



OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities and Human Rights Committee

Thursday 6 December 2018

Session 5



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Thursday 6 December 2018

CONTENTS

	Col.
ASK THE MINISTER	1
WORK PROGRAMME	26

EQUALITIES AND HUMAN RIGHTS COMMITTEE

31st Meeting 2018, Session 5

CONVENER

*Ruth Maguire (Cunninghame South) (SNP)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Mary Fee (West Scotland) (Lab)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Oliver Mundell (Dumfriesshire) (Con)

*Gail Ross (Caithness, Sutherland and Ross) (SNP)

Annie Wells (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Christina McKelvie (Minister for Older People and Equalities)

CLERK TO THE COMMITTEE

Claire Menzies

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Equalities and Human Rights Committee

Thursday 6 December 2018

[The Convener opened the meeting at 09:30]

Ask the Minister

The Convener (Ruth Maguire): Welcome to the 31st meeting in 2018 of the Equalities and Human Rights Committee. I ask everyone to ensure that all electronic devices are on silent mode. We have apologies from Annie Wells.

Today's business is an ask-the-minister question session with Christina McKelvie, the Minister for Older People and Equalities. For this session, we asked members of the public for their questions and concerns, and today we will put those questions to the minister.

The committee, following its call for questions, received a number of comments about disability and the Department for Work and Pensions. They referred to the overall treatment by the DWP of people with disabilities, work capability assessments and the recent comments of the United Nations special rapporteur on extreme poverty and human rights, Professor Philip Alston. As those issues are not generally within the remit of the committee or the minister who is before us today, the clerks propose to write to the Social Security Committee to bring the comments to its attention. That letter will be posted on our website.

I thank everyone who submitted questions and took the opportunity to engage with us. Although we will not be able to get through all the questions today, people can still engage with the committee through the normal routes, including by responding to our calls for views.

I welcome Christina McKelvie, and, from the Scottish Government, Lisa Bird, deputy director for equalities, human rights and third sector, and Duncan Isles, head of human rights policy.

As this is the minister's first evidence session with the committee, I invite her to make an opening statement—no more than five minutes, please.

The Minister for Older People and Equalities (Christina McKelvie): Thank you for having me back at the committee. It feels a bit odd to be on this side of the table, but I am absolutely delighted to be here today in my capacity as Minister for Older People and Equalities. I know the essential work that this committee undertakes and the vital

role that it plays, having seen that at first hand. That role has recently been advanced by your impressive report, "Getting Rights Right: Human Rights and the Scottish Parliament". I will respond to that formally, but I take this opportunity to give an overall welcome to your recommendations, which build directly on our existing strengths in Scotland. The report is welcome, and I look forward to responding to it.

I was honoured to serve as convener of this committee, and, as the minister with responsibility for equality and human rights, I look forward to assisting the committee today and in the future.

Before taking your questions, I want to talk about my approach to my role and say where I believe that we are already making a difference. Like this committee, I care passionately about deep-rooted unfairness and disadvantage in our society. I came into political life in order to end that unfairness and disadvantage. However, although it is important that we identify and describe those issues, our approach cannot be about simply feeling good about caring. What really drives me is making a difference in people's lives. My officials will tell you that my famous cry is, "Outcomes! Where are the outcomes?"

The reality is that, although there has been progress, the evidence shows that it has not been as fast or as deep as it needs to be. I am keen to see the situation improve. Above all, I want to see improved outcomes in relation to equality and human rights across Government and the wider public sector. We will achieve that only by ensuring that we are listening to the voices of communities and impacting on their day-to-day experience across a range of policy development and service delivery areas. That is why your questions from the public are welcome.

I am clear that I have an overarching responsibility for pulling together this Government's overall focus on equality and human rights—that is the role that the First Minister has asked me to undertake. However, I have a team of ministerial colleagues who also care passionately about these issues, and I will work closely with them. Much joint ministerial work is going on, and I will touch on that in a few minutes. I will be working with my colleagues to ensure that they are driving change in their areas of responsibility. My role is to challenge us all to do better and, where necessary, to ask difficult questions, even of my ministerial colleagues.

In pressing to make the progress that needs to be made across the board, we have strong examples of areas in which we are already making a difference.

I am delighted that, next week, I will attend a conference to discuss progress one year on from

the publication of our race equality action plan. One of the most important actions in that plan was the initiation of the ministerial working group on Gypsy Travellers—I know that that is of interest to Mary Fee. As this committee and others have highlighted, the pace of change in that area has not been fast enough, given that we all agree that it is fundamentally a human rights issue.

The ministerial working group has brought renewed focus, and I fully expect to be judged on the basis of the actions that we will report on next year. I hope that the new cross-party group on the Scottish Gypsy Traveller community will help us to implement those actions, which relate to key areas such as housing, education and employment. I should say that, when we considered issues to do with employment and Gypsy Travellers, it became clear early on that we need to change the focus a little bit in order to consider how poverty, benefits and so on impact on people's employment outcomes and on the issue of lifting people out of poverty. We got great evidence from two women from a Gypsy Traveller site on the simple challenges that come along with that. If there are simple challenges, there are simple fixes. That is the approach that I am taking.

A key aspect of the work in this area has been supporting and listening to voices from Gypsy Traveller communities, and I am particularly pleased that we are directly supporting women and young people to have their experiences heard. The Gypsy Traveller women's voices project has just got off the ground. We saw some of the results of that at yesterday's cross-party group meeting. I have great faith that the group will make a difference. Of course, young Davie Donaldson, who we met when I was on this committee, is doing amazing work through the young people's assembly with some of the other young people in Article 12 Scotland.

The First Minister's national advisory council on women and girls and her advisory group on human rights leadership continue the theme of reaching out to hear voices in new and different ways, challenging us to improve. Both are producing reports for the First Minister, and she is considering the recommendations as we speak, I believe. We will continue our strong commitment to take decisive steps towards gender equality and to embedding human rights in Scottish life.

On the latter, I am looking forward to attending the major human rights conference that is being held in the chamber on Monday, marking 70 years of the United Nations Universal Declaration of Human Rights. I commend the committee on its work in making that event possible. I am honestly looking forward to it.

Finally, I want to highlight an aspect of the work that I am responsible for, which exemplifies the

importance of working with my colleagues in a genuinely cross-cutting way. We will shortly be publishing our final social isolation and loneliness strategy, following wide-ranging consultation. These are deep-rooted societal issues, and the causes—and potential solutions—are not straightforward. However, the strategy that we are producing across Government will set a clear direction towards making progress and real change in people's circumstances and experience.

All the examples that I have given you—they are only a few of many—highlight the importance of putting human rights and equality at the heart of everything that we do. I know that is something that this committee wants to do in relation to Parliament; the Government wants to do that, too. However, there is much more to do, as the questions that you have received from the public highlight.

I am very happy to take questions.

The Convener: Thank you, minister. Without further ado, we move straight to questions.

Alex Cole-Hamilton (Edinburgh Western) (LD): Good morning, minister. It is nice to welcome you back to the committee. You will be aware that, earlier in this parliamentary session, this committee considered the Gender Representation on Public Boards (Scotland) Bill—indeed, as convener, you led the committee through that process. John Thompson, via Twitter, asked:

“What is the status of the Gender Representation on Public Boards bill that passed almost a year ago, and is there any scope for public comments about the specifics of its implementation?”

Christina McKelvie: The straight and easy answer to the latter part of the question is yes, but I will go into some detail on that. Thank you for your warm welcome back to the committee, by the way.

As you know, the bill was passed in January 2018 after being considered thoroughly by this committee. The bill received royal assent in March 2018, and I recently signed off some of the new associated regulations. The regulations and the guidance will go out to consultation, which is why my straight answer to Mr Thompson is yes. There will be an opportunity at that point for full public consultation.

I encourage Mr Thompson and anybody else who has an interest in these matters to take part in that consultation. As you know, the Government wants to ensure that we use lived experience in all our policy making, so Mr Thompson's thoughts, and anybody else's thoughts, will be welcome. Please look out for the consultation. It will be happening soon; as soon as it does, please

highlight it to Mr Thompson, to give him the opportunity to respond.

Alex Cole-Hamilton: Thank you, minister. If we look back on the bill with a year's hindsight, are there any gaps? Is there anything that we should have done differently?

Christina McKelvie: I do not think so. However, people have lots of different views and the consultation might throw some of those up. We scrutinised the issues thoroughly when I was on your side of the table, so I am quite confident that we did not miss anything. However, if anybody thinks that we have missed anything, we would be happy to hear about it.

The Convener: We are definitely going to get through all the questions, so we will have to be very disciplined with supplementary questions and answers. Gail Ross has a supplementary.

Gail Ross (Caithness, Sutherland and Ross) (SNP): Minister, I welcome you to your new role, and back to the committee. It is good to see you.

We said that we hoped that passing the Gender Representation on Public Boards (Scotland) Bill would encourage private boards to take the same line as that in the bill. Have you seen any progress on that? What can be done to encourage that?

Christina McKelvie: Interestingly, I have seen some private companies looking at the benefits of having a more diverse board. That is not just about gender representation; it is about having a more diverse board and the additionality that that brings to any company.

I cannot give you any examples off the top of my head, but I have seen some anecdotal evidence of work towards that. There is certainly a lot of conversation and debate going on about the benefits of it. I would encourage all private companies to look at the work that we have done in the public sector and perhaps use that as a template for taking forward more diversity on their boards.

Mary Fee (West Scotland) (Lab): Good morning, minister. The public sector equality duty requires public authorities in Scotland to consider equality between protected characteristics groups and potential impacts on them. This question was asked on social media by @Scottish_Women:

"As the Scottish Government undertakes its review of the Public Sector Equality Duty regulations, will the Minister consider what recourse members of the public might have when public authorities fail to have due regard to those with relevant protected characteristics?"

Christina McKelvie: As you will know, the Scottish Government recently started to look at the public sector equality duty, what more we can do with it and whether it needs to be updated. A bit of work is being done on that right now.

I managed to take most of last summer to meet all the stakeholders across my portfolio, and a lot of them who have an interest in the review asked for additional time. We were looking at quite a tight timescale to do that work and they asked for the review to be stretched a bit. We agreed to that because we want to hear from people and we want them to realise that we are listening and acting on their wishes.

The provisional timetable for the review will be over 2019, with possible amending regulations on the basis of the feedback that we get from stakeholders coming into force in 2020. Obviously, we do not want to stop groups from getting involved and we would encourage them to do so. However, you will understand that the Equality Act 2010 is reserved to Westminster and the duties under it are a matter for the Equality and Human Rights Commission.

We know that it is not a statutory requirement to do the review, but we decided to review elements of the regulations in relation to devolved matters. As I say, stakeholders have asked us for more time and we are about to give them that.

You might also know that, although we would quite like to have them, Scottish ministers have no powers to enforce either the public sector equality duty generally or the specific duties in particular. The compliance process is set out and I can ensure that the committee is given the link to the compliance process so that you can inform your questioner where they can go to get that information. At this point in time, we do not hold power over that aspect. That is held by the Equality and Human Rights Commission, and we would direct your questioner and possibly the committee to the commission.

Mary Fee: That was a helpful answer. I hope that it will answer the question that was posed.

Will the minister update us on the Scottish Government's work to incorporate the United Nations Convention on the Rights of the Child and give us a bit more detail about the First Minister's advisory group on human rights leadership?

09:45

Christina McKelvie: Absolutely. We have made a commitment in the programme for government and in other ways. The First Minister has given a commitment to incorporate the principles of the United Nations Convention on the Rights of the Child, and work on that is going on apace. That work has been undertaken by my colleague Maree Todd. Maybe there is an opportunity for the committee to have a deeper conversation with her.

Professor Alan Miller of the First Minister's advisory group has been working very closely with

us—I know that he has worked closely with the committee, too—in order to bring about some of his recommendations. The First Minister told him to be bold, and he has reassured me that he has been bold. I am sure that that will present certain challenges for us in the Government, but those challenges will be worth undertaking.

As members know, the First Minister is considering the recommendations. I think that Professor Miller will publish his report on Monday, when the committee will have an event. I am really looking forward to hearing what he has to say, and I believe that the First Minister will make initial responses to that on Monday.

That is all that I have to say about that right now, as I do not want to cut across the very important job that the First Minister has to do—it is her advisory group. I am really looking forward to hearing what Professor Miller and the First Minister have to say on Monday.

The Convener: It was raised with me only yesterday that there might be data issues relating to the public sector equality duty, particularly in relation to race as a protected characteristic. Do you or your officials have any reflections on what we can do to improve the quality of data that lets bodies assess the outcomes of policies that they are implementing?

Christina McKelvie: I have not had that feedback. I have managed to meet BEMIS and the Coalition for Racial Equality and Rights on a number of occasions in the past few months, and I have not had that feedback from those organisations. If that is a specific issue, I would be keen for you to write to me about it, as we would want to sort it out. Obviously, we are looking at the review of the first year of the race equality action plan. If there is an issue about how we collect data, especially if we go forward with the review of the public sector equality duty and what that means for public authorities and their responsibilities and people's ability to access their rights, I would be keen to hear from the committee on the specifics of that.

Oliver Mundell (Dumfriesshire) (Con): I want to return to the United Nations Convention on the Rights of the Child. Is the minister aware of any consideration that has taken place of the draft bill that the Children and Young People's Commissioner Scotland and others suggested to Scottish Government ministers? Is any work on that taking place?

Christina McKelvie: My brief answer is that I am not sure, as Maree Todd will take forward that work. If the committee allows me to consult my ministerial colleagues, I can come back to you on that.

Oliver Mundell: That would be very helpful. Thank you.

Gail Ross: I want to go on to gender recognition legislation. A number of questions have been asked about gender, sex, the rights of women, the rights of trans people, and reform of the Gender Recognition Act 2004. The Scottish Government recently consulted on a review of that act. A majority of the people who responded to that consultation supported proposals to introduce self-declaration for legal gender recognition, but concerns were raised about women's safety, and particularly about the potential for such a system to be open to exploitation and abuse by men by allowing them access to women's spaces, such as refuges and women's prisons, where they could potentially cause harm. Those concerns were also raised by people who submitted questions to the minister. Will the minister comment on the concerns that have been raised about the safety and rights of women under a system of self-declaration?

Christina McKelvie: Absolutely. I thank you for that very good question.

We completely understand some of the concerns that have been raised. We had 15,000-odd responses to the consultation, some of which were very detailed. The proposal in the consultation was to shift away from requiring a medical diagnosis in order to gain a gender recognition certificate to requiring a more social diagnosis. I am sorry—"diagnosis" is probably the wrong word to use. However, the proposal was to move away from the medical model.

The consultation proposed a new system, under which a person seeking gender recognition would continue to make a statutory declaration. They would not be able to just flip back and forward, because a statutory declaration takes place in front of a notary public or justice of the peace—it is a solemn act, in that sense. If it was abused and a false declaration was made, that would be a serious criminal offence carrying a sentence of up to two years. I hope that the fact that someone has to make that serious declaration, which is a very solemn oath, reassures people that someone would not be able to flip back and forward to suit themselves.

The other aspect is risk assessments. The Equality Act 2010 currently allows exceptions in women-only spaces, whether that is refuges or prisons. Women's organisations in the Scottish Prison Service use those exceptions all the time. The 2010 act is reserved to Westminster and the United Kingdom Government has already informed us that it has no intention of changing that part of it. Therefore, the exceptions that exist will remain in place and risk assessments will be based on individual risk and need. That should

mean that there is limited scope for any abuse in women-only spaces.

Gail Ross: Can you pinpoint the exact change, for the people who are worried? Is it about making it easier for a birth certificate to be amended? Is it correct that there are no other changes? We have had representations about sport, prisons and refugees—as you said—and so many other things that are already happening at the moment. Will there be no changes at all to any of those things?

Christina McKelvie: The exemptions that currently exist under the 2010 act will remain in place. All those fears, which are legitimate, should not materialise. We cannot legislate risk away completely, but if we take the approach that we have thus far, I suspect that the risk assessments will remain robust. We are attempting to take the most inclusive approach that we can. The main issue for trans people is whether they need a medical certificate and the main change is that they will not need one, but they will still need to go through the formal declaration procedure, which is an oath in front of a notary public or justice of the peace.

Gail Ross: We have another supplementary on this issue. Concerns have been raised about the guidance issued by the Equality and Human Rights Commission on the provision of single-sex services. It was highlighted that the guidance is inconsistent with the commission's response to the UK Government's consultation on the Gender Recognition Act 2004. Lisa Mackenzie asked whether the minister feels that the commission's guidance is sufficiently clear and whether it is well understood by organisations that offer or wish to offer single-sex services.

Christina McKelvie: In my answer to the question about the public sector equality duty I explained that the Equality and Human Rights Commission is a reserved body. If the UK Government is not making any changes, I do not think that the EHRC will make any changes either. Specific concerns about the guidance may be raised directly with the EHRC, but, as I said earlier, if no changes are proposed in the current exceptions that protect women in women-only spaces, I do not see how the risk would be increased. However, the EHRC would be the best place to go for an answer on its guidance, which is a matter for the commission and the UK Government, not for me.

Alex Cole-Hamilton: The intersectionality around this issue is quite stark. I struggle to think of an equalities issue on which tensions between equalities groups are as fraught as they are on this. We have seen protests at a pride march for the first time this year and at other such events. Can the minister tell us about any international examples in which other nations have already

embraced this change and travelled this road? Are there learning points for how we can win the hearts and minds of people who have understandable anxiety about the matter, while at the same time achieving progress for our trans citizens?

Christina McKelvie: I cannot think of any international examples off the top of my head. You have caught me out, Mr Cole-Hamilton; you are always tricky.

Officials are working on the issue and the cabinet secretary is leading on the proposals and the reform of the 2004 act. They are doing a lot of work in looking at areas that we can learn from. You are absolutely right: people have legitimate concerns and fears. Our role is to try to find information and examples that might allay some of those fears, and reassure people that we will minimise as much as we can any risks that they feel exist. I hope that people will be reassured by the actions that I have spoken about this morning. I can certainly ask the officials who are working with the cabinet secretary to look at international examples, and I can come back to the committee with some of them, if that would be helpful.

Alex Cole-Hamilton: I would be very grateful if you could do that. You mentioned that there were about 16,000 responses to the consultation, and that in itself is symptomatic of the mobilisation of both sides of the argument. The issue has the potential to be very divisive. I would very much like to learn from the experience of other countries about how we can heal those divisions and find a progressive and reasonable path forward that achieves the goals that, I think, we all share on the committee, while heeding the anxieties from some communities.

Christina McKelvie: I completely agree.

Gail Ross: There has been a lot of chat across social media about the issue, and people have come to see me about it. One of the prevailing perceptions is that the reforms are going to somehow erode women's rights. Could you put people's minds at rest on that point?

Christina McKelvie: I would be the last person in Government to ever allow anything to erode women's rights. That is not to put aside the fact that some people have legitimate complaints and issues, which we are taking into account. There were clear and detailed responses to the consultation, some of which were from people internationally. Some of them had great support for the scheme, and others had some concerns about it. We have taken all that on board. I give the reassurance that we will not undermine any women's rights in Scotland; if anything, we will be making our nation much more inclusive and

understanding of the differences and diversity that we all enjoy.

The Convener: One of the concerns that has been raised is about the conflation of sex and gender. Do you have any comments on that? The fear about women's rights being diminished might relate to how we define "women". Alex Cole-Hamilton talked about intersectionality. Obviously, all equalities are equal; there is no hierarchy. An answer to that point might reassure people.

Christina McKelvie: You are absolutely right. In lots of documents and policy over the years, the terms "sex" and "gender" have been interchangeable. We do not see the two terms as being very separate. There is a scientific argument about biological sex, which is fair enough, but the terms "sex" and "gender" have always been pretty interchangeable in equalities policy. I do see much issue with that. There is a clear understanding that sex is a protected characteristic in the Equality Act 2010.

The hate crime review has thrown up some issues about how we deal with gender and misogyny. We need a clear factual understanding of those issues and how we can take them forward. We are working very closely with stakeholders in order to get clarity, because there has been some confusion. We need to ensure that we have a clearer and factual response to some of the arguments, and we are working on that as we speak.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I have a question from Julie van den Driesche. She asks:

"What do you have in place to ensure children suffering from invisible disabilities and their families are fully supported? Do you have any plans to fund advocacy services to ensure all children are able to make the most of their early opportunities, and not fall through the cracks?"

Christina McKelvie: Mr MacGregor will know that that issue has been close to my heart for a long time. I was instrumental in ensuring that the autism strategy was introduced, and I was very pleased to launch it in 2011. My former colleague Hugh O'Donnell, who was a Central Scotland Liberal Democrat MSP, worked very hard with me on that strategy in the first session that we were in Parliament.

Our national strategy—getting it right for every child—underpins everything that we do. Our ambition is for every child to reach their full potential, irrespective of the barriers and challenges that they face. All learning environments—whether that is mainstream schools, special schools or flexible learning environments—should meet children's needs. For instance, in the Gypsy Traveller community in Moray, we have a bus that provides education. We

are looking at all flexible opportunities. Provision should be based on what a child needs, including what they need to thrive and flourish at school.

10:00

I am working closely with Maree Todd on the issue of how we support young people with disabilities at transition points, for example, from nursery to primary, primary to secondary, and secondary to further and higher education, workplaces and adult services. As I know the committee understands, such transitions can be the most difficult stages. We are working on a better strategy to make those transitions much more seamless, and we are speaking to parents and stakeholders about how to make a difference. I know that the questioner was keen to understand key elements of that.

It is right to ask about how we make all that happen in schools. There are a number of ways to do that, including better joined-up working between social work, social care departments and schools, and better understanding among, and support for, the staff who work in schools, and not just the teachers. On teacher education, there are new sections in the initial teacher training, and continuing professional development is going on with teachers who have been through their initial teacher training. All of that will help teachers to identify the challenges and come up with strategies and opportunities to support young people. In addition, teachers and young people are helping to redesign some of the frameworks and resources that are used in school for that purpose. We are also working with universities to explore how we increase schools' understanding of disabilities and the impact that they have on learning, in order to give teachers the confidence and tools that they need to support young people better.

The questioner asked about examples of advocacy. The committee will know that we fund Enquire, an organisation that supports parents and children. You will know that, under the Mental Health (Care and Treatment) (Scotland) Act 2003, any person with a mental health issue has a right to independent advocacy. You will also know—I hope you know this, and I think you do—that national health service boards fund the Scottish Independent Advocacy Alliance, which supports young people to make their own decisions. It also supports everyone around those young people. Advocacy services are central to ensuring that young people and their families know their human rights and their right to a good and fruitful education.

We are looking at how we can make more of that information available. Publications are going up online, and the children's advocacy guidance is

all online. I can provide a link to the committee that will give you some information. The Scottish Independent Advocacy Alliance recently published guidance for independent advocacy organisations and independent advocates when they are working with children and young people. That guidance is publicly available, too.

From working with the families of children with disabilities—invisible or otherwise—who are going through school, I have realised that those families are not sure where to find all the information. We have a job of work to do to ensure that they understand where the information is and how they can use it, the fact that they can have access to an independent advocate, what their rights are and the best way to make a young person's learning experience the best learning experience that it can be.

A whole host of work is going on, most of it led by my colleague Maree Todd but some of it led by both of us, to deal with some of the pertinent challenges around transitions.

The Convener: There are a couple of supplementary questions. It would be great if the questions and answers could be quite concise.

Fulton MacGregor: Thank you for that response, minister. I can tell from the way that you answered that you are passionate about the area and I know about the work that you have put into it over the years.

I recently met constituents who have children or grandchildren who are autistic and who are concerned about access to health services and the delays in that. Can health boards improve in that area?

Christina McKelvie: The honest answer is that some of that can be inconsistent. The Scottish Government has worked on the autism toolbox, which can be used across public authorities, and which helps with the identification of need and with planning to put support in place.

The autism strategy is a 10-year strategy and we are coming close to the end of that period. If there are clear examples of where it has not worked in relation to referrals to child and adolescent mental health services for diagnosis—I suspect that that is what Mr MacGregor is talking about, and no doubt I have dealt with similar cases—I would be keen to hear about them. I have seen smashing examples and some challenging examples as well, which are usually when the individual cases are a bit more complicated.

If there are specific issues to do with how that process is being conducted, locally or nationally, and you have evidence of that, I would be keen to hear about it. I could then have conversations with

my health colleagues about how we address some of those issues. Would that be reassuring?

Fulton MacGregor: Yes. Thank you.

Oliver Mundell: I have a few quick questions. Given the minister's concern and her interest in autism, does she feel that the "Not included, not engaged, not involved" report is a cause for alarm for a lot of families? What is she doing to help to end unlawful exclusion of young people from school? Looking at my local area, does the minister think that it is acceptable for parents and children to be waiting for three to five years to get an autism diagnosis?

Christina McKelvie: You will know that there has been a response from the Cabinet Secretary for Health and Sport on some of the issues raised in the report. Obviously, it was concerning for all of us. Work is going on to look at how we can do better.

I think—I am pulling this from the back of my mind—that Dr Anne MacDonald has done some work on placements outwith Scotland, which is one of the issues that was brought up, especially in relation to young people with learning disabilities or autism. I reassure you that work is going on right now, and I can provide more information on that, which I am sure will be helpful.

On waiting times, I do not think that anybody would be happy about waiting for that length of time for a diagnosis and I would be happy to liaise with my ministerial colleagues if you have a specific geographical issue that we can attempt to address.

Oliver Mundell: Thank you.

Mary Fee: Let us move on to disability and accessibility. We received a number of questions on accessibility. My question is rather a long one, but it reflects all the issues that have been raised with us.

Taryn Cotton asked about accessibility in relation to public transport, pavements, retailers and the provision of disabled toilets. Theresa Connor and Robert Duff asked about the enforcement of blue badges and about pavement parking. Catherine Kulczycka pointed out that a lack of disabled changing facilities can prevent those with disabilities and their carers from being involved in their community. Mary Batchelor Clive said:

"These may be small things but they have a large impact on our daily lives."

What is the Scottish Government doing to ensure that disabled people are not prevented from being able to participate in activities or undertake routine tasks such as shopping due to

inaccessible buildings and a lack of appropriate transport?

Christina McKelvie: I absolutely agree with Mary Batchelor Clive, who said:

“These may be small things but they have a large impact”.

I absolutely agree; I understand that very clearly. You may know that the strategy and action plan “A Fairer Scotland for Disabled People” has been published. In that document, we have five long-term ambitions and 93 individual actions covering a host of issues including accessibility and public transport. You have just reminded me of something else, as well—I will tell you a wee story about something in a minute. Let us look at some of the strategies that are available to people to change some of that. There is a real commitment in the 93 individual actions to do that.

You may know that, in the chamber a few weeks ago, Liz Smith asked me a question about purple Tuesday, which is an event that was organised to increase the accessibility of shopping. In the run-up to Christmas, people want to get out and do their shopping, and purple Tuesday is about how we can get out and meet people in our local communities better. My response to Liz Smith was that we welcome purple Tuesday but want purple Tuesday—ensuring that people have that better access—to be every day. We are doing some work on that. I will meet Liz Smith soon to discuss some of the challenges, such as those that people describe in Euan’s Guide.

Euan’s Guide is close to my heart because I supported the event here that launched it, and I am pleased to see it going from strength from strength. The guide is informed by disabled people for disabled people, and it shows where the best places to go are and where there is accessibility. Although it is very positive, it reviews everything, so we also see in it some negative reviews and some of the challenges that people face in accessing their town centres, shops, theatres or whatever. We are working closely with Euan’s Guide to ensure that it continues to go from strength to strength.

That is one part of our work; the other part is about how we ensure accessibility to public buildings. It is obviously a bit more difficult to retrofit older buildings, but I do not think that it is beyond the realms of imagination to retrofit them and make them accessible. You will know that the strategy “A Fairer Scotland for Disabled People” has an action in it about places being accessible to everyone. That is not just about people who have disabilities; it is also about how a community grows older. When people get older, they can get a bit frail or get dementia, and the strategy is about how buildings can be made friendly and

inclusive for everyone. There are some specific actions in the action plan around that.

Another issue is what more we can do to provide accessible toilets. A piece of work is being done on that right now, and we are working closely with PAMIS, which is the gold standard. I will tell you two quick stories, one of which is about the accessibility of public toilets. I know a local family who, every week, drop their dad off at Glasgow airport on Sunday night and pick him up on the following Friday night, because he works abroad. Their youngest child has cerebral palsy, and there were no decent facilities at Glasgow airport so his mum, alongside others, campaigned for them. One of my very first duties was to open the toilet. People would say, “You opened a toilet?” but it was actually life changing for that family. Glasgow airport stepped up to the mark, consulted PAMIS and provided one of the best facilities that I have ever seen. That is an example of a private company doing that. If we can all do that, we should be doing it. There is obviously a responsibility under the public sector equality duty to ensure that we have more of those facilities in public buildings. Please reassure your questioners that there is on-going work to do that, of which Glasgow airport is a perfect example.

There is an issue about just getting to places, being connected and using public transport if that is accessible—we know that most of it now is. The other story that I will tell is about a visit that I made in the summer to Galashiels, to the Gala wheels project. Oliver Mundell is nodding his head, because he knows the project is absolutely amazing. It is a small community transport project, and it had just managed to raise funds to get one of the big all-singing, all-dancing buses with the different hoists and lifts. That opened up a whole world to people who could not use other modes of transport, who are now using that bus.

Some of the support for that comes from the Scottish Government, which has a fund for training the volunteer drivers. In some cases, public transport might not be the answer for someone because it does not address the need, whereas funding for community transport links such as Gala Wheels does. I heard a great story from one of the organisers who said that, when they take a trip—a full bus—into Edinburgh, a lot of the people do not come back with any shopping, because they just go for the journey, the connectedness or to deal with the social isolation or loneliness that they are facing. They use the community transport link for those reasons.

There is lots going on. It is maybe never enough for the pace of change that we want, but we hope that, when it all comes together—using the strategy and the 93 actions—we will see real progress in the near future.

Mary Fee: Thank you for that very full and helpful answer. Before I move on to the specific supplementary question that has been sent to us, I will pick up on the issue of accessible toilets. The minister will be aware of the successful amendment that I recently lodged to the Planning (Scotland) Bill to ensure that all new public buildings, stadiums and shopping centres have a changing places toilet.

10:15

There is quite a difference between a disabled toilet and a changing places toilet, which has a hoist and enables people with more profound disabilities to go out. However, many hundreds of buildings do not have such a toilet. I would be grateful if the minister could give us some idea of what work the Government is going to do on the matter. After all, retrofitting a disabled toilet to make it a changing places toilet is not that big a job. Is the Government considering any work in that respect, or are you thinking about creating a fund to allow that retrofitting to be carried out?

Christina McKelvie: The budget is being introduced next week, and, as Mary Fee will understand, it is a difficult process. I just put that on the table in full view of everyone.

I can tell you that work is already going on. I saw what happened at Glasgow airport and I have received representations from PAMIS and other organisations about the work that can be done. Your amendment to the Planning (Scotland) Bill, which was helpfully agreed to, has added some impetus to that, and we are looking at how we can fund some of that work; indeed, there might be more innovative ways of funding, particularly involving business or the public sector working with business. I will look at the progress that we have made on the matter and come back to you with an update. I am sure that we have things to say, but I am not sure whether I can say them yet.

Mary Fee: Thank you. That was very helpful.

Christina McKelvie: I also want to come back to you on the issue of blue badges, because I know that it has been raised. We keep the scheme under review; indeed, we have just carried out a review and extended it a bit. There have been calls for some reform of the scheme, and Transport Scotland is currently looking into that. I am waiting for it to come back to me with information on some of the proposals that have been made, and I will then come back to you on the blue badge issue.

Mary Fee: Thank you very much.

Marion Barnett has told us that, due to the inaccessibility of certain local public buildings, she is unable to participate in local democracy. What

steps can the Scottish Government take to ensure that people with disabilities are not denied the opportunity for political participation?

Christina McKelvie: That is a really interesting question. No building should be inaccessible; provision should have been made to make it—or, at least, the services provided there—accessible to that individual. We are obviously talking about a very particular matter, and I hope that Marion Barnett will contact her local MSP to ask for some support, particularly given that we are talking about a public building. That would be my first response.

We are doing quite a lot on public participation. You will know about the internship programme that Inclusion Scotland is running, with funding from the Scottish Government. I suspect that many of you will have had an intern—indeed, I have had one myself—and, last week, on the United Nations international day of persons with disabilities, I met some of the interns to hear about where they are now, the work that they are doing and the progress that they are making. It was fantastic. That simple piece of partnership work has created many opportunities and opened up the world to people by giving them the right support. I asked some of the tough questions about the biggest challenges and barriers—for example, “Is your boss good to you? Do they look after you? Do you feel part of the team?”—and it was heartening to hear all of them say fantastic things. Not all of them were without challenges, but with the right support they were able to address them. It was amazing to see that happening in the internship programme. I should say that it is a political shadowing programme that allows people to think about whether they want to become politically active, and it would be absolutely wonderful if someone with that kind of amazing lived experience became politically active and brought some of that experience to politics.

I am trying to remember the name of it, but I also want to mention the participation in elections fund that the Scottish Government introduced last year, which supported 30-odd people, 15 of whom, I think, got elected. That, again, was a very simple means of opening up horizons and opportunities for people with disabilities to get involved in policy making.

A few weeks ago, I attended a conference on partners in policymaking, which is a funded programme that allows parents of children with disabilities to take part in policy making and to uphold and be champions for their human rights. That is another great example of the kind of simple thing that we can do through good partnership, collaboration and support, and which creates so many amazing opportunities. I hope to see some of the 15 people who were elected through the

participation in elections fund the last time in this Parliament the next time.

Mary Fee: Thank you.

Oliver Mundell: What action is the Scottish Government taking to ensure that everyone in Scotland has the right to adequate housing? Social media user JHF asked about the difficulties that people who have been involved in the criminal justice system may face in trying to access that right.

Christina McKelvie: You will know that rehabilitation back into the community can be tough for people who have been part of the criminal justice system. We hope that it will not be tough when they come into contact with the public sector and public authorities, which have a responsibility to house and look after people. We have some of the most advanced housing legislation in the world, and we are currently reviewing that to ensure that people get the opportunities they need. Mr Mundell will not be surprised to hear that Kevin Stewart is leading on that and is working very hard through the Planning (Scotland) Bill and other work.

You may also know that the strategy "A Fairer Scotland for Disabled People" includes, among the 93 actions that I mentioned, some actions that relate specifically to housing. That is to ensure that local authorities set realistic targets for new builds—Mary Fee's very helpful amendment will ensure that that focus is even sharper now—and targets that create flexible housing opportunities so that those are accessible. Retrofitting old homes is sometimes more difficult, but, if we can build accessibility into the system and build out the barriers, there will be more flexible housing opportunities.

Local authorities have a duty to report annually to the Scottish Government on the progress they have made, and we will provide the committee with the most up-to-date report on that, if it would help you. Wheelchair accessible guidance to local authorities will be available early in 2019, which is another action in "A Fairer Scotland for Disabled People". We can give you that guidance as soon as it is available.

A refreshment of the local housing strategy guidance is also expected at about the same time, early next year, which will enable local authorities to take cognisance at the planning stage of how to build out those barriers and create more flexible situations—flexible building that meets people's needs. That has already happened in some new builds, with 91 per cent of the 2016-17 new builds having met the housing varying needs standards, so we are already making real progress. With the two pieces of guidance that are due early next year and the renewed focus provided by the

amendment in the Planning (Scotland) Bill, we should make much more progress.

Oliver Mundell: That is excellent and it covers a lot of the supplementary questions that people have asked. I have a short question of my own.

The Convener: I alert you and the minister to the fact that we want responses to all the public's questions and we have two more to get through, so I will pause members' questions.

Oliver Mundell: Okay. Can I put a comment to the minister so that she can get back to me? It is about particular problems in rural communities where the social housing and other housing stock means that not a lot of alternatives are available. What financial provision is there for people to adapt their existing homes?

Christina McKelvie: I will speak to Mr Stewart about the specific situation in your geographical area and get back to you on that.

Gail Ross: Let us move on to older people. There has been much discussion in the media recently of an intergenerational divide between young and old on everything from housing to Brexit. For example, earlier this year, the *New Statesman* described baby boomers versus millennials as the "defining schism" in UK politics. In April, *The Observer* asked:

"Millennials are struggling. Is it the fault of the baby boomers?"

Colette Greig asks on Facebook:

"What is planned to prevent the division between young and old which appears to be encouraged on all of the media. It is negative and serves no real purpose other than to cause anger particularly from the young."

Will the minister comment on what work is being undertaken in Scotland to foster positive intergenerational relationships?

Christina McKelvie: I certainly will. The narratives of "them versus us" and "who's to blame?" are incredibly unhelpful, and we are taking steps to deal with them. As the minister for older people—although I am obviously not defined by that—I, along with the Government, believe that older people make a positive contribution. They bring their wisdom and their life experience to all the work that we do in creating the society that we want to be. Our population is getting older—we are all getting older—so we will face some real demographic challenges in the future. In order that we face those challenges and maybe not come up against too many, we need to create the narrative of the positives of growing older: the wisdom and the lived experience. We want to use that experience in everything that we do.

We have committed about £490,000 to older people's organisations in order to tackle barriers.

The framework that we are using is all about positivity, positive contributions and working together across generations. We fund an organisation called Generations Working Together, which does fantastic work. Please go to see the work that it does in your constituencies, if you get the opportunity, because you will be absolutely gratified. I had a brilliant experience in my constituency.

When older people's organisations are tackling the barriers, one of the things that they look at is independent living and older people maintaining independence in households, communities and families for as long as possible. Promoting people's rights and the equalities aspect to that can only be a positive and should always be framed in a positive way.

We also have the older people's strategic action forum, which I now chair. Recently, we freed up about £50,000 for OPSAF members and organisations to inform the work on the framework. That takes me to the work that we are doing to address all these issues. We hope to publish, around spring time, the older people's framework, which will focus on a few key elements. Positive contributions are at the very top of our priorities, and the framework also looks at removing barriers and ending negative perceptions.

To inform that work, I visited the Hanover (Scotland) Housing Association Ltd project up in Elgin. It has just built a new housing development that is not just for older people but for people with disabilities, mental health issues and learning difficulties, who are all living together in the community. It is a beautiful new build that is fully accessible and has fabulous facilities. There is a gorgeous courtyard in the centre of the development. I like gardens, so I asked, "How is the courtyard so nice?" I was then shown why it is so nice: there is a nursery school next door, and the kids from the nursery come in and look after the garden. They chap on everybody's door and say, "Come and help us sort out the hydrangeas"—the kids were giving me all the Latin names for the plants.

That was a perfect example of what we can do when we bring together the framework and have generations working together. We can end all the negative perceptions and bring all the wisdom and lived experience back into young people's lives. I hope that we will be able to give young people something that they can aspire to, because, when they hear the stories from the lived experience of the older generation, they can say, "I could do that. I could be involved in that." Seeing that key intergenerational work was a real joy. That is what we are focusing on and where we want to get to.

Gail Ross: Thank you so much for that answer. The strategies that you have mentioned will

protect the social rights of older people in Scotland—the right to education and the right to take part in cultural life, for example. Could you expand on that?

Christina McKelvie: Absolutely. The framework looks at all those issues. I will tell another anecdotal story, because, when we put a human face on policy, we can see it in action. On the UN international day of older persons, I went to Glasgow to visit Queens Cross Housing Association, which has the most amazing community link worker set-up. I met a group of older people, some of whom had been socially isolated and lonely in tenement blocks and had not spoken to people for years, who have been brought back and given a new outlook on life through the community link worker team. They have been helped to upgrade their homes and to deal with some of their health issues. It was an amazing fact that every single one of them was registered at the local college—it did not matter what age they were. I got a fantastic hand massage from an older lady who had decided that, after all these years, she would go back to college and take full advantage of her student discount card.

10:30

The Convener: Minister, the young women lead committee's "Report on Sexual Harassment in Schools" highlighted that 91 per cent of its focus group participants

"considered sexual harassment or gender based bullying to be a problem at their school".

The report also noted that

"More than half of girls age 13 to 21 think that those who report sexual harassment may be bullied or teased."

Regarding your portfolio responsibility for women and gender equality, Twitter user @Scottish_Women asked:

"What are the Ministers views that the sexual harassment and sexist bullying of schoolgirls were not explicitly named within the Respect for All anti-bullying guidance? Can she guarantee these incidents will be accurately recorded & monitored, in order to tackle it?"

Christina McKelvie: I pay tribute to the young women lead project and the work that it has done, which is informing all my work in this area. I also pay tribute to the girl guides who came to see this committee during the prejudice-based bullying inquiry that we undertook. They came to see us in private first, to talk about some of the issues that they had experienced, and then they felt comfortable enough to go on the public record. Some of what they said was harrowing. I am taking forward the work that I am doing now with all that in mind.

I am absolutely clear that sexual harassment or abuse of any form is unacceptable anywhere and needs to stop. Bullying behaviour as a result of sexism is very different from sexual harassment and/or assault, and we have to be clear about that as well. The support that is needed by a young person who demonstrates bullying behaviour and one who demonstrates inappropriate sexualised behaviour is different, too. We must ensure that children and young people get the support that they need to address such behaviour. I put that on the table.

What are we doing to address some or, I hope, all of that? The equally safe strategy is being rolled out in schools—a school in my constituency was in one of the two pilots that we ran—and 26,000 young people have gone through the programme. Along with equally safe, there is the stamp out media patriarchy project, and Rape Crisis Scotland's sexual violence prevention programme has also recently been rolled out to all 32 local authorities. I hope that those will address some of the issues on what the differences are and how we deal with that.

In the personal and social education review, there are elements of training on how to deal with consent, as there is an issue with interpreting what that means. There are many resources available, including the Educational Institute of Scotland's booklet "Get it Right for Girls" and guidance for teachers.

One of the specific asks in the question was about how we ensure that such incidents are recorded properly. You will know that a key element of this committee's inquiry was on data collection, how data is used and the richness of the data. The Government has taken all that on board and the SEEMIS information system, which is the data collection system that is used in schools, will now allow schools to record any underlying prejudice or negative behaviour that is reported as a bullying incident. That includes an option to record an incident that is based on sexism and gender, so there will be opportunities for schools to record that more accurately. We can get more accurate figures, which will mean that we can target our resources and focus our attention more clearly.

On the wider scope of things, early in the new year, I will launch a sexual harassment and sexism public awareness campaign, a specific strand of which is on children.

I hope that all that reassures your questioner that work is on-going and that we are taking the issue seriously.

The Convener: You said that the campaign will have a specific strand on children. The thrust of the question is that people are concerned that

naming male violence for what it is might become diluted. The answers that you gave showed that that is not the case, but do you recognise the concern that if we do not talk about violence against women and girls specifically, something might be lost?

Christina McKelvie: That could be a legitimate concern, but I go back to all our other actions, because there is not just the anti-bullying strategy. Bullying is a specific thing and I would be a bit worried that if we did not separate it out, we would dilute the fact that there is violence against women. That is why equally safe in schools, the sexual violence prevention work, the consent training and all the other work will reinforce the fact that we are serious that any form of sexual harassment, in or outwith schools, is not acceptable. We are taking actions to address it.

Mary Fee: You touched on the inquiry that this committee did when you were convener. You might remember that there was a suggestion that not every incidence of bullying was being recorded, because of the perception that stigma would be attached to the school. How confident are you that that has changed? You have spoken about the equally safe strategy and all the work that has been done around that, which is welcome, but if there is still a fear or concern in some schools that is preventing them from recording everything, how will you get over that?

Christina McKelvie: There are two ways to address that. First, there is the whole-school approach, which means that the whole school has to change its culture. We have seen some great examples of schools that have done that. Secondly, there is the inspection regime. A bit of work is being done to follow up on a recommendation in the committee's report. The Government is taking forward all those recommendations and my ministerial colleague, Maree Todd, is leading that work. She and I seem to work together on a lot of things, because of the impact that those issues have. I can get some additional information on where things stand in relation to that matter.

Alex Cole-Hamilton: As you know, minister, there is a spectrum of sexual harassment—it ranges from physical abuse to online grooming and exploitation. Before I came to this committee, I sat on the ministerial task force on child exploitation. At its first meeting, I raised the fact that I was the youngest person in the room—that is saying something. Have we made progress on involving young people, who know far more than we do about the various social media platforms and fora and the online frontiers where they are most at risk? How are you involving them in issues relating to not only online sexual exploitation, but the other policy areas around sexual harassment?

Christina McKelvie: You will not be surprised that one of the reasons why I commended the work of the young women lead project is that it is all over this stuff, as is the Scottish Youth Parliament. The SYP committee that is equivalent to yours has done some interesting work on the rights respecting schools campaign and how we involve young people in that. One of the pilot schools in that work is in my constituency. I went there for a meeting on another matter and I saw that the young people who are involved in the rights respecting schools committee were delivering the equally safe in schools project to their peers. We think that peer education will be key to a lot of the work that is going on. That is the approach that has been taken. We want to ensure that we have relevant policies that are informed by the lived experience of young people and are, in most cases, delivered by young people.

The pilots for the sexual violence prevention programme and the stamp out media patriarchy project were all run by young people, who are absolutely amazing. Some of those young people come to Parliament to speak to the cross-party groups in order to inform the work that is done here, which brings down the age ratio dramatically.

I can reassure you that all the work that we are doing across the board has involved young people—much younger than you and me, Mr Cole-Hamilton—at every stage. Just last week, in this room, we had an everyday heroes event, which involved young people who had been through the criminal justice system as victims and witnesses of domestic violence. All the recommendations that they made to us last week have been taken on board with regard to how we can improve that process for young people.

Alex Cole-Hamilton: That is good to hear.

The Convener: Thank you for giving evidence, minister. We appreciate your staying on a little bit longer than planned so that we could get through all the questions from the public.

Our next meeting will be on Thursday 13 December, when we will continue to take evidence on the young women lead committee's "Report on Sexual Harassment in Schools" from representatives of that committee and the Cabinet Secretary for Education and Skills, John Swinney.

I now close this meeting, and—

Mary Fee: Convener, I had intimated to you that I wished to raise an item of business before you closed the meeting.

The Convener: I have not yet closed the meeting. *[Laughter.]*

Work Programme

10:39

The Convener: Mary Fee wishes to raise an item.

Mary Fee: I am grateful to the convener for allowing me to raise this issue. I would like to ask that the committee reopens the evidence-taking process in relation to our scrutiny of the Age of Criminal Responsibility (Scotland) Bill. I have two reasons for the request: the first relates to the stage 2 amendments that have been lodged by our colleague, Alex Cole-Hamilton; and the second is the intimation that the UN is consulting on the age of criminal responsibility with the intention of raising the age to 14 earlier next year.

The amendments that have been lodged by Alex Cole-Hamilton would raise the age of prosecution to 14 and the age of criminal responsibility to 16. The committee will be aware that we took no evidence on the age of criminal prosecution or on raising the age of criminal responsibility specifically to 16. I appreciate that we had some evidence from stakeholders that they would like the age to be higher, but we did not ask for specific evidence on the age of 16. In light of that, it is my view that it is impossible for this committee to reach any kind of decision on the amendments.

As committee members, we have a responsibility to thoroughly scrutinise the legislation that comes before us. The power of this Parliament is and should always be in our committees. It is therefore incumbent on us to fulfil our obligation and take further evidence on the amendments that have been submitted by Alex Cole-Hamilton and fully consider the intention of the UN to raise the recommended age of criminal responsibility to 14. If we do not do that, we will introduce legislation that will already be at odds with recommendations from the United Nations.

I assure the committee that this is not about party politics. This is about us as a committee fulfilling our responsibility and obligation to this Parliament.

The Convener: You have put your views on the record. As you know, agendas have to be published in advance, so there is no capacity to take items on the record that are not on the published agenda. The agenda is a matter—

Oliver Mundell: I have a question. Given the point that Mary Fee has raised, would it be possible to have a discussion in private session on the work programme, and perhaps take some advice from the clerks?

The Convener: The agenda is a matter for me, as convener, and I suggest that we put this item on the agenda for next week. Is that agreed?

Members *indicated agreement.*

The Convener: I close meeting.

Meeting closed at 10:42.

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