

EQUAL OPPORTUNITIES COMMITTEE

Wednesday 30 June 2004
(Morning)

Session 2

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CONTENTS

Wednesday 30 June 2004

	Col.
ITEMS IN PRIVATE.....	519
“FAIRNESS FOR ALL: A NEW COMMISSION FOR EQUALITY AND HUMAN RIGHTS”	520

EQUAL OPPORTUNITIES COMMITTEE

13th 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 GAVE EVIDENCE:

Kay Hampton (Commission for Racial Equality Scotland)

Maureen Fraser (Commission for Racial Equality Scotland)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Ruth Cooper

ASSISTANT CLERK

Roy McMahon

LOCATION

Committee Room 1

Scottish Parliament Equal Opportunities Committee

Wednesday 30 June 2004

(Morning)

[THE CONVENER *opened the meeting at 11:00*]

Items in Private

The Convener (Cathy Peattie): Good morning and welcome to the 13th meeting in 2004 of the Equal Opportunities Committee. It is probably the last meeting that we shall have in this room—she says with her fingers crossed.

We have received apologies from Marilyn Livingstone and Margaret Smith. Shiona Baird is unable to attend, so Patrick Harvie is here as her committee substitute. I welcome Patrick to the meeting.

Do members agree to take items 3 and 4 in private? Item 3 deals with consideration of the committee's approach to the Department of Trade and Industry white paper on the commission for equality and human rights in the light of the evidence that we will have heard. Item 4 concerns possible arrangements for an away day to consider the committee's forward work programme. Is that agreed?

Members *indicated agreement.*

“Fairness For All: A New Commission for Equality and Human Rights”

11:02

The Convener: I welcome our witnesses: Kay Hampton, the deputy chair of the Commission for Racial Equality and commissioner for Scotland; and Maureen Fraser, the director of the Commission for Racial Equality Scotland.

I invite you to make a short statement, after which we shall move to questions. I know that members have lots of questions that they want to ask you, so we want to use our time in the best way possible.

Kay Hampton (Commission for Racial Equality Scotland): Thank you so much for rescheduling a time for us to give evidence, a little later than had been arranged. We will not say too much in opening, except to say that, as you will be aware, the Commission for Racial Equality has been involved in the process for the past two years and fully supports the principle of having a single equalities commission. However, the white paper that we are considering and the evidence that we are giving must be understood in the framework of there being areas of the white paper on which we require some clarity. I am sure that the committee's questions will deal with some of those areas.

We have one general point to make, which we have made throughout: we feel that the entire principle of equality should be embodied in the paper and is missing. We have always said that, to enshrine that principle, there must be a single equalities act, which the paper clearly does not include. That is a fundamental element of the paper that we feel requires clarity. Without that, a number of areas remain unclear.

The Convener: How do you believe that race interests will be served by the proposals in the white paper?

Kay Hampton: It is difficult to say at this stage because, as you can see from the paper, an impact assessment on race has not been done. One of the requirements under the Race Relations Act 1976 is that, when papers are introduced, a full race equality impact assessment should be carried out. In the absence of that, it is difficult for us to say exactly what the implications will be.

At the moment, the CRE is carrying out a series of consultations with the sector throughout the UK, including Scotland. We are hosting one on 9 July. We plan to bring together members of the community, community groups, the voluntary sector, and those who have used the Race

Relations Act 1976—institutions, the legal sector and so on—so that we can have a proper debate about the implications and how the proposals might affect the various sectors in Scotland and the UK.

The Convener: Will there be an opportunity to feed in the outcome of those consultation meetings to the CRE or elsewhere?

Kay Hampton: Yes; they will become public documents. The commission will submit a full written response to the white paper. We will include all the submissions—we have invited written submissions as well as oral—and all that will become publicly available. We will be delighted to make it available to the committee.

The Convener: Have you any concerns about the implications of the proposals in the white paper on the race equality work that is currently conducted in Scotland?

Kay Hampton: As you know, race equality and equality are reserved matters. There has always been a tension there, and there are a number of grey areas in which we cannot make much of an impact. One such area, which is not covered in the Race Relations Act 1976, is immigration and asylum. The position is already complicated by the fact that we have to keep the balance between reserved and devolved areas, although much of what we do within the framework of the Race Relations Act 1976 impacts on devolved areas such as public services, health and education.

Now that there is a proposal to establish a Great Britain-wide single equalities body, that will definitely impact on the delivery of race equality in the local context. We are not sure what that means and we are not even sure how it will work, given that there will be five new strands. Clearly, the most powers exist in respect of race issues, and there is a great sense that we might overwhelm the other strands, in that we already have a legal focus and we must carry out our public duties. We have to provide advice under section 66 of the Race Relations Act 1976, which is about complainant aid. Section 44 requires us to make funding available to the voluntary sector. If we follow the principle of non-regression, we suggest that all that needs to happen, plus a little bit more. I am not clear how the proposal will operate in practice.

The Convener: You have a strong network of local organisations, including ones in my constituency. How will the proposals affect their work and their communications with the national organisation?

Kay Hampton: As I said, we are in the early stages of our consultation, but concerns are already being expressed by local organisations about what the proposals will mean. If they are

being provided with funding, the first area that people will get concerned about is whether there will be a further reduction in funding and how their funding can be safeguarded. You will notice that the white paper makes reference to preserving funding streams and adopting the same approach with the other strands. In practice, that would mean a larger investment of money and, given that there are currently spending cuts, I am not sure that the money will be made available to do that work.

The primary concern for the voluntary sector and the sector that delivers for us, including the race equality councils, will be funding. The second question will be about how we would cope with the added burden of dealing with a definition that defines equalities in terms of diversity. I am not sure that the capacity is there to deliver that, and there would be a concern that race issues would be diluted or that race equality work would become marginalised. If I was sitting on the board of the single equalities body, I would find setting equalities priorities quite a task. How would we do that without creating concerns in any one of the areas?

Ms Sandra White (Glasgow) (SNP): You have touched on two issues about which concerns have been raised in previous evidence sessions. One is about the new strands; the other is about resourcing and funding. In previous evidence, concerns have been raised that the new commission risks having a hierarchy of equalities in which certain strands are given priority over others. What is your view on that aspect of the proposals in the white paper? I will ask my question on resourcing once you have answered that one.

Kay Hampton: We recognised the point about a hierarchy at the beginning of the process. The Commission for Racial Equality has been around for 28 or 30 years. We have used our powers under legislation and we continue to do so. We are one of the three existing commissions that are devolved, in the sense that we have a Scotland committee. We understand how the system works and we are concerned that we will dominate and make the hierarchy even more real. If one strand has the highest level of power, it will tend to overwhelm the newer strands. Our concern is that the new strands will not develop a discrete identity and get established and that they will not understand how the limited powers that they have can be put to best use.

We are acutely aware of the problem. We realise that the new strands will struggle to reach a certain stage. As I said before, even then, the new strands might never have the same powers as we have. The white paper is clear that the new strands will probably be effective only in the areas

of employment and vocational training, whereas the Race Relations Act 1976 covers a much broader area of life, including health and education, which means that we can take action on issues that arise in those areas. Given the non-regression principle, there will definitely be a hierarchy of powers.

Ms White: Thank you for being so forthright and honest—you have said exactly what will happen. Further down the line, once the new commission and the new strands are more established, could the new strands push for more powers, perhaps in legislation, rather than leave the three levels of hierarchy?

Kay Hampton: Proposals exist to extend the public duty element to the Equal Opportunities Commission, and the Disability Rights Commission will get additional powers in October. However, that still leaves the new strands without such powers, which will mean that 50 per cent of the strands will have powers that the others do not have. It might be possible for the other strands to push for more powers, but that would mean that, in the first five or six years, much of the attention would be focused on gaining more powers rather than on getting the work done.

The question that arises is what will happen to the work that the commissions are currently doing. How will we be able to focus on two separate issues at the same time? It is not easy to get additional powers—we have had ours since 1976, and we have managed to amend the legislation significantly only once. A lot of work goes into trying to extend powers and I am not sure that the newer strands have the capacity to do that. It might be argued that there should be a shadow board to enable the strands to get more powers, but that would still be time consuming. The aim could be achieved that way, or by a single equalities act.

Ms White: I am sure that the committee has listened closely to what you have said. We will look into that matter in our investigation.

Another aspect that has come up time and time again is resources. Again, you have been up front and honest about the cutbacks. Will Scottish resourcing issues be tackled adequately by the new commission?

11:15

Kay Hampton: We cannot put a cost on equality at this stage without having done a proper review and a business case. Because that has not happened, it is difficult to predict the ultimate cost of delivering on all strands. That said, the CRE budget is around £20 million and if we consider that that is not enough to deliver on race equality

we will need to work out the cost of roll-out on all strands.

Resources will eventually become a contested issue, which will be even more relevant to the situation in Scotland, because our experience is that budgets in the CRE are set corporately and that it becomes increasingly difficult to make a case for what we need to deliver in the Scottish context. Even if we resolve the issue of the budget, there will be interesting issues about priority areas, because the budget is one matter but decisions about how the money is spent are another. People might fight their own corners and I am not sure how that would be resolved easily.

The interesting aspect of the white paper for Scotland is that we could be allowed to deliver within the framework of the Scotland Act 1998, which means that we could deliver for the additional strands of language, political opinion and social origin as well as for the recommended strands. However, who would pay for that additional work? Would the money come from the devolved Administration or from the United Kingdom Government? There would also be a question about the nature of the investment that would be required to develop the incoming strands and to bring them up to a standard that was equal to that of the other strands. That will always be an issue. John Wilkes, who was involved in the commission for equality and human rights task force, said from the outset, first, that there would need to be a levelling-up of powers and secondly, that resource implications would need to be carefully scrutinised, because if the work is not resourced effectively throughout the UK, delivery will not be even throughout the UK.

Ms White: I am sure that we will consider the matter with great interest.

Marlyn Glen (North East Scotland) (Lab): I invite you to take another point of view that considers the multiple discrimination that some individuals and groups suffer.

Page 30 of the white paper says:

"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 can that work be taken forward in the Scottish context?

Kay Hampton: As you know, such work will probably be easier in the Scottish context, because the existing commissions have been working informally to bring the different strands together. We recently set up a reference group in Scotland and we have successfully worked out areas that we can address jointly. In Scotland we work more effectively in partnership—because we

are smaller, for example—so I do not think that there will necessarily be a problem. There has always been a spirit of working towards equality with the Scottish Executive because of the need to frame work around the 1998 act. The idea of bringing the strands together is not foreign to us.

The real issue will be the practicalities of who does what and how. There is immense value to be had from cross-cutting and multiple discrimination work. However, people do not often say, “I am discriminated against because I am black and a woman and disabled.” There is usually a single overriding factor for people. In cases of multiple discrimination, the legal approach is always to address the area of discrimination that offers the best chance of winning in the legal process.

There are certain areas in which working together would be effective, such as in giving people advice and information about their rights. We could do some legal work together—we could take up legal cases or carry out inquiries together. However, certain aspects will be distinctive and discrete and will apply to only a single strand, and we need the flexibility to deal with that. I am not sure that we could do everything together. I will ask Maureen Fraser to talk about how that might work in practice.

Maureen Fraser (Commission for Racial Equality Scotland): It would not be anathema for us in Scotland to work together across the different strands. Indeed there has already been co-operation among the equalities strands, particularly on getting amendments to bills through Parliament and encouraging the imposition of a duty to promote equality. That was achieved in education and housing and soon will be in health, so there is a track record and a positive relationship upon which to build. Our working together has been positive.

However, as Commissioner Hampton said, the critical thing to think about is the reality of the experience in practice, particularly for individuals. Multiple-layered discrimination cases are rare, but were we to have such a case we would have to consider the complexities of dealing with it given the different legislation and, in particular, the fact that the legislation covers only employment and vocational training for the new strands, but covers goods and services for the old strands. That is an important point, because individuals want high-quality advice and a quick resolution. We will have to deal with a messy minefield in advising and supporting an individual, given the different scope of the various pieces of legislation. It will be interesting to see how that would work in practice. The simplest solution would be to introduce a single equalities act now and not after the horse has bolted. On one front, working together is positive and we have done it, but on the second

front, the fundamental point is that we are not starting with a level playing field.

The Convener: That is interesting. Sometimes there is frustration about what we can do and what is reserved to Westminster. Introducing a single equalities act would seem to make sense, but there is a bigger issue involved. Members of the committee visited Ireland recently and heard from the Equality Authority, which covers nine equalities strands, about how it manages to support and develop effective equalities strategies nationally and locally through the integrated work that it conducts. In your view, will the proposed commission facilitate such work in Scotland?

Kay Hampton: There are a lot of lessons to be learned from Ireland and we should keep looking to see how the Equality Authority works. I am not sure whether there has been any evaluation of how it works in practice. For us, the stumbling block to reaching a similar position quickly is the lack of harmonisation. Even with race there are discrepancies between the interpretation of direct and indirect discrimination in the article 13 European race directive and in the Race Relations Act 1976. If we do not clear that up, it will become difficult for institutions to provide support to individuals, tell them what their rights are and give them the correct type of advice. As Maureen Fraser indicated, whoever does that work will be working within an unnecessarily complicated framework.

That is not to say that the concept of an equalities commission will not work in practice, because I think that it will, but we need to think about making it work more effectively, which is what the concern is. It will be difficult for an ordinary person to understand what their rights are when they arrive at the door and we say, “We can do this for you on public services and race, but if you are coming to us on the basis of religion, we can only help you on employment.”

That presents many difficulties in practice. I know that we keep going on about the discrepancies in the powers that would be available but, ultimately, the new body would be advising people on the powers that they have and do not have and on their rights and responsibilities. If there is no consistency, it will be difficult to make things work in practice.

The single commission can work, but we need clarity around what is implied in much of the white paper. In principle, the new commission sounds good, but we are not sure how it will work in practice, given all the legal complexities, the courtrooms and the tribunals. Ordinary people do not understand much about the law and they do not understand why we can and cannot do certain elements of the work involved. If we add multiple discrimination to that, we would need an expert

team that would be able to bring all the strands together to make the commission work effectively.

I am not sure whether or not performance before and after bringing together the nine strands has been reviewed. If we were to achieve consistency, we would need to resolve some inherent contradictions, particularly in relation to religion and sexuality, on which there are such strong opinions and views. It is easy to associate minority religions with race, whereas it is difficult to know where the larger religions sit if we are then dealing with the majority of people. It is not that simple when we break things down into detail.

A white paper cannot go into such detail but, when we are reading it, we need to think about how the commission will work in practice. Principles are great, but one needs to think about what happens in practice.

Elaine Smith (Coatbridge and Chryston)

(Lab): The convener referred to frustrations around reserved and devolved issues with respect to equal opportunities. Equal opportunities were devolved to the Northern Ireland Assembly and, as I understand it, a single equalities body was set up there. Have you considered that model and how it was worked up? Do you think that it would make sense for there to be similar devolution of equal opportunities to Scotland, or might that complicate matters?

Kay Hampton: There are probably two ways of considering the devolution question. At the extreme end, it might be felt that it would be easier to revisit the devolution settlement and ask again whether equalities should be reserved or completely devolved and how the arrangements might work more smoothly, given the tensions that exist.

I do not think that the matter is that simple, however. Equality can be considered to be a national issue with a national impact. Because it is related to immigration, which is a national issue that can have a national impact, it makes much more sense for it to be a UK issue. Otherwise, we might end up with a postcode-based service in which equality is dealt with differently on each side of the border. I might get a better service than someone across the border, for example. The simplistic approach of devolving equality to the Scottish Parliament would bring with it costs and questions about whether we could afford to pay the costs of delivering race equality.

There is a question about how to resolve the tensions over what is devolved and what is reserved and the white paper contains some proposals for dealing with that. There could, for example, be a Scotland committee and commissioner, although I am not sure what that would mean in practice. We need more clarity

about governance arrangements and how things would work. If we get the governance right, we can get the new commission to work.

It is suggested in the white paper that we will be able to establish a devolved committee and have one commissioner. The problem is, however, that although we will be able to make decisions on devolved issues, we will be able only to advise on reserved issues. The UK committee will be able to make decisions on devolved issues, which is inconsistent with the devolution settlement because—as we all know—ministers can vote on reserved matters at Westminster but the Scottish committee would not be able to have a direct influence on decisions on, for example, budgets. As a result, we need more autonomy and greater involvement in decision making on devolved and reserved issues.

11:30

It is also not very clear how the committee will work with the Scottish Parliament and the Scottish Executive. At the moment, we advise the Scottish Executive on race equality and the relationship works well. However, although we have no problem submitting papers to the Executive, we need much more clarity about formal and informal relationships with the Executive and the Scottish Parliament, particularly in areas of concern such as asylum and immigration that are reserved but nonetheless impact on devolved matters. It is also very difficult to intervene in cases that involve children in care and so on.

We need to learn what does and does not work from existing commissions' experience of dealing with devolved and reserved issues. The matter is not as simple as it is sometimes made out to be; the concept of devolution is not widely understood across the UK. As we are much more closely involved with devolution, we try to understand better the various relationships.

It will be difficult for one commissioner to oversee six strands. Indeed, I had a non-executive position on one strand and I cannot tell you how much of a burden that was. I cannot imagine how one person will be able to take on the massive burden of representing six strands as well as knowing about devolution and the local context, local needs and so on. The structure of governance will need to be thought through before such an approach will work.

Mrs Nanette Milne (North East Scotland)
(Con): You have essentially answered my first question, which was to seek your views on the proposal that Scotland should have only one commissioner.

Will the appointment process lead to the appointment of a commissioner and committee members who know enough about Scotland?

Kay Hampton: I do not think that that will be a difficulty if we follow the principles that we have already followed. Public appointments that are made under those principles are open and transparent and are based on skills rather than on specific expertise. However, as I have said, it will be extremely difficult to find someone with such a range of skills.

As for appointing committee members, we could work out criteria to balance the skills that are required on a committee. An open and transparent appointments system will make that whole process less problematic. Perhaps the issue is less about the membership of the committee than it is about having the proper structures in place. If those structures are not in place and appropriate governance does not exist, a committee could be made up of the best people who would still find themselves unable to perform effectively.

Mrs Milne: Do you think that Scottish interests will be adequately covered at UK level and not simply be considered by the Scottish committee alone?

Kay Hampton: As I said earlier, the Scottish committee might be expected to focus only on Scottish issues. I do not know what form the feedback loop will take if we have only one person who is able only to advise but not to make fundamental decisions.

Mrs Milne: I suppose that you want someone who will really try to influence the centre.

Kay Hampton: I have sat on a number of the UK boards. It is not easy to be the lone voice putting forward the Scottish case when people do not understand the Scottish context. It is like trying to make a specialist case when one does not exist. That is because there is a lack of knowledge. The white paper suggests that people who sit on the board should have knowledge of devolution, Scottish affairs and so on. That might help to a certain extent, but it is not always about the number of people as much as it is about how much power they have. The power of the Scottish committee will be more important than the number of people on it, as will its relationship with and the support that it gets from the local administrations.

Mrs Milne: The white paper states that the CEHR's board will be responsible for ensuring that its work and priorities are balanced across all the equality strands and that maximum benefit is gained from the opportunity that the body will have to undertake both cross-cutting and strand-specific work. Are you confident that that can be done at UK board level in a way that will address Scotland's specific circumstances?

Kay Hampton: At the moment, because there is little detail of how the priorities will be set and how the board will operate, a lot is left to the discretion of the board. The direction of the work will be very much in the gift of the board that is set up, as will the shape and balance of its priorities. Some would argue that the benefit of discretion being left to the board, rather than the board being directed by the Government, is that the board will have some independence. At the moment, a lot is left to the board to decide; it will have the task of balancing priorities.

I expect that all that the existing committee is doing will continue to be done. That is the starting point for us. If that did not happen, we would be going against the principle of non-regression. We need to use that as a benchmark for balancing matters. Each body will have a minimum of work to do in the existing strands and we will need to build capacity and bring in the other strands. That will be a challenging task for the board when it comes into being.

To answer your question, addressing Scotland's circumstances is probably doable, but it will be challenging and it will be hotly contested by people watching from the outside who have an interest in equalities, especially the strand-specific sectors. We do not want that to happen continuously because it would hamper progress that might be made for the collective good.

Mrs Milne: My final question is on transition arrangements. The white paper mentions the establishment of a transition group to oversee and manage the process. That group will consist of representatives of the three existing commissions, representatives of the new strands and Government officials. Do you have any concerns about how Scottish interests will be represented in the transition group?

Kay Hampton: As you know, we have had only one representative in the discussions so far. We are aware that that has been quite a burdensome task because it was almost a full-time job for the individual. The on-going work in the EOC must have been affected by the involvement of that individual. Given that there is to be a Scottish committee, I would expect the commission to have a similar reference group operating at Scotland level that could feed into corporate discussions. It will be very difficult for one individual to represent Scottish needs and interests in the transitional period, so careful thought must be given to how we can contribute effectively in that period. It will be a crucial time in which important decisions will be made about how the initiative will be operationalised. We need to think about the arrangements for Scotland, because they are not explicit in the white paper.

The Convener: Before we move to the next question, I want to pick up on the issue of having only one commissioner. Last week, it was suggested in evidence that a deputy commissioner might be needed because one person should not be expected to have all the knowledge and carry all of the responsibility. What is your view on the idea of having a deputy commissioner as well as a commissioner?

Kay Hampton: That would be another way in which to deal with the problem; the burden would be shared. The question, however, is about how to make that selection and how to arrive at decisions. It is not clear how that would be done. A useful suggestion was made during a discussion at a meeting of the equalities steering group. It was said that the equalities steering group worked very well because all the strands are represented on it, all the interests are put on the table and so on. We thought that it might be useful to have at Scotland level a similar set-up to that which is proposed for the UK-wide commission because that would allow Scotland greater participation. We also thought that it would be reasonable for one person to link in at UK level and provide feedback to Scotland. The amount of work that is proposed for the 18-month period is immense; it would be quite difficult to do it even with a deputy, especially in the early stages.

I am not clear about the role of each of the different groups. It has been suggested that there will be a steering group and that a shadow board will be appointed at some point. I am not sure whether people on the steering group will move automatically on to the shadow board or whether they will be kept as two separate entities. There is also the task force, which gave the original advice on the paper. I understand that it will continue to do some work.

The focus of the white paper is rightly the bill and getting it passed. It is also right that the paper does not contain too much detail, but we need to get some clarity on what the different groups will do, what the interim arrangements will be and what will happen in the transition period. With that information, we would be able to say whether one commissioner and a deputy could undertake the work.

The Convener: Thank you. I realise that the question was not easy.

Frances Curran (West of Scotland) (SSP): My question is also about arrangements under devolution. The white paper specifies that reports should be laid before the Scottish Parliament on work that the new commission does in Scotland. Is it your understanding that the requirement to do so will be a statutory requirement and, if it is not, should the requirement be made statutory? How will the reporting process work in practice? The

questions are about practical matters; the white paper seems to be lacking in respect of practicalities.

Kay Hampton: There are organisations that do not have a statutory requirement to lay reports before Parliament or to share with the Executive the work that they do in Scotland, but that do so nonetheless. Perhaps it might be better if a little more formality was built into some of the arrangements that are set out in the white paper. There is a lot of good will and good spirit and there is a sense that such things will happen in partnerships. My opinion is that the reporting requirement should be statutory because that would give Parliament a proper scrutiny role and the relationship would become much more meaningful.

If much is left loose and to good will, the impact will probably not be as great and the power of, and Parliament's influence on, the work that is done in Scotland might not be so great. The simple answer is that such matters need to be formalised and made much more explicit.

The reason why we all have so many questions about devolution is that the white paper mentions devolution only in the chapter on devolution. No links are made to any other chapter, nor is devolution threaded through the spirit of the paper—it is almost as if it sits apart. As a result, we must all second-guess what the intention is. Perhaps, given that we want to make a positive response to the white paper, we should ask the Government to explain matters to us more clearly. We should ask how things will work in practice, what the arrangements will be and whether they will be statutory. We could then work out what would be best for us and how we can shape things in future.

As things stand, it looks like all the possibilities were considered and are contained in the chapter on devolution, but that chapter needs a lot of developing—it needs to be connected to all the other chapters in the white paper. I am sorry that I cannot give a straight answer, but I think that we need to be much more firm about arrangements. If we are not, it will be difficult for those who will make the proposal a reality, because some directors might prepare and lay reports and some might not. It is always better to have things laid out clearly.

11:45

Elaine Smith: I want to explore a bit further the issue of engagement with the Scottish Executive. The white paper sets out at paragraph 2.11 the need for the proposed CEHR to

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

Is that adequate? It does not specify targeted guidance.

Kay Hampton: My view is similar to that which I expressed in response to the previous question: if something is not a statutory requirement, it becomes something optional that people do out of good will. If we do not have the funds to deliver on a statutory requirement, we can make a case for getting more resources by saying, "It is a statutory requirement. We have firm guidelines from the Scottish Executive that it would like us to do X in Scotland." However, if we receive guidance and advice from the Scottish Executive that we ought to be doing work that is complementary to what is in its plan, it is difficult for us to make a case for increased budgets and resources. If a requirement is not statutory, it is always negotiable.

Often we have different priorities. When we are deciding on budgets we always pay more attention to statutory requirements than to matters that can be negotiated one way or another. If we really want to deliver in the Scottish context, address Scottish priorities and complement the work of the Scottish Executive so that provision is seamless, we need a better-defined relationship that does not compromise the independence of the proposed single equalities body.

Elaine Smith: I want to continue on that theme, but to approach it from a different angle. The current situation at UK level is that there is a statutory requirement for commissioners to advise the Government on equalities issues. The current commissioners provide advice to the Scottish Executive and, under the proposals, the proposed commission would continue that arrangement, but there is no proposal for a statutory requirement. Given what you have said, do you think that there should be such a requirement?

Kay Hampton: I think that there should be such a requirement, but I do not see any harm in there not being that requirement. At the moment we advise successfully. As Maureen Fraser said, we have provided advice on race for a number of papers, bills and race equality schemes, and the "Racial Equality Matters" document outlines an agenda for race equality work. We have provided advice in a spirit of good will, which works well, but it is dependent on the players at the time, their commitment and how we make it work. Without a statutory requirement, it becomes a case of saying, "If you have the commitment and the will to do it, we will work well together." If there is no such requirement, everything is looser. My preference is for a statutory requirement. We do the work anyway, but that would formalise things and make them neater; everyone would know what was required. However, it might then be said that our relationships were becoming too binding and that we should be able to work much better in

partnership. There is always tension between reserved and devolved issues.

If matters are not set in statutory requirements, they sometimes get lost along the way. Unfortunately, the existing legislation is not ideal. We wish that we could do promotional work and that we could trust the good will of people to get things done, but it does not work like that. Sometimes when organisations have a legal obligation to do something, it gets done much more quickly.

Elaine Smith: With all the strands coming together, and because of the complications that might arise, that could become more important.

Kay Hampton: We will always be struggling with resources and so on. Some strands might get lost on the way unless things can be achieved in them all. We should all be able to advise the Government on how equality should be delivered in a Scottish context. That should not always be in terms of race or women's issues. Those are comfortable issues nowadays because we are used to them; they have been present for a long time. The new strands will be more challenging. We should be talking a lot more about them and engaging with them much more, so that the learning process can work both ways. I would not see any harm in that. Indeed, it would be a useful way of going forward.

Marlyn Glen: The white paper proposes that a memorandum of understanding should be drawn up between the CEHR and the proposed new Scottish human rights commission. Are you content with that approach? Have you considered whether similar formal understandings will be needed between the CEHR and other bodies in Scotland?

Kay Hampton: That adds an extra dimension to the complication. It seems that we have to produce a number of memorandums of understanding as we progress. There is now also a commissioner for children and young people in Scotland. In Wales, there is a possibility of an older persons commission. We will have to tidy up a number of loose ends, with different areas of equalities being dealt with in different ways.

The situation of the Scottish human rights commission is interesting. It has not been established yet, but let us consider what that body will mean to an ordinary person in the street and how it will be perceived. There will be two organisations operating in Scotland with the words "human rights" in their title. That alone will create some tensions. I hope that ministers will consider that. Names are important for the associations that people make.

I return to what we can and cannot do with respect to the areas of work that are devolved and

reserved. The white paper suggests that there will be a memorandum of understanding whereby the GB-wide CEHR will focus on reserved issues in the Scottish context, with the understanding that the Scottish human rights commission will focus only on devolved areas. I do not think that that will be possible in reality and I do not think that the Scottish human rights commission will be happy with that; my understanding is that it will also want to comment on reserved issues in relation to their impact on devolved matters. There will be tensions and problems there.

The memorandum of understanding will have to be quite complex. How it is portrayed to the public will be interesting. People do not often read such memorandums of understanding. That is more for institutions than individuals. In order for people to be informed, the human rights element—whom to contact and what support is available—must be laid out quite simply.

My understanding is that both commissions will be advising at an institutional level. Some Scottish human rights test cases might be taken. My knowledge of Scottish human rights is not vast and I do not pretend to be an expert, but I know that, if there are case studies in some areas but not in others, that will give rise to complications. That aspect needs to be thought through and negotiated carefully.

The concept of tidying up and bringing human rights together with equalities is neat for England and Wales but not for Scotland, as we already have two institutions that will be working together. We might want to think about whether our requirement is just for an equalities commission in Scotland.

Marlyn Glen: I was going to ask whether you envisaged any problems in co-ordinating the work, but I take it that you are saying that there will be immense problems.

Kay Hampton: All these issues were raised with the task force when it was drafting the white paper. However, a lot of them are not clearly reflected in the white paper. It will be interesting to see how they are dealt with, as that has not been made clear.

The Convener: Will the establishment of the single equalities body supersede the need for a human rights commission in Scotland?

Kay Hampton: No. They are two separate issues. Human rights work covers a slightly different patch and is much broader in context. Equal opportunities and equalities work addresses inequality in the context of discrimination, specifically in relation to service provision, access to services and personal discrimination. In that sense, it is quite limited in what it can and cannot do and is very much directed by the level of

powers that are available. For example, if we did not have the powers that we have, we would become a promotional organisation that could talk about the niceties of equality but could not do anything about it. Human rights work is slightly different, as it cuts across all that and hits at fundamental issues. Therefore, I do not think that the establishment of an equalities body will supersede the need for a human rights commission.

The Convener: That is interesting. The white paper states:

“As we approach the establishment of the CEHR, it will be important for the existing three Commissions, and representatives from the new areas of discrimination law, to work closely together to develop a shared understanding and identify opportunities for adding value to existing arrangements.”

How did that process work in Scotland during the consultation and task force period and what kind of work can be done in the transition period?

Kay Hampton: I will speak from a non-executive position. Perhaps Maureen Fraser will want to say something on the question, as it is about what we did in practice.

We worked well together. Immediately, of our own accord, we set up the equalities steering group. Some two years ago, we were aware of the fact that there was thinking around a single equalities body and we set up that group. It is fair to say that, for the past two years, we have worked quite closely with our partners in the DRC and the EOC. However, each organisation has different priorities, different operational plans, different powers and different ways of achieving what it wants in the Scottish context. The work of the Commission for Racial Equality was dominated by public duties. The Race Relations Act 1976 was amended in that period and our focus was on using our new powers. That was not the case for the other organisations. There were few areas in which we could undertake practical work together, as our priorities were so different.

Nevertheless, in ideas and thinking we have worked closely to support one another and we will continue to do so. We will always look for areas in which we can undertake work together. The DRC has been stepping into areas of minority ethnic concerns in identifying cross-cutting issues. However, we are at a very early stage of determining a project on which we can work jointly. We do not want to invent one just to have an excuse to work together; it has to be something real. A case that cuts across the areas would be a good test of how we can work together in practice. I think that, together, we could market information, carry out conflict resolution or extend the infrastructure for supporting individuals who have been discriminated against across the piece.

However, we have come together for the sole purpose of discussing the implications of the white paper, our response to the paper and how we will deal with it in a local context.

12:00

Maureen Fraser: Following on from the commissioner's comments, I think that we have already started the process and have established a platform that we can build on. It is quite right to say that we should not simply invent a mechanism that allows us to work together, because that would be a waste of everyone's time and resources and would have no impact for real people.

Up to now, we have successfully worked together on preparing for discussions such as this one on the CEHR proposals and on co-operating over amendments to proposed legislation. For example, we took a joint approach on seeking the duty to promote race equality, which has been very successful. Moreover, the three statutory commissions have worked together on a joint approach to the Scottish Executive. That approach is joined up on the basis of equalities, not individual strands, but it has yet to progress.

We need to build much more and have started elementary discussions on what might be the kernel of a tangible issue: employment. Although people would immediately point out that employment legislation is reserved, our focus is the economic impact of such legislation in Scotland, which is a devolved matter. Those discussions would also include the new strands, which extend into employment legislation.

We should also acknowledge that, because of different interests and priorities, it might not help to work together over certain issues. That said, it is important that we keep one another informed about what we are doing. Let me give a classic example in that respect. As the duty to promote race equality gives the CRE strong powers, which we are exercising, there is no room for co-operating with other groups, because they do not have the same powers. However, there is plenty of space to exchange information and so on. After all, the other statutory commissions will receive those powers at some point.

I add a note of caution. If people expect the new strands to join up with the existing strands, I should point out that there is no reliable infrastructure or pool of resources to support the development of that work. As a result, the new strands are immediately working at a disadvantage and are competing almost as poor cousins. Although we might expect certain things to happen, those strands do not have the structure or resources to deliver them. The people involved

might have phenomenal expertise and experience, but even they would say that they needed the formal back-up of real money and institutional, infrastructural support. However, that element is absent from the detail of the transitional arrangements. How can we have effective transitional arrangements if we face such problems at the outset?

The Convener: As you are aware, the committee has to prepare and submit a report on its findings. What should we say about the interim arrangements?

Kay Hampton: Maureen Fraser's final point is relevant in that respect. It is desirable for us all to work together. After all, no one can deny that being in a team provides strength and allows us to work towards a common outcome. However, it would be dangerous to ignore the fact that the strands are at different stages of development and knowledge. After all, we have 28 years' experience in using the law and knowing when to take up a case and how to advise clients. It would be folly to give someone the power to promote equality and provide advice without also giving them the space to carry out that work effectively or even to take up a test case to see how it feels.

Given that supporting one another is inherent in the concept of equality, it would be wrong for us to say, "We're okay; we have the powers. Let the others struggle." Equality does not work in that way. We feel equally for the incoming strands and want them to reach our level. However, we also feel disempowered because, although we have made a commitment to assist them to reach our level, we simply do not have the resources or time to do so.

Ultimately, we need legislation that establishes the infrastructure to support the strands' development over the interim period. As members know, the voluntary sector in Scotland is probably not as structured or as effective as the voluntary sector in England and Wales. However, it took a long time for that to come to light. For example, the Inter Faith Network for the United Kingdom exists for completely different reasons and outside the new legal elements that are being introduced. We cannot expect it to take on the burden of dealing with equality without giving it the capacity to do so.

If we do not give such groups the skills, the knowledge and the ability to develop and use the new powers, we will have lost an opportunity. As a result, we must focus on how we bring everyone up to the same standard to allow us to work as an effective team and move forward. We face a highly problematic situation. If we do not bring everyone up to the same standard, we will simply reinforce the hierarchies that were mentioned earlier and we will be unable to reverse that trend.

The Convener: As members have no other questions, I thank the witnesses for their evidence. We now move into private session to discuss two approach papers.

12:06

Meeting continued in private until 12:29.

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