

EQUAL OPPORTUNITIES COMMITTEE

Tuesday 22 September 2009

Session 3

£5.00

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Printed and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by
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EQUAL OPPORTUNITIES COMMITTEE

13th Meeting 2009, Session 3

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Marlyn Glen (North East Scotland) (Lab)

COMMITTEE MEMBERS

*Malcolm Chisholm (Edinburgh North and Leith) (Lab)

*Willie Coffey (Kilmarnock and Loudon) (SNP)

*Bill Kidd (Glasgow) (SNP)

*Hugh O'Donnell (Central Scotland) (LD)

*Elaine Smith (Coatbridge and Chryston) (Lab)

*Bill Wilson (West of Scotland) (SNP)

COMMITTEE SUBSTITUTES

Jackie Baillie (Dumbarton) (Lab)

Mary Scanlon (Highlands and Islands) (Con)

Margaret Smith (Edinburgh West) (LD)

Shirley-Anne Somerville (Lothians) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Rona Fitzgerald (Adviser)

THE FOLLOWING GAVE EVIDENCE:

Glyn Hawker (Unison)

Fiona Kordiak (Audit Scotland)

Craig Marriott (NHS Dumfries and Galloway)

Lynn McDowall (Royal College of Nursing)

Alex Neil (Minister for Housing and Communities)

Euan Page (Equality and Human Rights Commission)

Ian Reid (NHS Greater Glasgow and Clyde)

Emma Ritch (Close the Gap)

CLERK TO THE COMMITTEE

Terry Shevlin

ASSISTANT CLERK

Rebecca Lamb

LOCATION

Committee Room 1

Scottish Parliament

Equal Opportunities Committee

Tuesday 22 September 2009

[THE CONVENER *opened the meeting at 10:03*]

Equal Opportunities Issues

The Convener (Margaret Mitchell): Good morning, everyone. Welcome to the 13th meeting in 2009 of the Equal Opportunities Committee. I remind all those present, including members, that mobile phones and BlackBerrys should be switched off completely as they interfere with the sound system, even if they are switched to silent.

Our first item is a general evidence session with Alex Neil, the Minister for Housing and Communities. We held a similar session with the minister's predecessor, Stewart Maxwell, in December 2007. I welcome the minister and Yvonne Strachan, who is head of the Scottish Government's equality unit, and invite the minister to make an opening statement.

The Minister for Housing and Communities (Alex Neil): Thank you for inviting me to this general discussion on vital matters relating to equalities. The equality statement that accompanies the budget is now ready for publication. We intend to circulate it to committee members today. We would have liked to do so before now, but the budget was not announced until Thursday. I am happy to appear before the committee again at a future date to discuss the detail of the equality statement. We will circulate the statement to the committee and give members a chance to read it before it goes up on our website. That will happen some time today.

As you know, this is the first time in the 10 years of the Parliament that we have published an equality statement simultaneously with the budget. That is a significant step forward in trying to achieve our common objective of ensuring that how we spend and allocate resources fits in with what we are trying to achieve in policy terms on wider questions of equal opportunities.

I am pleased to say that the equalities budget remains committed for next year. Against a difficult background of financial tightness, the equalities budget has not in any way been reduced, which is a cause for joy.

In the next few months we will give attention to the Equality Bill and consider what duties might be placed on Scottish public bodies. We will consult on that shortly.

In the coming year we will promote the mainstreaming of equality. We will drive forward on a number of fronts, which will include developing a Scottish approach to independent living for disabled people, challenging racism and promoting race equality, tackling religious intolerance and sectarianism, supporting activity to close the gender pay gap and address occupational segregation, challenging negative attitudes to lesbian, gay, bisexual and transgender communities, and supporting front-line services and activity to address violence against women.

I am pleased that the committee is interested in hearing about the work that we are doing to tackle violence against women. The issue has always received cross-party support, which is welcome. I hope that the committee will be as pleased as I am that violence against women has been chosen as one of the two ministerial priorities under the gender equality duty, which means that we will report on progress across the public sector by 1 July 2010.

On 1 June we published jointly with the Convention of Scottish Local Authorities "Safer Lives: Changed Lives: A Shared Approach to Tackling Violence Against Women in Scotland". The document provides a definition of violence against women that recognises the links between different forms, including domestic abuse, rape and sexual assault, forced marriage, female genital mutilation and commercial sexual exploitation. It guides the development of a shared approach locally and nationally. The key areas of focus are prevention, data collection and services for marginalised women and children. The safer lives, changed lives approach is rooted in a gendered analysis, which is supported by the evidence base from around the world.

It is appropriate and entirely in keeping with the gender equality duty that we target resources at the most acute need. We acknowledge that abuse happens in same-sex partnerships and that there are male victims and female perpetrators. Abuse is never acceptable and should never be tolerated, dismissed or made light of. I have given an undertaking to consider the matter carefully. I will look at evidence such as the Scottish crime and justice survey, which will be published in November and will give us up-to-date evidence about the prevalence of abuse in all contexts. I have also asked officials to look into the service for male victims that is supported by the Welsh Assembly Government, to determine whether we in Scotland can learn from it. During the next year we will continue to support a full range of activity to tackle violence against women and we will work for change with our partners.

In brief introductory remarks I cannot cover all aspects of the wide-ranging work that we are

doing on racial equality, disability equality and a range of matters. I will be happy to discuss any of those issues with the committee.

The Convener: Thank you. The committee welcomes the publication of the equality statement, but we are hugely disappointed that we could not have sight of it in advance of this meeting, which would have enabled us to scrutinise the statement and derive maximum benefit from our opportunity to ask you about it. I take your point that in the 10 years of the Parliament it is the first such statement to be published simultaneously with the budget, but it has not been published in time for the Equal Opportunities Committee to be able to use it to best effect. However, we welcome your commitment and your offer to come back to us when the statement has been published. I understand that it is a sizeable document that runs to 90 pages, so we would welcome the opportunity to ask you about it.

Alex Neil: That is fine. However, publication one business day after the announcement on the budget is not bad going after 10 years.

The Convener: Right. We move on to the national performance framework. There are 15 outcomes, but the one that is most relevant and interesting to the Equal Opportunities Committee is the one that states:

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

We note that the Scottish Government's website provides some further information to the effect that outcomes are not improving quickly enough for those who face barriers because of their race, gender, age, disability, sexual orientation or faith. Why are there not specific national indicators for such groups?

Alex Neil: There are 45 national indicators. We disaggregate some of them where the data are available and reliable, but as you know, the reliability of some of the data is variable. There is also an issue about definitions, for example in relation to disabilities. However, the most important point is that we are, in a sense, mainstreaming equalities throughout the indicators, in that many of them, in seeking to achieve targets, reflect the need for an approach that is based on equal opportunities and which targets particular groups.

I will give a fairly recent example of an innovation in the national health service. When women are admitted to hospital, they are now routinely asked a question about domestic abuse. That is to help us achieve both our health targets and our equalities targets. I could give many examples of other indicators that touch on and are

relevant to achieving our equalities targets and outcomes.

The key point in this context is that the national indicators are mutually reinforcing. For example, in seeking to achieve greater educational opportunity, we want to ensure that people with disabilities are not disadvantaged in the education system. We cannot just focus on outcome number 7, which is specifically about reducing inequalities in Scottish society, and say that that is it. The whole point is that reducing inequalities runs right through the 45 indicators.

Elaine Smith (Coatbridge and Chryston) (Lab): You mentioned that NHS staff now ask women about domestic abuse. Will you tell us a wee bit about how that is done? Are the staff trained to ask about domestic abuse? Often, women may not want to talk about it. Scottish Women's Aid, for example, has training on dealing with those issues.

Alex Neil: We consulted widely with the likes of Scottish Women's Aid about how to go about the questioning before we actually introduced it. It is being done in a very sensitive manner. The people who ask the questions have received appropriate training, which is now part and parcel of the normal training that those NHS staff receive.

The Convener: Is there demonstrable evidence in the draft budget that the Scottish Government's political commitment to supporting equalities is matched by resource allocation?

Alex Neil: Yes, I think that there is. In relation to the equality statement, we give not just examples but comprehensive reports by portfolio. If I pick my portfolio as an example, one key area that we are looking at is the need for the affordable housing investment programme to meet the needs of people with varying needs. Many of those people are disabled and it is important that we meet their needs. When we ask local authorities to prepare their housing strategies, and from that their housing investment programmes, we specifically ask them to take into account, for example, the need for housing with wheelchair access, which is important.

I will pick two further examples from the office of the First Minister. The first is our international development work. As members will know, the budget for that is being increased by 50 per cent next year, I am delighted to say. It is still a modest amount, but the increase is significant nevertheless. We specifically ask any organisation that receives funding from the Scottish Government, in Malawi or elsewhere, to demonstrate its commitment to equal opportunities and we request a copy of its equal opportunities policy. Similarly, in the culture portfolio, there are specific examples of our trying to ensure that

resources go to widening access, for example, in relation to the national collections or performances by the national companies. There are many examples throughout the portfolios of our trying to allocate resources to ensure that particular disadvantaged groups are no longer disadvantaged.

10:15

The Convener: How are the Scottish Government's priorities, as stated in the national performance framework, reflected in the budget?

Alex Neil: I have given examples of that already. Our overall key purpose is to increase sustainable economic growth and to ensure that Scotland becomes a fairer society. In education and health spend and in other spending areas, including my area of housing, we deliberately try to ensure a fairer distribution of resources. A good example is the equally well strategy that is being implemented in the health service. As you know, an equality impact assessment was behind the work that led to that strategy, which was developed by a group of ministers. The purpose of the strategy is to ensure that, in the health service, people who are most in need—who were previously perhaps not accessing the quality and level of service that they should have been accessing—can now access the quality and level of service that they need.

Malcolm Chisholm (Edinburgh North and Leith) (Lab): I will pursue the line that the convener started on. She referred to the Government's website, which refers to specific strands of the equality legislation. However, as she said, the indicators in the national performance framework deal more with socioeconomic inequality, and much of the language on the website is, rightly, about tackling social and economic inequality. I want to pursue how the two aspects relate to each other. One particular dimension is the consultation that you are carrying out on the Equality Bill. What is the Government's attitude on that, if it has one? I do not know whether it is neutral on the issue or whether it has an attitude. I want to tease out your approach to equality legislation in general. In your mind, is that distinguished from the broader approach to tackling socioeconomic inequalities?

Alex Neil: There is a clear distinction between the new single public sector equalities duty and reducing inequality in income and wealth in our society. We have strategies in relation to both, but there are areas in which the two come together and must be regarded as part and parcel of a wider picture. A good example is the employment level among people with disabilities in Scotland. At present, the level is 48 per cent, whereas the general level of employment in Scotland is 78 per

cent. That 30 per cent differential is a huge gap that we must try to close. That requires us to reduce income inequality and even increase employment opportunities for disabled people, but is part and parcel of fulfilling our duty to disabled people under equality legislation. That is an example of the two strands coming together, although I recognise that there are two separate policy strands.

Malcolm Chisholm: I understand what you are saying but, to return to a previous point, is it not a bit odd that no indicator seems to focus on issues such as disability and race, although it is obvious that such issues are often connected with wider inequalities?

Alex Neil: As I have said, there are 45 indicators, and specific areas and targets relate to many of those indicators. I have just mentioned, for example, that 48 per cent of disabled people are in employment compared with 78 per cent of the population as a whole, and it is clear that the pay gap between men and women is still substantial and unacceptable. The Scottish Government's pay policy reflects the need to close that gap not just by 1 or 2 per cent, but completely. That aim is not specifically one of the 45 national indicators. If we rolled out every indicator for every group, we would end up with an unmanageable base from which to operate. The important point is that we are actively targeting progress where we can measure the size of the problem, whether in employment, income levels or pay gaps. In time, we want to close entirely the gap between the employment levels for disabled people and those for the population in general, and it is clear that our objective is to close the pay gap between men and women. Some modest progress has been made on that.

The other important point is that many of the issues touch on reserved policies. For example, we have a big role to play in closing the pay gap between men and women, but it is obvious that Westminster is responsible for many policies—the issue is not whether we think that it should be responsible for such policies—that are key to our ability to close that gap.

Malcolm Chisholm: Will you give an update on the Scottish Government's current attitude towards the socioeconomic duty in the Equality Bill?

Alex Neil: As you know, we are consulting on that at the moment. The consultation period will finish at the end of the month. We have agreed with our colleagues in London that if we want to extend the socioeconomic duty to Scotland as a result of that consultation, we will have plenty of time to do so through amendments to the bill, which is going through Westminster.

Marlyn Glen (North East Scotland) (Lab): Like the convener, I am disappointed by the lack of an equality statement. We had a carbon assessment of the budget on Thursday. It would obviously have been much better for us to have the statement—which sounds interesting and which we welcome—because we could have asked you about it.

I want to ask about the equality and the budget advisory group. Given the equality duties and the long-standing commitment to link equality and budgets, what advice have you received from EBAG?

Alex Neil: The group was formed in 2000—its formation is not a recent event—and it has worked on that problem for nine years. As I said, this is the first year in which we have an equality statement. I am glad that the committee welcomes the fact that we have such a statement after nine years.

We have not been entirely satisfied with EBAG's remit and membership. We have revamped it and tried to make its membership more robust. It is a group of officials that tries to ensure that we establish the necessary processes for mainstreaming equality through the Scottish Government's entire budget. I should clarify that EBAG does not advise on individual spending priorities or decisions; its remit is to ensure that there is a clear link between evidence, policy and spend. EBAG will produce a report next summer on how we will take that work further and—now that the equality statement has been produced—we will do a lot of work before then in preparation for the next spending review, which will, I hope, cover the three-year period beginning in 2010-11.

We recently co-opted a representative from COSLA on to EBAG and I am sure that the committee welcomes that, given the concerns that it has expressed about the need to ensure that the money that the Government provides to local authorities through the single outcome agreements reflects, as far as possible, the national priorities for equal opportunities.

Marlyn Glen: We took evidence from EBAG at our previous committee meeting, so we are aware of the changes. Will you comment on the nature of the advice that you received from EBAG, and explain to the committee how that advice has been acted on? Will you provide evidence of how EBAG's work has informed the budget process and the resulting spending allocation?

Alex Neil: As you know, around 86 equality impact assessments have been published, many of which were carried out under the auspices of EBAG. Those assessments have influenced policy, and therefore spend. The equally well strategy, which I have already mentioned, emanated from EBAG's work, which will—not only

this year but on an on-going basis—inform the spend in relation to the programme and how we achieve its objectives.

EBAG has directly influenced the Scottish Government's policies and its decisions on spend in other areas, such as drugs strategy. It has helped to ensure that the Government's housing guidance to local authorities properly reflects the need for equal opportunities in dealing with specific groups in the allocation of housing and in general housing policy. I stress, however, that EBAG does not advise on individual spending programmes—it is a process group rather than a decision-making group with regard to spending decisions.

Marlyn Glen: You mentioned the next spending review, which will be critical in allocating resources for the following three-year period. How and when will you tell the Equal Opportunities Committee how equality considerations will be integrated into the review?

Alex Neil: We anticipate that the next spending review will take place after the United Kingdom general election, some time in 2010, although it is not clear at this stage whether it will cover the period 2010 to 2013 or 2011 to 2014. The EBAG report, which will be published in June or early July next year, will be orientated towards the spending review and the process of how we can mainstream equality more than we currently do in the decisions that we make. The publication of that report would be an opportune time for me to return to the committee, to discuss its contents and recommendations in relation to how we improve the mainstreaming of equality in the spending review, irrespective of which three-year period it covers.

Marlyn Glen: The committee seeks reassurance that EBAG will influence policy and spend at the beginning rather than the end of the process. At our previous meeting, Yvonne Strachan said:

“it should be part of the process and not something that is done at the end of the process.”—[*Official Report, Equal Opportunities Committee*, 8 September 2009; c 1206.]

We are concerned about equality being tacked on as an afterthought. That is the impression that we were given as a result of the equality statement not being ready.

10:30

Alex Neil: I do not think that you can tie the two together. Perhaps that is what happened in years gone by, but it is certainly not happening now.

I commissioned EBAG to work on the spending review between now and the middle of 2010 to ensure that that work will be done before we have

to decide on the next spending review. We do not know when we will know how much money this Government will have to spend, but we are not waiting for that information before we develop the processes for ensuring the mainstreaming of equality throughout the Government's policies and budgets.

Hugh O'Donnell (Central Scotland) (LD): It is reassuring to hear that you are using equality impact assessments, particularly in relation to housing, given what Shelter Scotland seems to think is a £200 million cut in funding for affordable housing. Can the minister highlight any instances when the impact assessment took the Government in one direction but spending was allocated in a different direction for political reasons related to its overall strategy?

Alex Neil: I will first correct the point on housing expenditure, since you mention it. Shelter knows this and every other housing group has said this: there is no cut in the housing budget, particularly for affordable housing. We have reprofiled what we were always going to spend—some of it has been spent this year rather than next—to maintain jobs in the building trades. It is dishonest of anyone to say that there has been any cut in the housing budget; not a penny has been cut from the housing budget.

People who make such statements should get their facts correct. I will make that point to Shelter, because it knows what has happened. It is perfectly entitled to campaign for additional funding for housing—obviously, as the minister I would welcome additional funding for housing—but it should at least be honest about the facts and the fact is that there is no cut in the housing budget: there has been a reprofiling of spend between next year and this year.

We take the equality impact assessment very seriously and the same was true of our predecessors in Government. To the best of my knowledge—I have checked this previously—there is no example of an equality impact assessment either being ignored or a decision being taken on policy or spend that is in direct contradiction to the conclusions of an equality impact assessment, nor would we be inclined to act in that way.

Hugh O'Donnell: Thank you for the clarification as far as affordable housing is concerned. It would perhaps have been helpful if the Cabinet Secretary for Finance and Sustainable Growth had been clearer during last week's statement.

Alex Neil: He was.

Hugh O'Donnell: On the matter of reallocating moneys to equalities organisations, I am given to understand that a substantial amount of money was reclaimed from an organisation called the Scottish-Islamic Foundation for a project that it

failed to deliver. At the same time, I understand that the Scottish Inter Faith Council experienced a cut in its budget. Does that clawback mean that the money can be reallocated to another organisation, for example the Scottish Inter Faith Council?

Alex Neil: When any organisation that receives funding for spend in a financial year does not meet either all or part of that spend, it is automatic that the money is clawed back, because that is the Treasury rule and we apply the Treasury rules in that case. That would happen to any organisation that did not spend the money that it been allocated for a particular year.

Any money that is clawed back goes into the general pot under the overall budget heading. It can be reallocated to a different organisation or to the same organisation. If the timetable had to be adjusted—I think that that was the case with the Scottish-Islamic Foundation's events, for obvious reasons as a result of the recession—we would consider an organisation's reapplication for funding, provided that it met the necessary criteria.

Money that is clawed back goes into a general pot. A decision on whether to give money to another organisation would depend on how much money there was in the pot, regardless of where the money came from.

The Convener: Three members have indicated that they would like to ask questions. The timetable is extremely tight, so I ask them to be brief.

Malcolm Chisholm: I was interested in what you said about the housing budget. I understand why you said that from a departmental point of view, but you must realise that it completely undermines the Scottish Government's argument that it has an overall cut in its budget. That situation is the result of capital reprofiling, but you are saying that capital reprofiling should not be counted as a cut.

Alex Neil: Those are two separate issues.

Malcolm Chisholm: No, they are not—they are the same issue.

Alex Neil: No, there are two separate issues. One is the £500 million cut, which you know of; the second one—

The Convener: We will leave that issue there because we are straying from equal opportunities, which, predominantly, is what we are here to discuss.

Bill Wilson (West of Scotland) (SNP): First, I want to dissociate myself from what the convener said—I do not agree that the budget equality statement is late. It is a remarkable achievement to produce the first budget equality statement

within one parliamentary day of the publication of the draft budget report.

My question is a slight rephrase of an earlier one. Can you give us an example of an occasion on which receipt of the equality statement has caused you to change a decision before making it public?

Alex Neil: Are you referring to the equality impact assessments?

Bill Wilson: Yes.

Alex Neil: No, as I said to Hugh O'Donnell, to the best of my knowledge—I cannot answer for previous Administrations; Malcolm Chisholm might be able to help you out in that regard—this Government has never changed a policy as a result—

Bill Wilson: I probably phrased my question badly. I was not asking whether you had ever changed a policy as a result of an equality impact assessment. I was asking for an example of a case in which you were directed by the equality impact assessment while you were working on the production of a policy. Have there been occasions when the equality impact assessment has directed your final decision?

Alex Neil: That happens all the time. As I said, 86 EqlAs have been produced. They are commissioned to inform the policy—that is their purpose.

In relation to housing policy, I am keen to ensure that when we fund new housing through the affordable housing investment programme, we ensure that any development has enough houses with wheelchair access. That is a direct result of the EqlAs that have been done in the past. In my eight months' experience, I cannot think of a policy decision that has been taken before the equality impact assessment has been completed. We would always wait for the EqlA before taking the decision on the policy and, ergo, the spend. It is a natural process. It is a critical path analysis. The EqlA, among other things, would inform the policy and the evidence that backs it up, which, in turn, would inform the spend profile.

Bill Kidd (Glasgow) (SNP): I thank the minister for his replies so far.

In the context of the impact that EqlAs have had on decisions on your budget priorities, do you welcome the Scottish Trades Union Congress's report, which calls for an acceleration of capital expenditure?

Alex Neil: Absolutely. As a Government, we have made it clear that we want to keep as many people as possible in employment until we are in a full recovery phase and that bringing forward more

capital spending from 2011-12 into 2010-11 is extremely important in that regard.

Willie Coffey (Kilmarnock and Loudoun) (SNP): As Bill Wilson did, I welcome the equality statement that the minister is releasing today after 10 years of the Scottish Parliament. I can only imagine the disappointment that there must have been around this place for 10 years at the lack of such a statement.

Can you tell us a wee bit about how the framework's measurement of how successful we are will work, given that we have the national performance framework, the equality measurement framework, the equality statement and equality impact assessments? Are we in danger of overburdening ourselves at an early stage with measurement tools and systems? More important, how will we assess and evaluate how successful we are in achieving the outcomes that we want?

Alex Neil: I do not think that we are overburdened, provided that we see measurement as being part of the bigger picture of trying to achieve our equal opportunity objectives. One of our problems is the sheer lack of reliable data in many policy areas. Before we can measure, we must have baseline data, but in many cases the baseline data are not available. For example, we do not know how many transgender people there are in Scotland, so it is difficult to measure precisely progress in the treatment of transgender people. We currently rely on the social attitudes survey for that. In that regard, I am glad to say that the latest social attitudes survey shows that, for the first time, there is a more positive attitude to not only the transgender community but the LGBT community.

In some areas it is difficult to get baseline data against which we can measure progress, but it is very easy in other areas, for example the pay gap between men and women, which I mentioned earlier. We have very reliable and up-to-date data on the pay gap, and not just overall but by sector, which obviously allows us to measure progress in closing the gap. The availability and quality of data are variable, depending on what group or issue we are discussing.

We must obviously look at the bigger picture, but the choice of words can sometimes be misleading. For example, the equality measurement framework is essentially the property of the Equality and Human Rights Commission. All four Administrations in the UK are working with the commission on development of the EMF. However, as the commission says in its literature, the EMF is not a performance monitoring framework, but is about measuring progress: the commission makes a distinction between progress and performance. Words can mean different

things to different people, so definitions are extremely important. When the EBAG report is produced next year, it might be useful to attach a document to it that pulls everything together and puts into context our duties under the Equality Bill—which I hope will be on the statute book by the time EBAG reports—where the EMF fits in with the EHRC, where our own national performance framework fits in and so forth. That would be useful for letting people see how, if you like, the jigsaw comes together.

Willie Coffey: That is very encouraging. Obviously, when there are no data with which to compare performance, the task in the early days will be to gather data and evidence. How soon will you be able to report on progress on a range of issues to meetings of the Equal Opportunities Committee?

Alex Neil: We already report on various issues. For example, in March we published the annual report on progress on our gender equality duty. That contained details on how we are making progress towards achieving our 10 key objectives for the GED, particularly on violence against women. The problem is that we must rely on many reports to get the total picture—the social attitudes survey, the GED report, the EBAG report and a range of other reports. When the EBAG report comes out, it would perhaps be useful to provide with it an inventory or directory of all the various reports—not just from us but from, for example, the Equality and Human Rights Commission—which are the reference points for measuring data, progress and performance. We will undertake to do that.

10:45

Bill Wilson: How will the local authorities' statements feed into the national performance framework, given that all the local authorities could—although we hope that they will not—decide to use different measurements of their equalities achievements?

Alex Neil: I make a distinction between the statutory duties and the discretionary duties of local authorities. Clearly, like the Scottish Government, local authorities will be given a statutory duty under the Equality Bill, in addition to their current statutory duties. The relevant monitoring body for that will be the former Commission for Equality and Human Rights, which is now—the names keep changing—the Equality and Human Rights Commission.

As far as our spend is concerned, one reason why we have co-opted a COSLA representative on to the EBAG group is to ensure that the 32 local authorities—as well as the community planning partnerships, which will play a key role—reflect

national priorities in such matters. We will need feedback and information from the local authorities to ensure that that happens. Given that EBAG will hope to make recommendations at some point in the future, it will need to consider how that issue affects not just local authorities but the host of other agencies—Scottish Enterprise, Highlands and Islands Enterprise and so on—that the Scottish Government relies on to carry out its work. Having spent a lot of time as convener of the former Enterprise and Culture Committee, I know that both Scottish Enterprise and Highlands and Islands Enterprise have particular programmes—for example, to encourage women entrepreneurs—that fit in with our national aim of closing the gender gap.

As I said in reply to Willie Coffey, we need to try to pull together that variety of sources of information, including the relevant information on how local authorities have performed in relation to the national indicators, and on the impact on groups such as disabled people, the LGBT community and so on.

The Convener: We now move to more general topics, some of which the minister has touched on. What progress have Scottish Government directorates made on the key actions that have been designed to address gender equality issues, as identified in the gender equality scheme? Will the minister add to what he said earlier? In particular, how is progress on actions to tackle violence against women monitored?

Alex Neil: The fairly detailed report that we published in March 2009—I take it that committee members have copies—describes our progress on tackling violence against women, and includes an assessment of where we are in meeting the 10 key gender equality objectives.

It is important to say that we report and evaluate, it could almost be said, at three levels. Under the violence against women programme—I chair the national group on violence against women—we support 73 projects, each of which is evaluated and properly assessed over time so that we can find out what works and what does not work. Obviously, some of those projects might then be rolled out into other geographical areas or other sectors. So, as well as the national overview that we provided in the March 2009 report, we carry out assessments at project level, which are available—subject to any confidentiality issues, given the sensitive nature of such matters—to any member who is interested in them. I am happy to share those assessment reports with the committee, so that members can see which projects are working and which are perhaps not as successful as others.

In addition, we are looking at developing local indicators. For example, there is a clear pattern of

geographical differences in violence against women. One thing of which I am very conscious is the lack of service provision in rural areas, which needs to be addressed because violence against women is as much a problem there as it is in urban areas. That dimension would be accounted for in local indicators because policy development relies on finding out what is happening on the ground.

So, we are working at national level, as per the report that was published in March; we are working at project level; and we are trying to work at local authority/community planning partnership level.

Malcolm Chisholm: Carrying on from that point, "Safer Lives: Changed Lives" is a framework and not an action plan, as the document points out, although it refers to priorities for action on which I want to home in. It says on page 22:

"This approach is intended to have a lifespan beyond the current spending review period and we acknowledge that some of the aspects of violence against women referenced are not current priorities for action."

Which aspects of violence against women have not been prioritised and what is the thinking behind that?

Alex Neil: As we have been saying, domestic abuse is a priority. We regard trafficking, on which we have been working with our Westminster colleagues, as a priority. Rape is also a priority when it comes to resource allocation. Undoubtedly, we will talk about forced marriages at some point.

I will pick two examples that have not been a priority to date, mainly because it is difficult to get consensus on how to move forward. As you know, we have debated prostitution in the Parliament on and off since Margo MacDonald introduced her bill about four or five years ago. The scope for consensus so far appears to be limited, which has been a bit of a barrier to progress.

Pornography is the second example that has not been prioritised or progressed. We have always said—I think the previous Administration said the same—that we would take a staged approach to such matters, and in that regard it is clear that the single biggest issue is domestic abuse. However, the other issues are extremely important and I would like us to make progress—ideally, consensually—on prostitution and pornography.

Malcolm Chisholm: Will you also tell us how "Safer Lives: Changed Lives" was developed and which agencies were involved in the process?

Alex Neil: It started with the national group on violence against women, which identified the need for the framework. It set up an expert group, which included representatives from the rape crisis

centres, Scottish Women's Aid, the police, local authorities and so on. That group produced a report that assessed the scale and incidence of the problem. Once that was done, there was a wide-ranging consultation on the work of the expert group. When the consultation was finished, the results came back to the national violence against women group and we published the document. It was a very wide consultation with a lot of participation, which is more important than consultation.

Elaine Smith: I will ask you specifically about domestic abuse but, before I do, I will pick up on something that you said about pornography in response to Malcolm Chisholm. You will know that the committee has considered sexualised imagery and goods that are aimed at children. You said that your priorities are domestic abuse and rape, but a lot of pornography is predicated on those two issues. Can we tackle effectively violence against women and gender discrimination as a whole while women are still being objectified by pornography, which is now so much more commonplace in society? How will you progress that issue?

Alex Neil: I am keen to make progress on both issues. Up to now, the focus has been on domestic abuse, rape, human trafficking and issues such as forced marriage, which have proved to be easier to deal with and to reach consensus on. Of course, the Government does not always need to take the lead, and it might well be that the best way of dealing with this is for the committee to do so. However, I agree with your underlying point that prostitution and pornography are part and parcel of the problem of violence against women in our society and must be tackled.

Elaine Smith: We need to recognise that the prevalence and consequential normalisation of pornography make it very difficult to tackle domestic abuse, rape, prostitution and other forms of commercial sexual exploitation. Although over the years the Equal Opportunities Committee has carried out a considerable amount of work on raising the problem of pornography in society, it has found it difficult to take that work forward. Perhaps that is an issue on which we can work.

Alex Neil: Given that all the major parties are represented on the committee, it might be more appropriate for it to take the lead on both issues. I am certainly happy to work with the committee in that respect.

Elaine Smith: Thank you very much.

Domestic abuse is a gender issue because the victims are predominantly women. However, we obviously recognise that men also suffer from such abuse and, indeed, we sympathise with them. As we know, we should not believe

everything we read in the press, but we have been concerned by reports that in England some women's refuges are being threatened with loss of funding unless they help male victims as part of the gender equality duty. The chief executive of Women's Aid has been reported as saying that its branches are still allowed to exclude men from refuges but have been told that, when council contracts come up for tender, they will have to provide advice and outreach services to men or lose their funding. Women's Aid is a collective of women helping women: given that women's refuges are often run by survivors of domestic abuse it is important that the organisation is all-female. Are you aware of any similar situations in Scotland? Given that an all-female environment is important to female survivors of domestic abuse, what is your opinion on the matter?

Alex Neil: I have been told by colleagues down south that what appeared in the press is a misrepresentation. However, I am not familiar with all the details and why that story in particular appeared in the press.

Elaine Smith: As I said, we have to be careful with what we read in the press.

Alex Neil: Absolutely. I can say categorically that there is no way we would make the admission of men a funding condition for women's refuges. I have said all along—I made it clear in my opening statement—that our policy is based on a gendered analysis. As Elaine Smith pointed out, all the refuges in Scotland—at least those that I know—are all-women environments. That is not to say that we would stand in the way of any refuge that decided to take in men: the point is that we would not enforce such a move. To the best of my knowledge, that has never happened in Scotland.

Elaine Smith: You might also want to consider the prospect of men establishing a similar group.

Alex Neil: That was my next point. I have received a delegation comprising members of all the major parties on domestic abuse and violence specifically against men. The reported incidence of violence against men used to be a ninth of the figure for women; I believe that the ratio is now 1:7.

Elaine Smith: Are you talking about domestic abuse as opposed to other, wider forms of violence?

Alex Neil: Yes. The figures for women are about 50,000, and the figures for men are now about 7,000. As I said in my opening remarks, the Welsh Assembly Government has examined and developed a strategy to deal with the issue, and I have asked my officials to look at that work. My initial thought is that it is a different issue. Obviously there are underlying commonalities, but we need to consider domestic abuse against men

as a discrete problem that needs to be addressed, and not as a tag-on to the issue of domestic abuse against women.

11:00

Elaine Smith: That was helpful. Thank you.

Hugh O'Donnell: For the record as much as anything else, will the minister summarise the response to the consultation on forced marriages? As an addendum to that, can he clarify what action the Government intends to take on the issue?

Alex Neil: We had 47 responses to the consultation. Almost universally, they requested that we introduce legislation to end forced marriages. Obviously the Government is considering the consultation and will, in due course, inform Parliament of its decision.

Marlyn Glen: My question is about the census. The Fife Arabic Society is concerned that the 2011 census will not accurately capture information on Arab-British identity as it will not contain sub-categories such as "Scottish Arab" and "British Arab". The committee has received correspondence from the society that states that it believes that to be an act of inequality in representation. What is the Scottish Government's view of the opinions that have been expressed by the Fife Arabic Society?

Alex Neil: I was at FRAE Fife on, I think, Wednesday, where I met representatives from the Fife Arabic Society. I will spell this out, because I have a fairly detailed briefing and I want to get it absolutely right.

Primary ministerial responsibility for the census lies with Mr Mather rather than with me, but obviously I want to update the committee on where we are. The proposals for the 2011 census ethnicity question that were published in July last year included an "Arab" tick box for the first time. As the committee knows, that proposal was welcomed by the Fife Arabic Society. I am told that space is tight on the census questionnaire because of demand from users for more information. The ethnicity question takes up a full column and cannot be extended. I am glad to say that the General Register Office was nonetheless able to agree to one of the detailed suggestions that the society made earlier this month, which was to change the label on the new tick box to say "Arab, Arab Scottish or Arab British".

The other detailed suggestion—which was to change the section heading to "Arab or any other ethnic group"—has been carefully considered by the GRO, but its conclusion was that the change would have two difficult consequences. First, it would risk reducing the response from ethnic groups that have no tick box because their eye

would be caught by the word "Arab" in the section title. Secondly, since the proposed section headings are the same throughout the United Kingdom, a change would be likely to result in loss of comparability with England and Wales, which is important to many users of census data. I regret having to go against the Fife Arabic Society's arguments on that particular point, but we have agreed to its recommendation on the first issue. An order will be laid in Parliament in November that will detail all these points; it will then be for Parliament to make the final decision. That is the Government's position.

Marlyn Glen: Thank you. It will be interesting to look at what you said in the *Official Report* because it was quite difficult to follow all the details.

Alex Neil: I will be happy to send you a full briefing. I will ask Yvonne Strachan to make sure that committee members get that.

Marlyn Glen: Thank you very much.

Alex Neil: If you have any outstanding questions when you get the briefing, write to me. We will be happy to share our information with you.

Marlyn Glen: Should I write directly to you?

Alex Neil: Yes: write to me or Jim Mather. I am sure that we will compare notes before we answer, anyway.

The Convener: Thank you minister. We appreciate that full answer.

Bill Wilson: In June 2006, the Scottish Executive set up the hearts and minds agenda group to consider ways of tackling negative and discriminatory attitudes towards lesbian, gay, bisexual and transgender people. Since then, the group has produced several reports and recommendations. What impact have the Scottish Government's actions had on tackling negative and discriminatory attitudes towards LGBT people?

Alex Neil: I refer you to the point that I made earlier, which is that the most recent social attitudes survey has shown that we are for the first time making progress in tackling negative attitudes towards, and prejudice against, the LGBT community. We are doing everything we can. I have a meeting with members of the community later this week, and I am going to Brussels next week, where I will meet the European council of the LGBT community, along with Scottish representatives. The hearts and minds campaign is absolutely central to the Scottish Government's strategy and we are working with the community to implement it.

The key thing, at the end of the day, is that we are changing attitudes, which is reflected and measured in the social attitudes survey. It would be almost impossible to disaggregate how much of the change in attitude is due to Scottish Government policy, to UK Government policy or to any other influence. I do not think that that is the key issue, however. The key issue is that attitudes are changing; they are becoming more positive. The question why that is the case would be the subject of a good PhD. I do not think that it is easy to measure exactly the influence of each opinion maker or policy decider on the change in attitude.

Bill Wilson: I agree that it would be very difficult to measure the influence of the Scottish Government, UK Government or the European Union and I suspect that the LGBT group would not actually care. However, it is important that we get some idea of why attitudes are changing; otherwise, we do not know how to maintain progress.

Alex Neil: We rely on the social attitudes survey for that, which is pretty robust.

Willie Coffey: My question is about widening access to local council membership. I understand that that issue was highlighted in the Equal Opportunities Committee in session 2 of the Parliament and that it might be mentioned in a legacy paper. What work is the Scottish Government doing, or proposing to do, to try to widen access to representation in local government?

Alex Neil: As you know, we had a widening access to council membership progress group. There are no plans to reconvene the group, because I think that it has done the work that it was set up to do. One of the key conclusions in the group's 2008 report was that it identified the level of basic salary as a potential barrier to encouraging wider access for people standing for the council. John Swinney, as the minister who is responsible for local government, has agreed that there is an exceptional need to address some of the issues that were raised in the 2008 review. He will, later this year, outline how he wishes that to be taken forward. The timetable for the review that was discussed with the group would be from around January 2010 until spring 2011. We are very much aware of that key barrier to widening access, according to the work that has been done.

As you know, the next local government elections will be in 2012, so we have some time. However, parties select candidates, so the onus is probably on them to decide how they progress in order to widen access to council membership. I would like to see a much higher proportion of people from ethnic communities and the disabled community and I would like to see many more women and so on.

The Convener: That completes our questions. Do you wish to say anything in closing?

Alex Neil: I just want to thank you very much indeed and reiterate my offer to come back and discuss the equality statement in detail once you have had a chance to study it. If you are happy to accept that offer, we will be in touch with you to organise another date.

The Convener: I reiterate that we very much appreciate that there will be an equality statement this year. That is welcomed by the committee as a huge step forward. Perhaps the harsh comments that were made this morning were to do with the fact that the prospect of the statement being published prior to this meeting was dangled in front of us when we took evidence last week.

We are grateful to the minister for offering to come back to the committee. According to our diary, that might involve negotiations with other ministers, as we would have to move one of our meetings with them in order to ask the minister questions on the equality statement before the budget.

I thank you for your evidence, minister.

11:10

Meeting suspended.

11:16

On resuming—

Budget Process 2010-11

The Convener: Our second item is a round-table discussion on the Scottish Government's draft budget for 2010-11, focusing on the issue of equal pay in the national health service. In a minute, I will go round the room asking everyone to introduce themselves. First, however, it is worth pointing out that although this is a public meeting and a transcript will be produced, the idea is to have a more informal evidence session. The committee feels that that is a better approach, as it results in more relevant information coming forward. It is worth stressing the point at the beginning: we are in public, and there will be a transcript, but the session is more informal in nature. The committee will take further evidence on equal pay in the NHS from Nicola Sturgeon, the Cabinet Secretary for Health and Wellbeing, at our next meeting, on 6 October.

We will start with introductions. I am the convener of the Equal Opportunities Committee.

Terry Shevlin (Clerk): I am clerk to the committee.

Rona Fitzgerald (Adviser): I am budget adviser to the committee.

Rebecca Lamb (Clerk): I am assistant clerk to the committee.

Fiona Kordiak (Audit Scotland): I am director of audit services for health and central Government at Audit Scotland.

Hugh O'Donnell: I am a member of the committee.

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

Malcolm Chisholm: I am a member of the committee.

Euan Page (Equality and Human Rights Commission): I am parliamentary manager for the Equality and Human Rights Commission.

Elaine Smith: I am a member of the committee.

Craig Marriott (NHS Dumfries and Galloway): I am director of finance at NHS Dumfries and Galloway.

Willie Coffey: I am a member of the committee and I represent Kilmarnock and Loudoun.

Ian Reid (NHS Greater Glasgow and Clyde): I am director of human resources with NHS Greater Glasgow and Clyde.

Lynn McDowall (Royal College of Nursing): I am professional officer for the Royal College of Nursing.

Bill Kidd: I am a member of the committee.

Glyn Hawker (Unison): I am head of bargaining and equality for Unison Scotland.

Bill Wilson: I am a member of the committee.

Marlyn Glen: I am a member of the committee.

The Convener: Thank you.

To set the scene, I will ask a general question. Are there still different types of equal pay claims? If so, how many of each type are there—by gender and, if possible, according to geography?

Ian Reid: We still have 12,600 equal pay claims in the system, which are split with roughly two thirds coming from trade unions and the other third from one contingency fee solicitor. The trade union claims vary. They come from various trade unions, represented by Thompsons Solicitors. I do not have the exact number, but the vast majority of the claims are from women; a very small number of claims come from males. The split between post-implementation and pre-implementation of agenda for change has not been clarified, because the cases have not yet gone to tribunal.

The Convener: That is helpful. Is anyone in a position to indicate how cases are distributed geographically?

Glyn Hawker: I can provide the committee with some information. The geography is varied. In NHS Greater Glasgow and Clyde, Ian Reid has the privilege of having by far the largest number of cases—certainly of Unison cases. Unison has the best part of 9,000 cases, and therefore has the majority of cases that have been lodged, of which about a third are in NHS Greater Glasgow and Clyde. There are also significant numbers in NHS Lothian and NHS Lanarkshire. There are small numbers in most other health board areas, but in a couple there is none. There is a considerable spread.

Ian Reid is right to say that most of the claims are for women; a small number are for men. I do not have the exact figures with me, but we could get that information if the committee thinks that it is important. The trade union claims are exclusively for back pay. They are not forward-looking equal pay claims of the sort that have arisen in local government or that were linked to the challenge to agenda for change and whether it was an equality-proofed job evaluation scheme. I understand that some such cases may still be lodged by the no-win, no-fee solicitor but that some are also in the process of being withdrawn. The committee will have to get clarification of the situation elsewhere.

The Convener: Your comments are helpful. I have a big question: is there a timetable for resolution of the cases?

Glyn Hawker: That is a big question.

The Convener: So the answer is no.

Ian Reid: The next management discussion in the tribunals is on 2 October. It follows the Hartley decision in England, so it may become clearer afterwards how the tribunals wish to dispose of the claims.

The Convener: I would like to tease out further why we do not appear to be making much progress. What are the key stumbling blocks to a fixed timetable? Emma Ritch has an overview of the situation. Can you explain the lack of progress?

Emma Ritch: Close the Gap cannot comment on the issue.

The Convener: Is anyone else in a position to indicate what the stumbling blocks may be? If not, we will progress with our questioning and try to tease out the answer at the end of the discussion.

Glyn Hawker: Unison has raised the issue regularly with health service employers in Scotland and at UK level. As part of my role as head of bargaining in Unison, I am the staff-side chair of the NHS bargaining mechanism in Scotland. Equal pay is a standing item on that committee's agenda, and it has been ever since I became a member, and we note it at every meeting.

Part of the difficulty is that there has been a view that, because agenda for change is a UK-wide agreement, resolution needs at least to refer to what is happening south of the border. I am aware that the Cabinet Secretary for Health and Wellbeing also wanted some indication of the direction in which litigation was going.

I am fairly confident that I speak for all the trade unions when I say that Unison is keen to move to a settlement of the cases, which have been outstanding for a long time and are the elephant in the corner of the room. There is a great deal of information, which I am sure members of the committee will have considered, about the difficulty of quantifying the costs, which are the big concern. I fully understand that. I do not doubt our ability to quantify those costs, but I am conscious of the fact that, until we do so, the issue will remain a big stumbling block. We must move beyond that. Like all of us, I am keen to see a resolution, not least because I think that it will turn out to be like waiting to see the dentist—I am mixing metaphors all over the place—in that, once we get down to dealing with the issue, it will not be quite as bad as speculation has suggested.

Ian Reid: Glyn Hawker has summed up how employers view the position. We have always been part of the UK pay system, so we are reluctant to move outwith the UK position. We have also been waiting to see what the litigation process brings, because of the challenge to the equal pay provisions of agenda for change.

It is important to say that through the tribunal process, both parties have co-operated and exchanged information. There has been no need for formal requests for information. The relationship between the two sides in the tribunal process has been amicable so far.

Marlyn Glen: I want to ask about the disproportionate number of claims in Scotland compared with England. With hindsight, could steps have been taken to reduce the large number of claims in Scotland by conciliation and other means? What steps are now being taken, if any, to mitigate new claims?

The Convener: Would anyone like to lead off with that?

Glyn Hawker: I would.

The Convener: Glyn, it is your show today.

Glyn Hawker: The biggest factor in mitigating further claims is the fact that agenda for change has been implemented, and we are now coming up against time bars. There is the potential for very few further back-pay claims like those that were submitted prior to agenda for change.

I could be flippant and say that the reason for the higher number of claims in Scotland is that perhaps more trade unionists in Scotland read their trade union journals than do their counterparts south of the border. Unison fairly publicly advertised to our members that they might be able to make an equal pay claim, and we made it fairly simple for them to register an interest. As I said, they responded patchily: in some areas there is a high number of claims, largely because people were encouraged to identify whether they might have a claim. Some of the other trade unions, and indeed some people in our areas, have said that agenda for change has fixed issues for them and they do not want to proceed with any claims.

I am not sure whether we could have mitigated the number of cases. We publicised the fact that there was the potential to make a claim, but that was all, and it remains. I am sure that we will come on to a more detailed discussion about the nature of those cases and how to quantify them. However, there is a big difference between saying, "I think I might have an equal pay claim," and receiving a cheque, however many months or years down the line, for tuppence, £2,000 or whatever. At this stage, we have lots of cases and

a fairly good indication within Unison about what they are worth, but we need a solution.

Malcolm Chisholm: The Hartley test case was referred to. Does Unison know how many of its cases relate to pre agenda for change? How many are post agenda for change? Do we know more generally what proportion of the claims are pre agenda for change?

Glyn Hawker: All of them.

Malcolm Chisholm: Does that mean that post agenda for change there were claims related to agenda for change? Have all the claims post agenda for change been withdrawn or just the Unison ones?

Glyn Hawker: Unison has never had any such claims. We have always been entirely confident that agenda for change stands up as an equality-proofed job evaluation scheme.

Malcolm Chisholm: So all your 9,000 cases are pre agenda for change. Do we know about the other 3,000 or so?

Ian Reid: My understanding of the position in England is that the contingency fee solicitor wrote to all the people whom he was representing to indicate that he was not prepared to represent them on a contingency fee basis any longer, which might impact on the number of claims in England. We understand that he has not done the same in Scotland, so we do not know whether the 3,000 contingency fee claims will continue or will be withdrawn. As I say, as far as we can tell, the contingency fee solicitor has not adopted the same position in Scotland as he has in England.

Glyn Hawker: I am not speaking on behalf of the contingency fee lawyer, but I have seen a letter to the Scottish clients that says exactly that.

The Convener: We will try to pursue that.

Glyn Hawker: The contingency fee lawyer is withdrawing as the representative of those cases and is not offering the same as he did to his English clients, which was, "If you pay me some money I will continue to represent you." The representation is being withdrawn in Scotland but individuals will still be free to pursue their own claims. We do not know how many will do so, but, as far as the numbers are concerned, I anticipate that claims will be withdrawn on the back of the Hartley decision.

The Convener: It is good to have that clarification. It seemed logical that the same action would follow here. Let us move on.

11:30

Bill Wilson: Since agenda for change was introduced, has the NHS in Scotland evaluated the

jobs that are most commonly subject to change? Have other comparators been brought in?

Ian Reid: We have not undertaken a further evaluation, but we have been moving through the implementation of agenda for change over the past four years. NHS posts were only recently evaluated, and the outcomes were finalised at the end of last year. We are now going through a review process with individuals who are unhappy with their evaluation. We have not undertaken further evaluations, other than perhaps through reviewing the posts that were evaluated upon the implementation of the scheme.

Bill Wilson: Are there many unhappy individuals?

Ian Reid: In our board, out of about 39,000 posts that are covered by agenda for change, 7,000 staff are affected by the review process, covering around 300 or 400 jobs. Multiple people are doing jobs for which a review has been requested, therefore a number of people remain unhappy.

Bill Wilson: You imply that the reviews cover a range of jobs. Are they similar jobs or are they in very different parts of the NHS?

Ian Reid: They are very different jobs and range across all the NHS functions. Agenda for change has a common pay spine. For example, band 6 covers numerous professions, such as allied health professions and nurses. Each review covers a range of professions, and I do not think that any particular group has a higher proportion of reviews.

Bill Wilson: Are the reviews about, for example, people who have been put in band 4 wanting to be in band 5 or even band 6?

Ian Reid: That is correct.

The Convener: Given that some of the pay claims involve a large proportion of the nursing profession, does Lynn McDowall have anything to add about the progress of the reviews?

Lynn McDowall: The Royal College of Nursing does not face the same number of claims because, until a few years ago, our members predominantly were trained nurses, therefore we do not have the same issues. We have the same issues with agenda for change, though. Ian Reid's figure for the number of people who are unhappy with their agenda for change banding in NHS Greater Glasgow and Clyde is probably reflected throughout Scotland. In relation to equal pay claims, we are in the same position as the other trade unions, although we have a lot fewer members involved in such claims.

Elaine Smith: Here is where I show my ignorance. I am not sure what is meant by the

phrase "contingency fee lawyer". Does that mean no win, no fee?

Ian Reid: That is correct.

Elaine Smith: Thank you. I just wanted to clarify that.

Glyn Hawker does not think that there will be any great difficulty in quantifying costs, but you think that there might be some dispute about them. Regarding all the cases that relate to agenda for change, if we have a good idea of who they involve, what they involve and how many of them there are, will health boards be able to estimate an upper limit for the contingent liability in their 2009-10 financial statements? If not, will there be a deadline by which firm figures must be published? That will obviously be important for future budgets.

The Convener: Perhaps Fiona Kordiak can comment from Audit Scotland's perspective.

Fiona Kordiak: Certainly. For a number of years, we have been pressing boards to quantify any potential liability and assess the probability of settlement down the line. We have been on the case for about three years, and have had extensive discussions with health board management and the Scottish Government's health directorate. This year, health board representatives and the Scottish Government were able to convince us that it was still too early to assess any likely financial liability down the line, largely because of the lack of firm comparators in a number of claims so far. I reviewed a sample of claims with the central legal office of NHS National Services Scotland and representatives from Greater Glasgow and Clyde NHS Board, and I was satisfied that it was too early to be able to quantify the claims.

In general, with any contingent liability or provision, it is fairly unusual not to be able to specify a range of potential outcomes and make a general prediction. Because of the unusual situation and high degree of uncertainty in this context, auditors this year included an explanatory paragraph in their audit opinions, in which they said that although the accounts as presented were true and fair, it was acknowledged that the issue would potentially be significant down the line. We wanted to point out to readers of the accounts that an area of uncertainty remained unresolved, which could have financial implications.

As auditors, we are concerned about accounting treatment. We were satisfied that that was appropriate this year and we accepted that it was too early to quantify claims. However, we are concerned about the financial impact down the line, which Glyn Hawker mentioned, and we are concerned about how unquantified claims that materialise in future might impact on the financial

situation, particularly given the number of agenda for change appeals in the system—Ian Reid raised that issue. Provision has been made in financial statements in that regard, but as with any provision, estimates are by their nature uncertain. Given the tightening financial position and future funding and cost pressures, we are concerned about an uncoded potential liability that has not been fed into financial plans.

Hugh O'Donnell: With respect to the people around the table who understand auditing and accounting terminology, for someone like me a couple of your comments were in less than plain English. Will you give me edited highlights in plain English, so that I can understand what you meant?

Fiona Kordiak: The current position is that boards have highlighted the existence of equal pay claims as a disclosure in their accounts but have not included estimates of the costs as a charge against their accounts. We normally expect that when there is a liability, a financial transfer will probably be required to settle it, the amount of which can be estimated with reasonable certainty. We have accepted that boards are not yet in a position to do that and therefore cannot account for the costs in their current financial statements. We have accepted that boards can disclose only that there is a potential liability, but that means that it is not built into financial plans.

Hugh O'Donnell: Okay. That sounds like a ticking bomb for all concerned.

Bill Wilson: I suspect that my understanding of accountancy is no better than Hugh O'Donnell's. I understood Fiona Kordiak to say that in relation to claims, boards cannot work out the likely financial liability because they are not sure what comparator to use to enable them to work out the wage differential. Is that correct?

Fiona Kordiak: Yes. Also, genuine material factors other than gender might account for differences—I am probably not best placed to explain the technicalities on that.

Bill Wilson: I am not an expert on audits, so this might be a foolish question. Agenda for change set out relevant comparators. It said, "These people should be in this group, because they do a similar job." Why, therefore, cannot comparators be identified, given that agenda for change appeared to do exactly that?

Fiona Kordiak: You have just asked the question that we as auditors have been asking management and board representatives for the past few years. One issue that has been raised is the fact that, until recently, agenda for change was still under question. Now that the Hartley case in England has been decided, there is more certainty that agenda for change is an equality-proofed system, so that system as a whole and the job

evaluation system that underpins it are no longer under question in the same way as they were previously. We now expect boards to make much more progress over the coming year in quantifying the potential liability, given that the agenda for change issue appears to have been resolved. In the 2009-10 financial statements, we will expect more progress on quantification than has so far taken place.

Bill Wilson: Does that imply that, in point of fact, quantification could have been done earlier and that the boards merely delayed it deliberately because they thought that there was a risk that they might have to do it again?

Fiona Kordiak: No, they did not delay it deliberately. Board representatives are better placed to answer than I am. Their view—and that of the central legal office of NHS NSS—was that there were so many areas of uncertainty that quantification was not possible. One concerned agenda for change. Another one, which is called the single-source issue, concerns whether the employer is the NHS in Scotland as a whole or individual boards. Should it be proved to be the NHS in Scotland as a whole, individuals will have a wider range of comparators against which to compare themselves than if the employer is the individual board. That has yet to be resolved.

The board representatives are better placed than I am to comment on their ability to advance quantification in the coming year.

The Convener: I will bring them in, but Elaine Smith has a question first.

Elaine Smith: I was going to ask for a firmer date for the upper limits, but my question has been answered: it is obviously expected in the 2009-10 financial statements.

Ian Reid: Although the boards have accepted that equal pay claims are on the table and that that could lead to a liability, we have not accepted that we have that liability. In the Hartley case, it was found that agenda for change is equality proofed, so we believe that there is no liability post agenda for change. Equally, pre agenda for change, we were within the UK Whitley system, which has not been tested in the courts under the current claims to ascertain whether it was unequal in some way.

Although we accept that there is a potential liability, we have not yet accepted the liability that is part of the litigation process.

Hugh O'Donnell: If I understood Fiona Kordiak correctly, she just said that there are no national comparators and that all 14 health boards use different comparators. Is that correct?

Fiona Kordiak: Each individual who makes a claim for equal pay must specify comparator jobs

against which they want to be compared, so comparisons are made on a case-by-case basis.

Hugh O'Donnell: Would that normally be done within the health board or against a national benchmark?

My second point might be a little bit more difficult to get an answer to. To what extent do any of the witnesses think that the health boards have chosen not to put a figure against the contingent liability for fear of making it look as though they have a sum of money on the table that can be negotiated for?

Ian Reid: I will answer the former point and Craig Marriott could answer the latter one.

In agenda for change, there are national profiles. When we go through job evaluation, we match a post to a national profile in the main. However, the point that has been made is that, in an equal pay claim, individuals have to pick comparators. Because health boards are separate employers under the current legislation, the comparator is within each individual health board. Had it been found in Hartley that there was one employer, which would have been the Department of Health in England, people could have used comparators from other health boards, but we are separate employers and the legislation provides that an individual can use a comparator only from within their own employer, not a cross-employer comparator.

11:45

Craig Marriott: It is worth reminding ourselves of the facts. The equality issue has not been resolved through the legal process, so no liability has been agreed. The question was asked whether we will be in a better position in 2009-10. It is extremely unlikely that there will be any change in the financial position in the current financial year, but we will not know that until the legal process is concluded and we have the details.

The Convener: Is this a cart-and-horse situation? The equality issue will not be resolved until it is tested, but we seem to be a long way from a case materialising.

Craig Marriott: In some ways, it is a circular argument. We could have been asked the same question previously in relation to agenda for change, but it was not until we went through the legal process of the Hartley case that we had a resolution that identified whether there was inequality and a liability. We have to do the same thing in looking at the Whitley scenario.

The Convener: That is helpful.

Malcolm Chisholm: Paragraph 20 of Unison's submission is helpful on the matter. I accept that the comparators have to be found within the same area, but how much variation is there in practice? Is anything that is happening in England around the Whitley council stuff relevant? Can we learn anything from that? Are any of those cases further advanced, or do we just have to focus on Scotland and indeed on individual health boards?

I refer back to Elaine Smith's question. Nobody can quantify the liability. All that we seem to be able to get from the evidence so far is the comment in Unison's submission that at least the claim values will be lower than in local government. Is that about it as far as any assessment of the liability is concerned?

Glyn Hawker: To be honest, people ought to be extremely relieved if the cost, the complications and the amount of time that cases take are less than in local government.

The cases south of the border are no further forward in resolving whether there are equality issues. The key difference between the two nations, which is described in paragraph 20 of our submission, is that it will be much cheaper to settle the cases in Scotland than it will be south of the border. I have difficulties in explaining that to our members who have read the press reports of the equal pay decisions in the health service in Cumbria and are waiting for cheques for amounts with several noughts on the end. The issues are different for the reasons that are described in paragraph 20, which concern the history of pay and reward in the health service in Scotland. For those reasons, we cannot learn a great deal from England, which in any case is no further ahead.

On the point about the legal test and the suggestion that, as with the Hartley case, we need to wait until the legal position is resolved, I point out that the Hartley case was very different. It was a challenge to agenda for change on the ground of whether it was equality proofed. A large part of the reason why we have agenda for change in the first place is the acceptance that previously, Whitley and the variations on it had created a distortion over a number of years and there were different systems—there were nine at one point, I think. That led to a situation in which we had unequal pay in the health service and we needed to resolve that. The work that went into creating and agreeing agenda for change was done largely to ensure that there was equal pay in the health service.

We could wait until there is a legal test to prove whether any of the cases will succeed, but nobody here could put their hand on their heart and deny that many of the back-pay cases will succeed in some way, shape or form. We could run to the wire with a legal debate, but the outcome will be

what we already know—that there was discrimination in health service pay systems before agenda for change. That is why we have the scheme. Unison's view is that, if we have to go to litigation, we will do so. It is taking a long time to resolve the matter. A number of people who worked in the health service, particularly women, are owed money, but a number of them will die or retire without seeing the benefits. That is not fair.

On moving forward to resolve the matter, I appreciate that our discussion is about the impact on health service budgets, but budgets and costings are about a lot more than money. For the wellbeing of the health service and its workforce, I would like us to resolve the issue. One way in which we are seeking to do that is by settlement but, as I said, if need be, we will go the route of litigation.

One argument that Unison is running with is the single source argument—that the health service in Scotland is a single employer. I will not run through the legal arguments supporting or denying that, but part of our argument is that, for the purposes of identifying comparators, there is one employer in the health service in Scotland. The defence against that is that there are different health boards. If we want to be complicated and really screw things up and keep cases in the courts for years, we can try to identify when various mergers and changes in the health service took place and tie everybody up in knots. All that means is that a number of women and a smaller number of men in the health service are not getting what they are owed, and that is not fair.

The Convener: There appears to be a fairness issue, which is why the committee is interested in the subject in the first place. Fiona Kordiak said that Audit Scotland has been examining the issue for three years and has expressed concerns about it. Does Audit Scotland have no tools that it can use to force the hand of the boards? Agenda for change has been decided, but Craig Marriott told us that, even so, realistically the situation will not change during the 2009-10 financial year. At what point does Audit Scotland say that agenda for change is on-going and that we could use certain comparators in an experimental way, just to have something, and to force the hand of the boards? There is a huge liability that is, at present, unquantified.

Fiona Kordiak: The first point to stress is that auditors have no powers of enforcement—we simply have powers of reporting. In this year's audit opinions for the boards that have a significant number of claims, the auditors included an explanatory paragraph on the issue, which was us upping the ante and the reporting of the issue again—it is the third year in which that has happened. The matter has also been referred to in

our NHS overview report for the past two years, and it will probably be referred to in this year's overview report. That is a very public document on which the Public Audit Committee generally takes evidence. Each external auditor makes an annual audit report on each board, and those reports are available on Audit Scotland's website, so there is a degree of publicity and public awareness of the issue.

Auditors will certainly press for further quantification this year, along the lines that you describe. The boards do not accept yet that there is a liability, but a contingent liability reflects the uncertainty over whether a financial transfer of benefits will be required, resulting in a cost in the end. The uncertainty does not mean that the likely or possible outcomes should not be estimated. Although there is a degree of uncertainty, which means that the sums cannot be accounted for in the accounts, they should be quantified and disclosed and plans should be made to deal with the financial cost in the worst-case scenario. Given that the Hartley case has been and gone, auditors will look for further progress on the identification of comparators and estimating the likely costs for 2009-10.

The Convener: Who takes charge on the issue? The statements that Audit Scotland has made are disturbing. Who takes cognisance of the issue and says that we need to do something about it? I can understand where the boards are coming from, but surely there must be another authority that is considering the issue. There is a fairness issue and certainly a worrying financial issue. Who takes responsibility? Can anyone answer that? Perhaps even Euan Page might like to comment.

Euan Page: Hugely—thank you, convener. I can comment only on the regulatory role that the Equality and Human Rights Commission has in the issue. As a generic point, it has not been indicated to us, through contact to our helpline or through discussion with stakeholders or other discussions, that significant problems are coming forth from the implementation of agenda for change. The problems that other panel members have ably discussed relate to back pay and other issues.

I am not sure that I entirely grasp the thrust of your question. Why would the commission—

The Convener: We have a problem. Not everyone admits that there is a problem, but a sizeable number of people do. I think that Audit Scotland has said that there is a contingent liability because we do not know how many cases will be successful or how much they will cost. Glyn Hawker said that there is a time-bar issue and that some people—women, disproportionately—might die and never have their case settled. Does the

Equality and Human Rights Commission have a view on that?

Euan Page: There is undoubtedly a fairness issue, as the unequal pay issue disproportionately affects women. I will make broad points that might help to inform the discussion.

First, as members will be aware, the Equality and Human Rights Commission is undertaking enforcement work under section 31 of the Equality Act 2006 and considering the Scottish Government's equality impact assessments of various aspects of policy, including the patient experience programme in NHS Scotland. It is considering the Scottish Government's undertaking of equality impact assessments, but I would be surprised if that is not focusing minds in boards. I am sure that my colleagues around the table will have more to say about that.

My second point goes back to your query about leadership. Ultimately, leadership must come from the centre—from the Government. The gender equality duty and the disability equality duty were designed in Scotland and ratified by the Scottish Parliament, and specific Scottish codes of practice and guidance sit underneath them. Information exists, and public authorities' legal requirements are clear. As part of the process, there is a job for the Government in setting the tone in discussions and leading. That is partly why the commission undertook the section 31 assessment work. We wanted to consider issues relating to leadership and setting the national agenda. Patient experience is different from what we are discussing, but lessons can be carried across. The same principles to do with how financial decisions are equality impact assessed are involved.

The Convener: That is helpful.

Bill Wilson: I would like a brief clarification on the single source argument. I would have thought—perhaps from a position of ignorance—that jobs are pretty much the same in all NHS boards, because boards all provide more or less the same service, although I understand that there will be exceptions. If that is the case, I presume that it does not matter whether there are national comparators, because comparable jobs would be found, unless, of course, jobs in different NHS boards are being paid at different rates. Will you clarify the position?

Glyn Hawker: Most people recognise that porters, nurses or whoever in different health boards do the same jobs and have broadly the same salaries, but there are variations. Having a single source or a single employer certainly makes it easier to identify comparators and to look across a timeframe. The fact that health boards have merged, changed and developed over the years from primary and acute services to the unitary

boards that we now have has been linked into that argument. However, you are right. It should be possible to identify comparators for the vast majority of jobs within health boards, but some jobs are fairly unique. Boards have autonomy to establish their own posts.

Bill Wilson: That is what I thought. Roughly what percentage of the 7,000 people—I do not know whether I scribbled the figure down correctly—would you have difficulty finding comparators for? That takes us back to the ability to estimate costs. If it is difficult to find comparators, because of the single source argument, in only a very small percentage of cases—say 10 per cent of the 7,000 cases—it cannot be too difficult to estimate the costs.

Glyn Hawker: Unison has a figure of nearly 9,000 cases.

Bill Wilson: I am sorry; I was using the NHS figure.

Glyn Hawker: Yes—the 7,000 appeals.

Unison has put a lot of work into identifying comparators, and I am fairly confident that the other trade unions have done so as well. We could probably come much closer, as I said earlier, to estimating how many claims would succeed and at which level. That information exists, but it is still not perfect. It has taken a long time to get to this point—we have been on the journey for some time—but we are now much closer to an outcome.

12:00

Ian Reid: On a point of clarification, it is accepted post-Hartley that agenda for change is equality proofed, so the comparators relate to the pre-2004 period, before agenda for change was implemented.

Bill Wilson: Can you give me a rough estimate of how many of the 7,000 cases you cannot find clear comparators for?

Ian Reid: The specific comparators for the individual claims have not been identified. That point is being debated at tribunal—there is an on-going exchange of information to identify the comparators for the pre-2004 claims, as it is necessary to identify a specific post and a specific individual.

The Convener: Is it fair to say that you could use the principle without going into the specifics? There is a way round it.

Ian Reid: That could be attempted, but the experience in England shows that it is immensely difficult to quantify the liability with regard to the outcomes of the cases.

The Convener: I will move on in strict order, as Bill Wilson has shuffled the deckchairs. I call Bill Kidd.

Bill Kidd: Everything that I was going to ask has been answered.

Bill Wilson: I was just saving you the effort.

Bill Kidd: However, the answers are not to my satisfaction. There is not enough co-operation between the health boards and NHS Scotland in trying to sort the issue out. It has been going on for years and, as Glyn Hawker said, the people who are at the lowest end are those who suffer the most in terms of discrimination. The fact that people will be retired or even dead by the time the matter is resolved should light a fire under the people who are supposed to be making these decisions. If any case has been resolved, enough resources should be put in to ensure that all the cases will be resolved well before the time limit.

Elaine Smith: Given Unison's major involvement in the matter, I draw the committee's attention to the fact that the union appears in my entry in the register of interests.

I have reached the stage of, "Confused? You will be." Perhaps I am missing something, but the issue is surely about common sense, which, to follow on from Bill Kidd's point, seems to be missing.

As I understand it, agenda for change adjusted everyone's pay, and the Hartley court case clarified that it is a fair system. I assume—perhaps wrongly—that agenda for change adjusted certain occupations to put them on a similar scale. We know that many people think that the previous system was not fair: for example, that there were gender equality issues in relation to pay, with nurses, who are mostly women, at a certain grade being paid less than senior technicians, who are mostly men, at the same grade. The women were being paid less than the men for work that was of equal value.

From the round-table discussion, it seems that a lot of money will be spent by individual boards and by the health service as a whole in fighting court cases. Scotland would be better off and would save money if someone—perhaps the minister—could get all parties around a table and could take a common-sense approach in relation to the grades that have now been adjusted and the comparison of groups of people in order to sort the matter out.

The Convener: Lynn McDowall had indicated that she wanted to comment, but it would be useful to get Emma Ritch's perspective.

Emma Ritch: My point is about the clarity of boards' responsibility to meet the requirements of the gender equality duty, because that is the issue

on which Close the Gap has intervened most with regard to equal pay. During the roll-out of the gender equality duty, we were approached by a number of health boards because we had written guidance specifically on the equal pay duty in Scotland. They asked us what they required to do in producing an equal pay statement and developing an equal pay objective as part of the gender equality scheme. At the same time, the central legal office produced a draft equal pay statement, which we felt was not as strong as others that had been produced across the public sector. By and large, all health boards produced equal pay statements in response to the requirement.

We recently became aware that the central legal office had issued guidance to at least one health board—we assume that it did so to more—advising it not to carry out an equal pay review because of the continuing litigation around agenda for change. That is extremely disappointing because, in our opinion, equal pay reviews are the only way to ensure compliance with the requirement of the gender equality duty and the only way to pick up issues to do with occupational segregation which, as I am sure the committee is aware, is one of the gender equality priorities that Scottish ministers have identified to be addressed across the public sector.

We are disappointed that that view has been taken. Glyn Hawker made the point about the drift away from the Whitley arrangements. We are concerned that if there is not a robust equal pay review process in place across all health boards, following on from agenda for change, it is possible that some inequalities might start to creep in. We are keen for health boards to take up the challenge of carrying out pay reviews, as NHS 24 has done. It carried out a pay review on gender last year and this year will carry out one on gender, age and race. We would like to flag that up as an example of good practice.

Glyn Hawker: Emma Ritch is absolutely right—there needs to be an on-going mechanism. I am confident that the relationships that exist between the staff side and the employers in the health service in Scotland will facilitate that process. Ian Reid made the point that we have not quite implemented agenda for change first time round, but the need for us to keep on top of the scheme and to maintain it has certainly been discussed. The staff council has custodial responsibility for the UK scheme and is already updating the agenda for change handbook. We need to ensure that we continue to review.

I am less concerned about the situation in the mainstream boards. You will see from our submission that we have flagged up issues to do with private contractors, whose standards have

not been anything like as high as those in the public sector. We have had some difficulties with people not being as scrupulous. It is an issue that Unison wants to keep an eye on. We have far fewer private contractors in the health service in Scotland than there are south of the border; the same is true in relation to local government here.

However, I am concerned that, as finances become tighter, which they will, the same drift towards contracting out that there has been in local government will occur in the health service. The work that is contracted out tends to be women's work, which is lower-paid work. That could be used as a means of deflating women's salaries and bringing back unequal pay. The existence of different employers raises the issue of being able to identify comparators—those who work for a different employer cannot. I have concerns about that; it is certainly an issue that we want to keep a close eye on in the context of the health service in Scotland. As far as the maintenance of an equality-proofed agenda for change scheme by the mainstream employers is concerned, I do not have too many difficulties. I think that we will put that in place.

To return to the point that Elaine Smith made, as far as I am concerned, it is an issue of common sense. I said that there was an elephant in the corner. We need to know whether it is a mummy elephant, a daddy elephant or a baby elephant. We do not know at the moment. I am fairly confident that we are not talking about a whole herd of elephants, but I know that some of my colleagues are worried about that prospect. It seems to me that we are spending effort worrying when we could sit down with a calculator and a pen and paper, do some sums and get a better idea of the situation. If we are not in a position to get the full picture, we are in a position to obtain some fairly clear indications about what the outcomes are. I take Ian Reid's point about there being difficulty quantifying the sums south of the border but, as we said in our submission, the issues in Scotland are different from those south of the border. The situation is much simpler here, and it would be much less expensive, because we have done other stuff in the past to improve the lot of low-paid workers, who are, predominantly, women.

I am conscious that I am speaking a lot—having 9,000 cases, I have quite a lot to speak about.

The legislation says that we need to identify comparators for the back-pay claims for the situation pre-2004, but it is not good enough simply to say that the agenda for change grades are now the comparators, because they do not tie up automatically. Some of them might be the same, but the tribunal has made it clear that we need to compare on the same timeframe as well. It

is possible to do that. We often point out that someone who cleans floors and is a woman is called a cleaner and gets paid at a certain level, and someone who cleans walls and is a bloke is called a technical operative and gets paid more. Agenda for change should have sorted out the fact that, if you wield a mop and a bucket, you are a cleaner, and the comparability that exists between cleaners should make things fairly straightforward.

The issue comes down to common sense and fairness. However, sometimes common sense and fairness cost money. I am not playing down the fact that the proposal will be expensive, but I do not think that it will be as expensive as it might be, and I think that other costs will mount up if we continue to let the situation go unresolved.

Ian Reid: Glyn Hawker has covered the point that I was going to make. Health boards, which are about to complete the review process, are conscious of the requirement for equal pay audits. NHS Greater Glasgow and Clyde is looking at the outcomes of agenda for change in terms of gender balance.

Hugh O'Donnell: I am never optimistic when people make appeals to common sense, as I have found it to be less common than we might expect.

Mr Page, do the financial processes that health boards engage in comply with public sector equality duties? In the—I hope—unlikely event that we go down the route of subcontracting to private contractors, would the primary contractor have responsibility for ensuring that the subcontractor complied with the equality duties?

Euan Page: On the first point, as we have said already, there is no reason why there should not be clarity. The gender equality duty has been in force since 2007, and documentation such as the public sector duty assessment toolkit clearly sets out who is covered by that specific duty in Scotland. There is also a Scottish code of practice and guidance. As Emma Ritch indicated, what statute says and what is happening in reality do not always match. The EHRC is aware that there might be concerns about, for example, ambiguity around or unhelpful comments about equal pay statements.

On contracting out services, I hope you will forgive me if I do not give you a definitive answer. My colleague, Muriel Robison, whom some of you know, is best placed to deal with that question but, ironically, she is at a meeting today on the equal pay provisions in the new Equality Bill.

The principle behind public sector equality duties is that someone who is carrying out services with a public function is still covered by the duties. That said, there are concerns around procurement, which are being addressed through the Equality

Bill. Again, the EHRC is concerned about that area.

As Glyn Hawker and others have said, the issue around reaching a settlement on the outstanding claims is, to an extent, a sideshow to the more substantive concerns around boards' understanding of the requirements of the statutory equality duties.

I can ask Muriel Robison to get back to the committee in writing to explore those issues a wee bit further.

Hugh O'Donnell: That would be helpful.

12:15

Emma Ritch: I am reassured by the fact that the health boards propose to ignore the advice of their central legal office not to carry out equal pay reviews. I think that that will be helpful going forward. Employers across the public sector frequently ask us about the Equality and Human Rights Commission's compliance role. In essence, they are looking to do a kind of risk management; for them, the bottom line is what the commission will do to them if they do not undertake an equal pay review, comply with the duty or take the advice of Close the Gap and others to produce equal pay statements and objectives for their gender equality schemes. I am not sure that the answer is as clear as Euan Page suggested. It would be helpful to have clarity on some of the commission's compliance functions for those of us who go out to employers and try to make clear the requirements of the duty and the possible consequences of not meeting those.

The Convener: I will give Euan Page the right of reply before I bring in Bill Wilson.

Euan Page: I take Emma Ritch's point. It is important to separate the requirements of the gender equality duty and of the other statutory equality duties from the commission's enforcement role. I will make two points. First, without sounding too pompous, there is an important philosophical issue about the policy intention behind the statutory equality duties. If people approach them from a compliance perspective—crudely, what is the bare minimum that we need to do to avoid getting done?—their outcomes will fit that approach. The thrust and thinking behind all the statutory equality duties—and, I believe, the single duty that is currently before the Westminster Parliament as part of the Equality Bill—are that the duties are a bit more positive than that, because they try to get away from the compliance-led model in which the commission says what people must do to avoid coming to its attention. A more positive reading of the duties is that they are a tool to aid better decision making and policy making. It is important that we try to get beyond the idea that

the duties are only a set of legal hurdles for public authorities and have no direct impact on their day-to-day business. Rather, the duties should be woven through all public authorities' processes and decision-making procedures.

Secondly, on greater clarity about the commission's enforcement role, the commission has a range of enforcement options open to it. In relation to Emma Ritch's point, it may be helpful for me to point out that we have been developing a public sector duty assessment toolkit that is a rigorous and, I hope, clear method of gauging the appropriate steps to take when possible breaches of the duties have been identified. That toolkit is not public yet, but we anticipate that it will be shortly. When it is, it might be useful for us to send it round the committee and ensure that Emma Ritch is aware of it as well. If she would like to talk to commission colleagues who have been working on the toolkit, I would be more than happy to arrange that.

The Convener: On your earlier point that one volunteer is worth 10 conscripts, I think that you are saying that, rather than going in heavy handed, it is better to try to make people work with you. However, equal pay claims have been in the pipeline for five years, and Audit Scotland has highlighted the issue for three years. At what point does the commission come in and not just tell everybody that there is a breach, which we already know, but do something about it and use its powers to best effect?

Euan Page: I return to my earlier point about the learning that we can garner from the enforcement work that we are undertaking. The principle underlying how we best apply equality impact assessments is the same, whether we are looking at equal pay, patient experience or whatever. We are already undertaking enforcement work by looking at the Scottish Government's performance on EqIA in one area of the health service, and we fully expect the learning from that to be applied.

The wider point is that, over and above the opportunities that exist to take individual cases or to take enforcement action under the equality duties, common sense dictates that there is a consensus—or, at least, a potential consensus—that the best way forward is to move towards settlement. As the Local Government and Communities Committee said in its report on equal pay in local government, an approach that is predominantly litigious closes down opportunities to reach compromise and forge a consensus.

As an observer as well as a participant in today's discussion, I feel that we are most of the way towards achieving a consensus—if it can be grasped. The commission will be happy to play its role in that, although whether the most helpful role that it could play is one of enforcement remains to

be seen. As I say, enforcement work is on-going, and the lessons from that can be applied when the findings of that work are published next spring.

Bill Wilson: I would like to clarify something. You said that private companies that have accepted contracted-out work would be covered by the public sector equality duties. Someone cited the example of cleaners. If cleaning has been contracted out and the cleaners are now working for a private company, who is their comparator? Is the comparator selected from within the NHS or is it selected from within the private company?

Euan Page: I am happy to get back to you in writing on that. There are valid concerns that contracting out will mean that a disproportionate hit will be taken by lower-paid women workers in the NHS in Scotland. However, I would prefer to get back to you in writing on that.

Ian Reid: An agreement with the Scottish Government that was signed by employers and trade unions in 2007 provides that contractors should pay their staff agenda for change terms. There is, therefore, an agreement in place in Scotland, which boards are still using. There is also far less contracting out now, given the Scottish Government's policy position; nevertheless, there is an agreement in place to cover the issue.

Bill Wilson: Does that mean that the comparator for contracted workers would be within the NHS as a whole?

Ian Reid: No. They would still be employed by separate employers.

Bill Wilson: So, the comparator would be with other workers within the private company.

Ian Reid: Yes.

Glyn Hawker: Yes. Once an entity has become a private company, if somebody is looking for a comparator they must find it within that employer. Equality duties come into play when the contract is established.

Ian Reid is absolutely right that there is an agreement that says that staff should be paid agenda for change terms and conditions if the work is contracted out. However, when we look at total reward packages, as we often do, we are concerned that reducing the costs attached to the contract is often seen as a way of saving money. That is when the gender equality duty should be used to assess the impact on the workforce of moving a piece of work from a mainstream employer to a private contractor or third sector organisation, such as a community or voluntary sector body, which sometimes happens. That is when the assessment should be made, and the responsibility for that sits with the health employer

that is contracting out the work. However, once that contract is shifted, responsibility moves into the private company.

The Convener: I would like to tease out the relationship that exists between the Scottish Government health directorates, NHS Scotland, the equal pay unit that was established in response to NHS Scotland's realisation that there were grievances about equal pay in the NHS, and the central legal office. My understanding is that NHS Scotland is at arm's length from the health directorates and that the central legal office takes advice from the equal pay unit and advises individual boards. What is the role of NHS Scotland? Is it an advocate for fairness and equal pay? How close is it to the Government? That is not clear from the papers that I have seen.

Ian Reid: Employment regulations are provided to each NHS board under direction from the cabinet secretary. Equal pay is the responsibility of NHS boards because of the equality duty that applies to them. The equal pay unit was established to lead a co-ordinated response from each NHS board to the litigation that was going through the courts. The CLO is the legal adviser to NHS boards, not to the Scottish Government.

The Convener: It is also the legal adviser to the equal pay unit.

Ian Reid: Yes. The equal pay unit is part of NHS National Services Scotland, not the Scottish Government.

The Convener: So it is arguable that if NHS Scotland felt that there was a problem, it should say to the directorates, "We think something needs to be fixed here."

Ian Reid: Yes, but that brings us back to my original point: although we accept that there are claims, we do not currently accept the liability that is being put on the table.

The Convener: It has been useful to tease out some of those issues.

Hugh O'Donnell: Can I clarify that the central legal office people have advised boards not to engage in equal pay reviews?

Ian Reid: The extant advice on equal pay audits was not to conclude them until the conclusion of the implementation of agenda for change. Now that boards are completing the review process and everyone will be fixed on the agenda for change agreement at some point, boards will be expected to do equal pay audits. It is not that we were advised not to do them at all; it is that we were advised not to do them during the implementation of agenda for change.

Hugh O'Donnell: But if there is a debate about the implementation of agenda for change, it could

kick equal pay audits into even longer grass than seems to have happened already.

Ian Reid: Post-Hartley, the view is that agenda for change is equality proofed and that therefore there is no barrier to boards undertaking equal pay audits.

The Convener: We move on to a more general perspective.

Willie Coffey: It certainly sounds as though a cottage industry has sprung up around this and established itself over several years.

Will colleagues round the table offer us a perspective on whether other sectors are dealing with equal pay claims faster, leaner or better than might be the case in the NHS and local government? Are there any lessons that we might learn?

Glyn Hawker: The answer is no; there are not large numbers of equal pay claims anywhere other than in local government and health, although there are some claims among other public sector employers in Scotland. For example, there have been numerous claims in what used to be called the careers service—I cannot remember what it is called now; it seems to change its name every couple of months. Some of the other non-departmental public bodies have looked at job evaluation schemes during the process of implementation. The higher education sector has been through a similar job evaluation process called the framework agreement and a small number of cases have arisen there. Some cases have been resolved on the basis that they are about back pay and the employers have made a decision that they want to clear the decks and get things out of the way. However, the numbers are tiny compared with those in local government and the health service.

I note that the committee paper also asks whether local government can learn anything from agenda for change. The answer is, “Only if we can rewrite history.” Agenda for change is a UK-wide scheme that has been applied to everybody. Implementation is local, there have been some local variations and there has been some local unhappiness, as Ian Reid described. Nonetheless, everybody understands what agenda for change is, it has been applied across the board and we have one common set of terms and conditions for millions of people who work in the health service throughout Britain. That is its absolute strength, as far as the equal pay scheme is concerned.

Looking to the future, we are well placed provided that we recognise that the scheme must be dynamic, in a state of constant change and that we work to take it forward as we have done in the past.

12:30

I have never understood why 32 councils wanted to take the single status agreement and come up with their own variations on it. We are paying the price for that in local government. The health service is much better placed. We have a full stop, which is agenda for change. Historical problems that date from prior to agenda for change remain, but once we have sorted out the back-pay issue, provided that we use the available tools—the gender equality duty and the partnership arrangements that are in place between the staff side and the health service—there is much that agenda for change and the way that the health service operates in Scotland can show to others who are engaged in the process, and will be for some time to come, or to those who are thinking about tackling the issue. They could do a lot worse than to come knocking on the door of the people who operate agenda for change and saying, “Tell us how you do it.”

The Convener: To be absolutely clear, can I take it that advice to individual health boards from the central legal office is that there is not a case to answer?

Ian Reid: Yes.

The Convener: It is for us to tease out with the Cabinet Secretary for Health and Wellbeing how all those pieces fit together.

Malcolm Chisholm has one last general question.

Malcolm Chisholm: Agenda for change staff are obviously the majority of staff in the health service. However, as we know, senior managers, doctors and dentists have their own arrangements, which are not without controversy in some ways. Have any equal pay issues been raised around the agreements for the staff who are not part of agenda for change?

Ian Reid: No. In NHS Greater Glasgow and Clyde—I am sure that the situation is the same for other boards—there have been no equal pay claims in relation to the pay arrangements for the other staff groups.

Glyn Hawker: Ian Reid is right that nothing has been raised formally and no claims have been lodged.

Unison is involved in the process as far as the arrangements for senior managers are concerned and a review of senior management pay is being undertaken. We have said that we want equal pay to be considered as part of that process to ensure that no issues arise. No issues have been raised by doctors and dentists, but I have less confidence about that because I view the arrangements as less clear; they are certainly not transparent in the way that the agenda for change agreement is. We

are directly involved in the arrangements for senior managers, so I can be more confident that if we have concerns they have been raised and will be addressed.

I do not know of anything specific regarding the arrangements for doctors and dentists, but I would always want to be in a position to monitor the situation and raise any concerns. As soon as there are differences, but also similarities, people who are working together start to consider what they get paid for what they do. Difficulties will arise from all that when there are three different sets of pay arrangements, but no equal pay claims are being dealt with at present.

Hugh O'Donnell: You mentioned doctors and dentists. What about staff who are employed in primary care services by doctors and dentists, such as dental nurses or a team of receptionists? Are they the employees of the practice or of the health board?

Glyn Hawker: Both.

Hugh O'Donnell: In which case, against what comparators are they measured? Is that done within the single practice employment structure or by comparison with another practice somewhere that is of a similar size and has a similar caseload?

Glyn Hawker: It varies, to be honest. Some staff in general practitioner practices are directly employed by the health service; as such, they are on agenda for change terms and conditions and are straightforwardly part of whichever health board they work for.

However, a number of GP practices employ their own staff. There is a code of practice, or guidance—I cannot remember exactly what it is called; Ian Reid will know better than I do—that tells those GPs what the health service would like them to do, but they do not have to follow it. Those GPs are private sector employers and the issues that we discussed in respect of private sector employers apply; staff are employed on less-than-good terms and conditions because the code of practice or guidance is advisory. In such circumstances, staff would have to identify the comparators from among the employees of that particular employer, who may employ only a small number of people. If there is only one receptionist, there is no comparator.

The situation varies, but I am sure that you can imagine that Unison much prefers people to be directly employed by the health service.

Hugh O'Donnell: Thanks for that clarification.

Lynn McDowall: We have campaigned for quite a long time to encourage GPs to employ their staff under agenda for change, which provides not just for pay but for other factors that are beneficial to

staff. To date, we have not had much success with that. As Glyn Hawker said, what people are paid varies a lot across different practices. However, the agenda-for-change issue is not just about equality. Within some board areas, three different hospitals might employ nurses who are given the same title but are paid on different bands. That is a huge on-going campaign, so we share Glyn Hawker's concerns.

The Convener: That is helpful.

I have a question for Fiona Kordiak. Given the suggestion from Unison that we can put a figure on the problem, can Audit Scotland go on indefinitely saying that it accepts that no agreement has been reached on how to quantify the matter, or does it have any teeth—for example, accounting or legal requirements—to pin down the issue?

Fiona Kordiak: For individual audits, the ultimate sanction is to provide a qualified audit opinion on each board's set of accounts. However, those are largely about the appropriateness of the accounting treatment rather than the financial impact. If this year we took the view that boards both had not done enough to quantify the potential contingent liability and could not convince us—as they were able to do last year—that matters were at too early a stage to put any figure on the potential contingent liability, we could issue a qualified audit opinion on individual boards' accounts. Because boards' accounts are consolidated up into the Scottish Government's accounts as a whole, as auditors of the Scottish Government we would need to consider how that fed through to our opinion on the accounts of the Scottish Government as a whole. Given the materiality aspects, we would need to take a judgment on that, but that is the next possible step that we could go to.

The Convener: It is very useful and encouraging to have the issue put in perspective.

That concludes our lines of questioning. If the witnesses have nothing further to add, I thank them for their attendance. Equal pay in the health service is an issue on which there has not been much awareness to date. If nothing else, we have certainly raised the profile of a matter that is very much an equal opportunities issue of fairness. We hope that some significant progress will be made as a result. The evidence that we have gathered today will help to form the basis of our questioning of the cabinet secretary.

As previously agreed, we will consider agenda item 3 in private.

12:38

Meeting continued in private until 13:04.

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