

# **EQUAL OPPORTUNITIES COMMITTEE**

Tuesday 30 September 2008

Session 3

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2008.

Applications for reproduction should be made in writing to the Licensing Division,  
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ  
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate  
Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by RR  
Donnelley.

---

# CONTENTS

Tuesday 30 September 2008

Col.

<b>BUDGET PROCESS 2009-10</b> .....	587
<b>SEXUAL OFFENCES (SCOTLAND) BILL: STAGE 1</b> .....	609

---

## EQUAL OPPORTUNITIES COMMITTEE

### 13<sup>th</sup> Meeting 2008, Session 3

#### CONVENER

\*Margaret Mitchell (Central Scotland) (Con)

#### DEPUTY CONVENER

\*Elaine Smith (Coatbridge and Chryston) (Lab)

#### COMMITTEE MEMBERS

Richard Baker (North East Scotland) (Lab)

\*Marlyn Glen (North East Scotland) (Lab)

\*Bill Kidd (Glasgow) (SNP)

Hugh O'Donnell (Central Scotland) (LD)

Sandra White (Glasgow) (SNP)

\*Bill Wilson (West of Scotland) (SNP)

#### COMMITTEE SUBSTITUTES

Willie Coffey (Kilmarnock and Loudon) (SNP)

John Park (Mid Scotland and Fife) (Lab)

Mary Scanlon (Highlands and Islands) (Con)

Margaret Smith (Edinburgh West) (LD)

\*attended

#### THE FOLLOWING ALSO ATTENDED:

Dr Ailsa McKay (Adviser)

#### THE FOLLOWING GAVE EVIDENCE:

Margaret Gribbon (Digby Brown)

Peter Hunter (Unison)

Suzi Macpherson (Employment Research Institute)

Anne Meikle

Emma Ritch (Close the Gap)

Muriel Robison (Equality and Human Rights Commission)

#### CLERK TO THE COMMITTEE

Terry Shevlin

#### ASSISTANT CLERK

Joanne Clinton

#### LOCATION

Committee Room 1



## Scottish Parliament

### Equal Opportunities Committee

*Tuesday 30 September 2008*

[THE CONVENER *opened the meeting at 10:08*]

### Budget Process 2009-10

**The Convener (Margaret Mitchell):** Good morning and welcome to the 13<sup>th</sup> meeting in 2008 of the Equal Opportunities Committee. I remind everyone present that mobile phones and BlackBerrys should be switched off completely, as they interfere with the sound system even when they are switched to silent. Apologies have been received from Sandra White, Hugh O'Donnell and Richard Baker.

Our first item is consideration of the Scottish Government's 2009-10 draft budget. The committee has agreed to focus on issues of equal pay in local government and on the associated issue of occupational segregation. I am pleased to welcome participants to our round-table discussion. I invite participants and committee members to introduce themselves. I am the convener of the Equal Opportunities Committee.

**Emma Ritch (Close the Gap):** I am project manager of Close the Gap.

**Margaret Gribbon (Digby Brown):** I head up the employment department at Digby Brown solicitors in Glasgow.

**Suzi Macpherson (Employment Research Institute):** I am a researcher at the employment research institute at Napier University.

**Marlyn Glen (North East Scotland) (Lab):** I am a member of the Equal Opportunities Committee.

**Muriel Robison (Equality and Human Rights Commission):** I am the head of commission enforcement at the Equality and Human Rights Commission.

**Bill Kidd (Glasgow) (SNP):** I am a member of the committee.

**Anne Meikle:** I am a consultant on equality issues, specifically on gender.

**Bill Wilson (West of Scotland) (SNP):** I am a committee member.

**Peter Hunter (Unison):** I am a legal officer with Unison Scotland, now seconded to the post of regional officer for equal pay.

**Elaine Smith (Coatbridge and Chryston) (Lab):** I am deputy convener of the committee.

**The Convener:** Thank you. The committee invited Audit Scotland and the Convention of Scottish Local Authorities to attend the meeting, but neither organisation wished to send a representative. Audit Scotland said that it thought that its contribution would be limited

"as our work in this area has not involved any major study offering the weight of evidence that we normally provide to Parliamentary Committees on a regular basis".

That seems fine on the face of it, but the evidence that we have received, especially the written submission from Unison, has highlighted some worrying facts. No doubt we will explore those during our discussion.

COSLA did not want to send a representative to take part in the discussion because it thought that that would hinder the debate. Given that COSLA is a key player in implementing equal pay, we thought that we should strive to ensure that a representative of the organisation was present. I contacted Pat Watters to see whether COSLA could send someone, but it has not done so, which is regrettable. We are extremely disappointed that such a major player is not represented here, especially given that a Scottish Government finance official was unable to come to last week's meeting. We are concerned that a pattern is emerging. We will follow up the issue with COSLA and ask it to provide a written submission. We hope that we will have that by the time that we speak to John Swinney, the Cabinet Secretary for Finance and Sustainable Growth, next week. COSLA's failure to send a representative is not a great start to our consideration of equal pay, but I hope that our round-table discussion will pinpoint the issues on which we need to focus and make the session worth while.

I am keen to keep the discussion focused on practical issues that we can raise with the cabinet secretary next week. We will start with a general topic. Why does the issue of equal pay remain unresolved? What are the main barriers to implementing non-discriminatory pay structures?

**Muriel Robison:** I am happy to open the discussion. Although I now represent the Equality and Human Rights Commission, I worked previously for the Equal Opportunities Commission, which had long been concerned with the issue of equal pay and, in particular, the pay gap. Over the years, the Equal Opportunities Commission attempted to address that issue. For a long time, there was relatively little substantive change in the pay gap. One of the main problems was the expense and complexity of litigation, which meant that only the Equal Opportunities Commission and trade unions were addressing the problem. In more recent years, other players—no-win, no-fee solicitors, as well as trade unions—have been actively involved in seeking to address

the issue in local government and the national health service in particular. In some ways, the main barriers were the complexity of the law and the lack of activity.

There was also a lack of awareness. The question of equal pay for work of equal value—when two different jobs are rated the same because of the skills, knowledge and experience that they require—is not well understood. That has changed in recent times because of increased awareness, as a result of activity in local government and the NHS. Perhaps we will come back to some of the pay gap problems that remain.

**The Convener:** Muriel Robison has identified the complexity of the law and a lack of awareness as barriers to addressing the pay gap. She made the point that we need to look at and to rationalise the issue. Are there other major barriers?

10:15

**Peter Hunter:** Another problem is securing recognition of pay inequality, discrimination and discriminatory assumptions about the roles of women and men in society. We are moving forward gradually, but there are still deep-seated assumptions about the work that women and men do. For example, the continuing debate about flexible working and work-life balance is dominated by how we accommodate the needs of women as workers and family members; there is less emphasis on men's role as workers and family members. That reflects deep-seated assumptions about the respective roles of women and men.

There is also a cost problem and a willingness problem. In an employment tribunal case in 2005, a senior human resources official from Glasgow City Council, Mr Ken Murray, gave evidence that the council had scoped the implications of implementing single status, which was due to be implemented in 2002, and costed it at £50 million. The council decided that, at that price, single status was impracticable for it. Before 2005 was out, the council had adopted a compensation scheme for women who had not been given the opportunity to receive equal pay because of the council's failure to implement single status. The proposals had an immediate cost of £42 million and have had an on-going cost considerably in excess of that.

I think that Glasgow City Council made a mistake in thinking, at one stage, that it would face no sanction if it did not implement equal pay. From a financial perspective, one of the big issues today is the erroneous perception of all employers—in this case, public sector employers—that there is no sanction if they fail to engage with the question

of equal pay. The penalty is one that we all pay—the huge, on-going, destabilising costs that are associated with the failure to address equal pay. Had Glasgow City Council spent the £50 million that it scoped as the cost of implementing equal pay in 2003 and 2004, employees would have been better off, because they would have had equal pay earlier, and the council would have been better off, because implementing equal pay would have cost less. For the purposes of the committee, it should be noted that the council tax payer would also have been considerably better off, because the issue would have been dealt with far sooner and at lower cost.

**Emma Ritch:** Some of the issues that have arisen in the public sector, especially on single status, are a real disincentive for private sector employers to take action on equal pay. We work with a number of private sector employers, across a range of industrial sectors, and tell them about the business case for and the possible productivity benefits of action on equal pay. When we do so, they point to the morass that single status has turned into and to what is happening in local government. The women and work commission discerned that there were potential productivity returns to the United Kingdom economy of between £15 billion and £23 billion, which represents 1 to 2 per cent of gross domestic product. However, those are macroeconomic benefits; there is much less clear evidence of benefits to individual businesses. It is difficult to continue to make the business case for equal pay when employers can see the difficulties that have arisen in local government.

**The Convener:** Those comments are helpful. We are getting the message that there is a real value-for-money issue, because failure to address the issue of equal pay means that costs escalate. Should other people come into the frame to monitor what is happening? With whom should responsibility for nailing the issue lie?

**Margaret Gribbon:** I have been involved in litigating equal pay cases in the past three years, mainly for the GMB trade union. I have dealt with in-house solicitors but, in the main, I deal with external solicitors who have been instructed by local authorities.

My perception is that the problem in local authorities is so vast that no one wants to take ownership of it. Increasingly, it is convenient to view the problem as a legal one, whereas, in reality, it is a massive industrial problem. Anyone who is involved in litigating these cases can tell you that employment tribunals are not equipped to deal with mass litigation under the Equal Pay Act 1970. The employment tribunal in Scotland has before it in excess of 40,000 equal pay cases against public sector employers, of which

approximately two thirds are local authority employers.

We are up to our necks in preliminary points and are nowhere near dealing with the substantive issues, such as whether the employer can justify the pay differential between men and women. We routinely tell our clients that it could be another seven to 10 years before the cases are resolved in the employment tribunal. There are people around the table today who believe that that is a conservative estimate.

Councils' solicitors are bombarding us with lots of preliminary points and if their objective is to delay the hearings, that has been a successful strategy. Of course, in the interim, that simply increases local authorities' legal costs. I do not see a light at the end of the tunnel for existing litigation, unless we go back to the core issue of why many of us believe that equality is not being delivered. My view is that cost is at the heart of the problem.

**Elaine Smith:** Should Audit Scotland be looking at those costs?

**Margaret Gribbon:** I am astonished to learn that it has not been.

**Peter Hunter:** That is a very important point. This will sound slightly sycophantic, but the Scottish Parliament has a good track record on equal pay issues. I say that in response to the question given the provisions in the Local Government in Scotland Act 2003, which describe the best-value regime and the way in which local authorities are required to deliver best value as defined. Section 1 of the act and the accompanying ministerial guidance are clear that best value is not just about old style cost efficiencies but about balance in relation to the need to deliver effectiveness, efficiency and equality.

Audit Scotland's role is to go beyond being a traditional accountant. Whoever drafted the 2003 act had a vision on which we have not capitalised. Under my interpretation of the act, Audit Scotland should be auditing spend and the financial risks that are associated with inequality. If Audit Scotland had taken on board the spirit and letter of the act and the guidance, looked rigorously at the activities of local authorities between 2003 and now, and made specific and relevant recommendations about dealing with the huge financial instabilities and risks that we now know about, the situation today would have been very different from the one that has unfolded during the past five years.

There are big questions to be asked. I can understand that Audit Scotland might see itself as being the regulator of the spend rather than the regulator of the budget, but its role, as defined by

statute, goes beyond the spend and is about protecting value for money and the public purse, minimising risk, alerting local authorities to risk if they are not already alert to it, and ensuring that risk is handled appropriately.

I hesitate to use this analogy because of the particularly distressing circumstances that are associated with it. I do not wish to upset people who have asbestos-related conditions or their relations but, from the point of view of litigation and financial risk, the equal pay gap situation is not dissimilar to the asbestos-related illness situation. Asbestos-related conditions are a long-term problem in the labour market that people are beginning to realise—this is well documented—has a horrendous, damaging effect on people's working lives and their wider personal lives. Those are actionable losses. The discrimination that people face over pay is similar, in some respects, in that it is deep seated in the labour market. The difference is that, unlike asbestos, which is regulated by agencies such as the Health and Safety Executive, employers are still building highly expensive and discriminatory toxic pay systems into the public and private sectors. From a value-for-money perspective, that is just storing up problems for the future. We are not dealing adequately with the problems of the past. People are not building the benefit of our current wisdom into the regulatory regime through Audit Scotland or other agencies. As a consequence, even if we set aside the equality issues and look at the equal pay gap from an accountant's perspective, we are building up major financial problems for the future.

**Elaine Smith:** That leads on to the next point that the committee would like to explore, which is the cost to the public purse of temporary solutions. In his opening remarks, Peter Hunter made a point about no-win, no-fee claims and the temporary pay-offs that result from them, and how they can add up to a substantial amount of money. I ask for comments about those temporary pay-offs, which add to costs over and over again. Margaret Gribbon also mentioned the matter.

**Margaret Gribbon:** I was talking about claims that are in the system at the moment and my estimate that they will take seven to 10 years to resolve, although some people think that they will take longer. I emphasise that those are what I call first-wave claims, which arise out of the pre-single status structures—the discriminatory pay structures.

On the horizon is a second batch of claims against many local authorities. They relate to women signing a discharge or compromising their claim up to a certain date, about which settlement offers were made mainly between August and Christmas 2005 and into 2006. Those compromise agreements asked claimants to discharge their

equal pay claims only up to the date that they signed the agreement. Therefore, if two or three years passed before the local authority implemented single status, those claimants would have claims that had not been compromised legally for that period. I call those residual claims.

Shortly, the GMB will lodge several thousand claims for members that fall into that residual category. One or two local authorities, such as West Dunbartonshire Council, have made offers to settle those claims. Others have given claimants payments that they say discharge their obligation under the Equal Pay Act 1970, but which we say fall significantly short of what is due to the claimants. Although payments have been made, claimants have not been asked to sign compromise agreements, so there will be further litigation in the residual claim period.

Further second-wave claims will be based on the allegation that the new pay and grading structure that was implemented under single status is as discriminatory as the one it replaced. Those arguments are based, in the main, on existing pay protection for male bonus earners, on which there has been recent litigation, as Peter Hunter mentioned in his written submission to the committee.

I see no end in sight to litigation. It is storing up fast and furious for the future. We will be litigating these cases for decades to come.

**Elaine Smith:** In other words, the cost to the public purse of the temporary solutions is massive.

**Margaret Gribbon:** Those solutions are not working. They are like putting a plaster on a bullet wound.

10:30

**The Convener:** Does anyone else want to comment?

**Muriel Robison:** The Equality and Human Rights Commission is concerned about the amount of money that has been and—as Margaret Gribbon said—will continue to be paid out as a temporary solution without the problem being addressed in the long term.

Margaret Gribbon talked about second-wave claims in relation to pay protection. The commission is much more concerned about the fundamentals of the job evaluation schemes that are being implemented and whether the schemes can address the undervaluation of the work women do that we think exists. We have been considering some councils in more detail and we are concerned that women are not moving up the occupational hierarchy and that women's pay is not increasing in the way in which we might have expected it to do, particularly given that the

payment of compensation indicates that women's work has been undervalued. In particular, we are concerned that the overall gap in local government pay will not narrow as a result of the massive financial investment, so we will not reap the cost benefit whereby women and men will be paid fairly and equally.

**Elaine Smith:** Why is that? Is there systematic discrimination that is not being tackled? I do not want to put words in anyone's mouth.

**Muriel Robison:** We are concerned that the job evaluation schemes that replaced the previous scheme—the scheme that was intended to implement single status—are not delivering a non-discriminatory pay structure as they should do. We have anecdotal evidence on that. We continue to investigate the matter and in due course we might require to use our investigation powers to get the information that we seek from councils. For example, we have not yet been able to get from councils information on the top-line changes to the pay gap in local government since implementation of the new single status job evaluation, although we have asked one or two councils specifically for that information. Such changes should be evident as an outcome of all the compensation that has been paid.

**The Convener:** You said that women are not progressing up the hierarchy. Are patterns emerging in departments or is what you described a blanket situation?

**Muriel Robison:** Are you talking about patterns in particular councils?

**The Convener:** Yes, and in council departments. For example, are women more likely to be heads of legal departments than heads of leisure and recreation services?

**Muriel Robison:** I do not have such detail. We have focused on lower-paid occupations that are dominated by women, such as home care services and the classroom assistant service. We carried out a detailed investigation into the pay and status of classroom assistants.

**The Convener:** Does Anne Meikle want to comment, given that occupational segregation affects the whole issue of equal pay?

**Anne Meikle:** Occupational segregation is a key contributor to unequal pay. I was a member of the Scottish Government cross-directorate occupational segregation working group, whose final report was written by Suzi Macpherson, and I have subsequently been involved in work on the modern apprenticeship scheme, as I said in my written submission. An enormous amount of money is spent on publicly funded training schemes, but it is difficult to get figures on the spending, given the pot pourri of public and private



funding that is involved. Schemes such as the modern apprenticeship are not the sole cause of occupational segregation, but they could be used to tackle occupational segregation in the Scottish labour market. A gender analysis of the budget for modern apprenticeships would contribute to the wealthier, fairer, smarter Scotland that we want to achieve.

It is about considering not just the level of spending but spending in the context of the resourcing and development of policies that attempt to tackle occupational segregation. The working group's final report has been published and the issues are clear. The Equal Opportunities Commission and its successor commission have produced reports on modern apprenticeships for a number of years and work has been done on classroom assistants, as Muriel Robison said. Evidence of occupational segregation exists, but no action to tackle the problem is being taken in the public or private sectors. A gender scrutiny of the budget could have a tangible effect. It is clear from the figures that young men are the main beneficiaries of the modern apprenticeship scheme, without a doubt.

**The Convener:** Are you talking about taking action in colleges and schools, for example by considering how careers advice is given?

**Anne Meikle:** That is part of what is needed. In its report, the working group highlighted a number of issues to do with work in early years and in schools. There is a raft of areas in which we can take action. I mean no disrespect to Suzi Macpherson when I say that the report falls down on the inclusion of concrete suggestions about what we should do. In England, it appears that more positive action is being taken in relation to publicly funded training and the modern apprenticeship scheme. Such measures could be taken in Scotland.

**The Convener:** Is there a case for allowing people to sample occupations across the board for a couple of weeks? For example, everyone who was applying for a modern apprenticeship or other training could sample five occupations—from child care to engineering—to find out whether they would take to a particular occupation. It might help to eradicate stereotypes if we were to offer people an opportunity to try something without expecting them to take a particular direction.

**Anne Meikle:** We could certainly consider doing that. As Peter Hunter said, we are dealing with deep-seated attitudes in society about men's and women's roles and jobs, and it takes a long time to change attitudes. However, although we have been talking about the issue for a long time, the figures do not seem to show that we are reaping benefits. There are stark figures on the occupations into which young men and women are

being channelled through the modern apprenticeship scheme. That takes us back to the discussion about how women's roles have been undervalued and how the work that men do has almost been overinflated. There is a raft of action that we can take, but we need to put money into the issue and to work across the public and private sectors.

**The Convener:** Suzi Macpherson might want to comment, as she is the author of the working group's report.

**Suzi Macpherson:** I echo much of what Anne Meikle just said about the challenges that we face and the fact that occupational segregation is strongly associated with the continuation of unequal pay. Men dominate particular occupations and professions and women dominate others, but research evidence strongly suggests that pay is significantly higher in those in which men dominate than it is in those in which women dominate. To address occupational segregation as a way of achieving pay equality would be a significant step.

The working group's report, of which I was author, focused specifically on the Scottish Government's work on mainstreaming gender equality and addressing occupational segregation. Much of the report referred to actions that the Government had already undertaken as opposed to new actions. The report highlighted positive new actions, but they tended to come from agencies and organisations outside the Government that the equality unit had funded. The report said that good work was going on but that we still have a long way to go to see significant change inside the Scottish Government's mainstream departments and directorates in recognising that focusing on occupational segregation is a key priority.

**Emma Ritch:** Close the Gap welcomes any initiative that encourages young people to consider their choices. However, there is a rational economic basis for young men not wanting to be, for example, classroom assistants or child care assistants: the pay of such workers is so low, so it is not a case of a person considering in the abstract whether they want to do such work. Most classroom assistants are not single because the wages are so low that it would be impossible to support dependants or themselves.

That brings us back to job evaluation and undervaluation of women's work. Are we considering the types of work that women do in local government and working out whether they are undervalued? The former Equal Opportunities Commission's investigation of the role and status of classroom assistants suggested that local government's job evaluation scheme is not up to the task of assessing women's work in jobs such as classroom assistant.

**The Convener:** Muriel Robison said that she had difficulty in getting information about what has happened since the old job evaluation. What powers do you have to acquire such information? Can you be stalled forever? Can you ask for the information through the Freedom of Information Act 2000?

**Muriel Robison:** We have significant powers of investigation, which means that we can, where appropriate, investigate either an individual council or the sector as a whole. The formal investigation into classroom assistants was an example of the latter. In certain cases, we might have to consider using our powers, which are quite bureaucratic. There is a long lead-in because of the evidence that we need. Our commissioners assess that, then decide whether to progress an investigation. The investigations are resource intensive in terms of time and cost. However, we will have to consider using our powers if we do not get the information that we want.

Over the years, we have asked councils to produce gender impact assessments of their proposals. Many say that they cannot do that because they have not fully implemented the job evaluation scheme. However, we have called for the assessments and we cannot let councils delay them indefinitely.

**The Convener:** When did you first ask councils for them? How long is it since you have had responses?

**Muriel Robison:** We are undertaking informal investigations as a follow-up to our formal investigation into classroom assistants, which finished about a year ago. We followed up on its recommendations because we expected the issue of classroom assistants to be addressed in their light, but we have not seen that. Over the past year or so, we have undertaken a more detailed informal investigation into some councils.

**Elaine Smith:** Your organisation has particular powers. Does Audit Scotland have similar powers to investigate a systems failure that has had such a huge cost for the public purse?

**Muriel Robison:** I would have thought so, although I am not an expert on Audit Scotland's powers.

10:45

**Peter Hunter:** Audit Scotland does have such powers. For example, the recent proceedings in Aberdeen regarding the financial situation in Aberdeen City Council involved investigations, a report and a public hearing. That indicates the extent to which Audit Scotland and, ultimately, the Accounts Commission can examine underlying reasons for financial instability in a local authority.

Many of the people in councils with whom I negotiate looked at the Aberdeen situation and said, "There but for the grace of God go I."

The majority of councils eroded or completely wiped out their reserves in order to pay off, as they thought, their equal pay debts. They were given credit for doing that in a series of best-value reports by Audit Scotland, which are worth looking at. I have read all the reports, and Audit Scotland routinely says in them that the council is making significant progress towards implementing equal pay, with a 98 per cent uptake of the compensation arrangements. However, Audit Scotland does not refer to the fact that those payments were made without the discrimination being cured. In addition, by the time the Audit Scotland best-value reports were published, the councils were making a second round of payments. I am not an accountant, but to my mind that is not good financial practice.

Serious questions must be asked about Audit Scotland because it and the Accounts Commission have powers to do more. If these were not such formal proceedings, I would have laughed loud and long at the suggestion that Audit Scotland was unable to take part in this session because of the lack of a major study to underpin what it might say by way of evidence. I have read, too, Audit Scotland's consultation paper on its next round of formal studies and its research programme for the next three years. Given the nature of the costs that are associated with discrimination—which Audit Scotland managed to miss until the Parliament's Finance Committee publicly pointed them out to it—it is a staggering omission to have a consultation on the next round of research and to do nothing about equal pay.

Neither is Audit Scotland delivering on its duties under the best-value arrangements of the 2003 act or in its gender equality duty to have due regard to its obligation to deliver equal pay. Audit Scotland could make a significant input to delivering equal pay, but there has been a systemic failure in Audit Scotland. I do not know what powers the Equal Opportunities Committee has, but I think that Audit Scotland should be compelled by this committee or another to come and account publicly for what it does—or does not do—on equal pay. It is possible that I have, looking from the outside in, missed something, but I have looked quite hard and, frankly, I cannot find anything.

**Bill Wilson:** Who will police the police?

**The Convener:** You have majored heavily on Audit Scotland. Can I have your comments on the Convention of Scottish Local Authorities' role in all this?

**Peter Hunter:** There has been criticism of the delay in litigation and of how long it will take.

However, it is relatively unusual for respondents in such a mass litigation situation to have paid compensation of about £500 million. Many women would not have seen any compensation for a considerable number of years. The compensation is short of the full value of what they might have received, but I believe that some people in COSLA took the view that, on balance, it was a significant risk that this money was due and that it should be paid so that the women had it sooner rather than later. Credit must be given to COSLA for that: for facing the complexity of the problem and for the fact that it must seek moneys from elsewhere to fund the work that it is doing. Often, that involves imposing pay cuts on men, which employers are obviously not keen to do and is a step that they would not take lightly or unnecessarily. COSLA must be given credit for all that it has done.

Nevertheless, from an audit and value-for-money perspective—which is not my primary perspective, so much of what I am saying is perhaps slightly against my interests, as we could act like no-win, no-fee solicitors and claim farm for our clients at great public expense for the next 20 years—the situation is not in the public interest. It would help if COSLA members were to step outside their role as employers and were more mindful of the cost and of the shared interest in taking the speediest route from here to a stable position in which discrimination is eradicated and the costs are managed. However, COSLA has shied away from debating that with the Finance Committee and—apparently—with the Equal Opportunities Committee today, which is disappointing.

**The Convener:** Thank you for those useful comments.

**Margaret Gribbon:** Muriel Robison talked about gender impact assessment. My trade union client—the GMB—has persistently requested that various authorities' job evaluation schemes be sent to an independent external expert, at the authorities' cost, to be gender impact assessed. I know of only one authority that has done that—Falkirk Council—although others might have done it. Given that, the GMB has been unable to sign many new deals because it is not satisfied that they are non-discriminatory.

From the outside looking in, I can find no cogent reason why an employer would not want its job evaluation scheme to be subject to scrutiny. By failing to accept such scrutiny, it exposes itself to a high risk of further mass litigation under the Equal Pay Act 1970.

**Elaine Smith:** I will follow up what Peter Hunter said; Margaret Gribbon might also want to add comments. Our briefing paper says:

“recent Employment Tribunal cases have highlighted how

Local Authorities have effectively *undervalued women's work* by seeking agreement on compensation claims that allow for the protection of wages in *male dominated jobs*.”

Peter Hunter said that authorities are loth to reduce men's wages to obtain funding to sort out the situation. Is any witness concerned about the protection of wages in male-dominated jobs?

**Peter Hunter:** As a trade union, we represent all our members' interests. Our initial demand is that pay equality should be achieved through using new money to level up women's earnings to those of men. In our experience, protection applies to women and men. Some of the main casualties of single status have been admin and clerical workers. Many of our low-paid white-collar women workers face pay cuts, so they rely on protection.

The situation is complex, but I believe that the single-status outcomes have been manipulated. I urge caution about assuming that that involves the job evaluation scheme. Employers can and do take a variety of measures, such as building into male jobs artificial tasks that they know the men do not do regularly but which inflate the value of the jobs. That distorts what is measured rather than the measurement tool. For example, we know that some refuse collectors who work with refuse trucks are being paid as drivers. There might be a complex driver instruction mechanism that requires them all to drive simultaneously or a fail-safe mechanism of which I am unaware, but my view is that a truck has only one driver. Such generosities in the pay system are not applied to women. Women's earnings are driven down through exposure to external contracting, privatisation and market testing. Such perks are not built into women's salaries. That is one reason why manipulation occurs.

I deal directly with negotiations on equality impact assessment and I know that the culture of equality impact assessing has undergone a revolutionary change in local government. Local authorities have engaged with that as a form of risk assessment—they now see it as a highly valuable and potentially profitable exercise in managing risk.

The skill and ability of people in local government who conduct such assessments have increased exponentially although, that said, they started from a particularly low base. I have seen an equality impact assessment for a council not a million miles from here in which the independent assessor said that the single-status proposals would widen rather than narrow the substantial pay gap between women and men, yet that authority implemented that pay arrangement. One massive issue that people need to get their heads round is that merely to follow the equality impact assessment process is insufficient; we must consider whether the outcome, as well as the

process, is compatible with the gender equality duty and the various duties under the 1970 act. The issue is complex and I am conscious that we always manage to find fault with a little thing that each employer does. However, when an authority that spends tens of millions of pounds on trying to address equal pay implements proposals that an independent assessor says will expand the pay gap, that is a staggering abuse of public money.

**The Convener:** That suggests a huge lack of accountability and of monitoring the authority and taking it to task. I welcome Peter Hunter's comments, which highlight the issue's complexity.

**Bill Wilson:** I have a question that I ask out of curiosity. It is glaringly strange that, when the assessment said that the proposals would worsen the situation, the authority continued to implement them. The council must have provided a reason for that.

**Peter Hunter:** The rationale was that the increase in the pay gap was temporary—for three years—and that the gap would begin to narrow in years 4 and 5.

**Bill Wilson:** The gap would become bigger, so I presume that it would narrow to where it had been before, which would mean there was no impact.

**Peter Hunter:** The adjustments to the pay system made the problem worse in the interim, rather than let it persist, but be degraded. Discrimination might be managed out of the system incrementally over several years—that might be a start. However, making the situation worse reflects the manipulation to which Muriel Robison referred. That does not involve the job evaluation scheme specifically, but several elements can be manipulated and, in my view, that is what happened in the situation that I described.

**Marlyn Glen:** An interesting question arises about the committee's powers. We need to discuss how we make good use of the evidence that we have heard, because the issue is serious. The evidence is shocking, but I have been shocked many times over the years on the same subject and we are still in the same place. It is important to avoid playing an historic blame game. We could bring in many names of vested interests, but that would not help when we are trying to move forward. Equal pay has not been delivered because of the costs. What will happen if we do not sort it? What are the longer-term financial implications of failing to act on equal pay now?

**The Convener:** Who would like to tackle that huge question?

**Margaret Gribbon:** As members might imagine, the solicitors whom councils instruct earn amounts way beyond the national minimum wage. We know what some of them charge and such litigation is

predicted to continue for at least the next decade, so legal costs alone for councils will continue to be colossal.

**Muriel Robison:** Not implementing equal pay creates fundamental long-term costs. Implementation of single status offers a once-in-a-generation opportunity to build equal pay into local government at least. As part of the bigger picture, I am greatly concerned that some women will continue to be undervalued. If they were paid equally, they could contribute to the economy significantly.

Emma Ritch talked about classroom assistants. That job appears to be perfect for a single mother, but we found in our investigation that almost no single mothers do it because they cannot afford to—the job does not even pay a proper full living wage. The bigger costs of failing to pay lots of women a full living wage are of great concern.

11:00

**Emma Ritch:** Other costs that are associated with failing to address the wages of low-paid women might, without some scrutiny, be less obvious. Given that women are poorer than men, attempts to lift people out of poverty need to start by tackling equal pay. We also know that the expenditure of poorer people benefits local communities. The poorer people are, the more likely they are to buy domestically produced products, to spend money locally and to build community cohesion by their expenditure patterns. We cannot overlook the impact of poverty on women's lives, on childhood poverty and on the experience of Scotland's communities. Addressing unequal pay in local government could have a big impact, given the size of local government as an employer.

**The Convener:** Clearly, that is a huge subject. Bill Kidd will move us on to the next issue.

**Bill Kidd:** The budget document "Scottish Budget: Draft Budget 2009-10" includes, "For information purposes only", local government revenue expenditure plans for 2008-09. In those plans, £40.4 million has been allocated for "Equal Pay/Single Status (prior year cost provision only)". I have never heard that phrase before, so I would be grateful if someone could put it into easy words. It has been suggested to us that, basically, that line is to cover cases that arose over a significant period of time but cannot cover much in the future. On that basis, the £40.4 million is limited for one or two years and we will be in some difficulty in judging whether enough money has been budgeted for the full period. Can anyone comment on that? Is there enough money in the draft budget?

Is there ever enough money in the draft budget?

**The Convener:** Has anyone looked at the financial provision in the draft budget in detail? Without necessarily quantifying the figures, can anyone give us an idea of whether that provision is way off line? Frankly, I think it is.

**Margaret Gribbon:** I can provide details of recent settlements that we have achieved for some of our clients from Glasgow City Council. In the past few months, a payment of £3 million was awarded to about 60 or 70 clients, which is just a drop in the ocean. To put the matter into context, that was a tiny number of clients from just one authority.

**The Convener:** How many clients are actively pursuing litigation?

**Margaret Gribbon:** There are 41,000 cases in the employment tribunal system in Scotland. About two thirds of those are local government cases and the rest are NHS cases. I should also emphasise that the £3 million was only a partial settlement that covered the period to March 2006. I know that, when Glasgow City Council made offers of settlement in December 2006, the total was well in excess of £40 million.

**The Convener:** How many claims are included in the first wave of local government claims that was mentioned earlier?

**Margaret Gribbon:** I think that 30,000 cases are currently in the system.

**Peter Hunter:** Yes—we are talking about that order of magnitude.

In my submission, I set out five phases in the development of equal pay claims. The first phase relates to claims only for those women who fall into “high risk” groups—many women are not included in these groups—such as cleaners, catering workers and care workers. COSLA’s evidence to the Finance Committee’s inquiry on single status agreements was that local authorities will spend between £260 million and £500 million on those claims. The £500 million figure is the full value for that group of claims. As litigators, we could extend that group beyond cleaners and caterers such that it would be reasonable to add another 50 per cent to that figure. Therefore, the five-year liability for all local authorities could be in the region of £750 million.

The figure that COSLA gave could not have taken into account the implications of the recent Court of Appeal decision on the cases of *Redcar and Cleveland Borough Council v Bainbridge* and *Surtees v Middlesbrough Borough Council*. The court said that, in equal pay situations, if male salaries are protected for three years and women in lower-paid situations cannot move incrementally to the higher rate, the women must receive the increase in full. In negotiations, I have sat down

with employers in unnamed local authorities who have quoted me astronomical amounts of money for complying in full with the spirit of that decision. It is far from clear whether the decision will be required to apply to every low-paid woman in local government in Scotland, but if that is the case, the cost will be hundreds of millions of pounds. I am in absolutely no doubt about that.

On the £40 million in the draft budget, it is better that the budget includes that provision but—to be honest—what concerns me more is the apparent absence of any detail about the reasoning behind how that £40 million figure was arrived at. That is of greater concern.

**The Convener:** What does that mean for the Scottish Government? What is its role in the issue?

**Peter Hunter:** We are talking today specifically about local government, but we should bear it in mind that other costs could come home to roost more directly due to the similar issues that exist in the NHS. I do not want to expand the discussion into considering that issue, but it is highly likely that such costs will arise—the only issue is on what scale—yet those costs are completely overlooked in the draft budget. The £40 million applies only to local government.

I must say that I did not understand the reference to “prior year cost provision”. That goes beyond my accountancy skills.

The implications of equal pay claims are very significant for the Government, but they will vary according to the relationship between the Government and the employer. I am conscious that the relationship between the Government and the NHS is different from the relationship between the Government and local authorities or between the Government and the various quangos. Skills Development Scotland is currently undertaking a job evaluation process, the Scottish Environment Protection Agency has just enforced its job evaluation process and the Scottish Commission for the Regulation of Care implemented a process in the summer. The issue is widespread.

In the past, Governments have taken the line that the obligation is on public sector employers as employers and is not an obligation on the state. I would caution the Government against taking that position, given that the position that was taken by previous Governments has led to the current situation.

In addition, the gender equality duty applies to the Government, which is under a legal obligation to have due regard to the promotion of pay equality in the economy as a whole, not just for civil servants. Moreover—this is particularly relevant in the context of the budget—recent experience shows that, if the Government steps

back from equal pay and leaves it to private sector or public sector employers to resolve the issue at a pace with which they are comfortable, the financial implications are potentially horrendous. In evidence to the Finance Committee, COSLA stated that equal pay was the greatest destabilising force in the history of local government finance. As alarm bells go, you do not get much louder than that.

**Bill Kidd:** On that basis, the problem will just grow and grow—that is what people are generally saying—because the local authorities are not under any compunction to deliver on equal pay, as such. As was suggested earlier, local authorities seem to be simply putting a sticking plaster over a bullet wound. Is there any sign that local authorities are making a genuine attempt to equalise pay for men and women? Are local authorities likely to continue down their current route, which will eventually cost very large amounts of money?

**Peter Hunter:** There is a slight difference between me and my colleagues in that I work closely in negotiation with the employers. Although I have made many critical observations, I would say that there is a drive, willingness and expertise now that did not exist in 2002. There is a certain resolve to try to address the inequality even when the going gets tough. Nevertheless, there are still resource problems and problems with the rigour of some of the overall pay systems—not job evaluation specifically but the whole pay package. I do not condemn the authorities out of hand by any means, but there is no wider public recognition of the scale of the problem that they are being asked to face. To allocate only £40 million to local government at a time when it is dealing with the greatest destabilising force in the history of local government finance is inadequate.

**Bill Wilson:** I think that it was Emma Ritch who commented on the effect of unequal pay on poverty and local expenditure. Might there be other indirect effects of unequal pay?

**Peter Hunter:** Pensioner poverty is an obvious one. One of the benefits of working in the public sector is possible access to a final salary pension scheme or a general pension scheme that is more favourable than private sector schemes. The difficulty for women is that if they have what is potentially a good pension scheme that is linked to a salary that does not reflect the value of the work that they do, their poverty in employment is transferred to poverty in old age.

**Bill Wilson:** Does that mean that it is possible that—off the top of my head—20 years down the line there could be further claims for compensation for final salary pension schemes?

**Peter Hunter:** Potentially, yes.

**Muriel Robison:** The pensions issue is complex, but we at the commission are particularly concerned about the implications of the pay gap for the whole lifetime of women and women in poverty.

**Marlyn Glen:** On the positive aspect of Peter Hunter's comments, I am glad to hear that there is resolve in local authorities as well as expertise. However, the evidence seems to show that the moneys that are in the draft budget and will be in budgets over the next 20 years are inadequate to deal with inequality of pay. Are we looking for enforcement? To whom are we looking for a lead? To the Government?

**Elaine Smith:** My point ties in with Marlyn Glen's comments. The Unison submission says:

"If the Scottish Government is to budget for the future in a way that has due regard for pay equality it is essential that it has reliable information on the current equal pay position. The lack of robust reporting from Audit Scotland combined with the apparent absence of equality impact assessments within the budget process leave the Government exposed to the accusation that"

the 2008/09 budget

"is in breach of the Gender Equality Duty."

Could we have comments on that before we sum up?

**Muriel Robison:** I will add something to what the convener said earlier about the implications for the Government. I agree with Marlyn Glen that we want to see a lead from the Government, but the gender equality duty also carries ministerial duties: Scottish ministers are obliged to report on progress and to propose action to address any gaps. The pay gap is certainly one of the gaps of great concern in relation to the implementation of the equality duty, so it is of direct relevance to the Government in looking at overall progress towards equality. Issues arise from the gender equality duty not only for local government but for the Government specifically in relation to the duties on Scottish ministers, which the commission expects to hear about in the next few years.

11:15

**The Convener:** You are certainly giving us some fruitful material about which to ask the cabinet secretary next week.

Now that we have listened to the round-table discussion and the horrific information about unequal pay, it would be good to have the comments of Ailsa McKay, our budget adviser.

**Dr Ailsa McKay (Adviser):** Peter Hunter made the point that, in evidence to the Finance Committee's inquiry in 2006, COSLA identified equal pay in local government as the greatest destabilising force in local government finance.

Given the evidence that it has heard today, the Equal Opportunities Committee might want to consider in its budget scrutiny that equal pay appears to be one of the greatest destabilising forces in Scottish Government finance. It continues to be a destabilising force for complex reasons, as we have heard from round the table.

With reference to budget scrutiny in particular, there is no evidence in the draft budget that adequate account has been taken of the resource implications of either meeting equal pay or managing unequal pay over the next few years at least. That is a serious omission that the committee, after hearing evidence today, is now well placed to point out to the cabinet secretary next week.

You heard about both the immediate costs in the short term and the direct costs in the longer term but, perhaps more worrying, you heard clear and coherent evidence about the less tangible costs of the negative impact on overall economic performance. Given that we have a fixed pool of resources, the committee needs to take sufficient cognisance of where the money will come from when raising the matter with the cabinet secretary.

**The Convener:** Thank you. Before we close, it would be extremely useful if we heard everyone's last comments on unequal pay. I cannot stress enough how worth while your evidence has been. Here is your last chance to put on the record what you want to say.

**Emma Ritch:** With regard to equal pay and compliance with the gender duty more broadly, the Government has an opportunity to take a leadership position and demonstrate to the rest of the public sector in Scotland how these matters can be dealt with and how important compliance with the duty is in order to deliver gender equality in Scotland.

**Margaret Gribbon:** The problems are colossal and have continued over the past three years. Local government and trade unions have been screaming out to no avail. The problem is now so vast that intervention from the Scottish Government is required without delay if pay inequality is to be eradicated.

**Suzi Macpherson:** This has been a fruitful and enlightening discussion for all of us round the table, but I have nothing further to add.

**Marlyn Glen:** The committee has a huge responsibility to make use of today's crucial evidence session.

**Muriel Robison:** I heard what Peter Hunter said about positive progress, but that is not the impression where I come from. I know that he is closer to the situation in some ways but, from where we sit, all we see are delays and a lack of

engagement with the problem. We want that to change.

**Bill Kidd:** I still do not know what prior year cost provision is, but I would be interested to find out about the reasoning behind the figure of £40 million, to which Peter Hunter referred.

**Anne Meikle:** A couple of key words are "enforcement" and "leadership". We need both. I would like to see some practical measures from the Government as well as leadership to tackle occupational segregation, which is at the root of unequal pay.

**Bill Wilson:** A major problem seems to be that people have preferred sticking plasters to cures. It looks as if some form of regulation might be necessary because, without it, we might find that, rather than solve the problem, whatever money we put in again just goes towards compensation.

**Peter Hunter:** I am conscious that who did or did not fix the roof when the sun was shining is a bit of a political cliché at the moment, but it is extremely sad that we did not address the issue during the times of economic boom. It now looks as if it will have to be dealt with in a period of economic uncertainty.

I reiterate how welcome the committee's intervention is. The Finance Committee's work on single status changed the parameters for that issue, which is only one element of equal pay. If in the future the Equal Opportunities Committee builds up its expertise on, and has a lasting commitment to, equal pay, I am confident that we will be in a better position than we would otherwise have been in.

**Elaine Smith:** We have had an excellent evidence session and we now need to make progress on the issue. We have had a good opportunity to home in on the budget process, but now we must ensure that we pass on properly what we have learned about equal pay and continue the scrutiny process.

**The Convener:** It is clear that the issue is hugely complex. All the witnesses have helped to tease out some of that complexity so that we now have a clear indication of what has not been happening and what should have been happening. More important, we now know what we want to ask the cabinet secretary next week. I thank you all very much for your attendance. All the committee members have found the discussion extremely worth while.

11:21

*Meeting suspended.*

11:28

*On resuming—*

## **Sexual Offences (Scotland) Bill: Stage 1**

**The Convener:** Item 2 is consideration of the written evidence that we have received on the Sexual Offences (Scotland) Bill. Members will recall that, on 9 September, we agreed to invite written evidence from a number of organisations on whether the bill will provide adequate protection from abuse to prostitutes and trafficked women. We have received responses from the Cabinet Secretary for Justice, from Glasgow City Council, on behalf of the Routes Out of Prostitution partnership and the trafficking awareness-raising alliance project, and from the Scottish Trades Union Congress. We are still waiting to receive the response of Strathclyde Police.

When discussing the responses, members may wish to consider whether there are any issues that we should highlight to the Justice Committee, which is the lead committee for stage 1 consideration of the bill and which is due to take evidence from women's and children's organisations on 28 October and 2 November. Do members have any comments?

11:30

**Marlyn Glen:** I was heartened by the responses, which are really useful. I think that we should pass on to the Justice Committee the points that the clerks have picked out and ensure that it considers them.

I am content that the Cabinet Secretary for Justice drew attention to section 10, which provides a list of circumstances under which consent is never present, and said that it has

*"particular relevance to those trafficked for sexual exploitation or otherwise forced into prostitution".*

I am happy to see that.

I know that it is not up to us to discuss the STUC's suggestion that the experiences of trafficked women should be included in the list in section 10, but it is an interesting point to pass on to the Justice Committee. One of us could perhaps lodge an amendment on the matter, so that it is discussed further. It is a really useful suggestion.

The idea that section 10 could include a provision on

*"where a complainant has been subject to behaviour consistent with grooming"*

also needs to be considered in some depth because that specific point has not been

discussed before. In the previous session, the Justice 1 Committee had a look at the general issue when we considered the Protection of Children and Prevention of Sexual Offences (Scotland) Bill, so some work has been done, but it would be useful to do some more.

The issue of sexual history and character evidence comes up all the time, so it would be good to underline its importance to the Justice Committee. The submission refers to the discussion on whether that should be dealt with in legislation or guidance. That should be examined, because some of the changes that we made in legislation in the previous session made the situation worse as it was taken that people were allowed to ask about sexual history. It is important that we are clear about that point.

The final point is about children and young people. We need to ensure that we talk about them too. All the points in the paper are important to pass on.

**The Convener:** If there are no other comments, I suggest that we forward the written submissions to the Justice Committee, with our own comments on the proposed addition to section 10 and on the issues of grooming and sexual history evidence. We can form our comments to pass to the Justice Committee on the issues that we think are worthy of note and, we hope, important enough for it to explore.

**Elaine Smith:** I agree with what Marlyn Glen said, so I will not add to it, but I have a quick question. Could the committee lodge an amendment and what would the timescale be for that? I am conscious that committee members cannot go to the Justice Committee meeting because the committee is elsewhere on that day. Will it be possible for us to consider lodging an amendment?

**The Convener:** Terry, can you help us on that?

**Terry Shevlin (Clerk):** An amendment to the bill would be considered at stage 2. We are still at stage 1, so the Justice Committee still has to report on the bill. If the bill is agreed to by the Parliament, we will then reach stage 2, which is when an amendment would be lodged. I guess that stage 2 will not take place for a few months yet.

**Elaine Smith:** But it is something that we could consider.

**Terry Shevlin:** It is something that the committee could consider doing. Any member can lodge an amendment, and if they wanted to make it clear that it was in the name of the Equal Opportunities Committee, they could seek to do that. It would then be discussed at the Justice Committee as the lead committee.



**The Convener:** Are we content for our immediate response to be to pass on the written submissions that we have received plus our comments on the three aspects that we hope that the Justice Committee will pick up on?

**Members** *indicated agreement.*

**The Convener:** That concludes our public business. We move into private session to consider a paper from our gender reporter.

11:34

*Meeting continued in private until 12:06.*



Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

**Tuesday 7 October 2008**

#### PRICES AND SUBSCRIPTION RATES

##### OFFICIAL REPORT daily editions

*Single copies: £5.00*

*Meetings of the Parliament annual subscriptions: £350.00*

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

##### WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

*Single copies: £3.75*

*Annual subscriptions: £150.00*

Standing orders will be accepted at Document Supply.

Published in Edinburgh by RR Donnelley and available from:

#### **Blackwell's Bookshop**

**53 South Bridge  
Edinburgh EH1 1YS  
0131 622 8222**

**Blackwell's Bookshops:**  
243-244 High Holborn  
London WC1 7DZ  
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh.

**Blackwell's Scottish Parliament Documentation**  
Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

**Telephone orders and inquiries**  
**0131 622 8283 or**  
**0131 622 8258**

**Fax orders**  
**0131 557 8149**

**E-mail orders**  
**business.edinburgh@blackwell.co.uk**

**Subscriptions & Standing Orders**  
**business.edinburgh@blackwell.co.uk**

#### **Scottish Parliament**

**RNID Typetalk calls welcome on**  
**18001 0131 348 5000**  
**Textphone 0845 270 0152**

sp.info@scottish.parliament.uk

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

**Accredited Agents**  
(see Yellow Pages)

and through good booksellers