



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Equalities and Human Rights Committee

**Thursday 26 April 2018**

**Session 5**



The Scottish Parliament  
Pàrlamaid na h-Alba



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**Thursday 26 April 2018**

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**EQUALITIES AND HUMAN RIGHTS COMMITTEE**  
**12<sup>th</sup> Meeting 2018, Session 5**

**CONVENER**

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

**DEPUTY CONVENER**

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

**COMMITTEE MEMBERS**

\*Mary Fee (West Scotland) (Lab)  
\*Jamie Greene (West Scotland) (Con)  
\*Fulton MacGregor (Coatbridge and Chryston) (SNP)  
\*Gail Ross (Caithness, Sutherland and Ross) (SNP)  
\*Annie Wells (Glasgow) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Danny Boyle (BEMIS)  
Justine Bradd (Edinburgh Tenants Federation)  
Cath Denholm (NHS Health Scotland)  
Heather Ford (Edinburgh Tenants Federation)  
Jane-Claire Judson (Chest Heart & Stroke Scotland)  
Peter Kelly (Poverty Alliance)  
Gordon MacDonald (Christian Action Research and Education)  
Councillor Adam McVey (City of Edinburgh Council)  
James Morton (Scottish Trans Alliance)  
Rami Okasha (Care Inspectorate)  
Emma Ritch (Engender)  
Councillor Elena Whitham (Convention of Scottish Local Authorities)

**CLERK TO THE COMMITTEE**

Claire Menzies

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



## Scottish Parliament

### Equalities and Human Rights Committee

Thursday 26 April 2018

*[The Convener opened the meeting at 09:01]*

### Interests

**The Convener (Christina McKelvie):** Good morning and welcome to the 12th meeting in 2018 of the Equalities and Human Rights Committee. I make the usual request that mobile devices be switched to aeroplane mode and that members' mobile phones be off the table.

We have apologies from the committee's adviser, Murray Hunt, who could not make it up to Scotland for the meeting; however, he is watching online. We also have apologies from Alex Cole-Hamilton, who is a bit delayed in getting here; he should be here by 10 am.

Agenda item 1 is a declaration of interests by our new committee member. I pay tribute to former committee member David Torrance for his work on the committee and wish him well in his new endeavours in the committees that he is now on. We put on record our thanks to him.

We welcome Fulton MacGregor, who is the new member of the committee. I ask him to declare any interests, please.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** Thank you, convener. I am really looking forward to working with all members of the committee. I have seen some of the work that the committee has done, and it looks really good.

I refer members to my entry in the register of members' interests. I am still registered as a social worker with the Scottish Social Services Council.

**The Convener:** Thank you very much.

## Human Rights and the Scottish Parliament

09:02

**The Convener:** Agenda item 2 is the continuation of our inquiry into human rights and the Scottish Parliament.

Earlier this week, I led a cross-party delegation of committee members to Strasbourg for meetings with key European institutions in the field of human rights. The delegation included Alex Cole-Hamilton, who is deputy convener of the committee, Mary Fee, Jamie Greene, members of the Scottish Parliament information centre and our clerk.

As part of the international evidence-gathering phase of the inquiry, the delegation met key European representatives, including the European Court of Human Rights, the Council of Europe's Commissioner for Human Rights, and the Parliamentary Assembly of the Council of Europe, and we managed to speak to some members of the Council of Europe's Committee on Legal Affairs and Human Rights, which was very interesting. We also met the European Union's ambassador to the Council of Europe and representatives of the European ombudsman's office and the International Institute of Human Rights. We had a packed few days.

I put on record our thanks to everyone who facilitated our meetings in Strasbourg. We had a very busy schedule, but we managed to keep to time and to talk to everybody there, which greatly added to the committee's knowledge for the inquiry. A report on our visit will be included in our final report on the inquiry.

Before we kick off our evidence session, I ask Mary Fee and Jamie Greene to give us a wee update on how they thought the visit went and the evidence that was gathered from it.

**Mary Fee (West Scotland) (Lab):** I, too, put on record my thanks to everyone who arranged and facilitated the meetings and the people whom we met. As the convener said, we met a number of organisations and individuals.

From my perspective, the visit certainly helped to put into context where all the different European organisations sit and how they fit together, and it gave me a broader and better understanding of the potential knock-on impacts of Brexit and of the role of the European ombudsman.

**Jamie Greene (West Scotland) (Con):** I put on record my thanks to the clerks and all the staff at this end and at the other end who helped to

facilitate the trip. We had an excellent, action-packed few days.

I reiterate what Mary Fee said. It was a fascinating set of meetings that gave us a big insight into the human rights scenario, which is quite complex, involving, as it does, many stakeholders and organisations. It was very interesting to meet the new Commissioner for Human Rights at the Council of Europe, who has not long taken up the job. She seems to be enthusiastic about ensuring that the Council of Europe and its 47 member states meet their international obligation to focus, or refocus, on human rights. Notwithstanding everything that is happening with Brexit, she wants the United Kingdom to give a firm commitment to continuing its membership of the Council of Europe, which I think will be a key organisation in the new political landscape that we are about to enter.

I also thank my MSP colleagues for an enjoyable experience.

**The Convener:** I think that that meant that we all got on. We enjoyed the visit greatly.

In addition, last Friday, one of our colleagues, Gail Ross, hosted the second external stakeholders focus group session as part of our inquiry. That event took place in Inverness and Gail Ross handled it on her own, with excellent clerk support. About 30 stakeholders attended, and a wide range of topics were discussed, including mental health and wellbeing in the context of human rights. There was also a fact-finding visit to Spirit Advocacy, a third sector group that provides mental health advocacy and support services across the Highland area—you can imagine the geographical challenges involved in that work. I put on record our thanks to the clerks and the organisations that organised that visit. We have a further two such visits coming up soon, in Galashiels and Clydebank.

Gail, would you like to give the committee an update on how you think that Friday's event went and the benefits of it?

**Gail Ross (Caithness, Sutherland and Ross) (SNP):** It was great to get back to Inverness and meet a lot of people I had interaction with when I was a councillor on Highland Council.

In the morning, as you said, we had a visit to Spirit Advocacy. I put on record my thanks to the people who met us there—Ken, Sue, Joanne, Christine, Emma, Alan and Jill. We had a really interesting conversation about how Government and the Parliament consult them in the legislation process. They told us that they can sometimes find it difficult to respond to consultations, given the amount of legislation that comes through, the timing and the people whom they have available.

Emma gave us a personal account of the problems that she had had with a number of authorities. She has learning difficulties, and she explained in some detail many of the problems that she has faced. At times, it was quite emotional. I thank her for coming along and opening up.

In the bigger session in the afternoon, we had two break-out focus groups, which included representatives of mental health charities, disability groups and children's charities. They gave stark examples of challenges that they face in their everyday lives. They gave examples of legislation that looks good on paper, but which has not been enforced. They mentioned the Disability Discrimination Act 1995 and cited people without blue badges parking in disabled bays, people parking on pavements and some new restaurants not having disabled toilets. Their evidence was quite stark.

In both sessions, there was quite a heavy emphasis on the benefits system and especially the interview process. People said that it was very unfair, and they talked about being treated like second-class citizens—especially people with mental health difficulties, which exacerbate the issues. We had a lot of discussion about a lot of different things.

I put on the record again my thanks to everyone who organised the meetings. I thank Seán Wixted for chumming me up, and Debra Gourlay and Laura McLaren as well. It was really useful, and I think that the groups felt that it was useful. More than one person said to me at the end, "We really appreciate you making the effort to come up here." I think it shows that we are accessible both as a committee and as a Parliament. It was really good.

**The Convener:** Thanks very much, Gail, and thanks for the work that you undertook there. As people will see, we are not doing work only in our committee meetings; we are working more widely, whether it is in Europe or in Inverness, Clydebank, Galashiels or the other places that we are going to visit. However, the aspect of the work that we do in our committee meetings is incredibly important, which brings me to this morning's oral evidence-taking session.

I welcome our first panel of witnesses. Rami Okasha is executive director of strategy and improvement at the Care Inspectorate, Councillor Elena Whitham is community wellbeing spokesperson at the Convention of Scottish Local Authorities, Councillor Adam McVey is leader of the City of Edinburgh Council and Cath Denholm is co-convener of the Scottish national action plan for human rights and director of strategy at NHS Health Scotland. I warmly welcome you all to the committee.

You will have seen the breadth of the work that we are undertaking, and we have a number of questions for you. Thank you for any written evidence that you have sent in to us, which is always gratefully received. We want to do as much as we can to really interrogate the idea of the Scottish Parliament becoming a guarantor of human rights and policy-making processes being washed through a human rights filter before things make it anywhere near this place. We are really interested in that process. You exercise those types of processes in your organisations, so we are really keen to hear about the work that you have done, the lessons that you have learned and maybe some of the pitfalls that we can avoid.

We are really grateful for your evidence this morning. We will kick off with Gail Ross, who has a number of questions under the heading “Why human rights?”

**Gail Ross:** Good morning, panel. We have had a number of evidence-taking sessions in our inquiry, and I usually kick off by asking the witnesses how we can embed human rights in society. This is the first time that a committee has been given a remit specifically on human rights and we realise that we have a lot of work to do, not just in this committee but in other committees. When I go out and ask people in my constituency, “What does human rights mean to you?”, they always tell me that it is something that happens to someone else: it is an immigration thing or a prisoner thing. When I explain a little bit more, they realise that everyone has human rights. How do we get that message out there and embed it in society?

**Councillor Adam McVey (City of Edinburgh Council):** From our perspective as a local authority, the answer to that question is service driven. It is about making sure that all the services that we provide are seen through the prism of those who use them. An example is housing. You will hear more about that later from Heather Ford and others, but it is a crystallised example of where something went wrong in service provision. Something always goes wrong, as no one ever has a 100 per cent success rate in doing anything, but it is about making sure that our procedures and the entitlements that people have are seen through the prism of the people who use the services. They should not be delivered as a tick-box exercise or seen as just another policy delivery; they must be seen through the prism of the people who use them.

Framing it in that way—taking a bottom-up approach and focusing on those who use the services, rather than taking a top-down approach and focusing on supplying the services—is probably the best way to get people to really think meaningfully about aspects of the services that

they are delivering. I hope that that is our mentality throughout our organisation, but the instance that you will hear about later highlights the need for further change.

**Gail Ross:** Do you have anybody in the council who deals specifically with human rights, or is it everyone’s responsibility?

**Councillor McVey:** We have an equalities officer who is responsible for things such as equalities and community planning, for example. Again, I think that it is seen through the prism of a bottom-up, community-up approach, rather than a council-down approach.

09:15

**Gail Ross:** Would you consider changing that person’s remit to make him or her an equalities and human rights officer?

**Councillor McVey:** I think that we would consider it. It is quite a wide-ranging remit anyway. Unfortunately, the person who was doing that job left to join Edinburgh College in a similar role, which annoyed us greatly. They were one of those people who are irreplaceable. It is hard to replace someone who is irreplaceable.

It is definitely worth seeing how we can further change the ethos of the organisation. Whether that is about putting that responsibility specifically into the direct remit of the senior directors and the chief executive of the organisation or whether it is about creating or enhancing a position somewhere within the organisation to add a monitoring officer-type role, we should have a look at the best way to get us to where we need to be more quickly.

**Gail Ross:** When policy is being formulated by officers and elected members, how do you consult from a human rights point of view?

**Councillor McVey:** We consult on more or less everything that we do. Every report that goes through the City of Edinburgh Council has an equalities impact section—if it is a bog standard report on something that apparently has nothing to do with equalities, there is still a paragraph that an officer has to look at to decide whether there will be any kind of equalities impact.

In terms of expanding that out and looking at how we frame that, we are already doing a bit of work around ensuring that that section, in itself, is meaningful. Putting in that section was a great thing because it meant that everything going through the council had that kind of assessment, even if it was a desktop analysis. However, we found too often that a lot of officers were copying and pasting the same paragraph that said, “No equalities impact”, which will be familiar to most people, as that is what is done in most organisations.

We are trying to move to a system that is far more relevant and forces more officers to look at the equalities impact so that committees get more tailored and robust information throughout the process, and they will be happy to look at human rights specifically being further integrated into that particular piece of work.

**Rami Okasha (Care Inspectorate):** The particular focus of the Care Inspectorate is to regulate and to support improvement in the quality of social care—social services in its broadest sense, from early learning and childcare through to the last days of someone's life. Human rights issues become really central to that, because if people are vulnerable and require some support, there can be a risk that their human rights could be infringed or not considered properly.

Over the past year, the Care Inspectorate has led, with others, the development of a new set of national care standards across all areas of health and social care, with human rights principles embedded in those standards. Rather than thinking of human rights as being something that sits over there, which we need to take account of from time to time, we think of human rights as being absolutely central to our work—not only the quality assurance work that we do in care services, but the work that we do to try to support improvement.

For us, one of the big changes has been to pay greater attention in our work to the experiences of people who are using care services. We are moving away from the old approach of using regulation that is focused on inputs, policies and procedures towards saying, "What is the impact of a care service on someone who is experiencing it and how can the quality of their life be improved as a result of it?" Human rights are really central to that, so our approach has been to not put human rights in a box and say, "Well, that is human rights," but rather to try to embed them in everything that we do.

**Councillor Elena Whitham (Convention of Scottish Local Authorities):** COSLA's member authorities are steeped in human rights and equality. To follow on from what Adam McVey was saying, it is important that we embed that and make it normal. Far too often, human rights and equality are seen as things that are done at a national or an international level.

Member authorities are keen to look at our equalities assessments, as Adam was saying, but how can COSLA help authorities to look at those authorities that are using equality and human rights impact assessments and help to roll that out right across Scotland? We understand that that will be resource intensive, but we must ask how we can support our members to be able to do that.

We must also ask how we can empower our communities—right down to our young people, who are growing up in rights-respecting schools and learning at an early age, through their local authority provision, what their rights are. If we can start at that level, it will become normal for everybody to expect that everything will be done through the prism of human rights. In the past year, we have seen quite a few authorities that, in setting their budgets, have looked at them through that lens. COSLA is quite keen to take evidence from its member authorities and start to look at that.

**Cath Denholm (NHS Health Scotland):** We have approached the issue from the perspective of the right to health, because that affects everybody in the country. We also have a very strong belief that any organisation—big or small—can take a human rights-based approach and, through that, improve the quality of what it does.

I will say a little bit about NHS Health Scotland. We are a small part of the NHS and a small, specialist national health board whose mission is to improve the health of the people of Scotland. In 2012, we launched a new strategy called "A Fairer Healthier Scotland: Our strategy 2012-2017", which was about everyone in the country being able to have their fair share of the opportunities, resources and confidence that they need to live as long and healthy lives as possible. For me, the connection between that aim, human rights and the right to health is very simple, because being able to live for as long and as healthily as possible is basically about someone exercising their right to the highest attainable standard of health. To me, the health inequalities with which many committee members will be very familiar are a very stark indicator that, at the moment, not everyone in this country is able to do that.

That is the perspective that we have taken. We have been very clear that we are not a human rights organisation, and I am certainly not a human rights expert. However, I cannot emphasise enough the benefit and value that really thinking about the right to health, being very articulate about it and taking a human rights-based approach have given us. The right to health provides an additional moral, legal and international context for the work that we do, and is not just about being able to access good, high-quality services but about all the things that enable people to live long and healthy lives, such as access to housing, privacy and education. Bringing all that together gives us a very strong basis on which to promote our work and to advocate what we promote daily, which is a perspective of health in all policies. We believe that every part of government—local and national—has a role to play in tackling health inequalities through looking at how health can be



promoted through everything that people do in the provision of public service. I have seen other people giving evidence to the committee about that. If the committee is doing nothing else, it is advocating the further incorporation of the International Covenant on Economic, Social and Cultural Rights into domestic law in some way, which puts matters such as the right to health right in focus.

A couple of years ago, we made a decision very explicitly to pursue a human rights-based approach in the work that we do, and we got the support of our board to do so. That has helped us, as an organisation, to grow in confidence in talking about human rights and helping our staff to do so. A lot of other people who have given evidence have referred to the PANEL approach—participation, accountability, non-discrimination and equality, empowerment and legality—which we have found to be very practical and has helped us to frame our communications and the way in which we consult on national policies. It has also helped us to frame our overarching strategy: our latest iteration of “A Fairer Healthier Scotland” is very explicit about why PANEL is hugely important in reducing health inequalities. Such an approach has also helped us to pay attention to how our own staff participate in the work that we do and—linking to what other people have said about impact assessment—really think about the impact of their work on the people who are most likely to experience inequality.

**The Convener:** I want to pick up on a point that jumped out at me from all our panellists, which was that you are all on a journey in refreshing and refocusing your human rights approaches. Can you give me examples in which you used service users or people from protected characteristics groups to develop that work?

**Rami Okasha:** I was nodding because that has been such an important part of developing the new care standards. A development group was pulled together that included people with experience in care and of providing care. The group challenged and materially changed the standards throughout the process in important ways that will have significant impacts.

I will give the committee an example. Initially, when a group of professionals sat around the table to discuss new standards, everyone said that there is no question but that safety is the most important thing across health and social care. The challenge to that point from people who experience care was profound and changed the professionals’ thinking. They said that although safety is important, it is but one part of their wellbeing; they want the right to be able to live, to take risks and to do things in their own way.

One of the most powerful things that I heard was when someone who has experience of care said that safety is what their carer talks about when they want the person not to do something. That was a turning point for me in terms of realising that the professionals had to change their way of thinking; they have to understand what people who experience a service are telling us and to respond accordingly.

Sometimes—as I am sure everyone in the room is aware—consultation can be tokenistic, so getting something that is deeper and which results in changing policy is powerful.

**The Convener:** My next question is for Adam McVey to respond to from the local authority perspective. Elena Whitham can respond afterwards, on the more strategic COSLA level.

I know that the City of Edinburgh Council has done a lot of experiential work, especially on housing. I am also aware that it is doing an equality and human rights impact assessment. I am keen to know whether you have used the experiential learning from service users in that assessment. Have you done that in your budget process?

**Councillor McVey:** We have a target to use 1 per cent of our budget in participatory budgeting. We are nowhere near 1 per cent yet, but the City of Edinburgh Council has a substantial budget, so 1 per cent amounts to more than £10 million. We have already put in place committee grants, through that process.

We have a transport forum that includes a cross-section of users from average interested punters, whom we picked through a selection process in order to get a genuine cross-section of such people, to people in haulage, public transport and so on. Its members include Edinburgh city residents of different ages and backgrounds. We put them all in a room and they act as a sounding board and, in a way, a sense check for the big transport policies that we are putting forward.

We are not just trying to change the wider ethos and culture of the organisation; we have used some of that thinking and those templates in tangible decisions in areas that one might not usually think of, such as transport. Normally, people think immediately about personalised services such as housing and care, in that context. However, transport is hugely important: if a person with visual impairment cannot get around the city, what use is the city?

**Councillor Whitham:** COSLA is working with the Scottish Government. We have an officer looking at participatory budgeting and how communities engage in decision-making processes across Scotland. We want perhaps to go further than the 1 per cent target.

A lot of good work is being done locally with grant-giving models of participatory budgeting. We are looking at how we can mainstream that, which means moving from that simple grant-giving model to involving communities in decision making about everything from transport to where budgets are spent in local authorities.

I will give an example. Perth and Kinross Council has worked with the Scottish Human Rights Commission to embed human rights in its approach to all its work. It had an innovation forum and lots of events took place. Lorraine Cook, who is with me—she is in the gallery—was at the events for COSLA. She has told me that there was a complete cross-section of local people, including children. They were involved in establishing a fairness commission; the council now does fairness impact assessments as part of its budget-setting process.

That is one example. When we look at what is happening more widely throughout Scotland, we will see that councils are doing such work, but are perhaps not capturing it. It is up to COSLA to help councils to capture the good processes that are being used, and to share them more widely.

09:30

**Fulton MacGregor:** Do panel members, in particular Elena Whitham and Adam McVey, think that councils should have specific equalities committees that robustly scrutinise major policy decisions? I ask because I am thinking about a major policy decision in North Lanarkshire, of which you might be aware, relating to removal of all the tower blocks there. The decision was publicised on the radio and on television before any information was given to residents. I have held a couple of meetings about tower blocks that will come down in the next couple of years in my area. It strikes me very much as a human rights issue: to be blunt, people are being forced to move from their homes, whether they like it or not. Should not such major decisions have gone through high-level equalities scrutiny—and not just councillor scrutiny?

**Councillor Whitham:** There are different practices around Scotland. We need to look at where there is good practice so that we can embed it. In some councils, that might involve an officer decision following, as Adam McVey said earlier, an equalities impact assessment. In my authority—East Ayrshire Council—such a matter would have gone through our equalities forum and would have been put before the tenants and residents federation before decisions were made. It is about capturing where practices are done well and how we use the resources that we have to help authorities to use that type of model and

scrutiny before such matters are discussed in the media.

**The Convener:** I will bring in Adam McVey, because he has the example of the Leith campaign, from which we will hear later. The committee has sort of become friends with that project. How did the decision on the Leith campaign come about? Would the decision-making process in North Lanarkshire Council that Fulton MacGregor described have happened in the City of Edinburgh Council?

**Councillor McVey:** I do not think so. Similar to what Elena Whitham described, the City of Edinburgh Council would have engaged with the tenants federation. We engage with that federation, which consults before it comes to a position, before we decide rent rates, for example. We have quite a robust period of engagement before we take such substantial decisions, including on repair and maintenance of the entire estate. We have prioritised kitchen and bathroom upgrades directly as a result of the tenants federation saying that it has been waiting X years for replacement kitchens and bathrooms. In response, the council decided to prioritise a lot of our repair and maintenance budget in that area to ensure that that replacement was done. Thankfully, we are now coming to the end of that programme, which means that our full estate should be adequate for people's needs, eventually.

On governance and decision making, councils use a host of models. In the City of Edinburgh Council, equalities sits within the policy and strategy committee, which I chair, as council leader. However, equalities also has a big part in our chief scrutiny committee, which is not an executive decision-making committee but a scrutiny committee that is chaired by the opposition and looks at governance, risk and best value. Every committee report that goes through our executive committees, which are decision-making committees, includes an equalities impact assessment, and we are trying to tighten that up.

I do not think that Fulton MacGregor's example would have happened in Edinburgh—or in other local authorities—because we would have had engagement before the decision even came before councillors. On such a big decision, we would probably have had a three-tier process. Certainly, the decision would have been accountable through our governance committee.

**Fulton MacGregor:** Tenants and residents associations have been mentioned a couple of times, but there is an equalities issue with them, too. We need to accept that not everyone would attend such forums. Attempts should be made to involve everybody in major decisions.

**The Convener:** That quite nicely takes me back to the overall issue of participation and experiential learning, and how it is ensured that the voice of the people in the protected characteristics groups are heard through NHS Health Scotland, for example.

**Cath Denholm:** There is no doubt but that working directly with the public is a particular challenge for organisations such as the NHS at national-policy level. How can that be done in a meaningful and not tokenistic way?

For us, there has been real value in working through the process in “Scotland’s National Action Plan for Human Rights”. That has been hugely beneficial and hugely powerful for us, because it was set up from the start as a civic participation process in which civic organisations and duty-bearing organisations work together. From the outset, we have worked with organisations including the Health and Social Care Alliance Scotland and the SHRC. That has helped us to give access to our networks to people who work directly with people with lived experience. We have sought to bring all that back into our own work.

I will give a couple of brief examples. Through that process and working with the Health and Social Care Alliance Scotland and the University of Strathclyde policy unit, we have funded a very innovative piece of peer-based research. A number of people with direct experience of homelessness and asylum seeking were trained to be peer researchers. They then worked with their peers to understand at a very practical and granular level, using the panel approach, participation in decisions about health, who was accountable for decisions about health, and whether people were discriminated against, for example. That has become a powerful piece of work. That learning has been shared in lots of circles of people who deliver health and social care services, and the approach of working with peer-based researchers in that way has been used in other groups.

Another example relates to the broader network of Scotland’s national action plan. Our group is a health and social care group, but we have collaborated with the group that deals with an adequate standard of living, for example. A number of people on that group have lived experience. Again, we have been able to extend our network and talk about areas of mutual interest that we can pursue together. Fuel poverty, for example, concerns both groups. How can we use our experience of formulating policy using data and evidence, and lived experience, and bring them together to form a stronger narrative?

**Gail Ross:** I will pick up on what Cath Denholm said. Without going into too much detail, on Friday

we heard about people with existing mental health conditions accessing healthcare. People have almost been dismissed if they have had breathing difficulties or other symptoms that could have been dismissed as being part of their anxiety issues, but such things have turned out to be more serious. How do we deal with health professionals who treat such people so dismissively? What recourse do those people have? Who can they go to?

**Cath Denholm:** That is a really big issue. Mental health provides a perfect example. The physical problems of people who present with mental health issues are often ignored. NHS Health Scotland is not a service-based organisation, and people must be helped to understand that. It is about working through human rights-based concepts such as triple-A Q. Are services genuinely accessible to people, including people who are experiencing mental health issues, so that they can access all the services that they need in order to improve their health? We have quite a long way to go in working with people who deliver health and social care services so that they understand that.

It is about starting again with the idea that people who experience mental health issues have the right to the highest-attainable standards of physical and mental health, as everybody else does, and continuing to promote that.

**The Convener:** Will you tell us what “triple-A Q” is? Members know what it is, but it would be helpful for the record.

**Cath Denholm:** I sometimes have to look for that. Triple-A Q is about services being available to everybody across the country and there being relevant infrastructures. It is about services being accessible, which means their being physically accessible to everybody, including to people who have different issues in accessing services, whether those issues are to do with literacy, understanding or additional support needs. It is about services being culturally acceptable to all the different people and about the quality of services not being compromised, regardless of to whom they are being delivered. It is a brilliant framework through which to interrogate any kind of public service that we provide.

**The Convener:** That was a great explanation. Thanks very much.

Rami Okasha wanted to come in on inspections.

**Rami Okasha:** That is a really important point. In a large and complex system, understanding of human rights cannot be turned on and off. In the health and social care system, for example, there is a role for leaders in championing and ensuring that services are being delivered to people in a way that is consistent with their human rights, but

there is also a need to build the capacity, skills and confidence of the workforce. That takes time and requires investment, but one of the advantages of the health and social care system is that its workforce is, largely, regulated by professional regulators that have very strong workforce development remits, which means that there is an opportunity to influence, engage and seek to change, through that route. As well as a top-down approach, we need a bottom-up approach if we are to begin to make human rights real for people who experience care.

**Mary Fee:** I have a brief follow-up question before I ask my substantive question.

I was struck by Rami Okasha's observation that we need to have a proper understanding of human rights and that we need to build capacity and skills. In my view, to build a proper understanding of human rights, we need to put in place a full training programme in almost every organisation across the country. Along with other members of the committee, I have a bee in my bonnet about equality impact assessments being a tick-box exercise. I would not want human rights to become the subject of another paragraph in a manual that said that we must take account of everyone's human rights.

Across the organisations that you represent, are you doing any substantive training in what human rights means, to help people to do their work?

**Rami Okasha:** Yes. It is an important point, but such training is not something that the Care Inspectorate does alone or with others. The primary responsibility for training staff who work in health and social care services lies with the providers of those services, be they public sector, voluntary sector or private sector organisations. One of the roles that we, as a regulator, play is in ensuring that the staff in those services are being well trained and that that is having a positive impact on people. It is possible for a care service to have the best training plans in the world, but what good are they if they are not having a positive impact on the people who receive that service?

The approach that the Care Inspectorate is taking is to change how we carry out our inspections and to build into them the new human rights-based national care standards. For different types of settings, we are developing clear illustrations of the quality that we expect in how people are treated, how their needs are assessed and met, and the extent to which people who are in a residential setting have opportunities to go outside and enjoy the activities that they used to love before they came into that residential setting.

As well as playing a role in ensuring that training is happening and that it is having a positive

impact, we play an important role in assessing the impact of that training. As well as working with individual care services, the Care Inspectorate is responsible for providing scrutiny of social work. We work with other scrutiny bodies to look at how local authorities, health and social care partnerships and community planning partnerships are designing and planning their services, and looking at how staff are being trained is an important part of those inspections.

**Mary Fee:** Would Cath Denholm or Elena Whitham like to comment?

**Councillor Whitham:** COSLA recognises that a huge amount of new legislation is coming in. Among other things, we have the Community Empowerment (Scotland) Act 2015 and the fairer Scotland duty. At local authority level, people sometimes feel that they have a handle on something and that their staff are ready to deal with it only for something else to come along.

We need a chance to step back, look at everything in the round and figure out how to empower our local authorities to empower their staff to interpret everything that is in front of them in a cohesive manner. That will be resource intensive. We would be happy to work with the committee and all the partners to make sure that local authorities are able to do that in a purposeful and meaningful way. Training can sometimes feel disjointed, so we need to figure out how to bring it together so that we can train people once as opposed to continually.

09:45

**Mary Fee:** When I was a councillor, before I became an MSP, my local authority had a training session with newly elected and returning members to go through legal obligations, the cycle of meetings and everything that happens, and the expectations about elected representatives. I am sure that all local authorities have such a session, which would be an obvious place to add a bit about human rights. I would be interested in any comments on that from Adam McVey and Elena Whitham. It is all very well to train local authority staff, but elected representatives have an important role to play and they need as full an understanding of what is expected of them under the human rights prism as do local authority staff.

**Councillor McVey:** Among our elected members, we have appointed an equalities champion. It is positive that several members have disabilities, and they have said to the wider populace of elected members that the system of decision making is not built for them. We are looking fundamentally not just at how service and policy decisions are made, in terms of equalities, but at how those decisions come to elected

members. If we make them more accessible to elected members, they will be more accessible to everyone in the city.

I pick up the point that was made about integration joint boards and care. Edinburgh has well-publicised issues with regard to health and social care, and, although we embrace the overall aim, we must ensure that there is some caution going forward. Our experience is that clinicians are very strict in their interpretations of the rights of their patients and that strictness and inflexibility has an impact, because the services—whether delivered publicly or privately—are not able to respond. We are trying to maintain those high standards and have a service that is open to everyone, but we do not want the backlogs that we have in Edinburgh, so we are looking at self-directed support.

The issue is not just about the quality of care, which Rami Okasha spoke about, but about decision making and the empowerment of individuals over the care that they want. We have found challenges in the way in which our staff have engaged with that subject, and we are trying to do far more training of the people who are doing the assessments to make sure that self-directed support is a more viable option for people. We hope that, by doing that, we not only will tackle the backlog and maintain the integrity of the clinicians' positions with regard to patients but will empower the human rights of individuals to choose the care that is best for them. That training will be a big undertaking, and I am not suggesting that Edinburgh has got it right yet. However, we recognise the issue and we are working to address it.

**Mary Fee:** That leads me nicely on to the question that I intended to ask, which is about balancing rights. As we navigate our way through the human rights agenda, every topic, subject or circumstance will involve a number of competing rights. How do we navigate through that to ensure that everyone's rights are taken into account and that everyone understands why their right may be considered in a different way without having less importance?

**Councillor McVey:** That issue is hugely difficult. The decision about tram extension in Edinburgh is an example of a policy trajectory that is anti cars going into the city centre, with more public transport and public realm so that people can enjoy the space. That has caused challenges for people who have disabilities. For example, if they are trying to get into Princes Street gardens, there is categorically nowhere nearby for them to park. That is not to say that those people's needs would not have been taken into account, but it would have been incredibly difficult to supply

parking spaces on Princes Street in order to provide such access.

It is a challenge to encompass absolutely everyone's individual needs. In making macro decisions like that, the point is not about individuals' needs but more about—to use the language that Mary Fee used—everyone's needs and trying to cater for a situation in which every segment of the population is catered for and considered so that their needs are understood. That will not necessarily mean that everyone will have an individual, tailored response, but it should mean that the end product has taken their needs into account and provides, as best it can, what we might call an equilibrium of rights.

**Mary Fee:** I imagine that the hardest thing for the people who make the decisions will be to understand and to grapple with balancing all of that, which will be hugely difficult.

**Councillor McVey:** It will be—yes. There is no getting away from it. We will be relying on officers using the perspective of people in the population who face challenges that not everyone in the room will have thought of. To a certain extent, we will also be reliant on the robustness of the consultation that we do in taking such decisions and in providing people who face such challenges with the opportunity to get in touch and to raise them. Ultimately, making sure that everything is out in the open is one of the strongest tools at our disposal. We cannot respond to a challenge that we do not have in front of us. If our consultation is sufficiently robust and if officers are engaging in a human rights-based, bottom-up perspective, it is to be hoped that we will catch what we need to catch in considering decisions as we move forward.

**Mary Fee:** The reliance will be on the decision-making process and the steps that you will go through to reach whatever decision you make.

**Rami Okasha:** Adam McVey has identified one of the most complex areas in thinking about human rights and policy making. In the care sector, there are circumstances in which we see individuals' human rights and their choices and wishes sometimes being in conflict, both in a care setting and where those choices and wishes may be different from the decisions that local authorities or other statutory agencies have made about how services will be designed or delivered. The point about self-directed support is a very good example of how tailoring public services to support people is the right thing to do but how it can be hard to do that in the context of a system.

We have found an understanding and appreciation of human rights to be helpful in trying to get such a balance. In some of the services that we work with—for example, secure care services in which young people may be detained or

deprived of their liberty as a result of a court order—we have been able to understand and recognise that, even when that happens, there are still human rights that need to be upheld in ensuring that such detention is lawful, is in the least restrictive form possible and is proportionate.

Of course, people who are involved in that also need to have their voices heard. The Care Inspectorate has a statutory role in investigating complaints about care services so that, if decisions have been made about someone's care and they feel that they are not right, they or anyone else can come to us and we will have the power to investigate and require change, if necessary. That provides some recourse in the sector in which we work.

**Cath Denholm:** I will add to those examples. The issue demonstrates why training has a place in empowering people to understand that their rights have a place. However, starting with the Scottish Parliament, leadership must be shown in helping people to understand that, although there are absolute rights, human rights have a progressive agenda that is exciting for Scotland in how we understand society and how we lead that culture.

A lot of the submissions are about rights holders and how people understand rights. They also seek to help everybody who provides public services to build confidence in their ability to demonstrate a progressive realisation towards rights. In that way, they do not start with an approach in which they think that they will get it wrong and that they will be pilloried by somebody for making the wrong decisions. Instead, it is about building not only a stronger culture of accountability but a stronger culture of confidence in being able to talk human rights language and to show how, as Rami Okasha said, rights can be used to make better decisions and rights-based language can be used to defend the decisions that people have made. There will be a need to balance rights, but the power of that language is really helpful for accountability, and it helps to build a culture in which more people understand why rights are relevant to them.

**Councillor Whitham:** Local government is most effective and legitimate when it involves citizens in the decisions that affect them. That takes us to participation and engagement. If we have meaningful participation that empowers people in the decision-making process, that allows them to accept decisions that are made. If, as Adam McVey said, we involve people from the bottom up, they will understand why there is a competing element and that we have to look not only at everybody's human rights in the round but at the rights of people with protected characteristics. The issue is about participation and engagement with

our citizens, to allow them to be involved in the process.

**Jamie Greene:** I have a few areas to explore, but I will start with a general observation based on the commentary that has been made.

There has been a lot of talk about equality impact assessments—and rightly so—but it is worth pointing out that, although equality is part of human rights, an equality impact assessment is not the same as a human rights impact assessment. When we talk about equality, we often consider the effect that it will have on, for example, identified protected characteristics, as laid out in the Equality Act 2010. However, human rights are universal. I am not entirely convinced that such impact assessments—by a variety of bodies, be they local or public authorities, including health and social care bodies—are taking into account the impact of policy decisions on people's universal human rights, as opposed to the effect that a policy decision may have on protected characteristics. Does anyone have a comment on that observation?

**Cath Denholm:** A number of years ago, NHS Health Scotland, with the Equality and Human Rights Commission, developed a health inequalities impact assessment tool, which sought to address that issue. We use that tool in all our planning processes and decision making, and we share it with others. The tool covers equality impact assessments, but also human rights impact assessments and health inequalities, given that those are all different ways of looking at what is essentially the same problem of who might be disadvantaged in how services are planned.

It is my personal and professional view that human rights are, as you say, universal. That is the starting point, which allows you to bring in the protected characteristics. That is how we have chosen to proceed.

**Councillor Whitham:** The Scottish councils' equality network agreed that equality impact assessments involving human rights are desirable and the way to go. Equality impact assessments are not always as robust as they can be, so we need to embark on a period of training and education with staff. That will be resource intensive, which we recognise. I do not want to say that that is a barrier, but there is an issue about how we equip local government to be able to make equality and human rights impact assessments meaningful and roll that out across the country.

**Rami Okasha:** It is important to make the point, as the other panellists have done, about the differences between equality and human rights. However, it is often the case, from an individual's point of view that there is a relationship between

those issues. Furthermore, the right to non-discrimination is in itself an important human right. We certainly come across circumstances where people who have protected characteristics under the Equality Act 2010 are at risk of not having their human rights protected or upheld.

It is important to identify that equality and human rights are distinct, but it is critical to understand the relationship between them. It is critically important to carry out equality impact assessments and human rights impact assessments when making strategic decisions and when changing policies, but there is also something to consider about practice.

10:00

When people who deliver front-line public services on the ground are making day-to-day decisions, they are not going to—and they should not—carry out impact assessments at that point. As we have discussed, their understanding of human rights and equalities issues should be reflected in their training and skills, so the decisions can be made there and then, rather than at a more strategic level.

**Councillor McVey:** I do not have a huge amount to add; I agree with that. The issues must be broken down to match the areas that people are working in. I agree with Elena Whitham that it would be a cumbersome process to get to a point where every public sector worker across the entire country understood the full suite of human rights impacts. It is understanding those rights in practice that is really important.

In education, for example, if there is a recent decision that is relevant to us in Edinburgh and incredibly pertinent in terms of the human rights of all children, it is important that, in practice, people understand the bit of it that is relevant to them and the people they are engaging with. If people have a more general awareness, that is fantastic, but it is about breaking it down and being quite specific about what people are looking for in upholding people's individual human rights.

**Jamie Greene:** That makes sense. One of the things that we often talk about in this committee is the fact that these impact assessments, in a formal setting where they become part of the decision-making process, are often box-ticking exercises. That has always been a concern. I suspect that it is a widely used practice, not because people are not interested in the subject, but because they may not always understand the direct correlation between the consequence of a decision and any inequality that it may create.

My worry is that if the task of training staff across a wide range of public bodies will be time-consuming, expensive, and perhaps even

impossible to do universally across all agencies, how do we ensure that the thought process about the impact of decisions on human rights becomes mainstreamed into everyday practice?

You have given some good examples of where that has happened, but how do we ensure that, outside the formal pro forma process, in everyday decision-making by officers and individuals within these organisations, they are constantly thinking about the impact of their decisions on people's human rights? It would be helpful to hear about that.

**Cath Denholm:** For me, it is about having the confidence to take a human rights-based approach. I spoke at the beginning about what we have sought to do in Health Scotland, which is to try to put that approach into everything. It is about having the leaders in our organisation talk about our agenda and our outcomes in human rights terms; it is about the right to health.

We are going through a major organisational change process with our staff. We are talking to our staff about it in terms of human rights and what it means to them as human beings. That all helps to demonstrate how to use the human rights approach on a daily basis. We have impact assessment tools that are built into planning, but it is also about the communications, the language, and everything that we do as an organisation—for me, that is what a human rights-based approach is.

It is about using that language and making human rights core to how you communicate about your work, how you engage with staff, and how you encourage people. You start to build that up incrementally, but you need to be quite relentless in how you do that. That helps people to understand, engage, and start to see the power of that approach. You get lots of sceptical people at the beginning, but more and more people start to understand it and start to be confident about using that language.

**Jamie Greene:** Adam McVey made an interesting point earlier, which is that it may not be relevant for everyone to have a universal understanding of all human rights; rather, they need to have an understanding of the human rights that are relevant to their job in a practical sense.

That is quite an interesting view, because that would by default make it easier to train people based on their individual departments, so that they understand the elements of human rights that affect the service users of those departments—for example, rights around housing, education or the provision of social care.

I guess that it is unfair to ask you this because you are here representing just one local

authority—you are not here to speak on behalf of all local authorities—but how confident are you that officers and senior members of staff within local authorities are fully aware of the conventions and charters that they must adhere to when they are making those decisions?

**Councillor McVey:** In the City of Edinburgh Council, we are confident that that is the case. With regard to how that translates from director or management level to 18,000 employees, we would have to do a bit of work to understand how far that understanding is shared across the organisation. The example in my ward in Leith, which the committee will hear more about in the session with the next panel, is a good example. The habitability element of housing as a human right fell down but, after that was pointed out, the council's response was—as I hope you will hear—positive and constructive. Things developed quickly and the situation was brought to a positive conclusion. Progress has been made.

The best way of achieving culture change is to have an open and transparent approach whereby, when problems are identified, as they will be, the organisation, department or individual officer feels comfortable enough to change practice to adopt such an approach. In that way, we will grow as an organisation.

**Annie Wells (Glasgow) (Con):** I have a quick question. Cath Denholm said that people who make human rights decisions are worried about the balance in decision making, and I think that that is true. An issue that Gail Ross always brings up is the fact that people do not realise that they have human rights; they think that it is other people who have human rights. I think that human rights get mixed up with protected characteristics.

A suggestion that has come out of the evidence that we have taken is that a human rights rapporteur could be assigned to every parliamentary committee to make sure that we take a human rights-based approach. Is that a good idea that we should run with? Could other organisations have such a system, whereby one person with an understanding of human rights would sit on each committee so that not everyone would have to understand the human rights angle?

**Cath Denholm:** I have a caveat—there is always a risk that everybody will look to that person as the expert whenever there is a human rights issue. However, I fully support the adoption of such a system, if it is done well. As I said, we are not experts in human rights. We have made progress because we have had access to expertise and support through the SNAP community and the SHRC. When it has been necessary, we have had real experts to help us, educate us and give us advice. We would not

have made the progress that we have made without that expertise.

I think that such a system would work well in the Scottish Parliament. A lot of our work relates to the work of the Health and Sport Committee, and I can see huge potential for a rapporteur with expertise in human rights to help that committee to interrogate matters with an eye to some of the issues that we have talked about.

**The Convener:** Elena, I suspect that you have an overview of the extent to which councils adopt that approach in the work that they do on their committees.

**Councillor Whitham:** Councils are at all different levels with that. Having such a system would be quite resource intensive, given the scope of the work that falls within councils' jurisdictions.

Councils are set up differently. My council has a cabinet set-up and we have a cabinet spokesperson for equality, human rights and poverty, whose responsibility it is to look in the round at everything that is happening in committees, but that is just my local authority.

We recognise that local authorities are on a journey when it comes to having a human rights approach to everything. Where possible, having a human rights rapporteur on every committee is something that we should aspire to, but I am not quite sure how we would do that.

**Rami Okasha:** Different organisations can approach things in different ways. We have talked about the health and social care standards, and one of those standards is:

"My human rights are central to the organisations that support and care for me."

I think that there is a responsibility on organisations to design the approaches that will work for them. If that is applicable to a wide range of public services, I am sure that it is applicable to the Parliament, too. You will design the approach that is right. As Cath Denholm said, what is important is that human rights are central to the work of everyone in every part of the organisation, instead of being hived off into a bit that is responsible for human rights.

**The Convener:** Adam McVey has a final point to make.

**Councillor McVey:** I agree. Our committee processes are different—we sit in our party groups and we work in our party groups.

I encourage the Scottish Parliament to keep raising awareness of human rights. Ultimately, the more people who have an understanding of their human rights and use a rights-based language, the better our services will be able to respond to



their needs. More power to your elbow in getting more people to understand that.

**The Convener:** We are out of time, because we have a second panel to hear from. We did not get on to how your organisations would deal with further incorporation of the whole rights-based agenda or Brexit, so if you have any comments on those issues, we would be keen to hear from you. Even if you could provide only a paragraph, we would be happy to receive it. That would be really helpful. Thank you for your participation and your openness, which we are grateful for.

I suspend the meeting for a comfort break.

10:10

*Meeting suspended.*

10:18

*On resuming—*

**The Convener:** The second part of our second agenda item is the continuation of our inquiry into human rights in the Scottish Parliament. Our session with the second panel will be in round-table format. We have with us Danny Boyle, who is the parliamentary policy officer for BEMIS; Gordon MacDonald, who is the policy officer for Christian Action Research and Education; Jane-Claire Judson, who is the chief executive officer of Chest Heart & Stroke Scotland; Justine Bradd, who is a housing rights development worker, and Heather Ford, who is a tenant, from Edinburgh Tenants Federation; Emma Ritch, who is the executive director for Engender; Peter Kelly, who is the director of the Poverty Alliance; and James Morton, who is the manager of the Scottish trans alliance. Good morning and welcome to you all.

We are grateful for the written submissions that we have received from you, which have been very helpful. As you know, we are continuing our inquiry into how we ensure that the Scottish Parliament becomes a human rights guarantor. We need to speak to everyone who has an interest in the matter, so that is why you will see lots of round-table discussions such as this, with lots of people whom you would not expect to have too much crossover in the work that they do. However, you all have crossover in the work that you do on human rights, and that is why we are keen to hear all of your perspectives. We move straight to questions in a similar format to that which we used for the first panel.

**Gail Ross:** Good morning, everyone. Thank you for coming along to see us. Some of you will have heard the evidence that we have already taken this morning. This committee has, for the first time, a remit for human rights. How do we embed human rights in society and educate people so

that they know that human rights belong to everyone and are not restricted to certain groups? How do your organisations do that and how can this committee do that?

**The Convener:** Before anyone answers that question, I should explain the round-table format. If you catch my eye, I will ensure that you get in.

**Justine Bradd (Edinburgh Tenants Federation):** Heather Ford and I have been working on the Leith project, which has been highlighted today. In our feedback, we said that education for staff was important. We used a bottom-up approach in our work. We worked with a group of tenants who surveyed everybody in the area—we doorknocked all 182 properties. We looked at the responses through a human rights lens and set the benchmarks and the indicators that were then presented to the City of Edinburgh Council.

There was a lot of learning in that process for me, because I was coming into it quite new. We had a lot of support from the Scottish Human Rights Commission and from the Participation and the Practice of Rights Project in Belfast. Education is important throughout the process. We recognised early on that staff need to have an overarching knowledge, as Adam McVey mentioned earlier. If staff understood what we were talking about, it certainly made a difference.

**Heather Ford (Edinburgh Tenants Federation):** We do not think that we would have progressed as far as we did with the City of Edinburgh Council if staff did not have a grasp of what a human rights-based approach was. Staff obviously did not have the knowledge in full, but they knew the approach that we were trying to take. That was the only reason that we progressed.

**Peter Kelly (Poverty Alliance):** For the past 25 years, the Poverty Alliance has been trying to take a human rights-based approach and spread an understanding of poverty as a denial of human rights. The first thing to acknowledge is the change and the progress in the culture that we have seen over that time. I will be the first to mention the Social Security (Scotland) Bill, which was passed yesterday, and which uses very different language from the language that might have been used even 10—never mind 25—years ago. That demonstrates the role of leadership at a range of levels. Whether it is the Scottish Government, the Scottish Parliament, local authorities or civil society organisations, we all have a shared responsibility to try to spread an understanding of what human rights are. That can be very difficult because human rights are often seen as a specialism that requires expertise. In many cases, that is correct and legal expertise is required. However, we need to find ways to make

those rights recognisable and understandable—the example from Leith is very important.

The role of training is also important. Cath Denholm from NHS Health Scotland talked about the need to be consistent and constantly work away at it, which is the approach that we have taken. We have training on poverty awareness, which certainly has a relationship to the human rights agenda. We work away at that and we see gradual progress, which is how we embed such an approach.

**Jane-Claire Judson (Chest Heart & Stroke Scotland):** I am struck particularly by what Heather Ford said about gaining access to expertise and knowledge. We must ensure that people are confident enough to ask for advice and support when they deal with such issues. The fact that we do not need to be human rights experts to deliver on human rights is a key message that I would like to come from the Parliament and this committee.

To make sure that everyone has that access, I would start at the beginning. I deal with conditions that tend to develop later in life, but in most cases their roots are in childhood. We should make sure that our education and support systems mean that children grow up with a sense of their rights and understand what they are, how to articulate them and how to express what is going on in their lives.

I work closely with the national health service and want to encourage our healthcare professionals to use a rights-based approach when they have conversations with people about their health. In their 10-minute consultation, they do not have to go through a treaty to explain someone's rights and to see if they understand whether their rights are being delivered. It is about asking a person where they are at and what they want to achieve in life, and checking—through the PANEL approach—whether the healthcare professional is achieving that for them. That can be done by people who are not human rights experts. I am not a human rights expert; I have come to human rights as something that enables me and my organisation to do our job and support people better. My organisation is going through a process to become a health organisation with a human rights-based approach, and there are a variety of ways to achieve that.

I welcome this committee inquiry. The Parliament has a great reputation for outreach, education and participation. Taking this leadership role and providing examples of best practice is key to organisations like mine, which look at them as a steer. If I am honest, it can be argued that people may think, “If they are doing it this way, I should be taking note of that”, which is a great lever to put out there.

**Danny Boyle (BEMIS):** Good morning, everybody. What colleagues have said chimes with what I think, and I welcome the committee's deliberations—just having them is a good indication that we are moving in the right direction.

With regard to how to embed human rights in society and recognise that everybody has rights, education and young people are key. We have touched on this issue already, but young people are fantastic at articulating rights in an accessible fashion. As Peter Kelly said, rights are most effective when we can all articulate them and feel that they make sense to us. We should not get lost in the technicalities of legislation or international conventions.

There are examples of outstanding practice in education via the curriculum for education and the Scottish education system and in the rights-respecting schools programme. Young people are able to articulate from a very early age the right to play, the right not to be bullied or the right to access food. When they are instilled with such confidence at that early age, they will have it when they blossom into young people and adults and graduate into employment. The rights-respecting schools programme is not mandatory, so schools may choose whether to do it. It would be more beneficial if the programme had a higher profile in the early years and included and incorporated some of the elucidations in the treaties that accompany the Universal Declaration of Human Rights.

We grew up in an education system that did not have rights-respecting schools. This morning, we are hearing from people who are equalities officers or who have responsibility for equalities and human rights across 32 local authorities or multiple statutory bodies. It is important that we instil in those people a confidence when approaching equalities and human rights. When we work with colleagues across councils or statutory bodies, there can sometimes be a sense of people being totally overwhelmed. For example, from a race equality rights perspective, we have to be aware of the race equality framework, the race equality action plan, the fairer Scotland action plan and all the action plans that accompany it, and the International Convention on the Elimination of All Forms of Racial Discrimination and the Council of Europe's framework convention on the protection of national minorities. We try to bring the approach back to such rights as the right to food, the right not to be bullied and the right to play, even when we work with people at a highly technical level. For example, there is a lot of commonality in the outcomes from ICERD and the Council of Europe framework convention in relation to Gypsy Travellers, anti-bullying strategies or increased ethnic representation in key public services. If we

get one right, a domino effect should take them all forward.

10:30

If we move the question on to what the Scottish Parliament can do—and this has been brilliantly articulated by the Law Society of Scotland alongside the Scottish Human Rights Commission—it is primarily about putting the issue high on the agenda, maintaining its position there and making sure that the right people are around the table when specific discussions and deliberations take place. Practical suggestions have been made about conferences, social media, pre and post-legislative scrutiny and special rapporteurs. We therefore have the framework in place to make potentially quite significant changes in the immediate future.

We welcome the fact that the committee is giving serious consideration to various factors that, in combination, will allow us to progress and deal with substantial issues. For example, from a race equality perspective, perhaps we, alongside this committee and other relevant committees that are overseeing specific aspects of the agenda, such as employment or education, should review the framework against the action plan in the next 12, 16 or 18 months, to ensure that we are making progress.

**Gordon MacDonald (Christian Action Research and Education):** When trying to embed human rights, the place to start has to be their origins, and specifically their philosophical and religious bases—if we do not do so, we will end up in a confused situation. At the moment, a lot of public officials are trying to grapple with understanding what the right to health or education means, or how we apply such rights in a practical sense. We have got into that situation because, in recent centuries—not just decades—we have adopted a subjective view of human rights, in which those who articulate their demands most strongly are able to say, “This is a human right and you should give me what I want”. In fact, human rights must be based on some objective sense of rights and on society’s shared understanding of common values, and those things are increasingly lacking.

The Scottish Parliament can have such a discussion and, in the specific context of a Scottish bill of rights, the most important thing will be for the Parliament to ask, “What sort of society are we trying to achieve, and how do we go about doing so?” If we just continue down the road that we, as a society, have been on for the past few decades, we will end up in a confused situation in which nobody—whether in politics or in the legal profession—will really know what human rights are.

**James Morton (Scottish Trans Alliance):** We have been doing workshops with community members to help them look at the Universal Declaration of Human Rights and understand how that then informed the European convention on human rights. There is often a lot of confusion about where European frameworks on human rights came from, but if people gain that understanding, that really helps to improve buy-in and support.

We have also been trying to make sure that people can take those key principles and think about how they affect their own lives and those of people around them, to make them very tangible and real. We have encouraged people to use the very good factsheets that have been produced by various human rights commissions, to talk to their friends and families and to be the next stage in sharing that knowledge, rather than just keeping it to themselves. We encourage people not to worry too much about the exact nature of the frameworks and instead to think about the principles. If they feel that a principle has been violated, they can then get support from various agencies to find out exactly what the legislation and mechanisms are for raising that. We have found that approach to be very positive—it is probably quite similar to the one that is being taken in schools.

I also want to flag up the charter from LGBT Youth Scotland—which is a different organisation from mine—that it now uses with public bodies. The charter was devised by its young lesbian, gay, bisexual and transgender people looking at what the United Nations Convention on the Rights of the Child meant for them, turning that into a charter for young people and then gradually expanding it to look at adults as well.

**Emma Ritch (Engender):** In 1995, Hillary Clinton said at the world conference on women in Beijing—for the first time, as far as anyone can tell—that

“women’s rights are human rights”.

I have just deduced that Engender is the same age as the Poverty Alliance. For the past 25 years, Engender has talked about women’s rights and using our United Nations consultative status to engage in particular with the Convention on the Elimination of All Forms of Discrimination against Women, which is the women’s bill of rights, as committee members will know, and the International Covenant on Economic, Social and Cultural Rights. We are in the middle of the development process for Scotland’s shadow report as part of CEDAW. The examination will happen in early 2019. We have gone around the country talking to women about what CEDAW is, what it contains, and what women’s human rights entail.

Extensive frustration has come back about its being very hard for women to assert the rights that are captured in CEDAW. Notwithstanding the excellent work that public bodies described in the first evidence session this morning, there is not a huge understanding of what CEDAW is or of what it contains, and there is no way of asserting rights under CEDAW in any court. If a person's CEDAW rights have been breached, they cannot go to the sheriff court and ask for a judgment to be made. The contents of CEDAW are not considered as part of impact assessment processes and policy development. Having one meeting every five years with the UN to talk about the status quo seems a bit toothless and abstract to some of the women whom we have spoken to.

In that context, we are very pleased that Scotland is considering the incorporation of CEDAW into Scots law. That would give it local effect in respect of justiciability, and we hope that that would mean increasing accountability for it and giving it a strong presence in policy making and decision making by public bodies. We think that that would enable people to understand the rights in CEDAW and to see their effects when public bodies make decisions, whether those are about spending, services or other things that significantly affect the lives of women and girls in Scotland.

**The Convener:** Thanks very much. Does Gail Ross want to pick up any points?

**Gail Ross:** No. I will let other people come in.

**Mary Fee:** Good morning, everyone. My question follows on nicely from Gail Ross's question. How do organisations and groups that work in the sector balance, take account of and prioritise different and competing human rights? In any situation that any of the organisations that are represented around this table will look at, there will be a number of different human rights. How do we grapple with that?

**Justine Bradd:** One right impacts on others, and we did not think about that happening. Obviously, we looked at the right to housing and an adequate standard of living, but we did not realise the impact of that on people's right to health. I hope that we will capture that. Residents lived in damp housing. The windows were awful, and kitchens and bathrooms needed to be upgraded. We have heard from people that it is also about improving their mental and physical health. I hope that our next survey, which we are about to conduct, will capture that and that its results will show that on a wider basis.

**The Convener:** I have a question for Heather Ford. Is that survey being led by the tenants?

**Heather Ford:** Yes. We are setting out the survey questions, which is quite good fun,

because some of them are not appropriate. We have managed to get home owners involved, so we have handed the home owners section over to them. It is really about delegating.

One thing really impacted on me personally. At Christmas, a neighbour came up to me and said, "Heather, for the very first time ever, I'm having friends and family for Christmas lunch, because I needn't be ashamed or embarrassed by my house." At the time, we were delivering the Christmas newsletter. I have lived in that area for 18 years and, for the very first time, I saw people hanging holly wreaths and other things outside their doors. Basically, my feeling is that the community has gone from dying to being what a community should be, and people are living with dignity and with respect for others. To me, that is what human rights are about.

**The Convener:** That is a great example. Thank you.

**James Morton:** The media like to portray human rights as competing much more frequently than they actually do. In fact, there are lots of complementary human rights and, as we just heard from that example, improving one human right can lift up another one. Often, some out-of-the-box thinking is required to address the needs of a wide range of people. In the vast majority of cases, there is not as much of a competition as some like to portray.

**Gordon MacDonald:** Part of the problem is with the interaction between human rights and equality law, which come from different legal perspectives. To manage that and to manage conflicts between human rights, the principle of reasonable accommodation should be prioritised. That applies already in relation to disability, where reasonable adjustment applies. We would argue—particularly in relation to religion and belief but more widely—that, if public agencies and courts were to prioritise reasonable accommodation when dealing with areas of conflict, many of those conflicts could be ameliorated.

Another issue is the principle of mediation, which goes along with reasonable accommodation. I know that another parliamentary committee is considering mediation at the moment. There needs to be greater emphasis on that so that people do not rush off to court as a first thing. There should be some mechanism of mediation so that people can see whether a reasonable accommodation can be reached.

**Danny Boyle:** To chime with what James Morton said, there is a point about the ambiguity around what human rights are, which is probably encouraged by media rhetoric. However, everybody in this room would entirely agree on the vast plain of non-derogable human rights and on

specific aspects such as how we make people's lives better through access to food, safe and affordable housing and healthcare. Those are all laudable policy and human rights aims that we would all entirely agree with.

The complication sometimes comes in when people interpret equality as a competing human right, which it is not. When people achieve equality in, say, access, employment or education, that is not about their human right superseding someone else's human right; it is about their equality and their recognition by the state as equal citizens. It is about people reaching up to the same level and enjoying the same benefits as others have enjoyed over a sustained period, which in no way negates anybody else's human rights. Raising the level of informed discussion about what human rights and equalities are and how they are entirely complementary functions is another important aspect of the committee's work. That needs to happen more generally in society, too.

**The Convener:** I suspect that there is, given the group of people with whom Jane-Claire Judson works, sometimes competition, or there has to be a balancing act with human rights. Can you give us some insight into that?

**Jane-Claire Judson:** We work across three conditions, all of which have different factors that play into why people might have them. Quite often, in the discussions that we start with, it can seem as if there is competition. We can have people saying, "I would like this service," but we need to consider what happens if the resource goes somewhere else. As a charity, we constantly think about the balance across the groups that we represent.

There is usually an assumption that there will be conflict at the beginning as people go through the process, but if we stick to the PANEL principles of participation and accountability, that works its way out. In essence, if we enhance one human right by making sure that it is delivered well, we will enhance all the other ones. Usually, we find that the issues are not about competing between conditions, but are about things such as taking a systems approach to redesign of an NHS service.

In my experience, there are tricky discussions to be had at the beginning and people feel that something negative might happen to them as a result of the conversation, but there is something about leadership and holding on to the human rights approach and ensuring that people engage with it. The more we talk with people who are affected, the easier it becomes to work out the issues.

For me, there is also the fact that human rights are not a finite resource: if you get something, that does not mean that I cannot have it.

10:45

Once you get into those discussions, people become really empowered for themselves, but they also become empowered in terms of understanding other people's situations. That can be hugely powerful in relation to looking at how we make sure that human rights are seen as positive, and not as negative.

In our submission, in relation to signing up to the Scottish declaration of human rights, we said that human rights

"matter because they protect us from the worst that we can do to one another—and highlight the joy and positive impact we can have."

Why would we ever see a human right as a negative? I cannot get my head around that. Where there is conflict, it is usually because there is some other work that we need to do. We need to take responsibility for doing that work.

**The Convener:** I suppose that we have, over the years, made great advances in relation to the conflict between genders, but some of the advances still rely on antidiscriminatory practice. Recently, we passed the Gender Representation on Public Boards (Scotland) Act 2018. We had some kickback from that, but it was the right thing to do.

Perhaps Emma Ritch can give us some insight into the work that Engender does on educating people about what their rights are—especially women and women's groups—and how to exercise those rights. Does it educate people on how to exercise those rights in the format that Jane-Claire Judson just described, with the idea that rights are a joyful thing? Is it about not saying straight out, "We're going to battle for this right," but instead taking the approach that we have more common ground than battle ground, and asking how we can move forward?

**Emma Ritch:** That is an interesting question. Over the last wee while, my colleagues at Engender who work on communications and engagement have been going out to women's groups across the nation to talk about CEDAW in particular—its positive dimensions and the rights that are contained within it, which are all things that we would recognise as being largely positive. Health is in there, as are access to fair employment, protection from violence against women and so on. They would not, with a couple of exceptions, be seen as contested rights.

The dynamic that the convener described, in which it feels as though some people are losing things if another group gains things, is not a question of competing rights. James Morton was quite right to identify that as something that is framed as a question of competing rights, but is actually not that.

I hope that there are very few men who would demand the right to be overrepresented in political spaces and leadership. Certainly, that is not a right that is contained within any international obligation or statute that operates in Scotland. Rather than being about two competing rights, it is about there being a sense of the world shifting and changing in an unfamiliar way.

Certainly, the rights of women to participate in political life, in public life and in leadership are captured in CEDAW, but what Engender is advocating for, and what our sisters across the globe are advocating for, is a seat at the table—not dominance, but co-production and sharing of power and resources.

**The Convener:** Excellent. I suppose that from the Poverty Alliance's point of view, poverty is a great leveller for many people—it can suppress so many aspects of how we want to live our lives. In the context of Mary Fee's question about balance, if a person is starting on the bottom rung, how do we ensure that they can pull their way up?

**Peter Kelly:** I would probably echo others' comments. When we talk about human rights and taking a human rights-based approach, it is not about seeing rights in competition. It is not a zero-sum game in which when one person wins, another loses.

Heather Ford and others have perfectly illustrated the interconnectedness of rights. It comes back to this: how do we talk about rights, and how do we educate people? That is perhaps not the right phrasing. How do we talk about rights to the general public so that people do not see them as being restricted to certain groups, or see some people as being prioritised within systems, and being able to avail themselves of rights that others cannot access?

It is important that when we talk about the right to food or the need for decent work, living wages or adequate incomes, that is not articulated as some people being denied them if more people achieve them. I guess that, as part of the inquiry, we are looking at the big issue of leadership and how to embed a culture of human rights, and the picture is moving away from being about the competitive representations of rights that are perhaps more popular.

**Heather Ford:** Before we took a human rights-based approach, we used the Scottish housing quality standard as a measurement. When we said, "We feel that you are breaching our human right to adequate housing", the duty bearers went into meltdown. Nobody likes to be told that they are breaching human rights. However, we explained to the City of Edinburgh Council that the SHQS said that we had the right to basic housing. I should not have been afraid when I switched my

cooker on that I would be electrocuted because it was right next to my sink, and I should not have had to get into a wet bed.

We felt that the council should have been adhering to the Government standard. To me, the standard invoked human rights and equality in one. We tried to explain the council's failings to it. As it looked at the matter it saw that the breach of human rights needed a remedy. We said that the remedy was to invest in the property, and to listen to the people who lived there before it did so. That approach was great: it has taken tenant participation to a higher level—to where it should be in the process, which is that it is equal. In considering equalities and human rights, a council should just go by the SHQS: it cannot be in breach of human rights if it does not breach that.

**The Convener:** I think that you are absolutely right.

I am very conscious that time is marching on, so I will bring in committee members and then allow all our panellists to have their say. Alex Cole-Hamilton will be next, then Jamie Greene. If Mary Fee has anything that she wants to pick up on, I will come back and allow a wee wash-up at the end.

**Alex Cole-Hamilton (Edinburgh Western) (LD):** Good morning and thank you for coming to the committee today.

I want to develop Mary Fee's question a little bit, and will start with a reflection on what Gordon MacDonald said in his opening remarks about there having been a distortion of the rights landscape because of some groups shouting louder than others. I fundamentally disagree with that: in my experience, those who shout loudest about denial of rights usually have the greatest cause to do so. We live in a democratic society in which freedom of speech is encouraged and welcomed, but it is also one that our Parliaments and decision-making bodies do not reflect, and we have been making decisions without cognisance of the needs of underrepresented groups.

One of the perceived tensions in rights that Mary Fee described is in the idea of equal protection for children, with which this Parliament will very soon grapple, in that we will remove physical punishment from family life. About time, too, I say. However, there is a view that that competes with the right to family life and to parent. That is a false dilemma. I do not think that there is a clash, and children must be absolutely pre-eminent. Children have not had their voices heard in the rights landscape because we have not had vehicles for them to do so. They are not alone: other groups in society are on the business end of tensions about rights and are not having their voices heard. How do we redress that balance?

**The Convener:** We should come first to Gordon MacDonald to respond, given that he has been called out.

**Gordon MacDonald:** Parents, if they are good parents, listen to their children and represent them. I sit on a parent council: that is what I seek to do, as a parent, in the school context.

The fundamental problem with Alex Cole-Hamilton's approach is that he seems to think that the state is the only body that has responsibility for protecting vulnerable people in society, but that is not the case. There are various spheres and institutions in society, and the family is one of them. The freedom and autonomy of the family are recognised as fundamental human rights in the United Nations Universal Declaration of Human Rights.

The example that Alex Cole-Hamilton cites is a classic example in which a subjective view—as opposed to an objective understanding—of rights leads to a clash. You, the United Nations Committee on the Rights of the Child and other activists adopt a particular policy position and say, “This is a human right,” but it was not there when the rights documents were originally devised. People insert into those documents interpretations of human rights that were not intended to be there in the first place.

In an ideal world, there would be no conflict between competing rights, but we do not live in an ideal world, because there are budgetary constraints. In health, there has been a court case in Liverpool, in which it is clear that there are competing rights. The clinicians have to ask how they can best spend the limited financial resources that they have in order to maximise health care provision for all their patients while also acting in the best interests of the patient concerned. The case has ended up in court because there is a dispute between the family and the clinicians about what should happen. The court cannot avoid the fact that, ultimately, budgetary constraints create a situation in which a decision must be made in relation to which right takes precedence.

**Alex Cole-Hamilton:** I want to respond briefly to something that you said. We are not talking about the “subjective” interpretation of “activists” who congregate around the UN Convention on the Rights of the Child; we are talking about the objective view of the UN rapporteur on our adherence to the UN Convention on the Rights of the Child, who has consistently said that the UK is falling foul of its obligations under that international treaty by allowing the practice of physical punishment of children to continue. We are one of only four countries in the Council of Europe that still allow it to take place. I do not think that it is fair to say that the position that I have outlined is the

subjective view of activists, because we are behind the curve of international best practice.

**Gordon MacDonald:** I am not here to talk about that specific issue, but it is the state parties who interpret the UN Convention on the Rights of the Child. The UN Committee on the Rights of the Child can come out with a view, as can a rapporteur, but ultimately the state party—which, in the UK context, is the UK Government and, in the Scottish context, is the Scottish Government—is the interpreting body. Therefore, it is the subjective view of particular individuals who sit on particular committees or who work for particular organisations that physical punishment of children is contrary to the UNCRC, but that view can be legitimately challenged. If it was contrary to the UNCRC, I would have thought that the European Court of Human Rights—which can read in the UNCRC—would have already ruled on it, but it has not.

**The Convener:** We cannot just stick to that one issue. Danny, would you like to comment on the substantive point?

**Danny Boyle:** That dialogue was fascinating in many different ways. It perfectly illustrates some of the contentious human rights interpretations and challenges that will continue. However, for the purposes of the committee, the Parliament and society more generally, there is a lot of substantive progress that can be made in areas in which there is no contention—for example, substantive progress can be made on the rights to access to food, to safe housing and to health, and on some of the endemic social issues that exist in Scotland.

There is definitely an appropriate place for us to consider the minute detail and to debate our interpretations of rights, our human values, how we perceive the world and how we want to shape the world that we live in, but there is much more that we share in common when it comes to what our fundamental aspirations are. We could make substantive progress in a relatively short time on much larger issues.

I hope that, in those much larger considerations, we will emphasise those larger issues, which we can take forward, as opposed to jumping right in to the most minute detail. That is probably best discussed within the confines of a more specifically focused time.

11:00

**The Convener:** I will bring in Jamie Greene now and let members pick up points in the final few minutes.

**Jamie Greene:** The discussion has been fascinating, and we could probably sit here for

hours continuing it. However, in the interests of time, we cannot do so.

Following on from that theme, there are, unfortunately, inherent conflicts when we talk about human rights on two levels, one of which is the macro level, which Danny Boyle talked about. Probably all of us agree that access to basics, such as justice, housing and health, should be available and deliverable, but Gordon MacDonald made a valid point. Budgetary constraints and differing policy intentions, for example, inevitably create conflicts of interest—an example in the NHS is when one medicine is approved and another is not, with the decision often being made on the ground of cost. The people who would have benefited from receiving that medicine would argue that they have a human right to access it if it is available in the market, but Governments make difficult decisions that are based on financial availability.

We could spend a lot of time arguing about whether all rights and protected characteristics are equal, but the reality is that they are not equal for policy makers, lawmakers and Governments. How do we, as parliamentarians in this committee and in the other committees that we sit on and as law makers, find a balance between human rights and equality between characteristics within the parameters of the Parliament's constraints and the political landscapes that we operate in? I suspect that there is no magic bullet. Nevertheless, given the wide variety of people attending the meeting, it would be really interesting to hear your advice on how we, as MSPs, can better address those issues.

**Emma Ritch:** Engender's view is not that the CEDAW committee, for example, has no role in interpreting CEDAW. It is quite a marginal view that UN committees and rapporteurs—

**Jamie Greene:** I am sorry, but will you clarify what CEDAW is?

**Emma Ritch:** CEDAW is the women's bill of rights. It is the Convention on the Elimination of All Forms of Discrimination Against Women.

**Jamie Greene:** Thank you.

**Emma Ritch:** We see the UN committee's steer on its obligations as being quite helpful.

I will speak to the point about health, the allocation of resources and the potential conflict and political challenge that that might give rise to. More information about the human rights framework is helpful in that regard. There is no absolute right to a perfect standard of health, if such a thing could be obtained. The International Covenant on Economic, Social and Cultural Rights, which speaks to health, sets out the progressive realisation of the highest attainable

standard of health. It looks for states to improve the health of their citizens, but it does not demand that every penny in a budget be poured into the health of citizens. It never speaks in those terms.

UN committees intrude into political spaces as little as possible. Budget setting is one area in which they want to see a human rights-based approach, but they are not in the business of sitting down and analysing a state's budget line by line. I think that there is a great deal of latitude in the framework of international obligations and that political judgment, skill and execution are still given considerable primacy by the UN.

I say again that I do not see there being competing rights if human rights are very well understood.

With regard to structural recommendations, Parliaments around the world have found a system of rapporteurs or specialist focus to be quite helpful. For example, during the progress of a bill, scrutiny or inquiry, a member of a committee can be designated as the human rights-focused individual who can gather information and evidence—whether from human rights experts in law, the UN, whoever is responsible for the obligation, such as the Council of Europe, or in civil society—and build up a clear sense of human rights thinking about the particular subject.

When this Parliament was considering expanding its mandate, I think that rapporteurs were discussed in evidence sessions. This committee could extend more broadly the very good question of how human rights can be addressed better by the Parliament. As an organisation that is often called to give evidence, we see that human rights considerations are not fully considered by the Parliament in its business, and we would raise the same concerns about equality.

There was a helpful discussion earlier about how equality and human rights impact assessments relate, if they are done well or at all. Our comment on that would be that they do not. It would be really helpful if the committee considered the structural issue of how the Parliament could engage with that question.

**The Convener:** Heather Ford has a good idea.

**Heather Ford:** When our group met the council, we realised that there were budget restraints. We did not want the moon; we just wanted adequate housing. The council came forward with a lot of proposals, and the residents group spoke about them and said that some did not make sense and were a waste of money. I think that the council was a bit thrown by the fact that we had thought about finances rather than just about what we wanted.



To get people to understand their human rights at a grass-roots level, you should ask service users what they think. There needs to be a proper consultation. We have a really multicultural neighbourhood that includes Polish, Chinese, Somali and Indian people, and we realised that not everybody could understand what we were saying. Not everybody could read it, as there is a high level of illiteracy in Edinburgh. People must get the service users to tell them what is needed. To us, the issues were about budgets as well.

**Gordon MacDonald:** Our organisation had experience of engaging with the Parliament on an issue that ended up in the Supreme Court, when the Scottish Government lost. At the time, it seemed to me that the committee that was involved completely failed to address the human rights arguments that were being put forward and would have benefited from specific independent legal advice on the bill. I am sure that the facility was available through the Presiding Officer, and I would have thought that there should have been an attempt at a much earlier stage in the committee process to have independent legal advice.

My slight concern about rapporteurs as they operate in the European Parliament is that they are usually politicians and they tend to come with a political perspective rather than an independent legal perspective. Although there might be a place for rapporteurs, the real benefit would come from a genuinely independent legal system that gave advice to politicians.

**The Convener:** When policy makers make policy and bills are at the drafting stage, most bills have a financial memorandum. The committee has discussed whether all bills should have an equality and human rights impact assessment at the very start of the process, so that we do not have episodes when legislation or the process are challenged later on those grounds, which seem pretty fundamental. Would that be a good idea? The panellists are all nodding. The assessment would be at the start of the process for a bill or a regulation change or statutory instrument, whether affirmative or negative.

**Gordon MacDonald:** It depends on the quality of the assessment. One of my concerns is that the Scottish Government does not tend to be very robust, particularly on issues of religion and belief. That might just be because of religious illiteracy within officialdom or it might be for other reasons—I cannot speculate. Presumably, somebody in Government looked at the Children and Young People (Scotland) Bill from an equalities and human rights perspective, but that did not stop the bill ending up in the Supreme Court. Yes, there might be a role for assessment, but it needs to be done robustly. We have already

heard evidence about the dangers of it being a tick-box exercise or of talking only to people that you know or your pals—thinking, “I know them. I’ve met him or her a number of times, so I will ask for his or her view”—and not taking a holistic approach.

**Jane-Claire Judson:** I want to touch on what Emma Ritch and James Morton said. Emma Ritch is right that, when it comes to the human right to health, we are not looking for the perfect level of health that everyone could attain. Budget and prioritisation issues are very real for people. From my experience of working in the health sector, I know that there are a couple of factors that come into that. When we get to the stage at which people are after a specific drug for a specific reason, it means that there have been failures in the system in the run-up to the public media-driven campaign. We need to look at the start of the process and understand how people end up in a situation in which they feel that they need to campaign for a specific drug to solve a specific problem. When you look back, you usually find that there is a range of other things happening in that health system that have not been resolved or addressed, so building a human rights-based approach into health systems across the whole system is key.

On budgets, we need to trust that people will understand the balances—after all, we all have our own budgets. When we have a discussion with someone and say that there are three or four things that can happen and that each one will give different outcomes or a different mix of outcomes, people will often respond to that discussion. However, quite often we do not give people that chance or the outlet to be able to learn about something. We expect people to read a technical briefing on a particular issue and be able to take that on board, but we do not root the information in the health outcome that that person is after. There are some real considerations around participatory budgeting, how we get that in place and how we ensure that people are supported to express their health concerns.

We provide submissions to the Scottish Medicines Consortium and do patient engagement to inform that work. As a health charity, and through other work that I have done, we look at health inequalities. Quite often, we use a lever to address a health inequality—something that could have been resolved with more upstream prevention. If we reoriented budgets and resources, we would not end up having the arguments that we do about a particular treatment.

These things are incredibly complex, because they affect the individual lives of those at the sharp end. I sometimes forget that. I am a chief executive and spend a lot of time in meetings with

bits of paper, and I have to remind myself that we are dealing with people's lives. Yesterday, I went to one of our stroke communication support groups. It was in my head to plan that partly because I knew that I was coming to the committee and that I needed to reconnect with the people who I work with. We need to build in that human rights-based approach and ensure that we listen to what people want. There will be hard decisions, but most people will come to the table if we respect them, share the accountability, cede some power and authority and come to decisions collectively.

Very briefly, I want to mention an example of some of the work that we are doing as a charity. We have very tight resources, as you can imagine; we are always campaigning for more funds and investment. We have decided to go down the route of developing community hubs, and our next one will be in Drumchapel. We have taken a human rights-based approach—we do not necessarily call it that in the paperwork, but that is what we have done. We have said that those doors are open to anybody in the community. We have asked the community what it wants from us; it is not about what we want as a charity.

That means that the food bank and the Drumchapel LIFE—life is for everyone—project can come in and use our space, that we will engage with the issues that the community faces and that we will be there to support them with their chest, heart and stroke issues when, or if, they have them.

Our approach really turns things around and shows what we as a community-based charity can do to be there for the long term and not just when there is an issue that suits us. We could try to embed that approach. It is a bold measure, and we need people to come with us and support our courageous move.

11:15

**The Convener:** I will bring in Annie Wells quickly, because Fulton MacGregor wants to come in, too.

**Annie Wells:** I am fine, because the issue of balance has been responded to.

**Fulton MacGregor:** I want to pick up on some of the points that were kicked off by James Morton, I think. I am pleasantly surprised by the general consensus that people do not consider that there is a lot of competition between human rights, although we have talked about where there is such competition, too.

I want to ask whether a key area of conflict relates to issues of safety. An example from my previous social work experience is when a young

person is placed in secure accommodation. Such a measure should never be used, apart from in the most extreme circumstances. That is a cutting-edge example where one right is set against another right. I appreciate that we have covered that issue a wee bit and there might not be time to get into the whole conversation, but do you consider that safety is a key area where there is the potential for a clash? That ties into a bill that is coming to the Parliament.

**Gordon MacDonald:** I would have thought that safety, where that is an issue of genuine concern, is the one area where there should not be any clash. Child protection procedures, for example, would override any issue of parental or family rights—that is how the system operates in practice. The danger, or difficulty, is when you blur the distinctions between what is welfare and what is wellbeing, which is a more nebulous general concept, because you then get into a more subjective understanding of those things. Where there is a clear safety issue, there should not be a problem.

**Emma Ritch:** That is right; that is a helpful point. An example in this area, which I think was discussed yesterday in the chamber, is the recent Crown Office and Procurator Fiscal Service change in policy, by which rape complainers will be mandated to give evidence under threat of arrest, or possibly after arrest. I understand that the basis for that is that it would protect other individuals from experiencing violence and potentially protect the person, as the unwilling complainer, in the event of an escalation of violence to murder. That should be very carefully balanced against the rights of individual complainers to have protection from inhuman and degrading treatment. A recent Inspectorate of Prosecution in Scotland report identified that women consider the criminal justice system to be “worse than being raped.” There is also a compelling argument to be made about a woman's right to privacy in that instance—protected rights will potentially be set against the welfare of the community at large. That requires to be worked through.

I am not sure that I would describe such instances as a conflict, but there is certainly something to be worked through to determine how the individual's rights are potentially set against the rights of the wider public or the community.

Our argument, and what I understand to be those of Rape Crisis Scotland and Scottish Women's Aid, which are both expert national organisations on violence against women, is that you can reduce the number of women wanting to withdraw from the process by making the process better. That solution does not require setting anyone's rights against anyone else's rights. Most

women want to withdraw from the process because, on average, it takes two years to go from complaint to case, and that is a very difficult two years in their lives—and men's lives, too, if they are the complaining witness. Our argument is that another resolution can be found that does not require all that pointedness about whose rights should be upheld resting on those individuals in a most difficult circumstance.

I suspect that there are other solutions to similar situations in which there appears to be a conflict of rights.

**The Convener:** Therein lies the challenge and the resolution to some of the work of this inquiry. We have completely run out of time and we have another piece of work that we must do in private.

As was the case with the first panel, we go nowhere near Brexit with you guys. If, after you leave, you consider that you have something to say on that issue, please get in touch. We are also keen to hear from you on the role of the inspectorate. Last week, we met the Northern Ireland Public Services Ombudsman. It would be worth while to look at what she said. We also met representatives of the EU ombudsman's office this week in Strasbourg. To help us in our inquiry, I would be quite keen if you could provide half a page on your thoughts on the level of power that the EU ombudsman has compared with the inspectorates and ombudsmen in Scotland.

I offer the committee's gratitude for your participation this morning and, no doubt, your ongoing participation in our work. We will no doubt cross paths on many occasions. If you go away and consider that there is an issue that I have not managed to cover this morning—the committee's time has been tight—please do not hesitate to come back to us, because this inquiry will continue to run for a number weeks. Thank you so much for your time.

11:20

*Meeting continued in private until 11:34.*



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