ago, but the whole focus of our work has changed in those five years. Government and others are now taking religion seriously in a way in which they did not in the past. The new ways of working will not represent a threat for our organisation, but they might do for others who suddenly regard us as having more importance than they thought that we would have when we were set up. Moreover, we do not want to lose the other side of our work, by which I mean engagement with people of other faiths and education.

John Wilkes: I endorse what Tim Hopkins said about the new commission's role in building capacity. The transitional stage will be crucial—it will be two, three or even more years before the CEHR is established, but the new employment regulations on sexual orientation and faith are already in force and the regulations on age will come into effect at the end of 2006. In the experience of the current commissions, when any new legislation is passed, it is critical that the first cases that come through are the right ones that will establish a good, rather than a bad, set of case law. There is currently fear about that.

The new commission will have duties to promote equality across all the different strands and it will have a useful power to make grants. It will inherit that power from the Commission for Racial Equality, which currently funds race equality councils. The white paper guarantees those councils' funding "for the foreseeable future" and proposes to extend the power so that the commission will be able to make grants across other equality groups. I presume that that means that the new CEHR will be able to commission work with other equality groups, which tend to be in the voluntary sector—although such funding will clearly depend on resources and priorities. In the task force's discussions, it was not initially clear whether the CRE's power would be transferred to the new body, but the white paper proposes that the power will be transferred and extended to more groups.

Adam Gaines: If the new commission is established, it will have to ensure that it strikes the right balance between advice and promotional work and strategic cases. As new legislation comes into effect, the commission's ability to take forward key strategic cases will be important. It will also be important for the new commission to be able to work in partnership with other organisations to take forward some of its advice and promotional work, rather than act as a stand-alone body. In Scotland, such work has been part and parcel of our ability to change attitudes and move forward.

Helena Scott: On capacity building, it is important for the new strands to cultivate their own equality identities—that relates to what Tim Hopkins and Isabel Smyth said and to the illustration that I gave about age. Capacity is also important in the context of what the white paper says about effective engagement and consultation. Those of us in the voluntary sector who work largely at the forefront of direct discrimination are, technically, the stakeholders. It is in the equality areas where we work, and in the role of extending our engagement so that it is fruitful and meaningful—so that this exercise can be real—that capacity is currently lacking for all stakeholders. The white paper gives guidance on the overall structure, but we do not know what the framework or the processes will be in Scotland. We do not know how we can have a sense of collective identity. An important area to consider is how we can work across the strands so that each of us understands the mainstreaming of equalities.

John Wilkes: A lot of the focus is on the new commission, but that should not stop all the other work that is going on in Scotland on capacity building. There will be players other than the new commission. For example, the Scottish Executive still has a role and a responsibility to mainstream equalities and to fund the capacity for that. The commission will play a particular role, but the danger is that the debate will focus only on the commission, which could then become the be-all and end-all of everything. However, many other organisations are responsible for activities as well. We should not forget that.

Isabel Smyth: John Wilkes spoke about race equality councils and about how important it was to keep such structures in place and to extend them to other equality strands. I hope that people do not forget that, for more than 30 years, there has been an interfaith movement in Scotland. All our main cities have interfaith groups. Those groups are very much at the grass roots, involving people in faith communities who are interested in going out of those communities to engage with others. They have long experience and I hope that they are not regarded as being unimportant in the

debate. I hope that they will be regarded as a way of establishing local councils, for example.

The Convener: That is an important point. One reason for our taking evidence today is to ensure that organisations have an opportunity to say what is important. Some organisations have been around for a long time and do not want to get lost. We will ensure that that point is in our report.

John Wilkes says in his task force report that the establishment of a commission for equality and human rights

“should not be used as a cost saving exercise.”

What are the task force’s concerns? Do you believe that the issue of resources in Scotland will be adequately addressed? From what we have already heard from voluntary organisations, I assume that they will have an equal concern about their future and about adequate funding. Tim Hopkins talked about funding being available for a year. However, for voluntary organisations, funding for just a year can be a nightmare, because they can only get started on something before the funding is nearly finished. I am interested in the sustainability of the work in Scotland, particularly in the voluntary organisations.

John Wilkes: If you will forgive the pun, funding is the \$64,000 question. During task force discussions, two overriding concerns recurred among many others. One was the harmonising of legislation and the other was resources. However, we were continually told that this was not the time to talk about resources; the role and powers of the new commission would have to be addressed before we considered the resources required to allow it to do its job properly.

There is a concern that Whitehall might regard the establishment of the new commission as an exercise in saving costs. A new body will be created and the three current commissions will disappear into that, so there may be a feeling that savings will be made through not having three sets of operations behind the scenes. However, we are talking about creating a fundamental new body that will have a much bigger role than that of the current equality commissions—and a lot of thinking has still to be done on how on earth the new body will address its human rights role, particularly in Scotland.

There is concern that no clear statements have been made about the resources that will fund the new body. If those resources are to be, in effect, the resources that the current three commissions receive—with the assumption that resources for new work will be found from savings made from having one body instead of three—there will be real concerns. All those wider issues will obviously

affect Scotland, which will require adequate resources for specific Scottish objectives.

As for the experience of the current commissions, I can talk only from the perspective of the Equal Opportunities Commission, where there is a continual tension over whether we have adequate resources to do specific pieces of work. I am sure that such debates will continue in the new body. The concerns are genuine and, until Whitehall announces the level of resources, those concerns will not go away.

Adam Gaines: The white paper includes helpful proposals on the Scotland committee and on work that will be done in Scotland. It is therefore important that the resources for that work be considered. At times, Scotland will have specific priorities. The Scotland committee should be regarded not simply as a branch office, but as a body with particular requirements and a particular strategy.

Tim Hopkins: On resources, I am concerned about the part of the white paper that deals with community cohesion and the promotion of good relations. Others have mentioned the racial equality councils. However, we now have fewer racial equality councils than we had a few years ago and a real resources problem already exists, even before we consider extending resources to cover the other strands as well. I am not sure what the answer is, but if the CEHR is to do the work that is set out in the white paper, it will need significantly more resource—at least twice as much as currently goes into the three existing commissions.

It is important that, in work such as that done by racial equality councils, the Executive has a recognised role. The Executive funds bodies that work in the existing commissions’ areas. I am thinking of bodies such as Black and Ethnic Minority Infrastructure in Scotland. It is very important that that funding role continues.

Elaine Smith (Coatbridge and Chryston) (Lab): Good morning. Some mention has been made of the definition in schedule 5 to the Scotland Act 1998. That definition covers more than the six defined groups in other legislation on discrimination. Just in case the eyes of the world are on this committee, I should explain that, on equal opportunities, schedule 5 talks about

“the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions.”

That definition is clearly much broader than other definitions.

The white paper proposes that, in Scotland, the CEHR will be able

“to be involved in work related to equality of opportunity as set out in the Scotland Act 1998”.

How might that work in practice, given the wider definition in the Scotland Act 1998? I put that question to Tim Hopkins first, because I think that he touched on the issue earlier in response to the convener's questions.

Tim Hopkins: The white paper seems to say two different things in different places. Part of one chapter is about promoting equality of opportunity, in the public sector in particular. That is the key part. The devolved power in the Scotland Act 1998 is used to encourage equal opportunities by placing duties on the public sector in Scotland to do everything in a manner that encourages equal opportunities. That duty is now placed on local government and will shortly be placed on the national health service through the provisions of the National Health Service Reform (Scotland) Bill, which has just been passed.

The part of the white paper that deals with working with the public sector talks about “promoting equality of opportunity”, but only within the six strands. Only when we consider the chapter on Scotland do we see that the CEHR will be able to promote equality of opportunity using the definition in the Scotland Act 1998. That point has to be clarified. The legislation will have to make it absolutely clear that, in its work to promote equality of opportunity in Scotland, the CEHR can use the definition in the Scotland Act 1998. As I said, the white paper talks about working with the public sector. Everything that the white paper defines as being in the public sector in Scotland is devolved.

11:00

Elaine Smith: Is that what you meant when you said that the working context is different in Scotland? We hope to pick up such points in evidence sessions such as this, so that we can include them in a report.

Tim Hopkins: The working context in Scotland is different in all sorts of ways. One of the key differences is the fact that the public sector in Scotland is virtually completely devolved and operates under the definition of equal opportunities in the Scotland Act 1998.

Elaine Smith: That is an important point. Does anyone else want to comment?

Isabel Smyth: Whenever I read the white paper or talk about equalities, it strikes me that the new commission must link up with education. We are trying to convince people that other people have to be treated as human beings; therefore, no kind of

discrimination should be allowed. We should not even be thinking about having to delineate sectors. I hope that the new commission will work with educational bodies and use the kind of advertising that has worked in Scotland to change people's attitudes towards one another so that we accept one another for who and what we are, no matter what differences there are between us.

Helena Scott: The new commission has said that it must be a model of excellence in equalities. By its nature, it must be responsive to the new arrangements in Great Britain. The legislation is a reserved matter but it must reflect the different circumstances in Scotland and Wales. The Scottish part of the new commission will have a duty to report directly to the Scottish Parliament, and one would hope that, through that mechanism, there will be reporting back and reflection on how the legislation has impacted in Scotland and what the commission's terms of reference might be. In that way, the message will go back to Government that there are different conditions in different parts of GB.

There should also be transferability. There is evidence that, since devolution, things have been happening in Scotland that are not being replicated in other parts of GB, and we have an opportunity to transfer good knowledge and skills across GB. It should be a learning ground—most of all, the commission should be a learning organisation.

Elaine Smith: In that case, do you think that the Scotland committee and the commission's Scottish offices will be responsible for developing policy and practice in relation to the wider groups that we have talked about, which are defined in the Scotland Act 1998?

Helena Scott: It is hard to know how the special Scotland committee to which the white paper refers is going to operate. We can only hope that the aspects of devolution will sit within all the areas of the commission and truly reflect the GB make-up. Perhaps one of the overarching roles of the Scotland committee will be to ensure that the aspects of devolution are worked through and operationalised throughout the work of the commission. At the same time, each of the committees must make that responsibility theirs, just as your role as the Equal Opportunities Committee is to ensure that all policies, bills and so forth have an equalities scrutiny. We seek that kind of recourse.

For a number of years, since the Government first made the announcement that it was going to review the whole equality machinery for GB, we have worked hard to ensure a strong and sound Scottish perspective. When the commissions were set up at least 30 years ago, we did not anticipate

a devolution settlement. We now have the opportunity to look at that seriously.

Adam Gaines: The white paper suggests that the new commission will have a power of promotion of good relations and social cohesion. There may be some linkage between how that is taken forward and the point that you are making about a wider context in Scotland.

Elaine Smith: When it was introduced, the Scotland Act 1998 was not intended to be cast in tablets of stone. The issues have to be considered over time, as circumstances change. In Northern Ireland, equal opportunities were devolved to an Administration that was working towards a single equalities body. That did not happen for the Scottish Parliament, for certain reasons. I wonder whether devolving such legislation to the Parliament would make sense, given the different Scottish context and the wider definitions that we have talked about, or do you think that the legislation can be managed within the single equalities body for the whole of the United Kingdom?

Tim Hopkins: It has been clear from the start of the discussion on the new commission that the UK Government has no intention of looking at devolving equalities legislation at the moment. We have been discussing the CEHR in that context and thinking about how it can be made to work within the existing splits of reserved and devolved responsibilities for equal opportunities.

Going a bit wider than how the CEHR will work, we feel that there are some problems with the details of the existing devolved/reserved split—in particular, when it comes to the encouragement of equal opportunities through public bodies. The fact that the regulation of equal opportunities is a reserved matter means that, although Scottish legislation can place duties on, for example, local government to encourage equal opportunities, when it comes to making sure that that has happened, there are questions about the extent to which that can be done in Scotland. That was perhaps not anticipated when schedule 5 to the Scotland Act 1998 was written. I think that there is scope in looking at the act again and tweaking it.

There are good arguments for having a level playing field in, for example, employment legislation throughout Britain. That is why the reserved/devolved split was made as it was. However, in relation to public bodies, which are mostly a devolved matter, the split can be adjusted to work a bit better.

Elaine Smith: That is a matter to which we may return at some point.

John Wilkes: In response to your first question, it is crucial that the CEHR in Scotland will not be restricted to operating merely along the six strands

to which it will be restricted in England and Wales and that it will be able to go beyond schedule 5 to the Scotland Act 1998. Like Tim Hopkins, I think that the final task force report contained a much better sense of that in the section about the public sector, and I am concerned that that seemed to get lost somehow in its translation into the white paper. Your second point feeds into the ability of the CEHR to have a role in advising how GB legislation will impact in Scotland, for the reasons that Tim Hopkins stated. The relationships between the CEHR and the Parliament and between the CEHR and the Executive need to be clear if there is to be that interaction.

Elaine Smith: I will perhaps pick up that point later, convener.

Margaret Smith (Edinburgh West) (LD): The introduction to the white paper states:

“In its policies and approach, a single organisation will be better equipped to address the reality of the main dimensions of an individual's identity, and therefore tackle discrimination on multiple grounds.”

Many people see that as one of the advantages of having a single body. On page 30, the white paper states:

“A key role for the CEHR will be bringing together work related to several different aspects of equality ... The CEHR will be able to respond to the complexity of individual and group identities which are rarely defined by a single feature.”

How do you believe that that work can be taken forward in a Scottish context, and what impact will that have on individuals?

John Wilkes: Speaking with my Equal Opportunities Commission hat on, it is easy to focus on the issue of gender—that is the remit of our organisation. One of the advantages of having this debate about a potential single body is the fact that it has made the Equal Opportunities Commission consider what that means and start to look at the cross-cutting issues around gender and race and gender and disability. That has been helpful.

I see the potential for the new single body to make some of the connections that may be difficult to make at the moment. Some of the connections that we might want to make currently entail joint work with one of the other commissions or other equality groups. Scotland has a good track record of joint working, but joint work on particular issues with different organisations can be more difficult and challenging than work in a single body might be, although that will also have difficulties.

Adam Gaines: The issue is one of balance and strategy for the new body, which must ensure that it has the capacity to develop issues that relate to particular strands. For example, on disability, we have suggested that specific disabilities will need

to be considered. However, at the same time, issues of multiple identity and of equality as a whole—covering the range of the strands—and the shape and path of the body's strategies will need to be developed. The body will need to be able to consider both those aspects. The Disability Rights Commission has recently undertaken work that concerns black and minority ethnic disabled people and related issues that need to be taken into account. The same applies to gay and lesbian disabled people.

The body will need to be able to work across strands and, when specific issues arise in relation to disability, for instance, it will need to be able to consider how it will progress that work. That is why we felt it helpful that the white paper referred to a provision for a disability committee to develop aspects of disability policy.

Isabel Smyth: It is accepted that multiple identity is the reality with which we all live and that the cross-strand approach is an important aspect of the white paper. The Scottish Inter Faith Council has benefited greatly from being a member of the equalities co-ordinating group and from working with those involved in the other strands.

Confidence must be built within strands before those involved in them can meet others as equals. The religions community would fear that it could become lost. That goes back to the education process and letting faith communities know about the commission so that they can understand what it means for them and their role in civic society. I know that a disability committee is to be established, but something must be done—some unit must be created, for example—for the strand of religion to allow the cross-cutting exercise to work for us.

Tim Hopkins: I am hopeful about the way in which the commission should be able to work on multiple discrimination across strands. That hope arises partly from talking to people from the Equality Authority in Dublin, which seems to have been really effective in that way. When listening to what that organisation does, I was struck by the scope for taking multiple-discrimination cases. I hope that we will see many more such cases, because people are discriminated against on more than one ground all the time.

I was also struck by the bringing together of the different strands. The Equality Authority in Ireland holds council meetings or group meetings at which it brings together people from voluntary bodies that are involved in the different strands to talk about matters that they are working on. That has meant that bodies in the religion strand and in the sexual orientation strand, for example, have come together and talked a lot. That has greatly increased the level of trust between those bodies,

which people would have been surprised to see five, six or 10 years ago in Ireland.

Margaret Smith: Isabel Smyth's overall concern is that levelling up is needed and that confidence and capacity building are needed for the new strands before we can move forward.

I was interested in your comments about the Equality Authority in Ireland, because some of us were there last week. The Equality Authority covers nine equality strands and has managed to support the development of effective national equality strategies in quite an integrated way. I am interested in how the witnesses feel that the new body here will help with mainstreaming, which the Executive is progressing, in a cross-cutting way. Can we make progress in the same way as Ireland has successfully done?

My one concern is that Ireland still has a separate body for disability. I put it on the record that that jarred with the committee members who went to Dublin. The proposal of a disability committee is a better idea than having a separate organisation, which fosters a hierarchy. As Isabel Smyth says, it is important to bring everybody up to the same level, after which everybody can proceed together. How might the single body help with mainstreaming and the Executive's mainstreaming agenda?

11:15

John Wilkes: The existing commissions and equality organisations have had to work in the context of Scotland, which has been one of the drivers for us to do much more joint work and to take joint approaches on some matters. Given that context, the one comment that I will make about Ireland—I have also been fortunate enough to go to the north and the south—is that one advantage of the Equality Authority has been that its work is based on two broad bits of legislation that harmonise provisions on all nine equality grounds. That is certainly a factor in why the authority can undertake cross-cutting work more effectively. I am not saying that the new body here will not be able to undertake such work effectively, but a complication will be added.

Perhaps examining the Northern Irish experience might also be useful. Northern Ireland has had a single equality body and a separate human rights body for four or five years, but the equality body has had to deal with different packages of legislation. I know from visits there that that has been one of the challenges that the body has had to face.

Broadly speaking, the new body here will have a good opportunity to develop the mainstreaming agenda. I think that it will do that if it has the right

level of flexibility and autonomy to make strategic, objective decisions in Scotland.

Ms Sandra White (Glasgow) (SNP): Good morning. I will ask about the new body's structure and how you think that it may work, which we have heard about already in some answers. I have read the task force's report, which throws up several concerns about timescale and voluntary sector issues. What are your views on the proposal to have only one Scotland commissioner in the CEHR? The task force has commented on that.

The CEHR's board will have 10 to 15 members. Are you content that those members will have enough knowledge of Scottish issues? Page 9 of your report mentions

"support in the Task Force on the need to harmonise the different legislation"

on different groups and strands, including the Scotland Act 1998. However, the report goes on to say:

"The Government position was stated early on that this was not a proposal that would be considered at this time."

Will you comment on that?

John Wilkes: Scotland currently has three commissioners from the three equality commissions, so it could be argued that having one Scotland commissioner will mean a net loss of two commissioners. Having one commissioner will place on that person a huge responsibility. They will need to have a wide-ranging understanding of the different issues to be able to represent those perspectives on their work on the commission's board, or whatever it will be called.

It is apparent that the board will not have more than one position each for Scotland and Wales but, as the task force report said, the understanding is that it will be the responsibility of the board as a whole to have an understanding of devolution and of Scotland and Wales. I do not know how it will achieve that and whether that will be a reality. That adds even more importance to the idea of a Scotland committee in the structure, to support the Scotland commissioner. The white paper views the Scotland commissioner as the chair of that committee, which will need to have a wide-ranging diversity of experience of Scottish issues if it is to support the Scotland commissioner and to gather perspectives from Scottish stakeholders. That will be a challenge.

Certainly, there was vigorous debate in the task force around the issue of how the board of the CEHR would be structured. It was agreed that it would be impossible to have a broadly representative structure if there were only 10 to 15 commissioners. Obviously, it was felt that the commissioners should have the necessary skills to run a body, but it was also thought to be important

that they represented the relevant diversity. The white paper places an obligation on the relevant secretary of state—whoever that ends up being—to ensure that diversity exists in the group of commissioners. The white paper also says that the commissioners should include at least one member who has or has had a disability. The point that the body should have a sufficient disability perspective was made by members of the task force and by groups outwith the task force. In support of that view, people cited the example of Northern Ireland, where the Equality Commission for Northern Ireland made new appointments and ended up with a board on which there was nobody with a disability.

The other aspect is that the Scottish Executive will have an input in relation to the appointment of the Scottish commissioner. In the task force, I tried to ensure that the appointment process for the Scottish committee of the CEHR should be done in a public way that ensures an appropriate level of legitimacy, credibility and accountability. There is still work to be done in that regard, as I understand that the committee will be appointed by the CEHR. We need to ensure that a steer highlighting the importance of the appointments process is given to the commission.

Adam Gaines: I agree with what John Wilkes was saying about the important role of the Scotland committee in the process. Clearly, it will have a large amount of work to do and to monitor. Therefore, it is important to ensure that it fully reflects all the relevant strands and key stakeholders in Scotland. It will be important to ensure that there is a disabled person on the committee. John Wilkes's point about how people are appointed is also important. Having a public appointments process will help to vest the committee with an appropriate status.

It is also important to ensure that the Scotland committee has representatives on the other committees that the commission might set up—for example, there will be a disability committee. We need to ensure that the experience and perspective of Scotland is represented across the commission as well as within the Scotland committee.

Tim Hopkins: I strongly agree with that. One of my concerns about there being only one Scotland commissioner on the board is that all the work of representing Scotland will fall to that person. However good the will is among the other commissioners to respect the devolved situation in Scotland and Wales, the lack of information available to them and their lack of understanding will place a huge responsibility on the Scotland commissioner.

Originally, we thought that it would be reasonable for the board to be made up of four

commissioners from Scotland, four from Wales and eight from England. Obviously, that would not reflect the population figures but it would reflect the different realities in the various parts of Britain. Having only one Scottish commissioner out of 15 means that the representation will be even less than the proportion of the population suggests that it should be. It would be much better to have a commissioner and a deputy commissioner for Scotland. That would mean that the load would not be all on one person and would cover eventualities such as, for example, the commissioner's falling ill.

It is important that the Scotland committee have oversight of what is happening in Scotland and devolved priority-making powers and powers to use the budget as it sees fit. For example, people down south might not understand that, in Scotland, travelling expenses make up a higher proportion of the expenses of any project than they do down south. However, I also endorse what Adam Gaines said about ensuring that the Scotland committee can also feed back into Britain-wide decision making. That can happen through having members of the Scotland committee on other committees but it also needs to happen at the staff level. Mechanisms need to be put in place to ensure that the chief executive—or whatever they will be called—of CEHR Scotland can feed into the Britain-wide staffing structures.

Helena Scott: I endorse what Tim Hopkins says. Having only one commissioner from Scotland is not sufficient. One reason for that is the amount of responsibility that that person would have. John Wilkes had a similar amount of responsibility on the task force. His role was to represent the Scottish perspective but he also had to enhance a generic equalities approach. In itself, that was quite a difficult task. He is not representative of the various relevant strands but had to have the ability to recognise the pros and cons and the complexities of the situation. He had a huge burden of responsibility.

Further, if only one person represents Scotland on the board, will they have the capacity to represent the business interests of Scotland? We have tended to come at this issue from the perspective of the voluntary sector but business interests are also important. Given what we know about the conditions and the demographic changes in Scotland at the moment, we can see that the establishment of the commission will have huge implications. How could one commissioner deal with the broad areas that relate to business interests?

To some extent, we have been able to have a bit of a trial run in Scotland through the equalities and human rights reference group, which has been a good platform for engaging with a wider circle of stakeholders. It gave John Wilkes an opportunity

that he found useful to engage with stakeholders before the meetings of the task force. In a sense, we have started to model a sort of Scottish committee. That has given us quite an insight into what we can achieve and what more needs to be done. However, the framework and the processes that I mentioned earlier need to be more systematically provided for.

The board should be more Britain-wide than London-based and should draw on expertise from across Britain. Members from Scotland should be represented on it because of their expertise. Geography should not be a factor. We want to create a body that is Britain-friendly and takes on board people from various areas. It is worth noting that the white paper says that the commission will not set up offices in each of the nine regions. It is proposed that the regional process will be dealt with on a partnership basis, but we need to see how that will be represented on the board. That issue relates to the situation with the devolved settlements in England and Wales. We need to be aware of and on top of those issues.

Isabel Smyth: I agree with everything that has been said. I do not see how one Scottish commissioner will have an impact on a British commission. I do not think that the commission will take Scotland seriously if we have only one commissioner. There is a danger that the agenda will become more England-focused than Britain-focused.

Ms White: People's comments have been interesting. I am interested in the suggestion that the board should be made up of four commissioners from Scotland, four from Wales and eight from England. I think that there will be too much pressure on one person if there is only one commissioner from Scotland, bearing in mind the fact that the new age-discrimination legislation will have to be dealt with in 2006 and that there will be a constant flow of European legislation as well.

I agree that Scottish interests will not be taken seriously if there is only one Scottish commissioner, and I note what Elaine Smith said earlier about Sewel motions and so on. We are not trying to score any points in relation to the commission; we are trying to create a level playing field with regard to equal opportunities.

Mrs Nanette Milne (North East Scotland) (Con): What has just been said about there being too much work for one commissioner is the crucial point that has come out of this session. Scottish interests will inevitably be diluted if there is only one commissioner.

My question is for Adam Gaines. What are your organisation's views on the specific arrangements for disability, particularly the proposals on the

establishment of the disability committee? I also note that the disability committee is to be temporary. What are your feelings on that?

11:30

Adam Gaines: The establishment of a commission for equality and human rights has great potential, but an important issue for us is how it takes into account the specifics of disability, because disabled people face specific environmental considerations and barriers and because there is a programme of legislation to deal with disability that will need to be thought about and taken beyond 2006. We would not want knowledge, expertise and the ability to concentrate on the issues to be lost in establishing the new commission, hence the helpful proposal for a specific committee with powers to pursue disability policy. It will also be helpful that the committee has an in-built majority of disabled people. The current act that covers the DRC requires at least 50 per cent of the commission to be disabled, because for so long disabled people had decisions taken for them, rather than their being part of the decision-making process. The proposal to have a majority of disabled people is important.

We recognise that the white paper suggests that there should be a review period. It is critical that the new body continues to take disability into account and that there are strategies for taking forward new legislation. It is also critical that, across the new commission, the interface between disability and the other strands is developed because, since we were established three years ago, we have had to learn an awful lot about promoting disabled people's rights, as there was not awareness at a high level, and we want to ensure that such work continues within the new body. The body has real potential to promote equality.

Mrs Milne: What was the task force's view on having a disability committee and the fact that it might not be permanent?

John Wilkes: The arguments that Adam Gaines made were made by the disability representatives on the task force. To be fair, overall, task force members were sensitive to the fact that disability organisations had particular concerns—one understood them and listened to them. However, a number of organisations from other strands were concerned that putting in place what they saw as particular arrangements for disability could set up dynamics and could result in calls for similar arrangements for all the other strands, such that the whole concept of having a single commission would break down. People felt that to a greater or lesser degree. When the proposals came back to the task force, some of the concerns were lessened, because the time limit on the new

committee would mean that some of the disability issues could be worked into the main stream of the organisation, then the committee would disappear.

There were debates and arguments. Some people did not accept the arguments on the special nature of disability and said, "I could argue the same for my strand." Some of the organisations representing the newer equality strands felt that arguments could be made to have committees for them because they have so much ground to make up. That was the tenor of the debate. However, while some of the debates on the arrangements for disability have been had in Scotland, I do not perceive there to be as much concern here as there is in other parts of Britain.

Tim Hopkins: I agree with John Wilkes. Perhaps because we have a longer history of working between the strands in Scotland, a level of trust and understanding has built up. As long as the CEHR has as its overall aim to work for all the strands in an integrated way, it is not incompatible to have specific arrangements for different strands. It is clear that for the disability strand—and all the strands—particular issues need to be taken into account. One such issue is the fact that the DRC is a new organisation compared with the other two existing commissions, and Adam Gaines mentioned several other issues.

It would be unfortunate if the discussion on those issues turned into a bidding war, in which people said, "If they are having a committee we want to have one as well." In fact, the white paper specifically says that the commission could establish committees to do anything, so there could be committees for the other strands. For the sexual orientation strand that we represent, it is not clear that a committee would be needed. We will have to see how matters develop once the commission is set up. So long as the commission is prepared to work in an integrated way and to consider all the strands as being equally important, while recognising the specific needs of the individual strands, it will work.

Mrs Milne: I was part of the group that went to Dublin last week, where we met the National Disability Authority. It is heavily involved in policy formation, particularly in relation to the development of legislation, which it believes is key, alongside the work of the single equality body in Ireland. Are the DRC and the other organisations content that the proposed structure and powers of the CEHR will allow for detailed policy development and input to strategy at a Scottish level?

Adam Gaines: The proposals to have a Scotland committee and a Scottish commissioner are important, to ensure that there are a perspective and a strategy for Scotland. The

proposals are also important because the independent body will have to give advice, not just to the Westminster Government but to the Executive, which will impact on future legislation. In the case of disability, we are facing a large amount of legislation—some of it is coming into effect later this year and there is a draft disability bill at Westminster. The new body will have to have a perspective on that and may also have the responsibility of developing new codes of practice, so its ability to provide advice will be important.

Elaine Smith: I want to pick up on something that John Wilkes said about the Scottish Executive, the Parliament and how engagement and understanding will work.

I am mindful that we have a big panel. I have three points to make, so may I make them, then the panel can comment as appropriate?

The Convener: Yes.

Elaine Smith: First, the white paper specifies that the CEHR will be required to prepare reports on the work undertaken in Scotland and to lay them before the Scottish Parliament. Do panel members understand that that will be a statutory requirement? How will it work in practice?

Secondly, the white paper sets out the need for the new CEHR

“to take account of relevant guidance issued by the Scottish Executive.”

Are you content with that arrangement? What about the fact that targeted guidance has not been mentioned?

Finally, at UK level, there is a statutory requirement for commissioners to advise the Government on equalities issues. The white paper states that the current commissions provide advice to the Scottish Executive and that the CEHR would continue that arrangement. A statutory requirement does not seem to have been proposed in that respect. Are you content with that approach or do you think that a statutory requirement should be introduced?

John Wilkes: When we met the task force, one of our priorities was to explain that, given the new devolution arrangements in Scotland, formal links should somehow be made between the CEHR and the important institutions of the Scottish Executive and the Scottish Parliament. I realise that there is nothing formal in how the current equality commissions engage with the Parliament and the Executive, or vice versa, and that there is a lot of interaction in that respect, which is good; however, the matter is important in designing the new arrangements. We wanted the task force to understand that in Scotland two institutions have to be taken into account—obviously the arrangements are slightly different in Wales,

because the National Assembly for Wales does not have the power to make primary legislation. It took a bit of time for us to get across to women and equality unit officials and task force members that two different links had to be made in Scotland.

The task force's primary concern was that any formal links between the Parliament and the Executive and the body in Scotland should not mean that the body would be formally accountable to those institutions. As I understand the argument, the fact that it is a British public body means that it should be clearly accountable to Whitehall and Westminster.

We made suggestions about formalising the links, one of which was that reports could be presented to the Scottish Parliament. I understand that that is intended to be a statutory requirement. My Welsh colleague and I had the opportunity to make a presentation at the second meeting of the task force. Because the Deputy Minister for Women and Equality could not attend the meeting, she arranged to meet me privately and asked me to run through my list of requirements. When I suggested that we could formalise links with the Parliament through the presentation of reports, she asked whether the Parliament would be satisfied with that. I said that I was not sure what the Parliament felt about the matter. Perhaps members will want to log that comment for future reference. As I have said, I think that the body would be statutorily required to lay a report on its activities in Scotland before the Parliament and I presume that the committee might represent a good link in that respect.

Although the feeling in Scotland is that some formal link should be made between the body and the Scottish Executive, officials found trying to describe such a link to be much more problematic. Indeed, there are different views on the matter in Scotland. Some feel that there should be a memorandum of understanding, while others think that the body should be given a formal power to advise the Executive. I am not totally clear about the Scottish Executive's view on the matter—although I know that the people in Wales certainly feel strongly about it. I think that some concerns and fears centre on whether the body would take on certain monitoring aspects. As a result, I am a little unclear about what the white paper is saying about the link between the CEHR and the Scottish Executive, because I do not think that it is describing anything other than the current arrangements between equality commissions and that institution. A more formal link should be made, although I do not really know what shape it should take.

Elaine Smith: Perhaps we should ask the Scottish Executive for its view on the matter.

John Wilkes: Indeed.

11:45

Tim Hopkins: I agree with John Wilkes that the proposed legislation should contain a provision that gives the CEHR the power to advise the Scottish Executive. Certainly the commission will have to work directly and closely with the Executive on imposing specific duties such as those that might be imposed on the public sector under the Race Relations (Amendment) Act 2000. After all, the Executive is responsible for making such provisions in secondary legislation. That example also covers your question on guidance, because in a sense the Scottish Executive will have to issue statutory guidance under that act and the CEHR will have to work closely on it. I am not quite sure what you meant when you mentioned targeted guidance.

Elaine Smith: The white paper mentions "relevant guidance". Does that refer only to overarching guidance or does it also include any particular guidance that the Scottish Executive might issue in relation to the Scotland Act 1998's definitions of equality? Is that an issue?

Tim Hopkins: It could become an issue. As you have said, the CEHR should be able to advise the Executive on the 1998 act's definition of equality and not restrict its advice to the six strands. The Executive issues other forms of guidance that the CEHR will have to work within. For example, the white paper mentions the English voluntary sector compact and the body will also have to take note of the Scottish compact.

Adam Gaines: Obviously we feel that it would be helpful if an annual report were presented to the Scottish Parliament and that it makes sense to formalise the link with the Executive. However, we believe that the way forward in that respect could be a memorandum of understanding that sets out the details of any such link. After all, a lot of work will have to be carried out on the Executive's own guidance and on any guidance for public authorities that the new body might develop.

Helena Scott: I certainly think that the new body should have a statutory responsibility to report to the Scottish Parliament. The white paper itself sets out a duty to consult stakeholders and we must ensure that the consultation runs parallel to and dovetails with the existing consultation processes and arrangements in Scotland to avoid any conflicting arrangements. This consultation will give us an opportunity to enhance the existing consultation process and to build on our current means of engaging stakeholders. We have also been working very hard on the manner of the consultation in Scotland and we want to develop it to maximise its effect.

We must not lose sight of the other institutions that are being developed in Scotland, or we will

inadvertently create bodies and institutions that are not interrelated. In that respect, we need to take an overview of how, for example, the role of the commissioner for children and young people or the Scottish Human Rights Commission fits into the CEHR's Scottish context, which means that its role and responsibilities with regard to the Scottish Executive will have to be clarified. Regardless of whether there is a Scottish commissioner or Scottish committee within the CEHR, the new commission will have to keep pace with developments in Scotland to ensure that it provides a more enhanced and composite picture of equality and diversity.

Ms White: Do you agree that the CEHR must be statutorily required to report back to Parliament? After all, the Scotland Act 1998 encompasses many provisions. If the CEHR has only one Scottish representative, the Scottish Executive and the Parliament will have to oversee what is happening in case the proposed commission, which we have already fought so hard to get, misses something.

Helena Scott: Things could become very bitty if we do not have an overarching view of the issues that are specific to Scotland and the reserved matters that might affect Scotland. Equalities are moving forward very rapidly and there are different aspects and different perspectives. We have to ensure that we keep in tandem with all the new developments.

The Convener: Would the Scottish committee not play that role?

Helena Scott: It could well do so.

The Convener: I see the role of the Scottish committee as being very important in all of this. I accept what people are saying about Scotland having only one commissioner and about whether there should be a deputy commissioner or whatever, but from reading the papers, my understanding is that the Scottish committee will play a vital role in bringing together the work that is being done. It will also liaise with the Parliament's Equal Opportunities Committee and with Scotland as a whole. The committee should not be dismissed just because it is a Scottish committee, nor should it be said that its relevance depends on its being part of a UK committee. Surely the Scottish committee will play an important role because of the Parliament, or am I wrong in assuming that?

John Wilkes: The Scottish committee will play a crucial role, but for it to do that, it will need to have a clear set of delegated powers and responsibilities, which are not defined as yet. That will be key to how well the committee works. What Tim Hopkins said about resources and so forth feeds into the point that I have just made.

Adam Gaines: One also needs to distinguish between two sets of guidance. There will be the guidance that the CEHR develops in explaining its work and its view on the legislation and there will be the guidance that the Scottish Executive develops.

Shiona Baird (North East Scotland) (Green): We have heard this morning how important it is that human rights have been included in the responsibilities of the new commission for equality and human rights—indeed, that can be seen clearly in its title. Isabel Smyth referred to the fact that human rights are for everybody. The white paper says:

“Human rights are not just for those who experience discrimination. They are inclusive and affect everyone. Human rights will give the work of the CEHR a real impact at ground level.”

However, in Scotland, the CEHR will deal only with reserved matters. The plan for Scotland is that a Scottish human rights commission will be developed to deal with devolved issues. The white paper proposes a memorandum of understanding between the CEHR and the Scottish human rights commission. All the strands are being brought together under an organisation that has the title of the commission for equality and human rights, yet, in Scotland, part of that commission’s responsibilities will be hived off. What are your comments on the issue? Will a memorandum of understanding be sufficient to establish the links between the two organisations?

John Wilkes: As the task force progressed its work, it became clear that human rights are one of the areas that have the potential for the most confusion and complication between the operation of the body in England and Wales and its operation in Scotland. I found it difficult to explain why there is to be a Scottish human rights commission and why it is within the responsibility and gift of the Executive and the Parliament to set that up. There was a feeling that that could get in the way of human rights being addressed properly.

I am not clear whether the white paper is saying that the commission for equality and human rights will be able to operate only in reserved areas in Scotland or whether it just expects that that will be the arrangement. Certainly, the human rights people on the task force did not seem to think that the role of the CEHR in Scotland could be limited in that way.

It is essential to have some form of understanding between the Scottish human rights commission and the commission for equality and human rights. I do not know whether there is a better mechanism than a memorandum of understanding to do that. Ultimately, the two commissions will be two independent bodies and will have great latitude to determine their own

priorities and operations. It is not as easy as saying that there is a simple reserved-devolved split. Questions arise as to whether an issue is reserved or devolved—I am thinking of health services for asylum seekers, for example, and certain aspects of health, such as genetics. Many complex and potentially confusing issues are involved.

Things will also depend on timeframes. If the Scottish human rights commission is set up first and established, it will be a bit harder for the commission for equality and human rights to make arrangements. Another important role of the Scotland committee of the CEHR will be to manage that relationship, as I do not think that understanding will be as great at a Britain level. Therefore, I have all sorts of concerns about the potential complexities of how that part of the agenda will operate in Scotland. If things are not done properly, there will be a great recipe for confusion. There will be two bodies with the words “human rights” in their titles and the public will ask how that will work. There have even been suggestions that the CEHR should not use the words “human rights” in its title in Scotland.

There are different expert opinions on what needs to happen to make some of the provisions that are being thought of for the commission for equality and human rights effective in Scotland. I made it clear at the start that I am not a human rights expert. I have sought advice from various expert bodies in Scotland, such as the Scottish Human Rights Centre and the Law Society of Scotland, and from other academics, but there is no universal set of advice about what is needed to make things work, which is a concern. I know that the Scottish Executive is having discussions with the Department for Constitutional Affairs, which handles human rights down south. We are talking about one of the crucial areas that must be got right.

Adam Gaines: I very much agree with John Wilkes. Not only how the two bodies will work together, but whether there might be slight differences in, or coterminosity of, powers is an issue. That is where the memorandum of understanding comes in. It comes in with regard to, for example, information and advice for the public. I hope that that will be as clear as possible because otherwise there might be difficulties for individuals who require information. How far the bodies will have promotional powers should also be considered. There might be differences in the two bodies’ promotional powers.

On a separate issue, we have a view about the role of human rights in the CEHR. It would be helpful if the CEHR had greater capacity to take forward cases to do with human rights and discrimination. The white paper suggests that

there may be a power to take forward combined human rights and discrimination cases and that it will be possible to continue with the human rights element even if the discrimination grounds have fallen away. We hope that it might be possible for the new commission's powers to go slightly beyond that.

Isabel Smyth: I have no expertise whatsoever in the setting up of commissions, so I certainly would not know the best way forward. My organisation learns much in that regard from being part of the equalities co-ordinating group.

However, I think that there is confusion at grass-roots level about the two bodies and that matters must be clarified. We are often asked questions about what the differences will be and why there will be a Scottish human rights commission. Work must be done on that issue for the general public.

Shiona Baird: I wonder how we can resolve the matter at this stage. John Wilkes or other members of the panel might want to say whether we need to reconsider carefully whether we need to set up the two separate bodies and whether the devolved issues, which are obviously important in Scotland, could be incorporated in the work of the Scottish committee—however, that would not work either. I am concerned that there are issues that have not been resolved and that the bill will progress and we will end up with everything being in place without matters being resolved. What can we do at this stage to resolve matters?

12:00

Tim Hopkins: On whether there should be two bodies, one of the key points is that the human rights framework in Scotland is different, because it is applied in Scotland through the Scotland Act 1998 as well as the Human Rights Act 1998. There are other reasons why it would be sensible to have a devolved Scottish human rights commission. For the sake of consistency, I would prefer us to work the other way round and have a Scottish equality commission to deal with devolved issues.

Shiona Baird: That was my train of thought.

Tim Hopkins: I do not think that that will happen.

Transitional arrangements are being put in place to move us forward over the next couple of years. One of the first issues that must be considered—in consultation with organisations that work on human rights in Scotland and with the Scottish Executive—is the nature of the split between the two bodies. In my view, the split should be quite clear. For example, the Scottish human rights commission could work on devolved issues and the UK commission could deal with reserved

matters. However, I agree with John Wilkes that there are difficulties in deciding whether issues such as that of children being kept at Dungavel are reserved or devolved.

Ms White: I think that it is important that this is being enshrined; I would rather have something than not have it.

We received a petition concerning the kids in Dungavel. It related to education and health, which are matters devolved to Scotland. However, no one—not even lawyers from the Scottish Parliament and Westminster—could agree which issues relating to Dungavel were devolved and which were reserved. That is a very difficult matter. If we can iron out some of the problem, we will at least have made some progress.

The Convener: To add a further complication, the children's commissioner could also take up the issue.

Mrs Milne: We are moving towards the end of questioning. I want to ask about the transitional phase. From the white paper, we know that there will be a transition group consisting of representatives of the three existing commissions and the new strands and of Government officials. How will Scottish interests be represented on the group?

Tim Hopkins: The issue that concerns me most about the white paper is that Scotland is not referred to at all in chapters 10 and 11, which are about moving towards the CEHR. The chapter on transitional arrangements refers to two groups: a steering group and a transition group. It does not explain the difference between the two, but evidently those groups will be set up down south to examine how we move towards the CEHR. The white paper also refers to the establishment of a shadow board, which would consist of three transitional commissioners—one from each of the existing commissions—and commissioners for the new strands. The board would deal with issues such as the appointment of the CEHR's chief executive.

All the proposals that I have outlined are good, but they do not say anything about Scotland. I am concerned that the process will develop a CEHR that is designed for England and that we will not move in the way in which we need to in order to fill the space in Scotland that the CEHR will have to occupy. Like the task force, the steering group and the transition group need to include Scottish representation. Over the past three or four months, John Wilkes must have spent virtually half of his working time on the task force, because there were meetings every couple of weeks. John did a very good job of representing Scotland, but we need to have two Scottish representatives on the steering group and the transition group, so that

the load can be shared between them. That would mean that if one representative were ill, the Scottish input would not be lost altogether.

A parallel process is required in Scotland—we need to have a transition group here. The new strand organisations in Scotland are different. Age Concern Scotland, the Scottish Inter Faith Council and the Equality Network are all Scottish organisations.

Mrs Milne: Can we do that?

Tim Hopkins: The Scotland Office could play a role in hosting such a group. When the shadow board is set up, an early priority should be to appoint the Welsh and Scottish commissioners, so that there is Scottish input to the board. It should also consider setting up shadow Scotland and Wales committees, so that right from the start the structures that are needed to make the CEHR work adequately in Scotland and Wales have been established.

Mrs Milne: Those seem to be sensible suggestions.

As we move towards the establishment of the CEHR, it will be important for the three existing commissions and the representatives from the new areas of discrimination law to work together closely to develop a shared understanding and to identify opportunities for adding value to existing arrangements. How has that worked during the consultation and task force period and how should we progress matters in the transition period?

John Wilkes: That process has worked very well, not just in the consultation and task force period. Ever since devolution, the three commissions in Scotland and, increasingly, the organisations that represent other equality interests have been working together and co-operating more closely. When we got to the busy and crucial stage of the task force, it was quite easy to build on that background and history. As someone who has been trying single-handedly to represent the whole Scottish perspective—an impossible task—I have found that structure highly supportive. My colleague from Wales did not have the same support structure. There has been a marked difference in that I have felt that I have been able to contribute in the knowledge that I had some sort of basis of opinion on which to do so.

I want to thank everyone who has been involved in the equality co-ordinating group and the Scottish equality and human rights reference group, as well as the Scottish Executive, which helped to facilitate the reference group. The help that that support structure has provided has been incalculable in enabling the Scottish views and perspectives on what has been important to be input in the limited amount of time that is available in such debates. In addition, there has been a lot

of behind-the-scenes work by officials from the Scottish Executive and by officials in various departments down in London. Their involvement has been incredibly helpful in advancing some of the task force debates. The Scotland Office, too, has played a helpful role by providing back-up for the process. If we can build on that way of working, the development of the new body will give Scotland a great opportunity. I hope that that continues.

I endorse all the points that Tim Hopkins has made about the transition. Regardless of how many times some of the concepts are explained, it is easy to see that if no one is there to remind people, it will be hard for those concepts to be taken on board. It is important that there is a parallel mirroring process to feed in views on transition issues from Scotland, as otherwise there is a danger that some decisions that could be disadvantageous to Scotland or that do not follow through the spirit of what is in the white paper might be made very early on. One can imagine that that might happen because of how busy the shadow body is. Those are crucial matters.

The Convener: As there are no further comments, I thank the witnesses. It has been a long morning, but your information has been very helpful. We will be pulling together a report to feed into the bill. We have still to hear from the Commission for Racial Equality and I think that we will want to seek some information from the ministers.

Meeting closed at 12:08.

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