

EQUAL OPPORTUNITIES COMMITTEE

Tuesday 7 October 2008

Session 3

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EQUAL OPPORTUNITIES COMMITTEE

14th Meeting 2008, Session 3

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Elaine Smith (Coatbridge and Chryston) (Lab)

COMMITTEE MEMBERS

*Malcolm Chisholm (Edinburgh North and Leith) (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)

Johann Lamont (Glasgow Pollok) (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:

Alexis Jay (Social Work Inspection Agency)

Jane Kennedy (Convention of Scottish Local Authorities)

Kathleen Marshall (Scotland's Commissioner for Children and Young People)

Belinda Pyke (European Commission)

Alan Swift (Scottish Court Service)

John Swinney (Cabinet Secretary for Finance and Sustainable Growth)

Lawrence Wason (Union of Shop, Distributive and Allied Workers)

CLERK TO THE COMMITTEE

Terry Shevlin

ASSISTANT CLERK

Joanne Clinton

LOCATION

Committee Room 1

Scottish Parliament

Equal Opportunities Committee

Tuesday 7 October 2008

[THE CONVENER *opened the meeting at 09:33*]

Interests

The Convener (Margaret Mitchell): I welcome everyone to the 14th meeting in 2008 of the Equal Opportunities Committee. I remind all those who are present that mobile phones and BlackBerrys should be completely switched off, as they interfere with the sound system even if they are switched to silent.

I welcome Malcolm Chisholm, who joins the committee to replace Richard Baker, and I record my thanks to Richard Baker for his contribution to the committee. I invite Malcolm Chisholm to declare any interests.

Malcolm Chisholm (Edinburgh North and Leith) (Lab): I declare that I am a member of the Educational Institute of Scotland, and of Unison.

Decision on Taking Business in Private

09:33

The Convener: Agenda item 2 is a decision on whether to consider the draft report to the Finance Committee on the Scottish Government's draft budget in private at future meetings. Are members agreed?

Members *indicated agreement.*

Carers

09:33

The Convener: Item 3 is a round-table session on unpaid carers. The committee has already held a round-table discussion with groups that represent and work with unpaid carers. That session highlighted the huge importance of the issue, which can affect anyone at any time. There are 660,000 unpaid carers in Scotland—a figure that represents one in eight of the population—who save the Scottish economy £7.6 billion. The figures put the issue neatly in perspective and show how important such people are and how unpaid caring could potentially affect everyone.

Having heard the evidence from the first round-table, the committee wanted to follow up on some of the issues, which is why we are having a further discussion with service providers and other relevant professionals. I am pleased to welcome all the participants to our round-table discussion, and I invite everyone to introduce themselves briefly. I will start—I am Margaret Mitchell, the convener of the Equal Opportunities Committee.

Hugh O'Donnell (Central Scotland) (LD): I am a member of the Scottish Parliament.

Jane Kennedy (Convention of Scottish Local Authorities): I am the team leader for health and social care at the Convention of Scottish Local Authorities.

Malcolm Chisholm: I am an MSP.

Kathleen Marshall (Scotland's Commissioner for Children and Young People): I am Scotland's Commissioner for Children and Young People.

Marlyn Glen (North East Scotland) (Lab): I am an MSP.

Alan Swift (Scottish Court Service): I am the director of human resources at the Scottish Court Service.

Sandra White (Glasgow) (SNP): I am an MSP.

Alexis Jay (Social Work Inspection Agency): I am the chief inspector of social work.

Bill Kidd (Glasgow) (SNP): I am an MSP.

Lawrence Wason (Union of Shop, Distributive and Allied Workers): I am the divisional officer at the Union of Shop, Distributive and Allied Workers.

Bill Wilson (West of Scotland) (SNP): I am an MSP.

The Convener: The deputy convener is not here, but I have been assured that she will arrive later.

From the submissions that we have received—for which I am grateful—it is clear that specific groups of unpaid carers are less likely to receive support. Such groups include, for example, carers who look after people who are involved in substance abuse or carers who live in rural areas. I invite witnesses to comment on that. The Social Work Inspection Agency's submission was particularly helpful in that respect—perhaps Alexis Jay would like to start by putting on the record some of the things that it contained.

Alexis Jay: I am happy to do that. As members will note from my submission, my organisation inspects local authority social work services, and we have generally found a reasonably good picture throughout Scotland. In the area of support for carers, however, there is considerable room for improvement. We identify, among the many aspects of work with carers that we examine, those who are more dissatisfied with the support that they receive and who appear to be less well supported than others. That includes, as you mentioned, carers of people with substance misuse problems; carers of people with mental health difficulties, including dementia; and parents and carers of children with disabilities. Those groups give the most negative responses to the surveys that we carry out in every part of Scotland. We survey carers in each local authority area, and those are some of the conclusions that we have drawn—among the many others that are listed in the submission—from the 3,200 responses that we have received over the past three years.

There appears to be different access to services, and people's perception of the level and quality of support that they get from councils varies a lot throughout the country. That is not to say that there are not a substantial number of good-quality individual services, but the overall picture reveals a somewhat fragmented approach to supporting carers. You mentioned the significance of carers' contributions as a workforce to the economy, convener. Given all that, their significant contribution to society and, what is most important, the huge value of what they do for the individual cared-for person, we need to take a much more consistent and co-ordinated approach across social care and the health professions.

The Convener: Do you find that if a particular local authority has a good programme, service or strategy for young carers, it will offer such services for carers in general? Or is there a divide?

Alexis Jay: There are not necessarily good services for carers in general. Young carers are particularly vulnerable, as I am sure that Kathleen Marshall and others will tell you, and as you have probably heard from previous evidence, but we do not find that there is a particularly strong and co-ordinated strategy for carers that covers all ages.

It tends to be a little more fragmented in regard to adult carers than it is for young carers. The point of transition is critical—for example, children move from the children's system into the adult system in all sorts of ways, and it is at those points that problems start to emerge within organisations.

The Convener: Two groups have been highlighted. Are there any other groups that tend to be overlooked and which include people who might not even realise that they are carers?

Alexis Jay: We should also mention grandparents caring for children with substance-misusing parents; carers in rural areas who, although supported by outreach services, can find access to centralised services far too costly; and black and minority ethnic communities, whose different cultural attitudes to caring might not be dealt with by the services as sensitively as they could be.

The Convener: What about older carers in general?

Alexis Jay: There are many more older carers than other types and, in the main, they are more satisfied with the support that they receive. That is not to say that a really strong, co-ordinated approach has been taken in this area, but there is probably more support for older carers and they seem to be happier with the services. Of course, demographic change means that more of the same will not be enough.

Sandra White: Grandparents might be trying to deal with their children's substance abuse as well as caring for their grandchildren. Do they feel that there is a stigma attached to what they have to do? They might not want the community to know what is happening, so they might not access services as readily as other people.

Alexis Jay: Those who care for people with substance misuse problems can feel stigmatised by the potentially criminal aspects of such behaviour and are concerned about being seen even trying to access such services. For example, when we examined the approach taken by NHS Grampian and its council partners to substance misuse and caring issues, we found that carers in such circumstances felt stigmatised and were more anxious than other people about being seen to access support services. Kathleen Marshall might be able to say something about the other aspects of this issue.

Kathleen Marshall: Young carers also feel stigmatised. Indeed, it can be very difficult to identify them, simply because they are not always willing to be identified. After all, it can lead to their being bullied at school. I know that you received a lot of evidence from young carers in March, and I will be able to answer members' questions on that matter.

We should also think about what happens to foster carers when children leave their care. The Government has proposed pursuing its expressed intention of helping young people to remain with their foster carers after their 18th birthday, but at the moment that has been restricted to children and young people in education and employment. It might be argued that those who are not in education and employment are in the most need, and the fact that some foster carers continue to support young people out of sheer compassion has not been recognised.

Another group that I can say more about when the convener wishes comprises parents of disabled young people. After all, many issues that concern them have equal opportunities implications both for the young people and for their carers. There is certainly a lot that needs to be examined in the disability field.

Malcolm Chisholm: Is Alexis Jay's basic point that certain groups are having their needs assessed more than others or is it that, having been assessed, some people are more likely than others to get services?

Alexis Jay: As you might know, the take-up of carer assessments has been very low, despite the fact that the provision has been in place for many years now. Carers do not routinely have their needs assessed. One of the most common recommendations that we make in our reports is that councils must increase the level of carer assessments—the standard response to which, of course, is that such assessments are done as part of the cared-for person's assessment. However, that is not good enough. Most carers organisations want to assert carers' rights to have their needs separately assessed. It is certainly true that most carer assessments are done for those who care for older people, which means that they are more likely to be represented. It is not the only way into the system, but there could certainly be immediate improvements in understanding what individual carers want and need and in responding to that.

09:45

Bill Kidd: I am sorry to keep Alexis Jay on the rack here, but I know that SWIA is a Government body directly responsible to ministers and that it has collected a lot of evidence on delivering social work services. How directly do you work with the local authority social work departments? In your submission, for example, you highlight the percentage of people who feel that their care needs were being met and those who feel otherwise, but does that information have to go all the way through the Government before it gets back to local authorities?

Alexis Jay: No. Indeed, we have done extensive and intensive work in individual council areas over a number of months. In the course of that work, which has not been completed in all 32 authorities—I believe that we have published 23 reports so far—we compile a report after surveying carers and people who use the service, reading files and carrying out intensive field work with other partners in health care, the police and so on. We debate and finalise the draft report's contents with the council and then send it to ministers for their information, not for their approval. After that, we work with the council on our recommendations and, a year later, we return to check whether they have been implemented.

Alan Swift: Many carers are employed and have a very difficult job in juggling home and work life. Moreover, many employees feel stigmatised at work for having to ask for time off. In that respect, the Scottish Court Service has been reasonably successful in making such requests legitimate and ensuring that an individual does not feel stigmatised as a carer. I believe that that is a major factor in addressing this whole issue.

The Convener: The Scottish Court Service has certainly been held up as a very good model in that respect.

This might be a good point at which to seek employers' views on these matters.

Hugh O'Donnell: Does COSLA or, indeed, do any local authorities have guidelines, procedures or processes for employees who have caring responsibilities?

Jane Kennedy: As you know, COSLA is also the employers organisation for local government and negotiates terms and conditions for its employees. There is no national framework for dealing with this issue, but certain terms and conditions in the so-called red book relate to carers' leave, unpaid leave and such matters. We set the minimum standards, but I have no information about what councils offer over and above that.

As Alexis Jay pointed out, there are examples of good practice in the support that carers receive not only for those for whom they care but with regard to their employment. We and the Scottish Government have committed this year to developing a carers strategy because we recognise that certain aspects of local government as an employer and service provider have to be examined. We hope that that work, which will be carried out through the ministerial steering group on health and community care, will be completed in two years.

Sandra White: Alexis Jay mentioned the low take-up of carer assessments and outlined how SWIA was working with local authorities and

reporting back to ministers. For the benefit of the others around the table, how are the relevant public bodies ensuring that the support required by unpaid carers is being delivered? Do they know about the help that is available from local authorities and are they accessing it?

Alexis Jay: Carers identify advice and information as almost their top priority in relation to what helps them most—it comes second to practical, hands-on support such as short breaks. Many local authorities have good information and advice services and, particularly in central Scotland, there is well developed welfare rights advice, which is good because there are few things that are more useful to carers than ensuring that they have a decent income, and they need help and advice to ensure that they get that.

I am confident that most places have relatively good information and advice services, although the situation is possibly more problematic in the rural areas. Of course, that is only one way in which people can tackle these issues, but it is an important way.

There are still ideas about how the situation could be improved. For example, there are a number of helplines that are able to give practical advice—bearing in mind that the kind of advice that carers need is sometimes specific to the condition of the person that they are caring for—and advice about benefits, pensions, financial support and what services are available through the council.

We are not convinced that access to advice—through the internet and other means—is as good as it could be, but we are confident that a lot of information and advice is available.

The last part of the paper asks about services elsewhere. I believe that England has made a commitment to establish a national helpline for carers, and carers organisations in Scotland have told me that they would like such a service to be established here as well. For the past 10 years or so, Carers UK has been running a limited help line in England, but it is overwhelmed and cannot cope. It is committed to developing a national helpline, and this committee might wish to consider recommending that one should be set up in Scotland.

The Convener: We will have a look at what is happening elsewhere a little later in the discussion.

Marlyn Glen: We have been told that limited information is available on black and minority ethnic groups with regard to carers. Can anyone around the table supply more detail than we have at the moment? The challenge involves not only language barriers but cultural difficulties. Would anyone care to talk about that?

Lawrence Wason: In 2005 we surveyed our members and, obviously, touched on black and minority ethnic issues. The research at that time showed clearly that many black and minority ethnic people did not understand the welfare state to start with, and viewed caring for a parent or a child as one of the normal things that they would do as a member of a family.

What you say about the language barrier is correct. There are also issues of social isolation and concealment of issues from families due to stigma. Further, information is often not given out in a culturally sensitive way.

Bill Wilson: My question is primarily for COSLA. Last week, we had a lengthy discussion on equal pay and talked about the fact that there is still a long way to go towards ensuring that there is no gender pay gap. Does COSLA have any figures on how many carers are women who are stuck on the lowest level of pay and might benefit the most from properly equalising pay?

Jane Kennedy: I am afraid I do not have that information with me, but I can get it to you if we have it. I head up the health and social care team, but there is a specific employers function in the structure of COSLA. It might have been useful to get someone from that team along today. I will find out whether that information is available and get back to you.

Bill Wilson: To be honest, that is the answer that I expected; I did not really think that you would have the numbers in your head.

Jane Kennedy: It would have been quite impressive if I had, though.

Bill Wilson: I would have been very impressed.

Sandra White: I do not need to ask the other questions that I had prepared, as I have got the information that I was after. What has come through is that there is a call for a national helpline and that, perhaps, advice could be given more proactively.

Marlyn Glen: My question is a bit rhetorical. I want to know whether services, not only information, are of a uniformly good standard across Scotland. I understand that that is not the case and that they are patchy. Could we hear more about that? Alexis Jay said that central Scotland is good, that sharing best practice is desirable, that internet advice is fine for those who have access to the internet and that a helpline would be a good idea. If there is good practice, is there a culture of sharing it?

Alexis Jay: There is not a culture of sharing good practice. I would like to say that there was, but it seems that, regrettably, people do not learn from a different council five miles down the road—do not ask me why. That appears to be the case in

England, as well. However, that objective is part of our function. Next year, we will run a conference with carers, part of which will focus on good practice.

There are a number of examples of good practice in all councils, but they tend to be project based. We are looking for a proper strategic approach by health and social care that says that, in every area, there needs to be not only information and advice but short-break services that are of consistently good quality, access to out-of-hours services and a range of support services. We need to ensure that all areas have a basic package of support that can take carers' needs into account. However, that is not happening at the moment.

The Convener: Are assessments being done in every local authority? Is every carer that is identified being offered advice?

Alexis Jay: No. From talking to carers and looking in files, we know that it is far from the case that every carer has their needs assessed. Some people might not wish to have a separate assessment, but it is their right to have one, if they ask for it.

The approach of social and health care professionals to the issue needs to change because, at the moment, there is no partnership with carers. Lip service is paid to the idea of partnership but, in practice, too often the contributions of carers to a support package of care for an old person or a disabled child is assumed rather than being negotiated. There is an assumption that they will make a contribution to that care, but exactly what that contribution might be is not discussed fully with them. That is the case across the board. The general awareness training of health and social work professionals needs to be changed so that we can ensure that they approach that in a different way. Engaging with carers in a different way is not only an economic necessity, it is also a moral necessity.

The Convener: Jane Kennedy, do you want to talk about that?

Jane Kennedy: There is always a difficulty in trying to do what Alexis Jay is talking about. COSLA has a health and wellbeing executive group that is made up of the chairs of the relevant committees in the councils, and we raise those issues in that forum. Further, the strategy of the Scottish Government that we have committed to should provide another way of doing that. We raise issues in the group, but it is difficult to get people to buy into that approach.

The Convener: Do you raise issues specifically about carers?

Jane Kennedy: We have not dealt with the issue of carers in a huge way, although we have always responded to issues relating to it when we have been asked to. As you know, we are a political lobbying group, and the issue has come up more frequently recently—obviously, the current financial crisis has made the future of unpaid care a bigger issue politically than it was a few years ago—and we are starting to see more activity around it than previously. We are starting to consider the issue with the ministerial steering group on health and community care.

The Convener: Are round-table forums such as the one that we are conducting helpful in informing that discussion?

Jane Kennedy: Yes.

Hugh O'Donnell: My first question is for Alexis Jay. Within the inspection process, can you identify whether a local authority is proactively promoting the interests of carers?

My second question is for anyone to answer. At the moment, there is a statutory obligation only to provide assessments, not services. Should there be a statutory obligation to provide services?

10:00

Alexis Jay: I will try to answer your first question; perhaps it is for members of the committee to think about the second one.

In the inspection process, we examine all the standard planning documents, including the corporate plans and the social work services plans, so we are well aware in advance of what a council and its partners say will be done in all aspects of social work and, increasingly, in health care services. Of course, we look for evidence of what they say they will do to support carers.

Incidentally, the committee may want to ask about the single outcome agreements, which are part of the concordat. Jane Kennedy can comment on them. Members may want to ask about the evidence that is emerging about what councils and their partners have said they will do.

We also look at individual files, of which there are more than 100 in each area. If there are carer support issues, we will look for evidence of such support being properly assessed and provided to people. In addition, we meet carers and they answer questions on our questionnaires. We therefore have quite an extensive network of evidence on which we can draw, and it leads me to believe that our evaluation of the support for, commitment to and resourcing of services to support carers in each council area is accurate across the range of groupings of people.

The Convener: Jane Kennedy may wish to talk about the single outcome agreements.

Jane Kennedy: The issue of respite care is covered in the concordat that the councils signed up to, but the single outcome agreements are different for each local authority, and they were put together in different ways—some are long and detailed, whereas some are slightly briefer. However, I would not assume that because outcomes for carers are not explicitly mentioned in each single outcome agreement, they are not implicit in the work of councils. We are in the first year of developing the tool of single outcome agreements, and they will develop over the coming years.

The Convener: Do you have a feel for whether people in the 32 councils are specifically mentioning carers?

Jane Kennedy: I could not give you information on that.

The Convener: Has the issue of carers been raised generally?

Jane Kennedy: Many people raise the issue of young carers, as young people tend to feature more in the single outcome agreements than do, for example, older people.

Hugh O'Donnell: I think that Alexis Jay mentioned that a lot of warm words have been spoken and that there has been a lot of interesting rhetoric. Do local authorities have a statutory obligation to define retrospectively what they have done rather than what they aspire to do?

Alexis Jay: That is expected in the single outcome agreements, but there is no statutory obligation. Of course, local authority health and social work services are required in law to produce community care plans. They should say what their plans are and how they intend to implement them, but there is no statutory requirement to consider what they have actually done and whether they have done what they set out to do.

The committee may wish to pursue with the Coalition of Carers in Scotland the analyses of the single outcome agreements from the perspective of carers. The coalition has examined the single outcome agreements in detail, and from what it has said, it appears that local authorities' defined outcomes rarely indicate anything to do with outcomes for carers, although, as Jane Kennedy said, the background narrative may include references to carers. Very few single outcome agreements specifically refer to what will be achieved in that context and set that out as a priority.

The Convener: The Social Work Inspection Agency could highlight that a local authority was not producing community care plans, but that

would not necessarily mean that the local authority would then have to produce them. Would that become an issue only if someone said, "I'm entitled to a community care plan and I'm not getting it"? In other words, would it become an issue only if there was litigation?

Alexis Jay: You are right that an individual who is denied a community care assessment or a carers assessment could take the matter to judicial review, but that never happens. If we say that we expect there to be an increase in carer assessments, when we follow up an initial inspection we check whether that occurs, but of course organisations such as ours have no enforcement powers. We have a lot of influence, because people do not like negative things about them being made public, but the increases in the number of carers assessments that we seek is still slow in becoming obvious.

The Convener: Of course, assessment is only the first stage; the next stage is resourcing, which, from what we have heard, is often not available.

You mentioned that good practice exists. Can anybody give examples of good practice across the board? You may refer to any group of carers. It is always good to highlight good practice and to get ideas to progress matters a little.

Alexis Jay: I have several pages of examples of good practice, some of which concern individuals. Obviously, I do not want to take up the committee's time by talking about all of them.

The Convener: Perhaps you could condense them.

Alexis Jay: The examples are very different. There are specific case examples. Some are to do with particular services. Angus Council's early stage dementia service is mentioned, as is Aberdeenshire Council's forget-me-not club, which is pretty good—carers and cared-for people attend it. There is Inverclyde Council's work with Children in Need, which involves leisure facilities and carers and is aimed at improving family relationships. There is also an example from the Western Isles. I can provide details to the committee.

The Convener: Perhaps you could explain something particularly good that happens.

Alexis Jay: I understand from carers organisations that North Lanarkshire Council's awareness-raising training programme for its staff, which probably included its health care staff, was a particularly good development.

Hugh O'Donnell: That is a good model.

Alexis Jay: I think that the programme was carried out a couple of years ago. Other local partnerships could embrace and perhaps develop

similar programmes. A number of examples of very good practice exist.

The Convener: North Lanarkshire Council seems to be very good with carers generally, including young carers.

Alexis Jay: That is correct.

Sandra White: I was going to ask about training for staff. Legislation has been passed and local authorities and employers have various duties, but does the problem lie in people not realising that they are carers? I am picking up on a point that Lawrence Wason made. Perhaps we need something in addition to a national helpline, for example a national media campaign to make people aware of their rights. Lawrence Wason talked about cultural aspects. Older people sometimes feel that it is their duty to look after their sick child. Should there be a national media campaign so that people know that they are carers and know about the services that they can access? Good practice has been mentioned. I hope that there will be joined-up thinking. Obviously, many employers and carers do not know about the good practice that exists. We need a starting point.

Alan Swift: On awareness, I would like to talk a little about an initiative in the Scottish Court Service. The initiative was not really organisation led; rather, it was led largely by carers whom we initially brought together around six years ago to consider the fact that the service had a number of people with caring issues. That small group of people quickly set up its own contact team, and it has led initiatives and raised awareness. Probably 20 or 30 people saw themselves as carers initially; we now have a register with 116 staff, representing around 8 per cent of the staff in the organisation, who are categorised as carers and can access benefits from the organisation. A partnership involving the Scottish Court Service, carers and our trade union—the Public and Commercial Services Union—has been driven by those people, which has been one of its strengths. They now run their own conference every two years, and we help to fund it. At that conference, carers and cared-for people come together with external organisations to raise awareness of entitlements and of what can be done to improve policies and benefits for staff.

The Convener: Clearly, there is a spin-off for the Scottish Court Service in that you retain staff.

Alan Swift: Exactly—our turnover is low. We retain staff and attract lots of applications for jobs, even though our salaries are perhaps not at the higher end of the market.

The Convener: You say that 20 to 30 people started the initiative. Did the others come into the fold because they suddenly realised that they were

carers, or did they admit that they were carers, or was it a mixture?

Alan Swift: It was a bit of both. Individuals who were carers ran a positive promotional campaign. For me, one of the most positive features was that when we started we had posters with cartoons, but eventually the carers said that they wanted to use photographs of themselves with the people whom they cared for to highlight that they were carers and were proud to be carers. The initiative has changed the attitude of staff members and managers in the organisation, so that caring is seen as positive, rather than negative.

The Convener: That flexibility is important. That is very encouraging.

Kathleen Marshall: I agree that we need the national helpline and a media campaign. However, one action that public authorities can take to deliver support is to ensure that appropriate advocacy arrangements are in place. One phrase that we have long used in the field is that it is the squeaky wheel that gets the grease. Parents will tell you that finding out about the available support and their rights and then pursuing them is a full-time job. Some people just do not have the capacity to do that. There is good practice in, for example, the Govan Law Centre and Independent Special Education Advice (Scotland), which helps parents. ISEA's funding was under threat, although thankfully it has been restored. Some people need help so that they are free to care and do not have to spend time becoming a pseudo-lawyer, pseudo-campaigner or pseudo-advocate. That is critical.

The Convener: I wonder whether Lawrence Wason would like to comment on anything that he has heard. The trade unions played an important role in delivering what seems to be an excellent model in the Scottish Court Service.

Lawrence Wason: There are various issues and there is some good practice. Three years ago, USDAW embarked on a national parents and carers campaign. At that point, we had three key priorities, which remains the case today. The first, which has not been touched on in depth this morning, is the financial aspect for carers, which ultimately is important. We want to work towards lifting carers out of poverty. Secondly, we want to help carers to remain in or rejoin employment, because if they do not do so it will curtail the opportunity for employers and reduce the field from which they can pick. Thirdly, we want to improve in-work support for carers.

In 2005, we conducted a United Kingdom survey, which revealed that less than 10 per cent of our members who were carers and in work received the carers allowance. The main difficulty is the gainfully employed rule. If someone earns

£95 a week or more, they automatically do not qualify for the allowance. That is a major hurdle for the people whom we represent. We would like the Government to change the rule and bring it into line with the rules on qualification for tax credits, under which people can earn up to £50,000 per annum.

The Convener: To clarify, that is a reserved matter, is it not?

Lawrence Wason: Yes. We are campaigning nationally, but it is important that I raise the issue in this forum to find out whether the Scottish Government could do anything further down the line.

The Convener: Feel free to do so.

Lawrence Wason: As I say, our survey indicated that the issue is highly important to our members. That is part of our approach.

The Convener: While we are on that subject, it might be good to explore the differences between Scotland and other parts of the UK. Malcolm Chisholm has a question on that.

Malcolm Chisholm: The issue has been touched on. Alexis Jay referred to the national helpline and Lawrence Wason referred to UK dimensions. Quite a lot seems to have happened in England in the past four years. I think—although I am not entirely clear—that most of the measures are specific to England, although some may affect the whole of the UK if they are benefit related. Can Scotland learn lessons from other parts of the UK about helping unpaid carers?

10:15

The Convener: We are aware of various differences in the UK. Some things are statutory in England, but not in Scotland. Can anyone put those issues on the record for us?

Alexis Jay: In response to an English consultation paper, the UK Government has committed to a review of benefits, pensions and taxation, which is under way and is hugely important to carers. Carers organisations are keen for the review to be supported and encouraged in Scotland and for it to be brought to a conclusion so that carers can benefit.

The care 21 report “The Future of Unpaid Care in Scotland” is good, but we need to ensure that the recommendations in it are followed through. We were ahead of the English in producing a national strategy, if we consider the care 21 report to represent a strategy. The report identified issues to do with health checks and carers’ health. Work on that is going ahead in England, with more encouragement. More impetus may be required here for the work on the relationship between the

breakdown in carers’ health and the support that they get. We must consider what the national health service in Scotland should do to identify issues early and offer support.

Malcolm Chisholm: One issue that you mention in your submission is legislation, particularly in relation to carers assessments. It seems that, in England, account must be taken of whether the carer works, wishes to work or wishes to undertake education. That is important. Another issue is about specific England-only funding streams. Will you comment on those?

Alexis Jay: Whether such measures should be adopted is worthy of discussion by the committee. The issue of whether a carer wishes to work is important. As we have discussed, we do not have a high level of carer assessment, never mind assessments that take that aspect into account. The care 21 report needs to be followed through in Scotland in more detail. It could be the basis of a perfectly good strategy if the Government pursued its recommendations. I understand that there is a commitment from Government and COSLA to do so.

Malcolm Chisholm: You mention that in your submission and Jane Kennedy mentioned it in passing. Will one of you clarify exactly how the care 21 recommendations are being taken forward? There is reference to a new strategy being introduced in a couple of years.

Jane Kennedy: At COSLA’s August executive group meeting, we agreed a report that states that we will build on the strategy for carers in Scotland, which was published in 1999, and the care 21 report, which was published in 2005, as well as the manifesto pledges and points in the concordat on respite care. We have agreed to update those to form a new carers strategy that is agreed by the Scottish Government and COSLA. Our approach is not just about the care 21 report and it is not external to it; it is about building in the current environment, too.

Sandra White: I agree with Malcolm Chisholm that we should consider the right to work and the other provisions in England. I believe that carers in England and Wales have access to direct payments, whereas those in Scotland do not. Apparently, that access does not affect any other benefits. Will anyone comment on that? Lawrence Wason mentioned the earnings limit of £95. Alexis Jay talked about a review at Westminster, but benefits for carers will not even be considered until 2011 in that review. We seem to have the crazy situation in which the law was changed in 2002 so that people over 65 can access carers payments, but if they get a pension they cannot access them.

Can someone clarify that situation? Is it correct that people in England and Wales can access

direct payments in a way that does not impinge on their benefits, whereas in Scotland people cannot access payments in the same way, and that does impinge on their benefits? Does USDAW or COSLA have any comments?

The Convener: Is Alexis Jay or Lawrence Wason aware of the situation?

Lawrence Wason: I am not sure of what the differences are.

The Convener: Perhaps we can seek further information after the meeting, and see whether someone can clarify the issue.

Sandra White: If people in England and Wales are able to access payments in a way that does not affect the benefits that they get, it should surely be open to Scottish people to do the same. I find it a strange anomaly. I wanted to clarify that point.

Alexis Jay: Your briefing note from the Scottish Parliament information centre actually gives you good clarification on it.

Sandra White: Thank you.

Alexis Jay: It confirms the point that you have just made.

Sandra White: Absolutely. We need to look into the matter.

Alexis Jay: As you know, there is a general problem with the level of take-up of direct payments, and with the support and encouragement that are given to people—or not—in pursuing them. Your point is correct.

As is cited in your briefing note, in Scotland,

“a carer’s assessment does not at present give the carer an entitlement to self-directed support”,

as it is described. That covers control over resources. The assessment of the cared-for person will entitle them to support, but there are certain exclusions as to how direct payments may be used in purchasing services, to do with close relatives and so on. The same does not appear to be the case in England and Wales.

Sandra White: That should be looked into.

The Convener: Do you have a question on the same point, Malcolm?

Malcolm Chisholm: The issue has perhaps been covered, but it is interesting to try and get to the bottom of it. We need to know about the extent to which direct payments are made to carers in England. The power might exist, and it would be interesting to find out whether it is used and whether it is resulting in any improvement in England.

In the summary of your report, Alexis, you state:

“there is a low uptake of direct payments and ... there is inconsistency across local authorities as to how direct payments are promoted or supported.”

You were writing not about carers but about the people they care for.

Alexis Jay: Yes.

Hugh O’Donnell: The more I look at the rules and regulations, with the overlapping benefit rules and so on, the more I am concerned that the whole system is in dire and urgent need of a revamp.

Young people at school, college or university are not eligible to access carers allowance. To what extent does that impact on young carers? I recognise that they might receive support in other areas, but what about 16-year-old schoolkids? Are there financial implications for them? How significant is the exclusion of such young people from accessing the funds?

The Convener: To whom is the question directed?

Hugh O’Donnell: Mostly to Kathleen Marshall.

Kathleen Marshall: I imagine that that would be significant, but I do not have an evidence base showing how significant it is. The Princess Royal Trust for Carers might be able to give you more direct evidence on young carers. It sounds like there is a serious gap, but I cannot quote any figures.

Bill Wilson: I may have misread this, but I am under the impression that if a student receives a student loan, they are not eligible for carers benefits. Can anyone clarify that? It seems strange that someone can be lent money, which obviously they will have to pay back later, yet that money can be counted as if it is a benefit that they do not have to pay back. Can anyone comment on that?

Sandra White: I believe that that is the result of the legislation. It is an anomaly, and it should be changed.

Hugh O’Donnell: That is my understanding of it.

The Convener: It is something else for us to highlight.

Kathleen Marshall: That certainly seems to be an anomaly. That jumped out at me, too, when I read the SPICe briefing.

We have spoken a lot about carers who wish to work. There are a number of more subtle barriers. One question is whether the person who is cared for will be treated with dignity and appropriate care in alternative settings. Earlier this year, we submitted the report “Handle With Care: A report on the moving and handling of children and young people with disabilities”, which showed that

extreme risk aversion and the interpretation of the guidance on moving and handling has led to people not being moved without using a hoist. In one case, a parent could not go to work because his daughter's school constantly called on him to go there just to move her in her wheelchair when she was uncomfortable. The school staff felt unable to move her.

The report also showed that there are several restrictions on lifting, supposedly to protect workers—it does not really protect them, which I can explain if you wish. Some of those restrictions are interpreted too widely. It can then be left to parents to do the lifting, and they do not have training in moving and handling. If a parent puts their back out, it restricts their access to work and their ability to care.

Question 4 in the SPICe briefing asks:

“Are there lessons Scotland can learn from other parts of the UK?”

We could take the lead in showing other parts of the UK the way. The Scottish Government has said that it will consider guidance to review the situation, to involve parents and children and to seek more appropriate and practical good handling guidance. There has been a lot of interest in “Handle With Care” from throughout the UK. Handling is a subtle matter, and it affects children's health. Young people have talked to us about not drinking, because if they drink their intimate needs will need to be met, and the hoist will be used, which is not appropriate. They have also talked about not eating, because if they eat too much their weight will increase, which will be more of a burden on their carer, and they do not want to put their parental or other unpaid carer at risk. There is a host of issues about the impact on the equal opportunities of both carers and young people, as well as on young people's health.

Respite care is a huge issue. The for Scotland's disabled children campaign started earlier this year. I have listened to parents speak eloquently about the subject. At least the need is acknowledged. We have also tried to raise the issue of handling, which is a significant barrier, and if we do not address it we will reduce opportunities not just for employment but for the healthy development of children and their carers.

The Convener: So under the legislation help is supposed to be provided, but because the law is interpreted so literally, it is having the opposite effect to that which was intended, and it needs to be re-examined, because effectively it goes over the top.

Kathleen Marshall: The problem is not with the law, but with its interpretation. We need authoritative guidance and to build confidence. That would benefit workers, too. If the guidance is

not practical and does not make sense, compassionate workers will move young people against the guidance, and if they hurt themselves they will fall outside all sorts of employment protection, which does not help them.

Lawrence Wason: This is not really my field; a different trade union deals with it. However, from a trade union point of view, if the legislation and the guidelines are available, and if somebody, unfortunately, ignores them and incurs an injury, they might find themselves in some difficulty. If the legislation exists, the advice is to comply with it.

The Convener: So we need clarification, rather than an overzealous interpretation of the law, which has been highlighted as counterproductive—thank you for making that point, Kathleen.

In our previous round-table discussion, an analogy was made about having a sort of MOT for carers. After a certain time, people ensure that their car is in good working order for doing what it is supposed to do, so it is strange for the same not to apply to carers. A huge part of that involves giving carers not just respite but some other interest to help to relieve the day-to-day burden that caring can involve. If we are looking at the provision that exists in England but not in Scotland, should we consider as a priority the fact that the right that people in England have to an assessment with regard to education and work seems not to exist under the legislation in Scotland? Could you comment more fully on that? It is not just a right to work and study for the sake of it; it is about the benefits that that can bring to the job of being an unpaid carer.

10:30

Alexis Jay: Councils need to be much more flexible in their provision of short breaks and support to allow people to take up these important opportunities. However, there is little evidence that, under the current system, cover is being provided to enable that to happen. Some of these opportunities—for example, getting the chance even to talk to other family members about the cared-for person—relate directly to their caring work, but the situation also means that people are unable to pursue leisure activities, do what they like or have time on their own. The focus seems to be on meeting the cared-for person's needs rather than on ensuring that carers can carry on with their task by giving them support and time on their own to pursue education or leisure opportunities, go to the bingo or the pub or whatever.

Alan Swift: Even if they are in employment, many carers have to use their holidays to cope with caring situations. For many years in the civil service, if a person applied for special leave, their

holidays would be taken into account in the amount of leave that they were given. On advice from carers, we decided to make an exception for those with caring responsibilities; with their requests, we discount the individual's annual leave on the basis that such leave lets them recuperate, recharge their batteries and get a holiday. I believe that such a move has significantly benefited carers, who have been able to get something like an extra two days off a year for caring reasons.

We have tried to offer those with significant caring responsibilities support for respite care. Under a scheme similar to that for child care vouchers, if an individual has saved enough to pay for a week's respite, we will pay for another week. However, the approach has not really worked because of the lack of available and affordable respite care. Indeed, that lack certainly makes it difficult for carers who are in employment to recharge their batteries and stay positive.

Hugh O'Donnell: My comments seem to be directed mostly at Alexis Jay. I assure her that that is not intentional.

Kathleen Marshall has quite rightly highlighted what has happened as a result of the guidance on moving and handling. Is there any mechanism in SWIA that reacts to changes in service provider? After all, in most cases, local authorities are using third-party providers, whose hourly rates can be as variable as the weather. Having consistency in service provision must surely build the confidence that carers and cared-for people need in order to feel comfortable. Is the social work inspection system able to pick up on any reduction in take-up of respite care or in participation in leisure activities, such as going to the bingo, at the transition point between different service providers?

Alexis Jay: That quite complex question is about the commissioning and contracting of services and covers relationships not only with in-house services but with a whole range of private and voluntary providers in a local area. Our reports always look at commissioning and contracting arrangements, but we do not have any detailed evidence on their relationship to the specific increases or decreases that you have highlighted.

We evaluate and comment on councils' relationships with their providers, including the way in which they commission services and whether they commission the right services. However, I cannot correlate that with the amount of free time that is provided for activities that recharge the batteries. Were you asking whether there was an increase or a decrease in that?

Hugh O'Donnell: I was curious because, wearing a different hat, I have some experience of

a case in which a service provider changed and the confidence of both the carer and the cared-for person diminished. They had established and built up a relationship over time, but it was damaged by the bean counters—for want of a better expression—and the need to retender services.

Alexis Jay: I am aware of your interest in this complex area. There is no doubt that some councils handle it better than others. As you know, councils have the imperative to ensure that they get best value and the most resources for the public money that they spend, but sometimes that rubs up against the quality issues, as you describe. In some areas, things are not well handled and individuals get little notice of a change of provider or carer. That makes a huge difference to the quality of the relationship, and the volume of service can be reduced as well.

Many councils handle transitions well but, where they do not, both the cared-for person and the carer are directly affected.

Bill Wilson: I return to Kathleen Marshall's remark that parents might not know the correct lifting technique. Obviously, if a parent is injured, it affects not just their ability to work but their ability to care for the child. What training is available to carers so that they know the correct technique? Are there any statistics on how many carers have sustained injuries that might have been avoided if they knew the correct lifting technique?

Kathleen Marshall: I do not have any statistics on that, but when we compiled our report "Handle With Care", the issue was raised not just by parents but by young people who were concerned about their carers' health and wellbeing. Courses on moving and handling are available for carers—I find that strange because, on the one hand, they are told not to do it but, on the other, there are courses available on how to do it.

It is a question of getting the correct threshold. Everybody would acknowledge that there are circumstances in which it is necessary to use mechanical aids such as hoists and slings to protect the person who is moving and handling the other person. However, they are used to ridiculous levels. In one case, the staff at a nursery would not lift a three or four-year-old up three steps to the hall to see the nativity play because there was a "no lifting or handling" rule. People sometimes put in place a blanket restriction.

When we did the research, people told us that the matter is a big concern for them. It is important because it is all about dignity. There are also practical issues when people have to use hoists and slings. We are instructing another piece of work on trying to make different hoists and slings compatible. People cannot get out and about because they have a hoist that they are not

allowed to use with another sling. There is a host of issues.

I do not know whether anyone is interested enough to collect the statistics that you seek. At work, people have accident books and so on, but we are talking about things that happen in people's homes. Unless they report them to someone who has a system for monitoring them, we will not know about them.

Bill Wilson: I presume that the training is not just a matter of teaching someone the correct lifting techniques. They need to learn risk assessment, so that they know when they should and should not attempt to lift the person.

Kathleen Marshall: Yes. That knowledge is sadly lacking. The parents to whom we spoke pointed that out themselves. Even in hospitals, staff are sometimes not allowed to lift, so they call in the parents.

Bill Wilson: So the parents who are not trained in the technique turn up to do things.

Kathleen Marshall: They are not trained but, because they are not subject to the guidelines, they are expected to do things. In fact, they might actually do things that are unwise and put themselves at risk in certain situations. However, they do not know that, and they are not supported to know it.

Bill Kidd: Poverty among carers is obviously a big issue that we must bring to the fore, although everybody knows about it. The problem for the Scottish Parliament is that, although we are aware of problems in the benefits system, it is a reserved matter. The carers allowance is £50.55 a week, but a carer who earns more than £95 a week does not get the allowance. That makes it extraordinarily difficult for a carer who might be desperately keen to get out to work. When they do manage to work, they tend not to get the kind of brilliant support that is apparently available to staff in the Scottish Court Service. Do any of the people round the table, including the trade unionist, know how widespread that kind of support is in other companies or organisations, including the civil service and local authorities? Is the SCS an isolated example in that regard?

Alan Swift: There is much better flexibility in the Scottish Government in getting time off than I imagine there is with most private employers. There is a certain amount of support in that regard in the public sector generally. However, such support is certainly not widespread.

Bill Kidd: Is that the case throughout the civil service?

Alan Swift: Support for carers is not widespread throughout UK industry, although there are

examples of it. I think that British Telecom has a good reputation for supporting carers.

The Convener: Can Hugh O'Donnell just nail this issue? We have touched on it and danced around it a bit, but can you pose the question precisely?

Hugh O'Donnell: Yes, indeed. Given what Alan Swift just said, can Lawrence Wason comment on the private sector's willingness to accommodate or support the needs of carers in relation to flexible working hours and so on?

Lawrence Wason: Yes. We certainly welcome the introduction of the right to request flexible working, but it is clear that it can create obstacles for the carer. It can hamper the ability of the carer to remain in paid work and hamper their access to training and their ability to progress. The time that carers get off is unpaid, which is a financial burden that brings difficulties.

Evidence from a survey that we did in 2005, which is obviously prior to the legislation coming into force, showed that just over 60 per cent of the carers who were surveyed needed changes to their or their partner's working hours—it was predominantly in the retail trade, which has scope for flexible hours—and that over 55 per cent of requests were granted, fewer than 10 per cent were refused and just over a third were agreed in part.

Another difficulty that our trade union has identified is that a growing number of our representatives and full-time officials are dealing with carers who face disciplinary procedures because of their time off or absenteeism for caring duties. That aspect is coming to the fore, but we are considering how to eradicate it and build in safeguards. Some employers let carers use the holiday facility for taking time off for caring duties. However, we all know that an emergency situation is not a holiday. Most panel members touched on that earlier. There are issues, therefore, and we are actively campaigning with the Westminster Government to try to get safeguards built in.

Sandra White: Lawrence Wason has answered the question that I wanted to ask on whether there had been surveys to find out how many carers can get time off. USDAW has obviously done that, but I wonder whether anyone else has. Such research perhaps gives more credence to the idea that we should adopt the English system, in which there is a duty on local authorities to take account of whether a carer wants to work or study. If such a provision were included in the legislation, it would be much easier to examine practices throughout Scotland, not only in local authorities but in the private sector. Examples of good practice have been mentioned. Have studies been conducted aside from the work that USDAW has done?

10:45

Lawrence Wason: Not that I am aware of. The issue has been brought to our attention by our membership, because of the sector that we predominantly work in, so we have decided that it is a worthwhile campaign to pursue and that we should seek improvements.

We believe that the time-off aspect could be addressed in a similar way to time off for statutory maternity or paternity leave, which would take some of the perceived cost burden away from the employer.

The Convener: Jane Kennedy can come in before I bring in Hugh O'Donnell, given that this is such a big issue.

Jane Kennedy: I will refer the issue to my colleagues who work in the employers function in COSLA. I do not deal with employment and local government employees.

The Convener: We would be interested to hear their views.

Jane Kennedy: That is fine.

Hugh O'Donnell: This point relates more to the issues that have been raised on moving and handling and is less to do with employment. The age profile of our carers is increasing. What steps is COSLA taking to address that fact? How is the fact that an increasing burden is falling on people who are themselves getting older and may be in need of care impacting on social work inspection services and those accessing services?

Jane Kennedy: There is a need for a full-scale examination of the matter. A number of factors make the future of unpaid care slightly less sustainable than it has ever been. For example, the breakdown of family structures means that there are often fewer family members to help to look after relatives. People are living longer and people with certain conditions who would not have survived in the past are now living into old age. There is therefore a bit more of a burden as the older population is increasing.

COSLA's current action as a national lobbying body for local government is to look at the carers strategy and to report back to the ministerial steering group.

You mentioned procurement earlier. A large-scale on-going piece of work, which has been led by Community Care Providers Scotland but involves representation from COSLA, Scotland Excel—the national procurement body—and the Association of Directors of Social Work, is examining responsible procuring and commissioning of care services. COSLA's specific work is mainly confined to the carers strategy;

individual local authorities are probably doing additional work.

Alexis Jay: Our survey asked carers whether they identified themselves as having a disability and we asked them about their age. Of the 2,200 carers from throughout Scotland who responded, more than 30 per cent identified themselves as having a disability or a debilitating illness, which is significant. The majority of those who responded were in the 25 to 59-year-old age group, but more than 450 people in the random sample were aged 75 and over.

You can see that, along with the rest of the population, the age of carers will be increasing. We have identified very little specific support for older carers, who will have changing and different needs. It is certainly the case that, as with the workforce in general, there will be issues to do with age for the carer workforce. It is important that we address the issue of support now so that we enable people to carry on caring for as long as they are healthy enough to do so.

Alan Swift: The average age in our organisation is mid-40s. People who are caring for elderly parents also often have child care responsibilities.

I am not certain, but I think that Carers UK has conducted surveys on employers' involvement in caring. I could try to make that information available to the committee. Carers UK produced a business case, which set out the economic benefits to employers of supporting caring. Much of that is common sense—a bit like the lifting issue. We found that a person who was looking after a terminally ill individual would traditionally be signed off on sick leave by the doctor, which potentially led to disciplinary issues with their employer and certainly meant that if the illness went on for a long time, they would stop being paid. Therefore, we decided to introduce a compassionate care scheme, through which an individual can be paid for a maximum of six months while they look after a terminally ill individual. The employee enters into a contract with the employer whereby they agree to come into work regularly and maintain contact. In general, people who have had a doctor's line for six months are not good at getting back to work. A commonsense approach can often make a difference for carers.

The Convener: Thank you for that information. We would be interested in information on the scheme and the Carers UK report. Before we conclude this part of the meeting, I invite everyone briefly to put on record issues that they want to mention as a result of the discussion.

Hugh O'Donnell: I have had my say. I thank the witnesses for the information that they provided and for the time that they took to compile it.

Jane Kennedy: I will report back to the committee on questions that I could not answer and I will keep you up to date on the development of the carers strategy.

Malcolm Chisholm: I thank the witnesses for a useful session. We have much to follow up.

Kathleen Marshall: On Friday, the United Nations Committee on the Rights of the Child published a report on the UK's progress in implementing the Convention on the Rights of the Child. In the report, the point was made that, as local authorities get more power, they should more explicitly assume the responsibilities under the convention.

Article 3 of the convention makes it explicit that when decisions are made, including on the allocation of resources,

"the best interests of the child shall be a primary consideration."

We should show how account was taken of children's best interests when decisions were made. I ask the committee to consider whether it is possible to amend the best-value criteria to make explicit reference to article 3 of the convention and to require authorities to show how they took account of children's best interests in their decision making. The convention says not that the child's best interests should trump everything else but that they should be "a primary consideration", so we should ensure that that is acknowledged and taken account of when decisions are made.

Marlyn Glen: I thank the witnesses for a useful session. There is an astonishing range of issues that we could follow up. When Alexis Jay mentioned the SWIA conference, I thought that perhaps the Equal Opportunities Committee could run an event in parallel or afterwards. It is important to push good practice.

Alan Swift: I hope that the carers strategy in Scotland will take account of employers. For many employers, it makes good economic sense to be supportive, not to mention the significant good will that that wins them from employees.

Sandra White: I, too, thank the witnesses, who raised many issues that we can follow up. Given that this is the Equal Opportunities Committee, it would be remiss of me not to remind people that 71 per cent of people in receipt of carers allowance in Scotland are women. Women are in the lowest-paid jobs, too. We should consider that.

Alexis Jay: My final message is that it is important that we secure a new relationship with carers in Scotland, in which we treat them as genuine partners.

Bill Kidd: We have had a constructive discussion and I thank the witnesses. We are still getting carers on the cheap. That needs to be addressed.

Lawrence Wason: I thank the committee for giving me the opportunity to attend this meeting. Our supporting parents and carers campaign is a UK campaign and we have a carers week, usually in June. Members and their colleagues are welcome to participate in our campaign.

Bill Wilson: I thank the witnesses. This has been a tremendous session. There seem to be good opportunities to improve our ability to share good practice to do with both employment and council activity.

The Convener: We have had an excellent session, which has provided positive issues for us to follow up. The example that the Scottish Court Service gave is encouraging and shows how common sense, flexibility and mutual support can generate economic benefits. I hope that people will be encouraged by that good practice to introduce similar schemes in their businesses.

We look forward to receiving the additional information that participants promised to send us. I thank everyone for coming.

10:55

Meeting suspended.

11:00

On resuming—

Budget Process 2009-10

The Convener: Welcome back. Agenda item 4 is consideration of the Scottish Government's draft budget. This year the committee's focus is mainly on equal pay in local government. At last week's meeting, we heard alarming evidence about the potential costs of achieving equal pay and the impact that the costs may have on the Scottish Government's budget. We look forward to hearing what the Scottish Government is doing to tackle this vital issue and whether the money that it is providing in the draft budget will be sufficient. The committee will also touch on the progress that the Scottish Government is making on its long-standing commitment to equality proofing the budget.

I am extremely pleased to welcome John Swinney, the Cabinet Secretary for Finance and Sustainable Growth; Graham Owenson, the team leader for local government finance in the Scottish Government; and Yvonne Strachan, a regular participant in the committee's meetings, who is the head of the Scottish Government's equality unit. I invite the cabinet secretary to make some brief opening remarks.

The Cabinet Secretary for Finance and Sustainable Growth (John Swinney): I thank the committee for inviting me to appear before it today to engage in dialogue and discussion on the formulation of the Government's 2009-10 budget and, specifically, the Government's commitment to addressing equality issues.

In our budget document, we indicate that our spending plans are designed to ensure that maximum resources flow to boosting the economy and investing in our public services. As members know, we are operating within a tight financial settlement, which is compounded by the challenges that the global economic slowdown poses. Although Scotland continues to demonstrate economic resilience, these are difficult times. Our budget is designed to ensure that we are best equipped to address the challenges that we face.

I have no hesitation in expressing the Government's commitment to tackling equality issues. Our national purpose, which underpins our spending decisions, makes clear that the emphasis that we place on building a successful and sustainable economy is intended to enable all of us to flourish and to share in the opportunities that are created. It sets out clearly the emphasis that we attach to creating opportunities for all Scotland to flourish. We know that too many

people in our communities face disadvantage and inequality, prejudice or discrimination, and that we must address those issues if we are to effect our purpose and to deliver on our stated outcomes. Members will be aware that we expect equality issues to be considered across the range of our activities. One of the outcomes that we have identified in our national performance framework is to significantly reduce inequalities in our society—we expect policy to deliver on that.

The committee has expressed concerns about the profile of equality in the budget and the extent to which it is seen to be considered in the development of our plans. There will always be a necessity to deliver improvements in that respect, and the Government will consider the issues that arise from the work of the equality proofing budget and policy advisory group. We accept that that aspect of our equality work is still developing and we value the contribution that our external colleagues in the group bring to the process.

The committee has specifically mentioned equal pay in local government, which I acknowledge is significant. I have discussed the matter with local government on a number of occasions. It has made progress on both equal pay and single status—I am pleased to hear from COSLA that all councils have now made compensation payments to high-risk groups.

I stress that equal pay and single status are matters for local authorities. In our concordat with local government, we negotiated a complete package of resources. As COSLA states in its letter to the committee, councils have managed the costs of equal pay and single status from within the resources that Government has allocated to them over a number of years, which we consider is the appropriate thing for local authorities to do. We continue to have dialogue with local authorities on equal pay. I am sure that those discussions will be informed by the committee's deliberations.

The Convener: Thank you for that opening statement, cabinet secretary. Given your previous role as deputy convener of the Scottish Parliament Finance Committee, you will be well aware of the "Report on the Financial Implications of the Local Authority Single Status Agreement", which that committee published in 2006. Does the Government know the overall cost of implementing single status?

John Swinney: It is impossible for me to give the committee a figure, given that the cost is—of course—subject to final negotiation of all the arrangements that individual local authorities are putting in place.

Clearly, in 2006, the Finance Committee undertook an assessment of the potential cost of

implementing equal pay and single status. By its nature, the figure was an estimate, albeit one that probably gives the most recently available quantum assessment that has yet been produced. As I said, given that all the agreements are not yet in place, the figure is impossible to determine.

The Convener: So, you are saying that the figure cannot be quantified.

John Swinney: It can certainly be estimated, but it cannot be finally defined, given that all this is subject to negotiation and discussion. As we all know, in many cases the process of negotiation and discussion between local authority employers and employees and the relevant trade unions have been quite protracted. At this stage, it is impossible to identify with certainty the figure at which the costs will conclude.

The Convener: Would you say that the Scottish Government is in the best position to quantify the figure?

John Swinney: No, I would not—we are not party to the negotiations on single status and equal pay at local authority level. The matter is, quite properly, one for authorities to engage in and take forward in that forum of discussion between employer, employee and relevant trade unions. The Government is not a player in those discussions. Obviously, we encourage resolution of the issues, which represent uncertainty not only for local authority finances but members of the public and local authority employees who are involved. Both at the institutional and personal levels, resolution is important for the Government.

The Convener: Once every local authority has conducted its negotiations, will COSLA be in a position to collate all the information and to estimate the figure?

John Swinney: COSLA may well be in a position to do that, but it will have the same difficulty that any third party—indeed, that any authority that has not yet resolved the issue—will have, which is that it will be unable to quantify where the negotiations will end up as a consequence of the discussions.

The Convener: Last week, we heard alarming evidence of bad financial planning by some local authorities. We heard that authorities are taking short-term solutions when a longer and perhaps more practical view should have been taken. The example that most concerned the committee is that of Glasgow City Council. Following a scoping exercise, the council was told that the cost of single status would be £50 million. The council decided that the figure was too high and went on to agree the short-term measure of making compensation payments of £42 million. In addition, it still has to make provision for the final cost of

implementing single status. What is your comment on that bad financial management?

John Swinney: The issue is largely about the independent decision-making processes of individual local authorities. Local authorities are constituted as independent public bodies. They are entirely self-governing as regards their decision-making capabilities—subject, of course, to questions of resourcing, which are largely dominated by the contribution that the Scottish Government makes to local authority finances, and other legislative obligations that they must fulfil.

It is up to individual councils to decide, on the basis of the best information that is available, what steps they should take to resolve the issues of equal pay and single status. Some authorities took decisions to resolve those issues some time ago, and they have been resolved. Some are coming to conclusions now, and others have yet to do so. The decision-making process will be appropriate to each authority. It is for each authority to justify to its members and its electorate the decisions that it takes on equal pay and single status.

The Convener: If a local authority were deliberately to stall the process of making such payments and to kick the issue into the long grass, with the result that the price continued to rise, surely that would be a value-for-money issue that would have a cost implication for the taxpayer. Is there any situation in which sanctions could be considered so that a more realistic and better outcome could eventually be achieved for taxpayers?

John Swinney: Local authorities are assessed on all such matters—which it is quite legitimate to raise—as part of the best-value process, which considers how local authorities operate within the best-value environment. I think that we are just about to complete the first round of best-value analyses of all local authorities in Scotland. If there was concern about how such an issue was being handled and about the implications of that for a local authority's financial planning, I would fully expect that to emerge as part of the best-value assessment of local authorities that is carried out by Audit Scotland. The implications for the wider financial health of an authority of not taking early decisions on equal pay and single status would arise as part of that assessment.

Elaine Smith (Coatbridge and Chryston) (Lab): I have a question on that specific issue. I recall Donald Dewar taking action—in 1999, I think—against North Lanarkshire Council on financial matters. Do you have any powers to take sanctions against local authorities if you feel that finances are being mismanaged in some way?

John Swinney: I have such powers.

Elaine Smith: Could you explain what they are?

John Swinney: I have powers that allow me to intervene in certain circumstances in which local authority finances are not being operated effectively. I am sure that, in the context of what I have said about the independent status of local authorities, all colleagues will understand that such powers would be exercised only in the most extreme circumstances.

I highlight the fact that we have faced some pretty difficult financial challenges recently in the city of Aberdeen, for example. Essentially, the action that we have taken has been to require Aberdeen City Council to follow the approach that has been laid out by the Accounts Commission, which examined the issue dispassionately, carried out a comprehensive assessment and set out actions that required to be taken. The council is now focused on taking the relevant decisions.

I use that example to illustrate the fact that the Government will look to some of the organisations that are enfranchised to supervise local authorities and their way of operating to determine what action needs to be taken if there is any cause for concern about the operation of a local authority's finances. In my term of office, I have received such representations from the Accounts Commission on only one occasion—in relation to Aberdeen City Council. We took action in that instance, but I have not been required to exercise my powers of intervention, which would, I stress, be applied only in the most extreme circumstances.

Elaine Smith: I was just trying to establish that the Government has those powers, convener.

The Convener: The cabinet secretary has indicated that it does.

11:15

Sandra White: You mentioned the best-value review. Under its gender equality duty, Scotland has a specific duty relating to equal pay. From 2007, public bodies have been required to publish an equal pay statement. Will that work hand in hand with the best-value review, and will that also be evidenced? What powers could you and the Scottish Government use if the reviews and progress reports that are published every three years were to show that local authorities were not fulfilling their duty on equal pay? Would retrospective action be taken?

John Swinney: Each local authority must fulfil its statutory duty in any respect, whatever the duty happens to be—there will be many statutory duties that local authorities wrestle with. Each local authority has an obligation to fulfil its statutory duty on equal pay and to report as required.

I return to my point about the balance that must be struck between the local authority's right to manage its own business as a self-governing organisation and any question of intervention, which would take place only in the most extreme circumstances. I have not been anywhere near such circumstances since I became a minister, with the exception of the example that Elaine Smith cited. I cannot readily think of any other examples of that type of intervention.

It is up to each local authority to report and to set out what action it is taking to fulfil its statutory duties.

Hugh O'Donnell: You have spoken eloquently of the Government's commitment to equalities. Can you clarify whether, over the next four years, the budget of the equality unit in the Government will be reduced, stand still or be increased?

John Swinney: The equality unit's budget is rising with inflation, if recollection serves me right.

Marlyn Glen: The Scottish Government's gender equality scheme lists the expected outcome associated with the priority objective of equal pay as

"The gender pay gap continues to narrow in Scotland."

During its round-table discussion last week, the committee heard of concerns regarding the current job evaluation schemes, which are not delivering non-discriminatory pay structures. The implications are that women's work continues to be undervalued and that the pay gap is widening. Combined with concerns over the amount of public moneys that are being allocated to temporary pay-offs—which have just been discussed—that surely leads to a situation in which the behaviour of local authorities in Scotland is not only leading us into a possible financial crisis, but is having a detrimental effect on securing the Scottish Government's overall purpose. Do you agree, and should you not speak to COSLA on the subject as a matter of urgency?

John Swinney: The Government's purpose is, essentially, to focus Government and public services on creating the opportunities that will allow all Scotland to flourish within the context of delivering increasing sustainable economic growth.

The aspirations that Marlyn Glen has set out, such as tackling gender pay gaps and addressing the equal pay agenda, lie at the heart of many of the actions that we take. Perhaps the most appropriate evidence of that is our focus on achieving the national outcome of tackling significant inequalities in Scottish society. That objective lies at the heart of many of the decisions that we are taking as an Administration. In everything that we are trying to do, the

Government is working to ensure that, as we concentrate on developing the Scottish economy and developing opportunities for individuals, we tackle gender pay inequality issues and equal pay questions.

As I said in my opening statement, I discuss those issues with local government in Scotland, which is delivering progress on them. The committee has before it evidence from the Convention of Scottish Local Authorities, which makes the point that 26 of Scotland's 32 councils have implemented, or are extremely close to implementing, local single status pay and grading structures. The convener raised with me the time when I was a member of the Finance Committee in 2006. I cannot recall the exact number, but, at that time, nothing like 26 councils had implemented or were close to implementing such agreements. Progress has been made and local authorities have taken forward their responsibilities in that context.

The Convener: What is your understanding of the term "implemented", as COSLA has used it?

John Swinney: It is not for me to explain the definitions, but, as far as I understand it, "implemented" in this context means that a particular single status scheme has been applied—it might not have been agreed to by the relevant employees, but it has been applied by the relevant local authority.

The Convener: So it could mean that negotiations have just been opened, rather than that an offer is going to be accepted.

John Swinney: My understanding is that a proposal has been put in place—I would define that as "implemented".

Marlyn Glen: The evidence that we received last week suggests that there is huge concern that the current job evaluation schemes are not delivering non-discriminatory pay structures and that what is being agreed to will, in the long term, make things worse. The concern is that the mainly women who are in low pay will continue to be in low pay and will still be able to go for litigation and that the pay-offs that were given are temporary pay-offs, which will also run out. It looks like there is a time bomb. Last week, we felt that that was a matter of urgency and that the Scottish Government should take responsibility for it and hold urgent talks.

John Swinney: It would be completely inappropriate for the Scottish Government to "take responsibility for" this issue, to use Marlyn Glen's phrase, because it is within the exclusive competence of individual local authorities as self-governing organisations. The Scottish Government has no role to perform in negotiating individual single status agreements at local level.

We certainly have a general duty to advance the issues of equalities and the agenda of equal pay within our general action and we have a responsibility and a duty, as a Government, to ensure that we are taking forward those issues for our employees. The Government takes that forward very effectively and we will continue to take forward the general issue within the wider debate in Scotland. In my view, the specific negotiations of individual local authorities are entirely a matter for them.

The Convener: We take that on board, cabinet secretary, but the real question is this: if the situation spirals out of control, at what point will the Government have to intervene?

John Swinney: Individual local authorities have duties to operate within the resources that are available to them, to meet their liabilities and to fulfil their commitments; they fulfil those duties every day of the week. The commitments that they must honour on equal pay and single status are part of their routine obligations, so they must ensure that they implement them effectively on behalf of their employees.

Bill Wilson: Might Audit Scotland or some other body have an appropriate role in determining whether job evaluations are fair?

John Swinney: That is an interesting question, because it cuts across an individual local authority's right and responsibility to carry out that assessment. There is no doubt that councils have an obligation to undertake that process as employers. For me, the question is whether they are acting on that responsibility. The information that I cited a moment ago suggests to me that, since the Finance Committee considered the question in 2006, councils have increased the tempo of their work on equal pay and single status.

Whether there is a direct read-across from negotiations in one local authority to those in another would be a matter for investigation. To take the locality that Dr Bill Wilson represents, the labour market for employees of Renfrewshire Council will be broadly similar, I think, to the one for employees of East Renfrewshire Council so, if there is a dramatic difference between the two councils' performance on equal pay or their grading structures, there will be consequences in the labour market and for the authorities' abilities to attract staff.

Many of those questions must be left to individual local authorities to determine.

Bill Wilson: On councils taking responsibility, the Virginia model of presentation—I have forgotten the correct name but I am sure that you know what I mean.

John Swinney: I am deeply attached to it.

Bill Wilson: Does progress on equal pay appear on that model? If it does, what kind of measurements appear?

John Swinney: It appears in so far as we have a national outcome that says:

"We have tackled the significant inequalities in Scottish society"

and because the Government's focus is on creating opportunities for all Scotland to flourish. The national outcomes are shared with local authorities, so recognition of the significance of those issues lies at the heart of the performance framework, which is based—as Dr Wilson correctly suggests—on the Virginia model. The Government has developed that model in the Scotland performs framework, which I will discuss with the Finance Committee this afternoon.

Elaine Smith: You mentioned national outcome 7:

"We have tackled the significant inequalities in Scottish society".

I am a wee bit confused. Given that that is one of your outcomes, do you not have a stake and particular interest in employment practices that promote equality, such as equal pay?

John Swinney: The national outcomes are shared with local authorities and public bodies in Scotland, so we are all working together to achieve them. That is the mechanism that we deploy to implement that part of the Government's agenda. We have direct duties on equal pay as employers and, indirectly, are involved in discussions with local authorities on the issue as part of our work to tackle

"the significant inequalities in Scottish society".

11:30

Elaine Smith: If that was the deal that was agreed with local government under the concordat, does not the Government have a direct interest in ensuring that local authority pay structures are non-discriminatory? Otherwise, local authorities will not fulfil the agreement.

John Swinney: Part of the answer is that we understand and respect the self-governing nature of individual local authorities. If we had a system whereby ministers directed local authorities what to do—which is the logical extension of Elaine Smith's point—the character and role of elected local authorities in our country would be fundamentally altered.

In essence, the Government is trying to establish a bridge between national Government and local government, given their shared interest

in achieving certain things. For example, we have a shared interest in tackling the significant inequalities in Scottish society as well as in improving the life chances of our children. We are taking forward a performance framework and other initiatives that reflect our joint interest in Scottish society. Ministers will carry greater responsibility for taking forward some parts of that package of activity, but local authorities will also make their contribution. We are encouraging a process of focusing on shared outcomes among national Government and local government. In my—completely biased—opinion, that framework is proving beneficial in creating better working relationships between national Government and local government.

Elaine Smith: I am not—

The Convener: I will let Malcolm Chisholm ask a brief question, as we need to move on. Cabinet secretary, can you confirm whether you need to leave at 12 o'clock?

John Swinney: I am timetabled to be here until 12, but if the committee wishes to detain me for longer I am happy to continue beyond then.

The Convener: That is helpful.

Elaine Smith: Convener, I just want to say that I am not saying that the cabinet secretary should direct local government. I appreciate that local authorities are elected in their own right but, given the agreements on local government finance and the outcome agreements, the Government must have some say in how those outcomes are achieved.

The Convener: Elaine Smith has now put that point on record.

Malcolm Chisholm: I suppose that I want to ask the same question in a different way. The cabinet secretary trusts local authorities to make progress, but what would the position be if inequality in a particular local authority got worse?

Another issue to be thrown in is that the gender duty requires authorities to report on progress on equal pay. If local authorities made no progress on that, or if things got worse, there would have to be some sanction or influence that could be exerted by central Government, which has imposed that duty on local authorities.

John Swinney: A number of different areas, some of which I have touched on already, could be the subject of that process. Along with the Cabinet Secretary for Education and Lifelong Learning, I have regular bimonthly discussions with COSLA leaders on local government's progress on delivering and developing the concordat. We have single outcome agreements with individual local authorities. We also have the best-value process, whereby local authorities are

assessed on how they steward their resources. In addition, the Government has established a direct channel of communication with individual local authorities—which, I must say, is proving to be very beneficial—whereby a director from the Scottish Government has a role in entering into dialogue with the authority to consider what progress has been made, what issues are emerging and what factors it finds troubling in the Scottish Government's conduct or intervention. The current framework provides ample opportunities for the Government to have that dialogue and to exert influence.

Much more is achieved by a focus on shared outcomes than is achieved by a focus on sanctions. With the greatest respect, none of those measures has worked in the past. Ring fencing, which is a form of sanction, has not delivered particularly effective public policy at local level. The focus on shared outcomes strikes me as the best framework within which to operate. The Government will conduct its discussions within that framework.

Marlyn Glen: We do not disagree that we have shared aspirations—shared outcomes are a wonderful idea. However, local authorities have an impossible task, as they have a limited budget—that is the bottom line. The issue may be more crucial now than it was two years ago. I am sure that you are aware that the committee has heard evidence that employers are still building highly expensive and discriminatory pay systems into both the public sector and the private sector. That is storing up financially risky situations.

Last week, one witness suggested that Audit Scotland has a role in protecting value for money and minimising risk in public spending; I presume that you agree. Is there merit in Audit Scotland carrying out an investigation into the financial implications of single status in local authorities, based on the Finance Committee's report of 2006?

John Swinney: I remember that I got into some trouble when I last requested an Audit Scotland investigation, so I will not accept Marlyn Glen's kind invitation to get into that space. It is for Audit Scotland to decide whether it wishes to conduct an investigation into equal pay and single status; that is not a matter for me. Audit Scotland will come to its own conclusions on that question.

Two significant issues must be borne in mind. First, Audit Scotland carries out best-value audits of individual local authorities, so local authorities are already subjected to robust testing on the issue of value for money—

Marlyn Glen: I am sorry to interrupt, but last week we understood that Audit Scotland had

never taken the issue of equal pay into account in best-value audits.

John Swinney: Let me complete the equation. I am trying to get across the point that, in exercising its responsibility in relation to the best-value process, Audit Scotland must look at councils in their entirety and determine whether they are functioning and delivering value for money. It cannot exercise that responsibility without giving some consideration to how local authorities are handling the question of equal pay.

My second point is crucial. Every year, local authorities must formulate their annual accounts. Their professional auditors—not Audit Scotland—must make an assessment of the financial health of local authorities in relation to contingent liabilities. The implications of equal pay are part and parcel of that assessment. If any issue arose in the process, I am sure that we would hear about it.

The Convener: The question was about not just best value, but risk assessment.

John Swinney: My second point relates to that issue. Best-value audits of local authorities look at value-for-money considerations. The professional accountants who assess the statutory reported accounts of each local authority must perform an assessment of the risk to which the authority is exposed in a variety of areas, of which equal pay and single status may be one. That is where the issue is properly handled.

The Convener: I suppose that we are considering both ends of the spectrum—what it could cost in one-off payments and what it could cost when it is eventually resolved. The latter figure is causing the committee concern. We had hoped that Audit Scotland would have a comment on that.

John Swinney: We must consider that we are in a different place from where we were when the Finance Committee undertook its inquiry in 2006. I hear what Marlyn Glen says about the wider implications, but progress has been made. A judgment has to be made about whether that action has mitigated individual local authorities' exposure to risk. Some authorities sorted out the issue once and for all a long time ago. For them, it is done and dusted, and they now operate with their new pay and grading structures. My view on the financial risk is that, if one local authority has been able to sort out the issue, it must be possible for other local authorities to do likewise, and many of them have done so.

Bill Wilson: By now, you have probably spotted that there is some concern about Audit Scotland. Let us say that it undertakes a best-value audit and ignores factor X, which turns out to be

important. How would you ensure that, in future years, Audit Scotland paid attention to factor X?

John Swinney: As Dr Wilson is aware—I have made the point already—Audit Scotland does not operate at ministers' behest, but draws up and undertakes its own work programme. If a local authority chief executive were sitting where I am sitting, he or she would tell you that the best-value process is a pretty exacting one to be put through by Audit Scotland. They certainly tell me that often enough. The committee should have confidence in the best-value assessment that Audit Scotland carries out.

As I said a moment ago, Audit Scotland either has completed or is very close to completing the first round of best-value assessments of all Scottish local authorities. It is moving on to best value 2, which will consider the questions afresh. I am certain that lessons learned in the best value 1 process will play a part in how Audit Scotland approaches best value 2. I am sure that Audit Scotland, which strikes me as always being receptive to input from parliamentary committees, will listen carefully to the committee's views on the matter.

The Convener: Audit Scotland has already indicated that, and we will take up its offer.

Sandra White: Good morning, cabinet secretary. In your opening statement, you said that the Government expects to deliver equality and tackle inequalities in Scottish society. The issue of equal pay—obviously, it is mostly women who are lower paid—is linked to Scotland's economic growth. You mentioned the report that the Finance Committee published in 2006, and although there might not be equal pay, there have been some outcomes in local government.

However, the committee has heard in evidence that the issue of equal pay remains unresolved. The convener mentioned the litigation, and there have been temporary pay-offs and unlawful pay protection measures, with long-term costs to the wider economy. Issues include the persistent gender pay gap, occupational segregation, women's poverty, and the position of women carers. We had a session earlier with carers, and 71 per cent of recipients of care allowance are women, so you can see where I am coming from. If women are not on the equal pay ladder, that has a negative impact on the economy as well as on women's lives and their children's lives.

If the cabinet secretary or the Government were to act now on equal pay, would not that impact directly, in a good and positive way, on Scotland's economic growth? If you agree with that—I am sure that you do, but here comes the sting in the scorpion's tail—why are no resources committed to that goal in the draft budget for 2009-10?

11:45

John Swinney: We must look at the issue from a different perspective. One of the challenges for the Scottish economy is the fact that we operate within a lower-wage economy than the rest of the United Kingdom. Let us take economic activity, for example. Scotland has the highest level of economic activity of any part of the United Kingdom yet we do not have the highest gross domestic product per head. In essence, the answer to your question lies in the mismatch between those two factors. More of our people are economically active than in other parts of the United Kingdom, but we have a lower GDP per head. What does that mean? It means that people in Scotland are generally, although not always, in lower-wage jobs. The big challenge for the Government—I freely concede that it is a big challenge at the heart of our economic agenda—is to create higher-value employment in Scotland.

The way to address the gender pay gap is to change the economic mix of activity in Scotland to ensure that we have employment that pays people more money, that is more rewarding and for which people have the appropriate skills. The Government's efforts to promote the life sciences sector are an example of that. We are also working to promote the financial services sector, despite its current difficulties, and many aspects of the manufacturing economy. We are trying to encourage the development of higher-value employment, as that is the route to sorting out the gender pay gap and the fact that—although it is a sweeping generalisation—people in Scotland are generally in lower-remunerated employment.

I do not accept the suggestion that there is no budget line for that. There are plenty of budget lines in relation to what the Government is trying to do to support economic development and higher levels of economic activity. To me, that is the route to tackle the significant challenge that Sandra White has set out.

Sandra White: I understand what you say about the objective of raising people's pay not necessarily being ring fenced in the draft budget but appearing in other areas of economic growth and other aspects of the Government's policies. However, although we obviously want both men and women to have higher wages, that does not address the current inequality between men's and women's pay.

I agree that we need to bring people into the life sciences and other areas, but the issue is how we can do that through apprenticeship schemes, for instance. You have said that better jobs are a key way for people to be able to earn more money, contribute financially and ensure economic growth for Scotland. However, evidence shows that,

although women enter apprenticeship schemes, the drop-out rate is greater among women.

There is no detail in the draft budget for 2009-10 of any spending by the Government to tackle occupational segregation in the modern apprenticeship programme, despite the wealth of evidence that has been produced since the Equal Opportunities Commission considered that problem in 2005. Are you aware of any spending that is specifically allocated to tackling occupational segregation in the modern apprenticeship programme? There have been reports of a commitment to work with the close the gap partnership, which looks at tackling stereotyping. Is there such a commitment?

John Swinney: There is a commitment, which lies at the heart of how the Government takes forward its economic agenda in all our interventions. Through the Scottish funding council, we are supporting entry into relevant vocational or higher education opportunities in the colleges and universities. We are working through Scottish Enterprise on business development. We are working through Skills Development Scotland to achieve the aspirations that I talked about, such as ensuring that we have higher-value employment and that we sustain high levels of participation in a difficult economic climate. Those interventions support the development of new and better opportunities for individuals in the workforce, which will have particular relevance for women, who are more likely to be in lower-paid occupations.

One of the challenges that we face in producing the budget document is that there are an infinite number of ways in which we could present information. We could present the document to show how we will address this committee's concerns about equalities. Another committee might ask me to set out the document to show how we will focus on tackling deprivation or on economic growth. The environmental impact of producing such a document would be colossal, because we would be showing the information in a multiplicity of ways. We have tried—through the language that we have used, the initiatives that we have set out and the commitment on equality that we express on page 4—to ensure that our aspirations and commitments resonate clearly throughout the budget document.

Marlyn Glen: The committee would absolutely applaud efforts to bring higher-value employment to Scotland. Will those efforts be targeted on women and, if so, how?

John Swinney: The essence of all this is a challenge that has been with us since the equal pay legislation was applied in 1970. We have a gender pay gap that has to be closed. I will not say that the Scottish Government will be able to

complete that job in the next 12 months, because that will palpably not be the case. However, we can work to ensure that we have a range of economic opportunities that are attractive to women in Scotland and which allow them to participate in the labour market at a higher level than before. The Government will focus on that challenge in its work to encourage more women to enter the labour market and to take part in further and higher education to develop their skills and equip themselves for different roles in the labour market. As I explained to Sandra White, a number of interventions through universities, colleges, training institutions and Skills Development Scotland support the Government's efforts in that respect.

Hugh O'Donnell: Notwithstanding what the cabinet secretary said about page 4 of the budget document, the general thrust that the committee has been pursuing is mainstreaming equalities issues. It would have been helpful if the commitment on mainstreaming equalities had been reflected tangibly throughout the document, rather than appearing only in a statement on page 4. To some extent, this is about self-interest, but that would have made it easier for us to do our job of tracking what is going on across budgets.

John Swinney: In essence, that is the point that I made to either Sandra White or Marlyn Glen—please forgive me for not recalling who. We could have constructed the budget document in such a way as to demonstrate throughout it what we are spending on equalities issues, but we would then have faced demands for a similar presentation on, for example, a deprivation perspective, a young people perspective or an old people perspective. We tried to construct an open and transparent document that sets out where our commitments lie and how they are being taken forward. Obviously, I have the opportunity to explain some of the detail to the committee.

I do not in any way reject the point that Hugh O'Donnell and others have made. I accept that the document could be viewed through an entirely different prism if it was organised in the way that Hugh O'Donnell suggested. However, the challenge for me, as the minister responsible for the budget, is to strike a balance around how many times I can re-present and re-cut the budget. Part of the demand on me, from Parliament and the Finance Committee, is to provide a budget document with sufficient clarity for it to be interrogated.

Hugh O'Donnell: My final observation is that the perspectives to which the cabinet secretary just referred—young people, old people and deprivation—are, in fact, all equal opportunities issues.

Malcolm Chisholm: The role of equality impact assessments remains unclear—a single mention is made of them on page 5 of the budget document, but there is no detail or information on how they have been applied. Why are the practices and outcomes associated with the application of equality impact assessments not evident in the budget document?

John Swinney: To an extent, that relates to the point that I just covered, which is that an approach runs through the document that is designed to tackle a range of outcomes that the Government considers important, one of which is the reduction of significant inequalities in Scottish society. Specific policy interventions will be the subject of equality impact assessments, and the Government provides to the relevant parts of the organisation the supporting policy guidance and relevant information that allows the undertaking of equality impact assessments on specific policy questions.

Malcolm Chisholm: Our view would be that the document should contain that evidence, because it is a high-level document. However, passing over that, can you give examples of equality impact assessments that have informed the document but which are not included in it?

John Swinney: A range of equality impact assessments has been undertaken, which have examined questions about access to support in relation to welfare provision, and in relation to vulnerable families and vulnerable women. Those assessments will have affected budget decisions that were taken on supporting the work that is implicit in the Government's programme about violence against women. That is one example in which our thinking has been developing and in which, as a consequence of the equality impact assessment, we have increased the available resources for the work to tackle violence against women that will be taken forward as part of the budget process.

Malcolm Chisholm: Can you give an example of resources being spent differently in a particular area as a result of an equality impact assessment?

John Swinney: The example that I gave would be one in which we changed our budget priorities. We increased the resources that are spent in that direction as a consequence of recognising the challenges posed by the equality impact assessment.

12:00

Hugh O'Donnell: Will the cabinet secretary give us an insight into his personal experience of engagement with EPBPAG and the extent to which its role has informed the budget process?

John Swinney: I will call it the budget policy advisory group—if I do one thing as part of the process, it will be to change the name of that group so that it is at least to some extent pronounceable.

Hugh O'Donnell: You will have my support on that.

John Swinney: Let us just agree to call it the budget advisory group for short.

The group was established in 2000, and it advises the Government on relevant process issues in the formulation of the budget. I am clearly informed by the group's conclusions and input in how I structure the budget process and how questions are addressed. The thinking that has emerged from the group has assisted me in the construction of the national performance framework, which is predicated significantly on tackling inequalities in our society.

Hugh O'Donnell: To summarise your response for the sake of clarity, you receive information from the group via a third party and have not engaged with the group itself. Is that correct?

John Swinney: I am advised by Yvonne Strachan and the equality unit in the Government. I receive a multiplicity of information and advice from all corners of the Scottish Government on how to take forward the budget process and my wider ministerial responsibilities. I do not have to meet every single group to do that; in fact, that would be physically impossible for me.

Hugh O'Donnell: Have the single outcome agreements been subject to equality impact assessments? More critically perhaps, when they have been subject to such assessments, how are we monitoring the link with funding?

John Swinney: Local authorities have a duty to take equality considerations into account in developing policy. The guidance issued by Scottish Government to councils on developing single outcome agreements sets out the duties of councils and community planning partners in relation to questions of equality. Those are material considerations for councils in the formulation of their single outcome agreements. In both the dialogue on the implementation of the agreements and the channel of communication between the Scottish Government directors and individual local authorities, to which I referred earlier, we will consider the development and delivery of the single outcome agreements in the context of the variety of factors that we have to take into account, one of which is the need to ensure that equality issues are properly considered.

Bill Kidd: Has the Government considered how it will report under the gender equality duty in

2010? Can the cabinet secretary identify the stated priority areas and comment on where the process of budget setting and reporting is situated in the context of those stated priorities?

John Swinney: The issue is still being considered by ministers. We are clearly aware of the 2010 duty, which we welcome as a positive addition to the Government's reporting structure. We will of course consider carefully how we can fulfil our obligations timeously for 2010. I stress that the Government positively welcomes the duty.

Bill Kidd: As Malcolm Chisholm said, the draft budget is a high-level document, so issues arise over the level of detail that can be meaningfully presented. As you said, you could go off at many tangents if you were not careful.

The committee recognises that, in effect, the budget represents the Scottish Government's values and policy priorities. Can you therefore explain the distinct lack of meaningful detail on the promotion of equality—which is a stated priority—across the range of spending portfolios? I will give an example. Despite the existing evidence base and the work of EPBPAG-supported pilot projects on sport and smoking cessation, there appears to be no detail on how such analysis has informed spending in the sport portfolio.

John Swinney: The issue comes down to the level of detail that can be shown in a budget document. On too many occasions over the years, I sat on the other side of the fence during the discussion of budget documents. We have to find a reasonable balance. As ever, I remain open to discussion on how much detail we can properly show in a budget document.

To do justice to the issue that Mr Kidd mentions, the budget document would have to present a pretty comprehensive assessment of past expenditure and its influence on proposed expenditure. As the responsible minister, it would be impossible for me to say that we would do that only for equalities and not for other issues. If we did it for all issues, the budget document process would be colossal. Engagement between ministers and committees provides an opportunity to look further into the detail. If the committee had questions requiring more detailed answers, I would be happy to correspond with the committee to ensure that members received full and comprehensive answers.

I simply repeat the point that it is difficult to put all the information into a manageable and meaningful document. I am going to the Finance Committee this afternoon, although not to discuss the budget process. If I went there in a few weeks' time with a bigger document, I could be met with criticism that the document was far too long and was unmanageable. We try to get the balance

right, but, for future budget documents, I am prepared to reflect on the points that have been made.

The Convener: Thank you for your offer of further information; we may well take you up on it.

Malcolm Chisholm: I will leave the presentational issues to one side. Has the pilot project on sport influenced spending in the sport portfolio? Can you answer the question now, or would you prefer to answer in correspondence?

John Swinney: If the committee will forgive me, I would prefer to give a detailed answer in writing.

Marlyn Glen: I want to follow up Malcolm Chisholm's point. The pilot project was designed to show how equalities could be influenced by the budget—so that we could see where the money came from and whether it was achieving the stated aspirations. I remember, in a similar budget discussion, expressing my disappointment with the previous Administration that the pilot project was so small. The expectation was that, although we were only at the beginning and had taken only a small step, we would be moving forward. I think that the committee should follow up with more questions. The pilot was small and was not high level, but it was terribly significant.

John Swinney: Are you asking about the pilot's significance in the development of the equality impact assessment process?

Marlyn Glen: Yes.

John Swinney: I can tell the committee that the sport pilot, and the smoking pilot, had a significant impact on the design of the equality impact assessment process and on Government's general approach, and I will be happy to answer specific additional questions, to give the committee a flavour of how that came about.

Marlyn Glen: We would like to follow that up. We are looking for evidence on the matter, but we do not have any.

The Convener: We will take up the cabinet secretary's kind offer.

Elaine Smith: As the convener said, at last week's meeting we were concerned to hear about the ever-increasing costs of compensation schemes. If the costs get out of hand—some people think that that has already happened—where will the local government funding for that come from? I am not talking about your power to take sanctions against local authorities, which we discussed. Perhaps we could first clarify what percentage of local government funding is raised through council tax and what percentage comes from the local government settlement.

John Swinney: About 80 per cent—probably a little more than that—of local authority funding

comes from channels that are provided by the Scottish Government and about 18 to 20 per cent comes from council tax revenue.

Elaine Smith: In the past, if local authorities wanted to spend more money they could increase the council tax, subject to certain rules and regulations. However, that is not currently an option for local government, because you have agreed a council tax freeze. Is that correct?

John Swinney: That is correct. However, I am funding the council tax freeze, so there is no loss of income to the relevant local authorities.

Elaine Smith: Yes, but local authorities have no opportunity to seek additional income.

John Swinney: I judge that people would not welcome a council tax increase in the current financial climate.

Last year, when I asked the Parliament to support the budget, I made provision for a notional council tax increase of 3.2 per cent. However, inflation at the time was running at 2.7 per cent, so resources of about £58 million would have been required to freeze the council tax, rather than the £70 million that I put through in the budget.

Elaine Smith: My question is about the 80 per cent of funding that the Scottish Government provides through the local government settlement. If compensation payments get out of hand to the extent that local services start to suffer, given the limited amount of money that councils have, can the Government step in and help councils by giving them more money? Would doing that affect the budget that you have set out? If you did not do that, would local services suffer?

John Swinney: Your question raises three issues. First, we should remember that some local authorities have concluded the matter entirely—

Elaine Smith: Are you confident that there will be no further litigation and compensation claims?

12:15

John Swinney: In some cases that will be the case; in others there may still be exposure to risk. I am confident that in some cases the issue is done and dusted and has been sorted out. If it has been possible for some local authorities to sort out the issue in the existing financial framework, I assume that it must be possible for others to do likewise.

Secondly, if local authorities were to receive from the Scottish Government resources that were additional to those that I have already announced, those resources would have to come from somewhere else in the Scottish budget. Unless I were to use the tax-varying powers of the Scottish Parliament, which I have told Parliament that I will

not do, I would have to take the money from somewhere else. The fact that we operate within a fixed budget means that such action would have consequences for other areas of policy.

The third issue—this is the material one—is covered in Rory Mair's letter to the clerk to the committee of 3 October, in which he says:

"Although a major budgetary pressure Scottish councils have chosen not to seek further funding from the Scottish Government."

From that, I take it that, as Mr Mair goes on to suggest, the local authorities accept that

"In a new relationship and a Concordat agreement, the negotiations around the local government settlement mean that the local government funding is negotiated as a whole and individual pressures are not costed. The budget is managed as a whole."

In my view, that is an absolutely fair representation of the relationship that exists between national and local government. It captures the approach that local authorities are taking to addressing the issue.

Elaine Smith: But, at the end of the day, you could step in with further funding, if you felt that that was necessary, albeit it that doing so would have an effect on other budgets. You have the ability to do that.

John Swinney: I have the ability to change the assumptions that are made, although my exercising that ability is subject to the consent of Parliament. That is an implicit part of the process. However, I do not propose to do that as part of the present budget process.

Sandra White: It is important that we sort out the issue of equal pay because the situation is coming to a crunch, particularly in Glasgow.

I remember that equal pay was an issue back in 1999 when the Parliament had just been set up and that that was the result of Westminster's acceptance of a European directive. Is it not the case that the Westminster Government should have been asked to give local government in Scotland as well as in England and Wales moneys from the Westminster Treasury for the directive's implementation? I do not know whether the cabinet secretary agrees with me but, in my opinion, that should have happened. The mess that local government has found itself in as it tries to come to terms with equal pay was created by Westminster, which the previous Executive should have asked for money to deal with the situation.

John Swinney: I think that I can manage to drag myself, kicking and screaming, to agree with Sandra White that the Westminster Government should be giving the Scottish Government more money. I generally take that view on most issues.

To be serious, I accept that equal pay is an issue that has been going on for a long time. At

present, there are remuneration issues that are the subject of disagreement between the Scottish Government and the Westminster Government. For example, a few weeks ago the Cabinet Secretary for Justice announced that the Scottish Government would pay for the costs of changes to commutation factors in police pensions. The Treasury is meeting that obligation for the Home Office in the remainder of the United Kingdom, but it is not doing so for us, so we must find that money from within our block. That does not strike me as being a particularly fair and equitable way to proceed. Although that example is from a different sector, it has real currency, given that it relates to an issue that the justice secretary and I have been wrestling with for some time.

The Convener: I wonder whether the cabinet secretary agrees with Sandra White's assertion that the whole issue of equal pay is a mess.

John Swinney: I do not. The issue has been going on for a long time, but in some parts of the country it is done and dusted.

The Convener: At this point, I ask our budget adviser, Ailsa McKay, to sum up.

Dr Ailsa McKay (Adviser): I am conscious of the fact that time is running out and that people have places to go to, but there are a few points that are worth reinforcing in relation to the committee's focus on budget scrutiny.

First, members have heard from the minister about the wider financial implications of failing to settle on equal pay, which are central to the best-value process. Members might wish to consider that in the context of the reason that Audit Scotland gave for not attending the committee's meeting two weeks ago.

Secondly, given what the cabinet secretary said about the 26 local authorities that have reached, or are about to reach, single status agreements, the committee might want to consider how many did not reach a single status agreement but had it imposed on them. Without the agreement of all parties, future costs may come about from on-going litigation over discriminatory structures that have been built into the job evaluation schemes.

Thirdly, the cabinet secretary said that differences in job evaluation schemes could be due to differing labour market conditions. That does not explain the evidence that the committee heard on gender differences. If women's work is undervalued, it does not matter under which local authority that happens. If there is a consistent and persistent evidence base that the jobs that women do are undervalued across all local authorities, the committee needs to consider that, given the costs and the impact on future budgets of litigation that arises from new job evaluation schemes. The committee might also want to consider the long-

term financial implications of the progress that the cabinet secretary mentioned in relation to meeting single status obligations

The committee needs to note what the cabinet secretary said about the challenges that the Scottish Government faces in terms of higher-value employment. There is an indication that low-paid women have been subsidising the Scottish economy for a number of decades. People may or may not agree with that statement, but there is a compelling evidence base that that is what has happened. That links to our overall performance in relation to children's health, women's health and women's poverty. If the Government accepts that there are challenges, the committee might want to consider explicitly how existing job evaluation schemes consistently undervalue the jobs that women do and the impact that that will have on overall economic performance in future.

The Convener: Thank you very much for that. The points that you raise are of concern to the committee.

I thank the cabinet secretary for attending. However, we are concerned about progress, and we have not been helped by COSLA not turning up to our round-table session last week. We could not put questions to or delve deeper with COSLA on implementation and the 26 authorities that appear to have settled, on which the cabinet secretary sets great store. All in all, the situation is unsatisfactory.

John Swinney: I thank the committee for its consideration of the budget. The question of COSLA's attendance is a matter that is entirely for COSLA and not one on which I should comment.

I have a couple of points on the budget adviser's summary. I accept that the issue of imposition and not agreement is central to the debate. However—I will try to put this as respectfully as I can—if imposition had not been involved in some deals, those situations would not have been sorted. There would have been no progress, given the unwillingness of some to conclude some of the issues. Regrettable though imposition may have been, it was the last available option for a range of local authorities.

I made a point about differential factors affecting individual local authorities and gave Renfrewshire Council and East Renfrewshire Council as an example. Dr Wilson asked whether a standardisation process could be applied. My point was that the Renfrewshire and East Renfrewshire areas share the same general labour market. Therefore, each authority has to be careful not to be too out of step with the other or they risk losing out in labour market terms. I do not want disparity to be entrenched, but that is a factor for each authority to consider carefully.

The Convener: On your first point on imposition, the committee is very conscious that imposition flowed from litigation that was conducted on a no-win, no-fee basis. The situation is not ideal.

I thank you and your officials for attending. I also thank you for extending the time that you gave us. We appreciate that.

12:25

Meeting suspended.

12:29

On resuming—

European Year of Equal Opportunities for All 2007

The Convener: Our final agenda item is evidence on the outcomes of the 2007 European year of equal opportunities for all. I attended the year's closing conference in Lisbon. The event was worth while and reinforced the fact that equal opportunities are relevant throughout the whole European Community and Europe.

I therefore take much pleasure in welcoming Belinda Pyke, who is the European Commission's director of equality. She has kindly agreed to come over from Brussels and I welcome her back to Edinburgh, where she used to live. We look forward to hearing what she has to say. As well as updating the committee on the European year, Belinda will talk about other European Union work that is relevant to our remit. That is not surprising, given that equal opportunities legislation that we consider emanates from the EU. We have chosen a good time to speak to Belinda, because the Commission has recently proposed a new directive on non-discrimination outside the workplace.

I invite you to give a brief introduction.

Belinda Pyke (European Commission): It is a great pleasure to be back in Edinburgh. I worked here in the late 1970s and voted for devolution at that time, so it is particularly nice to return to be present at the Scottish Parliament.

It might be useful if I set the European year of equal opportunities for all in its context and talk about recent developments—not only on the non-discrimination directive, but on proposals on maternity leave that were made last week. I will remind members of the basis for action in the treaty. The European Union can, of course, act only in areas in which a treaty allows it to do so. On equal pay, which the committee has been discussing, the basis for action goes back to the treaty of Rome, which enshrined the principle of equal pay for men and women. That was elaborated through case law and legislation to a broader concept of equal treatment for men and women in the workplace.

However, it took the Treaty of Amsterdam in 1997 to advance competences. That treaty provided the basis for gender mainstreaming in all Community policies. It is important that it also gave us article 13 of the treaty of Rome, which gives the European Union the competence to propose legislation to combat discrimination on six grounds: race, sex, age, disability, religion or belief

and sexual orientation. Not until the Amsterdam treaty was introduced could the European Union legislate against sex discrimination outside the labour market. That reminds us how recent such action is.

As members will see from the paper that the Parliament's Europe officer has provided, three directives have been adopted on the basis of article 13. The comprehensive race directive, which was adopted in 2000, covers discrimination on the grounds of race or ethnic origin at work and outside work—in access to goods and services, for example. Also in 2000, legislation was adopted on discrimination at the workplace and in access to employment on the grounds of religion, age, disability or sexual orientation. In 2004, we had the first legislation on sex discrimination outside the workplace, in respect of access to goods and services. Gender legislation has developed, too.

Policies have developed in parallel. We have a road map for gender equality from 2006 to 2010, in which one of our great battles, which the committee has considered, is on the gender pay gap. That remains stubbornly stuck at about 15 per cent. Many more women have entered the labour market in recent years, but the gender pay gap persists.

We have also developed disability policies at European Union level. They are now linked to the UN Convention on the Rights of Persons with Disabilities, which all member states are preparing to ratify. The European Community will be a partner in that, because of our mixed competences.

Non-discrimination is the broader remit that we want to discuss today. In 2005, a policy framework on non-discrimination set out several actions, one of which was the European year of equal opportunities for all, which was to be the culmination of awareness-raising measures. Other measures included reviewing whether we needed to legislate further on non-discrimination, so the work started then. We also developed a series of studies and policies.

That brings us to what has been happening this year. I have provided the committee with a communication that we published on 2 July on the future shape of non-discrimination policy. In that communication, we set out our assessment of the current legislative framework and the basis for why we think further legislation is needed.

We also addressed a number of policy areas that we need to develop in dialogue at EU level, such as mainstreaming, positive action and data collection. It is fair to say that the UK is relatively well advanced in those areas; it is further advanced, in many cases, than other member states. Data collection—for example, asking

people about their religion or their racial origin—is very sensitive in a lot of countries, so dialogue on that continues.

On 2 July the Commission adopted the communication that I mentioned as part of a package of social policy. We also decided to establish a standing expert group—a member-state committee—on non-discrimination policy, which will provide an opportunity to exchange experiences. We are now calling for member-state nominations, and we will meet for the first time in November.

We produced a working document, which is a review of policies and instruments in favour of inclusion of Roma, who are often called Gypsies or Travellers in this country. As an ethnic minority, they face the biggest discrimination in the EU. That is not confined to just a few countries—in all the surveys that we carry out, attitudes to Roma contrast starkly with attitudes to any other group, including any other racial group.

We also propose the non-discrimination directive, which extends protection against discrimination on the grounds of age, disability, sexual orientation and religion or belief outside the labour market. A number of countries, including the UK, already have rather extensive non-discrimination legislation, so if the legislation is approved, the necessary changes will be relatively minor.

I note that just before the European Commission made its announcement, the UK Government announced that it will introduce a new equality bill during the next parliamentary session. I gather that it intends to propose legislation in February, and that the bill will tackle age discrimination, which has been the big gap in the UK legislation. I stress that the legislation at EU level needs unanimity. Article 13 of the treaty of Rome requires all member states to agree to legislation, and that will remain the same if and when the Lisbon treaty comes into force.

Discussions within the Council working group have just started. The first discussions between ministers took place last week in Luxembourg at the Council meeting, which was public, so you can—if you want—spend a few hours watching a web-streamed broadcast of it. Some member states were more enthusiastic than others about the legislation and some states, such as Germany, voiced their well-known concerns that they have legislation that broadly covers the same scope and do not think the EU should legislate in the area.

The French presidency is keen to make progress on the directive, but it might not be approved for some time—we need unanimity. There will be a Czech presidency in the first half of next year, and a Swedish presidency in the

second half. The European Parliament is just about to begin its own work. It has only consulted—it does not have codecision in that area. The European Parliament can give an opinion and the Committee on Civil Liberties, Justice and Home Affairs leads on the issue, although other committees are involved.

Even more recently, on Friday, the Commission adopted a package of measures on work-life balance reconciliation—or as some of the press have put it, “working mums”. In the Commission’s road map on gender equality, we identified reconciliation and equal economic independence for men and women as being one of the basic building blocks for achieving real equality and ensuring that women are able to participate fully in the labour market.

We have been consulting widely. Notably, we have consulted the social partners, who said that they are now ready to negotiate improvements in legislation on parental leave, which is based on an agreement between them. Last week, the Commission proposed a general communication setting reconciliation measures into the broader context of demographic renewal, competitiveness and employment.

We produced a report on child care because, at the European Council in Barcelona in 2002, the member states committed themselves to achieving certain targets in child care, notably that each member state would provide child care for one third of under-threes and 90 per cent of children between three and the age at which they go to school. Most have not achieved those targets. That includes the UK, although it is rather closer to the target than other member states.

We also produced a proposal to review, amend and improve the 1992 directive on minimum maternity leave. The minimum maternity leave at European Union level is 14 weeks—again, the UK is well in advance of that—and we propose to increase it to 18 weeks. We also propose that that should be without loss of earnings, although we recognise that that will be difficult for many member states. Therefore, in the proposed legislation, we acknowledge that member states may set a ceiling on the maternity allowance, provided that it is not below the current level.

We have also proposed legislation to amend a rather old directive on equal treatment of self-employed people and aiding spouses. We know that lack of access to social protection and, particularly, support during maternity leave are often barriers to women entering entrepreneurship. We are also aware that assisting spouses—usually women—who work with their partners in setting up businesses or running farms are invisible in social protection. In the end, they will fall on the state for support but if

the partnership, business or marriage breaks up, they are vulnerable.

The two pieces of legislation that were proposed last week are subject to codecision and qualified majority voting, so we hope that they will be agreed during the remaining year of the European Parliament. As you know, we have elections next year.

I am sorry to have spoken for so long, but I hope that that gives you a proper picture. As I said, some things are very recent.

The Convener: Thank you for that comprehensive overview. We have questions, some of which touch on matters that you have already explored. The 2007 European year of equal opportunities for all was about raising awareness of citizens’ rights to equal treatment and a life free of discrimination. You summarised some of the main achievements, but would you like to add or highlight anything else for the committee? When I attended the closing ceremony, I was impressed with all the smaller things that were happening in each member state’s efforts to raise awareness.

Belinda Pyke: What was rather special about the year was that member states—for the first time, in many cases—developed non-discrimination strategies to address all six of the strands that article 13 covers. That was pretty ambitious, particularly for some of the newer member states, where religion or sexual orientation are still sensitive issues. In other countries, where attitudes to human rights have developed differently, they are less contentious. Therefore, the cross-ground approach was important. Of course, once we examine cross-ground discrimination, we address multiple discrimination. Gender is often one aspect of that.

The way in which civil society was involved with the public and private sectors helped to give the year its dynamism. That was particularly evident in Lisbon. To follow up the event in Lisbon, we now have an annual equality summit. It took place last Monday and Tuesday in Paris and was highly successful; the Swedish Government will host it next year. In that event, people from different member states’ Governments, the private sector, trade unions and civil society come together to review progress on promoting diversity and tackling discrimination. We also hope that the new committee that we have established will provide some continuity in exchanging best practice. That is where we can add value to policy development.

12:45

The Convener: Thank you. That was helpful.

Marlyn Glen: You spoke about a new directive. Could you give us more detail on that? Which areas of activity outside employment will be covered by the new legislation? The Scottish and UK Governments are both concerned about possible implications for the education and health-care systems.

Belinda Pyke: The directive specifies what it does not cover, which has created some concern among member states who wonder why we have done that. We felt that it was important to point out that we are not interfering with, for example, member states' traditions of having religious schools. The secular tradition is very important in schools in France, and that, too, can be maintained. The UK has concerns about the interface between education and disability and the rights of the country or Government to establish special types of education for people with special needs. That is perfectly permissible, as we make clear.

Education is covered by the race directive—we felt that it would not be correct to leave it out. For the moment, education is not covered by the sex discrimination directive. We might review that in 2010. We do not cover the content of education. People might have strong views about the nature of textbooks, for example, but that is not an issue for the European Union. People across the European Union will express their views, but that is not an area in which we would legislate.

Member states have asked that closer attention be paid to drafting in various areas, and the need for greater legal certainty in drafting came up at the Council last week. Sometimes, the more specific the drafting, the more uncertainty can grow. However, we hope that when we start discussions with the member states again next week we will be able to find out what the particular issues are at the lower levels.

Article 4 of the proposed new directive is on disability; it is the most detailed part. Particularly in the light of the UN Convention on the Rights of Persons with Disabilities, we need to go further. That UN convention defines "denial of reasonable accommodation" as discrimination. The concept of reasonable accommodation is fairly well known in European Union law. I forget the actual phrase that is used in the UK legislation, but a similar approach of reasonableness is taken.

Marlyn Glen: The proposed directive goes into detail about disability, but it is not exclusively about disability.

Belinda Pyke: No, it is not. It was necessary to go into more detail about disability. Age discrimination is perhaps different, but not to discriminate on the ground of sexual orientation means to stop doing something, whereas not to

discriminate on disability grounds usually means actually doing something positive.

Age discrimination is the other rather specific area. There has been quite a long debate in the UK about that. Certain types of age limit are perfectly justifiable for safety reasons or health reasons; for example, we might want to say that children may not drink or do certain other things. That is left to the member states, however.

There has been a lot of debate in the UK and other countries about insurers and bankers using age as a proxy for setting prices or defining products. Life insurance clearly has an age element. That is sometimes a bit less evident with travel insurance and car insurance.

Hugh O'Donnell: Your comprehensive responses have killed two of the questions that I had in mind, but that is not a problem—I am not short of questions, and I have a more general one. If a piece of legislation by a member state or a constituent part of a member state contravened either current European legislation against discrimination on religious grounds or the directive that we have been discussing, what action, if any, could be taken or what reprimand could be issued by the EU to address shortcomings in the legislative framework of that nation or member state?

Belinda Pyke: The Commission can take a member state to the European Court of Justice, but that is at the end of the process. All the legislation in this area is relatively new. The member state sends its legislation to the Commission, which assesses whether it is in conformity with the directive that was agreed—in this case, unanimously—by the member states. Discussions become increasingly formal and can end up in the European Court of Justice, although usually there is great interest in ensuring that that does not happen. Often there are issues of interpretation; a member state may say that it interprets a provision slightly differently from the Commission. That is the case regardless of whether the legislation relates to religion, sexual orientation or other issues.

It is interesting to note that the legislation on discrimination in the workplace on the grounds of religion and sexual orientation that was adopted in 2000 includes a specific provision for Northern Ireland, which has been used as a basis for positive action in the Police Service of Northern Ireland. That caused some parties in Northern Ireland concern, but I understand that it has been successful in achieving a great deal more diversity in the police force, not only religious. I do not have direct information on the matter, but I understand that the scheme can be closed more quickly than was expected—it is time limited.

Hugh O'Donnell: Given that I have lost two questions, I will ask a quick supplementary. What about a piece of nation-state legislation that effectively gives a separate organisation the right to discriminate by proxy?

Belinda Pyke: The question is too oblique. Can you give me more of a clue?

Hugh O'Donnell: Let us say that there is a piece of legislation on the statute book that allows a religious institution to discriminate in particular circumstances; I am thinking specifically of employment.

Belinda Pyke: The 2000 directive includes a quite detailed provision on the possibility in certain cases of religious institutions requiring an employee to adhere to a certain religion. In other cases, employees can be required at least to respect the ethos of the religion. We have discussed the matter with another member state where there has been concern about interpretation of the directive. At a religious school, it is not unreasonable to expect the teachers of religion to be of the religion concerned; it is not obvious that the cleaner or gardener needs to be of the religion, but one would expect them to show a degree of respect for the ethos of the religion. The 2000 directive addresses that issue, because its relevance to religious schools, in particular, was recognised.

Sandra White: I have a very short question, because you have covered most of the issues that I wanted to raise. Although the new directive will have an impact, it seems that it will respect the traditions of individual countries. Should all the issues that the directive covers be left to individual states? Do some EU states seek an EU-wide approach?

Belinda Pyke: I hope that I did not mislead. Certain issues will be left to the member states because they are not to do with us. Those issues include the organisation of schools and the content of education. However, as in the case of the race directive, member states have said that there should be common EU-wide rules, not least because the citizens of member states that have good legislation on these issues—as is the case in Scotland and the UK—should reasonably be able to expect that they will not face discrimination on those grounds if they go to another member state. That applies particularly in the access to goods and services—I am afraid that that is the sort of bureaucratic language that we use. In buying products or services, one should be able to expect that one will not face discrimination.

Also, businesses that work across borders should be able to understand what the common rules are. In a survey of businesses, we found that they felt that it would be an advantage to have a

minimum set of standards so that they could know what the minimum rules are on discrimination on the grounds of age, religion or sexual orientation. Many member states have fairly extensive legislation on those issues, but it is not quite uniform. We want to have a common basis. In the UK, Ireland or Germany, not much adjustment will be needed, but in some other member states development will be required.

Sandra White: So it will be up to each individual state but the EU directive will ensure that the requirements on certain aspects apply in the round.

Belinda Pyke: Yes.

Malcolm Chisholm: I want to ask about the effectiveness of implementation of existing directives but, before doing so, I have another question.

In your introduction, you said that the new directive will not involve a major change for the UK because many of its requirements have already been implemented here. Will you say a bit more about that? Basically, will the provision on age discrimination be the only new requirement for the UK, or will the directive apply to other areas of discrimination—whether on the grounds of sexual orientation, disability or whatever—that legislation does not currently cover in the UK, such as the supply of goods and services?

Belinda Pyke: I will not stick my neck out and match our directive against the UK legislation, but I can certainly say that the scope of the UK legislation and the grounds that it covers are almost as complete as what we propose. An interesting point is that, in implementing the two European Union directives that were introduced in 2000—the race directive covering discrimination within and outwith employment and the discrimination directive covering discrimination only in the context of employment—many member states went further and filled the gap. In many member states, the extensive coverage that applies under the race directive was also applied to other grounds for discrimination.

Sorry, can you repeat the other part of your question?

Malcolm Chisholm: Age discrimination legislation will be introduced in the UK at almost the same time as the directive is adopted. In the UK, the contentious age discrimination issue is the provision that allows companies still to force people to stop working when they reach 65. Will that continue to be allowed under the EU directive?

Belinda Pyke: One could say that that is already covered by the 2000 directive, as was

shown in the Heyday case in the European Court of Justice—

Malcolm Chisholm: So that will not change.

Belinda Pyke: Discussion on whether that is discrimination is still on-going within the European Court of Justice. We have tackled the subject; the issue now is judges' interpretation of the extent to which the situation in the UK represents discrimination.

I understand that the UK legislation will not apply to persons under 18. That issue is also being considered in discussions in Brussels.

On disability, I think that the UK has some concerns about the language that is used in the directive, but I think that—apart from in the area of education—we are broadly on the same lines.

Quite properly, the UK will always want to look at the exact language that is used to see whether the provisions will be difficult to translate into domestic legislation. Although the new directive is unlikely to be adopted before the UK introduces its legislation, I hope that the fact that our proposal is now available will clarify the scope of the EU legislation. The scope of the directive may need to be lessened slightly to secure agreement among the 27 member states, but it is unlikely to increase. That should provide the UK with some certainty. Clearly, member states that have just completed a legislative process find it disruptive to discuss proposals that would force them to change that legislation.

13:00

Malcolm Chisholm: To what extent have the existing directives succeeded in their aims—not just the workplace one, but the ones on the provision of goods and services and protection on race and gender grounds? Has it been difficult to implement and enforce those directives in any areas?

Belinda Pyke: We have produced general reports on some of the issues that have arisen in relation to the race directive and, more recently, the employment directive, and we tried to describe that in our overall communication of 2 July. Broadly speaking, implementation is good. An important part of the directives, particularly the race directive, is the requirement for member states to set up bodies for the promotion of equal treatment, or what we call equality bodies. That was also strengthened in the sex discrimination directives.

In Great Britain, we have the Equality and Human Rights Commission, and there is a separate body in Northern Ireland. The advantage of having such bodies is that, hopefully, they prevent cases from having to go to court and raise

not only individuals' awareness of how to deal with discrimination but employers' and service providers' awareness of how to avoid discriminatory behaviour. One question about our legislation is whether we measure success by the number of cases of discrimination or by the absence of them. We know that legislation is not enough and that awareness raising is also important. Certainly in relation to human rights, behaviour and the political climate have to change in order for the legislation to change, but that change then continues to develop the political climate.

Sandra White: The legislation protects people from discrimination on the ground of race. Particularly in Italy, but in other European countries as well, can the Roma people take cases of discrimination to the European court? If not, when will they be able to do that?

Belinda Pyke: They do not need to go to the European Court of Justice. They can use the race directive to tackle discrimination where it occurs in member states. The Italian situation is particularly complex, and the justice and home affairs commissioner of the European Union, Vice President Barrot, is in close contact with the Italian authorities about the census and fingerprinting.

Two weeks ago in Brussels, we had the first major Europe-wide conference on the Roma. It was the most political—in the nicest sense of the word—conference that I have ever been to in Brussels. We had a lot of Roma people there, from different groups. They are a heterogeneous population. In some cases, they face extreme poverty, in new member states as well as old ones. We are working with the non-governmental organisations to help to empower the Roma to get more involved in local activity and, for example, to access structural funds. In June, the European Council was asked to consider, at the end of the French presidency, what future measures can be taken to support Roma inclusion.

We set out the feeling of the European Commission in our document in July. We believe that, by and large, the European Union has the policies and instruments to support Roma inclusion. We have the anti-discrimination legislation, the structural funds, the regional fund and the social fund, and we have social inclusion processes, but we need to ensure that they are used more effectively to support Roma inclusion.

At present, the European Commission is considering how we can develop that to a greater extent. In my area, for example, we are working with the national equality bodies to ensure that they all have lawyers who understand the extent to which they can use existing EU and national legislation to combat Roma discrimination. It is also important that Roma civil society and Roma

NGOs are aware of the instruments. It is not enough to give people rights—they need to know how to use them.

Elaine Smith: That is interesting. The Equal Opportunities Committee conducted a major inquiry into discrimination against Gypsy Travellers several years ago, and it is an on-going issue for the committee's attention.

I have two short questions on implementation, but I will first return to what Malcolm Chisholm asked about. I am interested in access to goods and services. You referred to the UK publishing its legislation—is that the Equality Bill?

Belinda Pyke: Yes.

Elaine Smith: One of the groups that are discriminated against is breastfeeding mothers and their children. In Scotland, because of my member's bill, which was enacted in 2005, there is legal protection against mothers' being told that they cannot breastfeed in certain places. That pertains to women being denied access to goods and services such as cafes and buses. In fact, discrimination on buses was what raised the issue in the first place—about eight years ago, a woman was put off a bus in Edinburgh for breastfeeding. I understand that there is some intention to include such protection in the Equality Bill; however, I am curious to know whether the existing European legislation covers that group against such discrimination.

Belinda Pyke: That is an interesting question, which I will need to reflect on. If there is any relevant EU law, it will be the sex discrimination directive of 2004. That relates to gender and it might cover indirect discrimination.

Elaine Smith: If you could find out, that would be interesting. It became clear that because the sex discrimination legislation applied only to women, it might be difficult to pursue a case under it, as the situation could not be compared with the treatment of men. That is why I am interested in the directives on wider discrimination, particularly with regard to access to goods and services. There are some protections under employment law, with provisions built in about breastfeeding mothers. I would be interested in that, especially as it is proposed to include such protection in the Equality Bill, so that UK women and children are covered not just in Scotland.

I think that you said, in your opening statement, that the timescale for implementation of the proposed directive is a year—did I hear that correctly?

Belinda Pyke: I do not know the timescale. We need the agreement of 27 member states. It could take a year, it could take longer or it could happen sooner.

Elaine Smith: Should the UK or the Scottish Government be doing anything specific to prepare for implementation of the directive? Is the Equality Bill something that the UK Government is doing in that context?

Belinda Pyke: The UK Government is interested in the developments in Brussels and Luxembourg regarding the directive, as it will have an impact on the Equality Bill. I imagine that, by February, we will have a much clearer idea of where the points of disagreement are and what the shape of the directive is likely to be. The French presidency hopes to have made substantial progress on it by the end of the year. However, as I say, at the moment, some member states are adamantly opposed to any new legislation and, as long as one member state puts up its hand and says no, there is no legislation.

The Convener: That concludes our questioning. Thank you for a fascinating insight into what is going on in the European Union and how it impinges on the work of the committee. We look forward to reading the response that you give to Elaine Smith on the specific issue that she asked about, which is worthy of consideration and may move us a little bit farther.

I thank everyone for their attendance.

Meeting closed at 13:09.

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