



OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities and Human Rights Committee

Thursday 21 November 2019

Session 5



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EQUALITIES AND HUMAN RIGHTS COMMITTEE
28th Meeting 2019, Session 5

CONVENER

*Ruth Maguire (Cunninghame South) (SNP)

DEPUTY CONVENER

Alex Cole-Hamilton (Edinburgh Western) (LD)

COMMITTEE MEMBERS

*Angela Constance (Almond Valley) (SNP)

*Mary Fee (West Scotland) (Lab)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Oliver Mundell (Dumfriesshire) (Con)

*Annie Wells (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Danny Boyle (BEMIS)

Jatin Haria (Coalition for Racial Equality and Rights)

Parveen Khan (CEMVO Scotland)

Kaliani Lyle

John Wilkes (Equality and Human Rights Commission)

Beatrice Wishart (Shetland Islands) (LD) (Committee Substitute)

CLERK TO THE COMMITTEE

Claire Menzies

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Equalities and Human Rights Committee

Thursday 21 November 2019

[The Convener opened the meeting at 10:15]

Decision on Taking Business in Private

The Convener (Ruth Maguire): Good morning, everybody, and welcome to the 28th meeting in 2019 of the Equalities and Human Rights Committee. I ask everyone to turn off and put away mobile devices. We have apologies from Alex Cole-Hamilton this morning, and I welcome Beatrice Wishart, who is substituting for him.

Agenda item 1 is a decision on whether to take an item of business in private. Do members agree to take agenda item 3 in private?

Members indicated agreement.

Race Equality

10:16

The Convener: Agenda item 2 is on race equality in Scotland. Our witnesses are Danny Boyle, parliamentary officer for BEMIS; Jatin Haria, executive director, Coalition for Racial Equality and Rights; John Wilkes, head of Scotland, Equality and Human Rights Commission; Kaliani Lyle, former race equality framework adviser for the Scottish Government; and Parveen Khan, race equality mainstream officer, CEMVO Scotland. You are all very welcome this morning.

This discussion is prompted by CRER's letter, which states that the Scottish Parliament simply has not made enough progress on race equality in the past 20 years. We will have a couple of minutes' reflection on that big question from each panellist. Perhaps Kaliani Lyle could start.

Kaliani Lyle: The evidence is quite clear that the Scottish Parliament has not made progress. The evidence on employment statistics outcomes, for example, shows that black and minority ethnic people are twice as likely to be unemployed, regardless of their having high educational attainment, and that they are four times as likely to live in overcrowded housing. The evidence about poverty, bullying in schools, what has happened in universities, the employment of doctors and the ethnic pay deficit overwhelmingly shows that very little has been done in the past 20 years that would make you feel that progress has been made.

The tragedy is that that is not for want of investigating and looking at what the problems are. Many members around the table have been involved in committees or inquiries that have looked at the issues over and over again. Why is it that we have not made the progress that we should have made, despite having done lots of work and agreed that there are problems? What have the blockages been? Rather than reinventing the wheel over and over again and coming up with millions of actions that do not take us anywhere, the starting point should be to ask what the blockages are and why there has not been greater progress than there should have been.

The Convener: That is helpful.

Jatin Haria (Coalition for Racial Equality and Rights): Our letter about the lack of discussion in the Scottish Parliament over the past 20 years was slightly separate matter. We did that to chime with the Scottish Parliament's 20th anniversary. We had felt that that was the case, but we did research into the debates and everything else.

I agree with everything that Kaliani Lyle has said about the issues, but I am concerned about the lack of scrutiny on race equality and whether that is allowing the problems that Kaliani Lyle has mentioned to go unheeded. That is what our letter was about.

We had separately written to this committee asking for scrutiny of the race equality action plan. That letter came first—I think that we wrote that in the summer. We did that because we were quite disappointed with what we had read in the year 1 action plan update. That takes us back to the question of who will improve things if there is no scrutiny of such matters. That is context to those two letters.

At the moment, we are in a slightly tricky situation, because—this is positive—we are talking to the Government's equality unit about improvements to reporting on the action plan updates and so on. However, that does not negate our concerns about the year 1 update.

As Kaliani Lyle has outlined, we have been here so many times with the same old issues. Therefore, even though a refresh is going on, there is no guarantee that what comes out of that will be as useful as we want it to be. We would welcome on-going scrutiny of the issues, including by this committee.

Danny Boyle (BEMIS): Good morning, committee. Thank you for inviting us all here today. Thank you for our breakfast this morning—it is always easier to give evidence on a full belly.

CRER's letter about the past 20 years and the progress that has—or has not—been made with race equality and what is reflected in the race equality framework and the race equality action plan has instigated today's discussion. I was still at school 20 years ago, so, to a certain extent, I come to the matter with a fresh pair of eyes. I take colleagues' points that organisations, experts and communities are frustrated by the lack of substantive change when there is clearly a significant appetite for it. However, we are here today; we have an Equalities and Human Rights Committee; we have—for all its potential challenges—a race equality framework for Scotland; and we have a year 1 action plan and a commitment from Government to progress it and scrutinise work on it. We entirely welcome this initial session on equality and human rights. However, I think that we all are clear that this morning is a slight chap at the door, as opposed to a comprehensive review of what is going on.

With that in mind, it is valuable for the committee to be aware from the get-go, when we are discussing race equality and racial discrimination, particularly through the prism of equalities and human rights, where we derive the

authority to understand where the problems are occurring, whom they affect and what the race equality framework and action plan in Scotland has been developed to respond to.

The International Convention on the Elimination of All Forms of Racial Discrimination states that

“‘racial discrimination’ shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin”.

That term has largely been transcribed word for word into different areas of United Kingdom law, Scottish criminal law and the Human Rights Act 1998.

This morning, we heard about a range of issues affecting communities. Trishna Singh from Sikh Sanjog talked about employability issues in the Sikh community; Khaleda Noon from Intercultural Youth Scotland talked about a plethora of issues in education, including bullying; and I was discussing with Najimee Parveen from the positive action training in housing scheme—

The Convener: I think—

Danny Boyle: Sorry, but I am just about to make a critical point.

The Convener: The session that you mentioned was an informal one, and I want to bring you back to the question that I asked about progress.

Danny Boyle: I was giving examples from the communities because they directly link to the international convention. The communities engage with race equality in Scotland based on a number of those characteristics. In considering the issues, the committee should be aware of the various dynamics in play when it comes to race, racial discrimination and racial equality in Scotland.

When it comes to progress and the role of the committee in the parliamentary structures—

The Convener: I am going to pause you there, because I want to give everyone an opportunity to make an opening comment. My colleagues will have lots of questions, and that is when we will get into details.

Does Parveen Khan have anything to say on that general point about the lack of progress?

Parveen Khan (CEMVO Scotland): Yes. I support what colleagues, particularly Kaliani Lyle, have said about that. For us, the main issue is how we measure things. Some outcomes are harder to measure and report on than others.

The race equality framework and the action plan need to be improved—there needs to be better alignment. It is harder to report on some actions, because the framework does not pick up in the action plan some of the measures that we have. We need to report those measures and include

progress on some of the actions. Some of the capacity of the public sector to tackle racial equality could be lost while that is not happening.

To summarise, we welcome the fact that there is a framework and an action plan, but they need to be better aligned. It also needs to be taken on board that some actions are easier to measure and to report on than others.

The Convener: Thank you. Does John Wilkes have anything to add?

John Wilkes (Equality and Human Rights Commission): Yes, and thank you for inviting the commission along today. I do not have much to add to what the others have said.

The EHRC is the equality body for Scotland and the rest of Britain, and it looks after the Equality Act 2010 and all those sorts of things. As others have said, there is lots of evidence to suggest that progress is slow in areas of inequality, including race inequality.

Racial inequality is systemic. Systemic issues are often quite hard to move forward quickly. Having an overall framework aimed at meeting targets by 2030, with milestones in the form of activities to reach along the way, is a good thing.

We have to produce a progress report on equality every three years. “Is Scotland Fair. The state of equality and human rights 2018” demonstrates quite clearly that progress is slow and, in some areas, is going backwards.

We welcome the general approach. The Equality Act 2010 provides a strong legislative framework in Britain, and the Scottish Parliament has enacted legislation to support it. Legislation is important, but if that was the solution, we would not be here today.

Legislation provides only the framework. What matters are changes in practices and behaviours by organisations, service providers and employers, as well as attitudes in communities, and those things can fluctuate. We are very interested in the tools that can help progress those aspects. There are some very powerful tools, but we do not think they are being used to full effect.

Government has a role to play, and it has set out its aspiration in the action plan. The role of Parliament as a scrutiny body is important. The overview of this committee is particularly important, but all the other committees have a role to play because there is inequality in all areas of the Parliament’s activities. It is important that inequality does not become pocketed in this committee and that you encourage other committees to consider inequality issues in their work, whether that be about employment or whatever else.

Beatrice Wishart (Shetland Islands) (LD):

Good morning, panel. John Wilkes has probably touched on a bit of what I was going to ask about how Parliament and all its committees can make changes to ensure that race is back on the parliamentary agenda. I am interested to hear others’ thoughts on that.

Kaliani Lyle: Leadership, and therefore the role that Parliament, various committees and ministers can play, is important.

The Gypsy Traveller section of the race equality action plan year 1 action report is an example of where things have worked really well. In that area, ministers have been around the table, in a ministerial working group. Engagement at that level has got results in an area that has been intractable for a long time. Prejudice towards Gypsy Travellers is said to be the last bastion of racism—that is, the last form of racism that people think that they can still get away with.

What can we learn from how that was done compared with other areas where there has been less progress? I think that is about leadership, including from Parliament. If ministers and committees sign up to a set of objectives or an ambition, they have to put their money where their mouths are. You have to hold people to account. If someone says that they will do something but it is not done, you have to ask why it has not happened. There is a huge role for you to play. Without leadership, we will be treading water and always coming back to the same point.

10:30

Danny Boyle: I thank Beatrice Wishart for the question, because the issue is key to a positive action point that we can take away from this committee meeting in the time that we have.

The overview analysis of the year 1 report points out that there are 84 action points across 32 different policy areas. That is a significant breadth of work, and the discussion topics that are outlined—“Community Cohesion & Safety”, “Participation and Representation” and “Education & Lifelong Learning”, for example—are critical components of it. It is incredibly important that not only the equalities and human rights obligations of different Government directorates, different cabinet secretaries and different ministers take forward that work, but that the relevant parliamentary committees provide critical oversight.

When we launched the race equality action plan conference last year with the Minister for Older People and Equalities, Ms McKelvie, BEMIS pointed out that what we have to be very careful about and what has been a vulnerability of the race sector for a significant period of time is that

the third sector—BEMIS, CRER, CEMVO Scotland or whoever else—will provide the silver bullet solution to race equality challenges in Scotland. We can give examples of research, good practice and how things can be progressed positively, but we are not the duty bearers. When it comes to employability, we need to ask Skills Development Scotland whether it is responding to the action plan and if not, why not, and we need to speak to various local authorities.

The issue of racial bullying came up recently in a report that was launched in the Parliament on racial bullying in the City of Edinburgh Council with regard to the race equality framework and the race equality action plan, under the “Community Cohesion & Safety” topic. We need to ask local authorities what they are doing about racist bullying in their schools, what their action plan is, and how they are taking that forward. The duty bearers must be brought to the table not to bash them about the head, but to hold them accountable. If they are not doing things properly, they have to work positively with any of the organisations here or have their fingers burned by the Equality and Human Rights Commission, because that is the commission’s role in the process. If they are not adhering to legal obligations, we need to see action against them. The parliamentary committee structure has an absolutely critical role to play in ensuring that people’s human rights are respected and taken forward.

Jatin Haria: I will try to answer the specific question. If race was discussed more widely in Parliament and committees, that would show leadership, ownership and accountability, and that would really send a message. If key race equality documents are not discussed in the Parliament and other key documents are, and the framework or the previous Equal Opportunities Committee’s inquiry into race unemployment are never discussed in the chamber, that sends the message that those things are not really that important, even though people have done that work.

John Wilkes’s point about other committees discussing race more often is valid, but I do not see that happening, and I am not sure that we should talk about things that will not happen. Committees are already really busy with their own business. Unless we can ensure that that will happen, let us not recommend it unless there is a guarantee that it will have some impact.

We have suggested other mechanisms in the past. I think that, long ago, there used to be a race rapporteur for each committee. We could look at bringing that approach back in, or find out why it was scrapped, if it was scrapped. As part of the parliamentary reform process that the Presiding

Officer was involved in a couple of years ago, we suggested that there should be external co-optees on committees to bring in a bit more expertise on race equality. Some members might feel less confident about speaking about such issues and therefore less confident about questioning witnesses on really tricky things, so maybe there is a role to train all members of the Scottish Parliament.

People have spoken about learning from what works. That is absolutely the case, but we should also learn about what does not work so that we do not make the same mistakes again. We are not very good at doing that. That does not apply just to scrutiny; it applies to race equality initiatives. Over the past 30 years, there have probably been thousands of initiatives. Most of them have not worked, but we have not learned why they have not worked.

John Wilkes: Obviously, legislation is part of the work of committees. When legislation comes along, a package of other things comes with it about what it is trying to achieve, and there is an equality impact assessment. Whatever the legislation is, that is one tool that committees have to assess the impact on different groups that might be disproportionately affected. That is where the conversations about race and other groups can happen. If that can become more mainstreamed in the discussion, we will start to get that thinking, and we might get better legislation out of it. That is part of the role of committees in their legislative work. This committee has a different role in having more of an overview.

That was just to clarify the point that I made earlier.

Kaliani Lyle: I want to go back to equality impact assessments. One of the problems is that they are not done well. One thing that I found really inspiring about the Gypsy Traveller work was that committees went out to speak to people on Traveller sites. I am sure that people here whom members had breakfast with this morning would say the same thing. The committee can sit and talk to people and consider the difference or gap between what officials say and your actions on the one hand and what people experience on the other hand and what needs to happen. Sometimes there is a kind of gloss or an appearance that things are happening, but if we ask a Bangladeshi woman who is unemployed, has children, is disabled or whatever what difference something has made to her life, we will have the ammunition to look at what is happening and what the difference is.

Parveen Khan: I agree with my colleagues. There is definitely a need for more accountability to be built into the current processes. There is a lack of transparency, although good work is going

on. For example, how is the data for equality impact assessments being collected and used to address deficiencies in policies and practices? Some of the information is missing and, if it is not being published or promoted in any way or is not transparent, it cannot be scrutinised. There is definitely a need for more robust data to be available and disaggregated. Often, we do not have a clear picture of the situation or a clear picture for individuals in order to make an improvement or to have better experiences of service provision, as Kaliani Lyle said. That is because there is not enough data. We do not have enough data on mental health or many of the issues that affect minority ethnic communities, and a lot of inequalities exist because of that.

Mary Fee (West Scotland) (Lab): Good morning, panel. I want to ask about the definitions of race and ethnicity and the language that is used to describe them. You will know that different language is used, that a number of definitions are used to describe race and ethnicity, and that there are very strong views on what those definitions should be. Are the definitions that we currently use helpful? If you think that they are, why are they helpful? Should we have a different single definition that covers everything?

Danny Boyle: This is the Parliament's Equalities and Human Rights Committee. Earlier, I read out the definition in article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, which mentions five characteristics:

"race, colour, descent, or national or ethnic origin".

That has been integrated into the relevant statutes of law in Scotland and the UK.

On what any potential future definition might look like, that is a definition of customary international law and cannot be derogated from or removed. The question is whether that definition and its integration into the domestic legal regime give us an appropriate platform to analyse and speak about the variations and circumstances of racial discrimination and racial inequalities that all the communities that self-define under that definition face.

I elaborated on that because I was talking about diverse intercultural youth from many different backgrounds and the employability of Sikh and Muslim women. I was going to say that people who self-define under that definition may come from the Scottish Gypsy Traveller community, the Polish community, the Jewish community, a multigenerational Irish community, multiple African communities, black communities or Caribbean communities. The definition is broad enough to give all those communities and all those individual citizens of Scotland a place to access their

recognition. In that context, their recognition is not up for debate. It is non-negotiable; it is a customary piece of international law. The Scottish Parliament's Equalities and Human Rights Committee, the Scottish Government, Scottish Government ministers, our 32 local authorities and our multiple statutory bodies do not have the right to narrow that or say that it means something completely different.

You are entirely right about one of the biggest challenges that we face in progressing race equality in Scotland—I am sure that colleagues would agree with this even if they come from a different perspective. In 32 local authorities, there are potentially 32 different definitions of race being utilised, and a significant number or most of them will not be responding to the customary international norm that is set out in the ICERD convention to which the UK is a signatory and which it has ratified, and which is integrated into our legal system. BEMIS uses the comprehensive definition because it allows us to talk about issues that are faced by people of colour and people of different nationalities, descent and ethnic origins. In doing so, our intention is to raise awareness in the communities of the variations in experiences that they face, which are very similar across different areas.

Where there are differentiations—for example, people of colour might be discriminated against in a specific way in a specific policy area—we must respond specifically. However, we can say that a disproportionate number of people who live in poverty in Scotland come from multiple African communities, our Polish community and our Scottish Gypsy Traveller community. That is why we endorse and will always follow the use of the comprehensive definition. In the committee, the committee structure, the Scottish Government's race equality framework, the Scottish Government's directorates, local authorities and statutory bodies, we need leadership on what race means, because we currently have a completely scattergun approach to what race is, and that means that it is continually not dealt with appropriately or according to the statutory legal obligations of the duty bearers.

Mary Fee: Would any other panel members like to comment?

John Wilkes: The Equality and Human Rights Commission's perspective reflects what is in the Equality Act 2010, which is quite broad in its determination of what racial discrimination is, and it reflects what Danny Boyle said about colour, nationality, citizenship and ethnic and national origins. In the first 10 years of operation of the Equality Act 2010, we do not feel that its definition of racial discrimination has posed any particular problems in relation to things that have been

presented to us as acts of discrimination. There is a body of case law now and the definition in the act is pretty broad. There are other discussions taking place around this, but that would be our view from the legislative perspective.

Kaliani Lyle: The important thing is to be led by the evidence. Rather than starting off with a kind of whataboutery, we should look at the evidence and at what we know to identify the key things that we need to do to make a difference. I want to see change. I do not want to be bogged down by endless arguments. Language is important and definitions are important, but we should be led by the evidence.

10:45

Jatin Haria: The legal definition exists and no one is really disputing it, so it is not up for discussion. In a sense, it protects everybody. Everybody has an ethnicity, so everybody is protected by the Equality Act 2010 on race grounds; it is the same for gender grounds and other grounds, as every single person is protected. It is not useful to just say that is the legal definition and that is enough.

The legal definition by and large stops us from discriminating against other people and, as John Wilkes said earlier, if the legislation was all there was to it, we would not be having this discussion right now. There is a lot more to it than that. There is a lack of understanding of what racism is, which I think is the fundamental reason why we are not getting very far. If we do not talk about power relationships when we talk about racism, we are not talking about racism. If we do not talk about whiteness when we talk about racism, we are not talking about racism. If we do not talk about structural racism, we are not talking about racism. If we do not have a real understanding of all those things and just go back to the legal definition, we get nowhere.

Mary Fee: Before I bring Danny Boyle in, does Parveen Khan have any thoughts on this?

Parveen Khan: I support what Jatin Haria said. The legal definition covers all the different categories, but the reality is in how people define themselves within that. Legally, people are protected, but if you do not have those conversations and look at the categories within the definition, and at different aspects of race, you cannot really serve the people. The question goes back to the role of the Equalities and Human Rights Committee, and that has to be less about the legal definition and much more about conversations and what discrimination means to people.

Mary Fee: Do you think that there is a job of work for the committee and the Parliament to talk

more about the legal definition and what sits within it, so that we can talk about all the different race and ethnicity groupings within that definition? Would that be helpful if we make the constant link between the two?

Parveen Khan: Yes, but we should bear in mind that the experiences will be different.

Mary Fee: Yes, absolutely.

Parveen Khan: It is not a homogeneous group, so the legal definition will cover everybody, but the experiences and the responses will be different.

Mary Fee: I will bring Danny Boyle in very briefly because I have another couple of questions and I know that other committee members want to ask questions.

Danny Boyle: I will be extremely brief. I want to place on record that, when I cite the broad definition from the ICERD treaty, which is integrated into our domestic legislation and recognises the rights of all the communities that I have identified in the submission, that is not indulging in whataboutery. I hope that that was not what was being insinuated, because what I heard from the communities that I referenced are the specific lived examples that they face. It is not me just mentioning a particular community that might happen to identify under the law but which in practice faces no barriers. The specific reason why I mentioned the different communities is that they do face barriers, and that is what they tell us. The evidence—the statistics on poverty, hate crime and unemployment—tell us the same thing. All the communities under the legal definition face similar experiences.

Dealing with something that afflicts—sorry, I will be extremely quick—one community reinforces what is done to deal with these things for other communities. They are not mutually exclusive. If we extend and use the full legal definition and recognise the variations that people face, it places race significantly higher on the agenda because it becomes a much bigger issue and develops the empathy between communities and the momentum that we need for change.

The Convener: I do not like to interrupt panel members but, if you see me make the face that I just made, bring your point to a close, thank you.

Mary Fee: I will be brief. Kaliani, you talked about the Gypsy Traveller community and you will know that I have a keen interest in that community and have tried to champion its interests while I have been here. The Scottish Parliament is a human rights guarantor following the legal definition, but we also have to recognise that there are specific issues that face specific communities. The work that has been done with the ministerial working group on the Gypsy Traveller community

is a perfect example of how Parliament and committees can pick one particular grouping of people and do a specific piece of work while still recognising and acknowledging the legal definition. Is that something that you would like to see Parliament and committees do more of?

Kaliani Lyle: Certainly. That joint working sets a good example of how things could be taken forward. It is also about the resources that were put into that work and about how you align policy and delivery. You have sub-state structures and policy. How do they work together? Putting the resources into the Convention of Scottish Local Authorities, having a member of staff working specifically on it, going out to the communities and bringing together all the different players and the actors shows you how you can take systems that are geared for what is considered to be the norm—your policy planning system, for instance, and the housing needs assessment, which the Gypsy Traveller community and a lot of BME communities fall outwith—and provide the opportunity to ask how we can work this so that it is flexible and includes everybody. I absolutely agree with you. It shows you how you can do it.

My slight worry is the read-across. Particular people were there at a particular time and made something happen, but replicating it is not easy, so I take Jatin Haria's point about scrutiny. We need to make sure that, in learning from that, we do not simply rely on the fact that that is what will happen again, because the two things are not exactly the same. I totally agree with you. We saw a perfect storm where things came together in a way that made things happen.

Mary Fee: Something that we constantly get criticism about, and we talk a lot about it, is the way we use data. Could we be cleverer and a bit more proactive about how we use our data? For example, could we take a set of figures relating to say housing or employment within a particular grouping of people and, using the example of the work that was done with the Gypsy Traveller community, use the data to proactively help another particular grouping of people or ethnicity? John Wilkes is nodding.

John Wilkes: Data is a critical part of this. In our last "Is Scotland Fair?" report, we highlighted a number of key data gaps, because without data you do not have evidence and without evidence you do not really know what you are trying to tackle and how to tackle it. I was pleased to note in the year 1 activity report the work to improve data gathering split out. It is an issue across the public sector. One of the areas that we are going to focus on in our new strategic plan is looking at where we think the data gaps are, and how we can point a light on that and help organisations to improve their data gathering, because how do you

know you are succeeding if you do not know what the data sets are? There is a lot of work to be done in this area. I think that the committee using that as an example shows good leadership.

Mary Fee: I have one final brief question. It is specifically to you, John Wilkes, because it is about the EHRC's report "Tackling racial harassment: Universities challenged". You have been criticised for including anti-English racial harassment or racial discrimination. What do you have to say about that? Do you think that that was a relevant thing to do? Do you think that it has been helpful to the statistics? Would you do it again?

John Wilkes: Thank you for that question. When we set out any inquiry under our powers, we are trying to address a particular issue and we just go where the data takes us. In that example, the evidence that we got back from surveys and from speaking to students and staff around Britain was that some people were saying that that had happened to them, and that is covered in the context of the definition. We have reflected on what we did in that inquiry and we will take the criticism on board when we address how to express such points in future.

The Convener: Can I press you a little bit? One of the specific criticisms was that, when you include white communities, it waters down the impact on black communities, and that, because of their whiteness, white migrant communities will always be absorbed. How would you respond to that?

John Wilkes: That was one element of the report, but the major thrust of the report was about the discrimination that is faced by black minority ethnic students and its recommendations were about that. We reflect on all our pieces of work and take reflections and criticisms from others on board so that we might do better in the future.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good morning. I should just note that I have previously come across most of the witnesses and the people in the public seats today in the context of the cross-party group on racial equality. A couple of members of previous secretariats are in front of us today.

I am going to ask questions about the racial equality action plan and I will combine the two questions in the interests of time, because I know that we have had a very thorough session already so far.

What is each organisation doing to support the race equality framework and the race equality action plan? How does each one feel that that work is progressing, and are there concerns in that regard? Some of you will have heard Christina McKelvie speaking about the action plan at the

most recent meeting of the CPG on racial equality, a couple of weeks ago. Jatin Haria, it would be good if you could start, as you raised some concerns in your letter.

Jatin Haria: The Coalition for Racial Equality and Rights gets funding from the Scottish Government equality unit to assist it with some of its work.

First, to some extent the framework and the commitments within it seem to have been forgotten about, so people are not really talking about those things at the moment. We are trying to bring the framework back into the discussion.

On what we are doing to support the Government and the race equality action plan, we are talking with people in the Scottish Government equality unit. We support the plans to refresh the action plan, and we hope to work with departments of the Government to help them with that. However, despite all the work that may or may not happen in the next few weeks or months—we are almost at the end of year 2 of the action plan now, as it is almost December—there is no guarantee that it will lead to activity that will change people's lives. That is what we are really worried about.

Anecdotally speaking, one of the things that we have noticed is that, as staff move around departments in the Scottish Government, the focus on the relevant issues goes up or down, depending on who the person is and what they are aware of. We need to embed those issues in the work of the Government, rather than activity being dependent on there being members of staff who are keen on the issues and know what they are doing. That is a challenge, and I am not sure what the answer is, but we are talking to people in the equality unit and hoping to work with departmental staff to at least work on the refresh. Part of that will involve setting much better monitoring mechanisms so that we can see what we are achieving or, if we are not achieving it, why we are not achieving it. That is what is missing from the current framework and action plan: there are no good monitoring mechanisms.

As we said in our letter, which I hope that the committee has seen—it was sent only this week—we still think that an external advisory group, which we first recommended years ago, would really help matters, and we remain keen to push that recommendation.

John Wilkes: Our work in the next period will probably focus mostly on the Scottish Government's commitment to review the specific duties around the public sector equality duty. We can see how the specific duties that were introduced through this Parliament have functioned and operated over the first four or five

years. We see the public sector equality duty as a potentially powerful tool to help public authorities in relation to their responsibility to eliminate discrimination and promote equality and community cohesion.

As was noted in the year 1 report, we did a couple of pieces of research last year and have done quite a lot of assessment over the four-year period of how the public sector duties have operated, and we hope to use that learning to influence and work with Government to make those tools more powerful and ensure that they operate better. That is one of the things that we will concentrate on. We also want to see how that links into and interacts with other things that the Parliament has enacted around the socioeconomic duty. We will also be working to see how the incorporation of human rights into Scottish law would be another helpful tool.

11:00

Danny Boyle: Before I respond to Fulton MacGregor's question, which I will do in detail, I would like to place on record my concern about the tenor of the question about the whiteness of individuals who have experienced anti-English racism and John Wilkes's potential nervousness about saying that EHRC may take into consideration how we deal with that in the future. We cannot derogate from customary international norms. It is not necessary to juxtapose the rights of one group against another group based upon their skin colour. Someone who faces anti-English racism in their workplace has the right for that to be recognised as such and for action to be taken. Is it the same structural racism that may face someone of colour? No, absolutely it is not, but these things are not in competition with each other; we can deal with these things at the same time. I would like to place that on record.

The Convener: You have made your point. I suppose that I should be clear: these are not my personal criticisms or criticisms that have been made by members of the committee. We are just raising issues that have come to the fore. You acknowledged yourself that this is a massive issue. This is an introductory session for us, and what I want is to make sure that everyone on the panel gets a fair opportunity to air their perspectives.

Danny Boyle: I completely appreciate and understand that, hence why I have just responded to place on record at a human rights committee our position with regard to what are human rights norms.

On Fulton MacGregor's question about what we are doing in terms of progressing the race equality framework, as I said at the informal discussion this

morning, we felt that there was an over-emphasis on the third sector, potentially in relation to the race equality action plan, but certainly at the conference that we held last year with Christina McKelvie. CEMVO, CRER, and other race equality partners from the third sector do not hold the power dynamics in terms of progressing this, but we can take forward examples of good practice, so this committee and others should be asking duty bearers to come in to respond to these specifics.

I will give two examples of avenues that we are taking with regard to community cohesion and safety and with regard to participation and representation, where we have already forecast the substantive change that we want to take place.

On community cohesion and safety, we are part of the tackling prejudice and building connected communities group, which is overseen by Aileen Campbell. She and her civil servants have committed to progress a community cohesion agenda from an equalities and human rights base, via that prism.

We have instigated a conference over the past number of years, in conjunction with our partners in Police Scotland and many other statutory services. The criminal justice system is just the remedy of last resort. There have to be significant other mechanisms in place to deal with hate crime and hate incidents and to find out where they derive from and how they perpetuate in society. Since the amalgamation of Police Scotland, we have had absolutely zero disaggregation of data on racially aggravated hate crimes—the last time that that happened was in 2013-14. That is not acceptable and, in terms of human rights, it means that we are not working in compliance with our legal duties at the international level under the ICERD. The United Nations Committee on the Elimination of Racial Discrimination has picked up on that and has recommended to the Scottish Government that we have to create a system of disaggregated data on hate crime in Scotland. Our policy position, via the conduit of that group, is that, as we develop new hate crime legislation and in tandem with it, we should create a new system of disaggregation, based upon the international legal definition, that enables us to look at what hate crimes are taking place, where they are taking place, who they are targeted at and who faces them, so that we can allocate resources to deal with those particular problems.

On culture and cultural recognition, we work with cabinet secretary Fiona Hyslop's group. It has done fantastic work, taking a human rights-based approach to an inclusive national identity and putting forward proactive opportunities for diverse ethnic and cultural minority communities to participate in Scotland's winter festival period—St

Andrew's day, Burns night and so on. It is not about those communities endorsing a monocultural Scotland of shortbread and bagpipes and so on; rather, it is about them celebrating our cultural identity and Scotland's modern dynamic identity using their own cultural characteristics. Does that mean that we have found a panacea in terms of an inclusive national identity for Scotland? No. We need the other duty bearers—Creative Scotland, the 32 local authorities and so on—to say how they are going to respond to that and to ensure that their funds and their engagement with ethnic and cultural minority communities is done progressively and coherently.

We have shoots of work and we are making progress. We have forecast the dynamics of the duty bearers who have to take forward their own work and respond coherently. This committee and others will have a critical role to play in ensuring that that happens.

Parveen Khan: CEMVO Scotland is also funded by the Scottish Government's race equality unit to provide social enterprise support to minority ethnic groups, individuals, and social entrepreneurs, including young people aged 17 plus. For many social entrepreneurs, social enterprise is the only route into the labour market. That is what we have discovered and that is what we support. I could give you figures, but I am pretty sure that we are tight for time, so I will move on to just give you headings.

Funding other programmes of work such as early learning and childcare is also part of the action plan. Since September 2018 we have organised a series of events throughout Scotland to increase awareness among ethnic minority communities of the Scottish Government's campaign to recruit an additional 11,000 into the early learning sector. That is on-going work, and, again, we have figures that we can provide for that if anybody is interested.

A year-long pilot was carried out in health and social care. We were asked to provide it for another year in various areas—South Ayrshire, Dundee, Perth and Kinross and East Renfrewshire—which was done, and reports have been produced.

On poverty, we have run social security experience panels and helped the Scottish Government to organise two events in 2019. Thirty-five minority ethnic people attended those, and six people have expressed an interest in participating further.

On participation and representation, I support the Scottish Ethnic Minority Women's Network. That has been supported to become a registered charity and it now has its own executive committee. It will drive forward ethnic minority

women's engagement in local and national decision-making processes.

We have worked with the Scottish Government to organise three events to increase ethnic minority awareness of the Community Empowerment (Scotland) Act 2015, with a focus on asset transfers. Quite a number of people attended the workshops—37 in total—and we are currently supporting Pollokshields Development Agency with a community asset transfer request to Glasgow City Council. That is a good case study of how minority groups are engaging with the act. We can provide information and evidence about that if required.

On the race equality framework, we have improved the capacity to tackle racial equality, meet the needs of minority ethnic people and to make Scotland's public sector workforce representative of its communities. We have done that through the race equality mainstreaming work, which I head, and through some of the increasing participation and representation of minority ethnic individuals in governance and influence in decision making at local and national levels. Our public appointments work is another way in which we have done that.

I hope that that addresses some of the information that Fulton MacGregor is looking for. We have also been part of the outgoing secretariat that has supported the cross-party group on race equality.

The Convener: We would be interested to receive those figures. If you could write in with them, that would be helpful.

Parveen Khan: I can do that.

Kaliani Lyle: I used to be the race equality framework adviser—I came out of that role almost a year ago. After a while, I agreed to go back and sit on the programme board. I would like to see changes to strengthen the governance around delivery of the race equality action plan. As John Wilkes was saying, after the first three years, now is the time to take stock and focus on refining what is in the action plan to deliver strong impactful actions. We do not want to lose sight of the wider issues and actions that are in the framework and in the action plan, but the directors of each service should come up with a few impactful actions that you can see and measure and which will make a difference to people on the ground. That is an important step. Getting the articulation between the delivery board and the directors right is important with regard to ensuring that we get the governance right. I am going to do that for a while, though not for very long. I hope that that will make a contribution.

Oliver Mundell (Dumfriesshire) (Con): What is your view of how the Scottish Government has

engaged with communities at grass-roots level on the action plan? There was a feeling at the informal meeting this morning that there is often consultation but it is not meaningful and it takes place at a level below where the decisions are being made. There is a certainly a feeling among some communities that there is limited diversity at the decision-making level in many important organisations in Scotland, including here in Parliament.

Jatin Haria: That is probably a question that you should ask of the Scottish Government, but the Coalition for Racial Equality and Rights was heavily involved in working on the race equality framework and hundreds of people were consulted on that. That was a few years ago. I am not aware of any massive consultation being done before the action plan was published, so I think that that came out of other work and not through community consultation. Maybe that explains some of the weaknesses in the plan.

There are a lot of process issues in the action plan, which communities are not really interested in. They want to know what will change their lives, so if there was more of that—"The vision of the plan is X"—we could probably get more buy-in from communities. Communities are not interested in our saying that we will work with delivery partners. They want to see change now. People have mentioned that this is a three-year plan, but we have had race equality initiatives for the past 30 years. We are not doing anything new. We have been working on this and, as we started off saying, the frustration is with how little change there has been. As Kaliani Lyle said earlier, we know what the issues are, so, although community engagement and consultation are important, it is a waste of their time and ours to go and ask communities what the issues are. Let us ask them about implementation mechanisms, if that is what we want to do, or let us ask them about things being achieved.

Kaliani Lyle: There are different layers of consultation, and talking directly to people who are affected by particular things is very important. There is a role for intermediaries, but one also needs to hear directly from people who are in a particular situation. I suppose that you want to hear that in your leaders forum; you want to hear people saying, "This is what you say, but this is what is happening to me. What is the gap between what you say and what will happen to me?" Many years ago, when I worked with women's groups—people who were particularly isolated and who were referred to groups by health visitors and so on—I found that hearing their stories was very different from what you would hear from other people. I often wonder whose voices are not being heard and where the people are who are experiencing poverty, who are isolated and who

may have different needs? There is an exercise to be done about whose voices are not being heard.

Danny Boyle: Oliver Mundell's question is critical. The legitimacy, success and viability of the plan can only be grounded in the individuals in communities that it seeks to respond to. The community engagement aspect of it is fundamental, if it is not the most important part of the plan, particularly for a framework that has to stretch from 2016 to 2030 and cover the variations in circumstances that may occur during that time.

We go back to who has the fundamental responsibility. I can certainly speak on BEMIS's behalf, and I again place on record and clarify for anybody listening or anybody else in the room that BEMIS as an organisation and as an intermediary does not speak on the behalf of communities. I cannot speak on behalf of the Muslim women; I cannot speak on behalf of Jewish people. I cannot speak on behalf of Sikh Sanjog or Intercultural Youth Scotland or anybody else. What BEMIS can do is raise awareness of issues that affect our membership and our membership is represented under the article 1 international human rights law definition.

11:15

I go back to the point that I made earlier about the overemphasis on the progression of the action plan and the framework being solely or disproportionately the responsibility of the third sector. None of the organisations in this room can authoritatively say that they represent every ethnic minority organisation and individual in Scotland, so where does the power lie? The Scottish Government certainly has an equality unit that works incredibly hard to take this forward and other directorates have responsibilities to engage but, critically, to do so from a human rights-based perspective through the PANEL process—the PANEL process is a human rights-based approach that is based on participation, accountability, non-discrimination, equality and legality, which must be part of all of the engagement processes that duty bearers take forward.

John Wilkes mentioned the EQIA process earlier. Part of the problem with the EQIA process is that, when a local authority that does not know what race means is taking a piece of work forward, it will ask about one narrow dynamic of the legal definition and not everybody. We are saying that, if you get everybody who is covered by the legal definition in the room, it makes it a much bigger issue, it develops empathy and it drives momentum for change. We will take the engagement process on board and continue our work and I am sure that the Government and my colleagues around this table will do the same, but the duty bearers and the fundamental people who

hold the power to deliver this action plan must also take it on board. Again, we turn to this and other committees to take the work forward.

Annie Wells (Glasgow) (Con): For brevity, I will put my two questions together. For each of the policy areas in the race equality action plan, are there aspects of the plan that you would pick out as stronger or weaker? Do you think that the action plan is achievable in the timeframe allowed?

Kaliani Lyle: That is a big, big question.

Annie Wells: It is. I was trying to make it small.

Kaliani Lyle: If you are looking at each one, it is quite big. Part of the problem with the plan is that so little of it is focused on race, so even if there are good things happening, you cannot get a grasp on what they are. When I looked at some of it, I thought, "I am not sure that this is not just part of a wider review. Where is the race aspect to this?" It is difficult to grapple with it. It is better in some cases than others but, by and large, it needs to be much clearer and to show what actions will have an impact. It is quite difficult to answer your question. In the stuff on health, for instance, I felt that there is nothing that is not part of a wider review.

One slight concern of mine relates to data collection, which was brought up earlier. Perhaps it is my reading of it, but there seems to be a kind of laissez-faire approach to that—a sense that it will happen sometime in the future and so on. Recently, the Mental Welfare Commission for Scotland produced a report about detention and mental capacity that said that it could not tell the ethnic origin of a person who had been detained under mental health legislation from the forms that it was sent. Five per cent of people who are detained are of BME origin, but on 25 per cent of the forms you could not tell the ethnic origin of the person being detained. That is a serious matter. When I looked at the report, I felt disappointed and I felt that that is not being looked at with the urgency that is needed.

I hope that, in the filtering of the plan, the directors will have to look at what the key things are and how they are measured, so in the next iteration of the action plan, we will be able to answer your question.

Jatin Haria: As Kaliani Lyle said earlier, the section of the action plan on Gypsy Travellers is the best in terms of structure and updates on actions. We should learn why that is and why that has not applied to the other sections.

We did a full analysis of each of the actions and updates in the plan and found that 40 per cent of the updates, apart from the Gypsy Traveller ones, did not have a race focus, so I do not think that we

can say any one of the other sections is necessarily better or worse. Because we are actively talking or hoping to talk to the departments just now, I do not want to name anybody, but absolutely, we need to ask that question when the new iteration of the action plan is out, because I am sure that there will be differences.

John Wilkes: I echo those comments. The plan is there to deliver on the framework and there is a very ambitious goal for 2030. Like others, I think that there are an awful lot of activities in the plan, but it would be useful to see how those relate more clearly to the proposed outcomes.

The Government has quite a wide role in this. It is a facilitator, it is a resource enabler for others to do other things, it can appoint some of its agencies to do things and there are other things that it can do itself. I would like to see more of that facilitation role drawn out. All the other stuff that the Government does to help others do things is good and helps to drive change, but what are the things that only the Government can do? I think that that is partly why the Gypsy Traveller section of the report has been mentioned; the Government worked on that directly, and the quality of that work came through.

The Equality and Human Rights Commission is clear that one of the things that the Government could do that could drive a lot of change for others is a review of duties to look at what has happened and how duties can be improved. If that is done properly, it could be a driver of change throughout the public sector. There is a lot of stuff going on, and that is good, but more clarity is needed on what the Government thinks will achieve the longer-term change and goals, because 15 years is not a long time given the systemic nature of the problems. Things that are put in place in this first period will be important for the delivery of change in the latter half of the programme.

Danny Boyle: I promise that I will be as brief as possible. The plan is indicative of an issue that we have faced within race and race equality in Scotland over a significant period of years. I have alluded to it: "The third sector will fix it—give it to BEMIS, CEMVO and CRER and they will do it." That is also the case in the Government: "The equality unit will deal with that—if it is to do with race, give it to the equality unit." Our colleagues there—Harry Dozier, George Ritchie and Hilary Third—have done a significant amount of work to raise the profile of race in Government departments. Where there is a lack of recognition of the importance of race, which I think Jatin Haria said they have come up against in trying to engage with other departments, it falls back to the absolutely primary issue for the potential of this plan, which is that even a lot of Government

departments do not know what race means. They do not know what we are talking about. How can we possibly take forward a problem if we do not know and we have not defined what we are talking about?

I have already alluded to this. There is a definition of racial discrimination as part of customary international law and there is the Equality Act 2010 definition. Those should be seared into the walls of Government departments and directorates across the country and in local authorities and in statutory bodies. It is not a particularly long definition, it is not particularly complicated and it should form part of everything that they are doing when they are taking it forward. The reason why the Gypsy Traveller example has been so successful is that it was quite clearly focused on a single community. We have to increase awareness and recognition of the diversity of experiences of communities who define under the racial definition and we need to support the Scottish Government's equality unit, the third sector, other directorates and local authorities to up their game. A parliamentary committee such as this one has a huge role to play in telling everybody to lift their game and asking them to come in here and talk about it.

The Convener: Forgive me, Jatin Haria, I see that you want to comment, but the limitations of a Thursday committee mean that we have to be finished by a certain time and I still have a colleague to bring in, so I am going to leave additional contributions. Please keep responses short. You can of course write to us with any points. We have heard the points that have been made previously and they are on the record.

Angela Constance (Almond Valley) (SNP): In the spirit of what needs to be done, I want to have a quick-fire round with the panel. I would like you to share your reflections on the role of the programme board and delivery group and how they are doing, the importance of Scottish Government leadership across the public sector, how impact is measured, and, crucially, the funding that is needed to support the implementation of the action plan. I would like to start with Ms Khan, please.

Parveen Khan: There is quite a lot there for me to respond to.

The Convener: If you want a minute to reflect, we can come back to you.

Parveen Khan: Yes. I am still thinking about funding. I do not really know how much funding there is—I got caught up on that.

The Convener: Perhaps I could refer the question to Ms Lyle, since you have first-hand experience of the programme board.

Kaliani Lyle: It is a big question and there is a lot in it. I have already referred to governance and what needs to happen.

Picking up on what Danny Boyle was saying, it seems to me that the critical point is that mainstreaming only works if people have authority over the other departments. It does not work if it is about a kind of negotiation and you cannot get others to do what you want. You might get a plan with stuff in it that you do not agree with, but if you do not have the necessary authority you will not be able to say that it will not wash and is not going to deliver anything. There is a question of authority.

There is a question of resourcing, because one of the reasons that the Gypsy Traveller stuff worked was that there was leadership and you had resourcing. How do you align policy and delivery? You do that by having somebody in COSLA whose full-time role is to deliver on it. There is a question of how you resource that work.

Thirdly, there is something about clarity: being clear about what it is you are going to do, the process by which you are going to get there, how you are going to measure it and governance that oversees all that.

I have said this before: I am an optimist who worries. From what I have seen, the programme board has looked at the situation and said, "This isn't working—we need do something different." That is about refining the action plan, making employment one of the key issues and looking at the measurement framework, and I hope that that will give us a starting point to make it better.

Jatin Haria: It is hard to answer that question because we are not members of either the programme board or the delivery group. We were invited to a programme board meeting back in May, but the last programme board minute that the Government published was from March and we do not know what has happened since then. In our submission to you, one of the questions we asked was: if the programme board signed off the action plan update with 40 per cent of actions having no race focus, why did it do that? Alternatively, if it did not sign it off, why did it not sign it off? Those are fundamental questions.

Danny Boyle: The programme board obviously has an important role to play. I mentioned to Paul Johnston at a conference last December that it might be beneficial for the programme board to engage at its meeting with different organisations, including grass-roots organisations—some of whom are represented here today—as a bare minimum, just to speak to the people whom it is delivering to. That is a basic fundamental tenet of a human rights-based approach.

I would go back to the fundamental point—Jatin Haria has alluded to it—that we are not sure what

the programme board's terms of reference are. When it is talking about race, what is it talking about? Maybe that is reflected in the apparent incoherence of aspects of actions that have been undertaken by different departments or local authorities and so on. If there are multiple definitions of a problem that we are trying to address, how can we take it forward? The programme board is important, but it could do with more engagement.

John Wilkes: I am just repeating or building on what others have said. I think that the programme board has a really important role in terms of focus, because this is such a huge issue. Where can the Government most effectively focus its own efforts and energies with regard to what it wants to do across all parts of the problem and how it can get its own house in order? As Kaliani Lyle said, governance is important. It is a long-term plan, so it is really important to maintain focus and that there is the opportunity to review and refresh the action plan if it is not working. Those are the key things that the programme board has to take into account.

11:30

Angela Constance: Ms Khan, I am sorry for putting you on the spot earlier. Is there anything that you would like to add?

Parveen Khan: I support what Jatin Haria and Danny Boyle said. My hesitation was because I am not familiar with the work of the groups that you mentioned, particularly the programme board, and I got stuck on the funding part of your question.

I have spoken about some actions being easier to measure. On the reporting and alignment aspects, measurements of some actions are missing from the framework and the action plan. Not really knowing about the work of the board and the delivery group that you mentioned, Ms Constance, I was not able to answer that part of your question. Apologies for that.

Angela Constance: Not at all. Thank you very much.

The Convener: That brings our session to an end. I thank you all very much for your evidence. Our next meeting will take place on 28 November, when the committee will continue to hear evidence on race equality in Scotland. I now move the meeting into private.

11:31

Meeting continued in private until 11:37.

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