



OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities and Human Rights Committee

Thursday 25 February 2021

Session 5



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EQUALITIES AND HUMAN RIGHTS COMMITTEE

6th Meeting 2021, Session 5

CONVENER

*Ruth Maguire (Cunninghame South) (SNP)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Mary Fee (West Scotland) (Lab)

*Joe FitzPatrick (Dundee City West) (SNP)

*Alison Harris (Central Scotland) (Con)

*Gillian Martin (Aberdeenshire East) (SNP)

*Alexander Stewart (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Dr Alan Mitchell (Scottish Human Rights Commission)

Judith Robertson (Scottish Human Rights Commission)

Lynn Welsh (Equalities and Human Rights Commission Scotland)

John Wilkes (Equality and Human Rights Commission Scotland)

CLERK TO THE COMMITTEE

Claire Menzies

LOCATION

Virtual Meeting

Scottish Parliament

Equalities and Human Rights Committee

Thursday 25 February 2021

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Ruth Maguire): Good morning, and welcome to the sixth meeting in 2021 of the Equalities and Human Rights Committee. Our first item is consideration of whether to take items 3 and 4 in private and whether to consider a draft legacy report and a draft annual report in private at future meetings. Are members agreed?

Members *indicated agreement.*

Equality and Human Rights Commission and Scottish Human Rights Commission

09:00

The Convener: Item 2 is evidence from the Equality and Human Rights Commission and the Scottish Human Rights Commission. They will give an annual update and overview of their priorities for the coming year, which will inform the legacy report for our successor committee. I welcome our first panel. From the Equality and Human Rights Commission in Scotland, we have John Wilkes, head of Scotland, and Lynn Welsh, head of legal.

You have the opportunity to make a brief opening statement, after which we will move to questions from the committee. It is over to you, John.

John Wilkes (Equality and Human Rights Commission Scotland): I thank the committee for giving us the opportunity to share some of the work that we have been doing and to look at our future priorities. I am here with my colleague Lynn Welsh, who heads up all our legal and compliance work in Scotland. Between us, we lead the work of the commission in Scotland.

As I am sure the committee is aware, the Equality and Human Rights Commission is Britain's equality regulator, and we are also an A-rated national human rights institution. However, in Scotland, we share our human rights mandate with the Scottish Human Rights Commission, and we have a very good working relationship with it. Late last year, some new commissioners and a new chair were appointed to the commission. In Scotland, we also recruited some new members to the commission's statutory Scotland committee.

With the 10th anniversary of the Equality Act 2010 and the 50th anniversary of the Equal Pay Act 1970—two landmark pieces of legislation—2020 looked set to be a significant year for the commission. Of course, other events overtook 2020 and, like everybody else, we have been overshadowed by the impact of the Covid pandemic. We think that its effects on equality will be with us for some time to come.

Our work is dictated by our strategic plan priorities. Our current strategic plan covers the period 2019-22, and our core aim is to ensure that strong equality and human rights laws work to protect people. In our current plan, we have five other priority aims covering equality challenges in areas such as access and fair treatment at work, education, public transport, fair treatment in

institutions, and redress in the criminal justice system.

When the impacts of Covid became clear, about a year ago, we quickly reviewed our work and priorities. On the back of that, we paused or reduced some work we had been planning to do in the year just gone, particularly in education and transport. We quickly noted the impact that Covid seemed to be having on some communities, such as the black and minority ethnic communities, and on care homes and elderly and disabled people. We have developed new priorities and programmes of work to look at the equality aspects of those impacts.

In June last year, we launched an inquiry into the impact of Covid on low-paid workers in health and social care organisations who are from BME communities. We also developed a programme of work to look at the impacts of Covid on the social care system through an equalities lens. We anticipate that both those programmes of work will continue into next year.

Every five years, we are obliged to produce a state of the nation report on how equality is doing across Britain and in Scotland, and we were due to publish that report later this year. However, we have decided to delay publication by a year so that we can review and incorporate the evidence of the longer-term impacts of Covid on equality. We felt it was important to do that. In October, we published a shorter report that brought together evidence of the more immediate impact of the coronavirus on equality and human rights, and that report contains some recommendations for the Governments across Britain.

We continue to prioritise the use of our unique legal powers and compliance tools, and we have produced a range of guidance to support employers in dealing with different aspects of the pandemic.

In June, we published the findings of an inquiry that we undertook into the challenges of people with disabilities or mental health conditions in navigating their way through the barriers that they face in the criminal justice system. The strategic use of our legal powers last year included two Britain-wide investigations: one into antisemitism in the Labour Party and one into equal pay at the BBC. In Scotland, we reached a settlement with NHS Greater Glasgow and Clyde in a significant case on ending the unlawful detention of adults with incapacity.

In our policy work over the past year, we very much focused on working with policy makers and legislators to ensure that the fast-changing environment of the coronavirus and the policy regulations and legislation that were put in place to

meet the challenges of it met the requirements of the equality legislation.

Looking ahead to the coming year, we will continue the work that we have started on our race inquiry, and we anticipate publishing the findings of that in June. We will further develop our work on the impact of Covid on the different aspects of our social care system, and we will move to support the focus of equality in the important work of economic recovery. We will also look at the particular impact of the pandemic on women and work. We have noted the Scottish Government's commitment to reviewing the public sector duties, and we hope to be involved in that work. In addition, we are considering other work such as a potential inquiry into how aspects of the work of the Department for Work and Pensions impact on people with disabilities.

The coming year is the final year of our current strategic plan, and we will consult on the priorities for our new strategic plan, which is due to come into effect in 2022.

The Convener: That is very thorough and helpful. Committee members will be keen to probe you on some of the aspects of your work that you have mentioned. I will bring in Gillian Martin.

Gillian Martin (Aberdeenshire East) (SNP): I was going to ask about the impact that Covid-19 has had on the priorities for your work programme, but I think you have covered that very well. However, I want to pick up on a couple of things in your opening statement. At the end, you said that you plan to do some work on women in work. As we all know, many reports have said that women have been disproportionately disadvantaged by the Covid-19 pandemic. A lot of that stretches back to the inequalities in women's work. Can you give me a little bit more detail of what you are planning?

John Wilkes: For the report that we published in October, we looked at some of the immediate impacts of Covid. The evidence shows that there is increased underemployment rather than unemployment in the labour market so far, and loss of earnings from that has contributed to a drop in living standards. The groups that are most likely to be affected include women.

We are looking at how we can help to shine a light on some of those issues, some of which are longer-standing issues of pay or opportunities for flexible working. In our role as the equality regulator, we will pull together what we think would be the most appropriate package of work, to advise the Government and employers on how they can address and tackle the issues. We are still working on the final outlines of that work.

Gillian Martin: How has the pandemic impacted so far on the commission's staffing and resources

and on your capacity to carry out what sounds like a really intense programme of important work, which you outlined in your opening statement? You are studying the impacts that Covid-19 is having, but you might also have been impacted as an organisation.

John Wilkes: Yes. Like many organisations, we have been working at home for about a year now. As I said in my opening statement, we had to review very quickly the work plan that we had set out for last year, and we paused some areas of work that we had been planning to do. We decided that we would consider putting some pieces of work a year behind. A lot of staff were impacted personally by the coronavirus, and some had to reduce their hours. I suppose that we faced exactly the same challenges as many organisations have faced. We tried to scale up or scale down the work to what we felt we could do. We also focused very much on what was most relevant to us as an equality regulator and a human rights institution, so that we could play our part in shining a light on certain things that were going on in what was—and still is—a very fast-moving pandemic.

We have been impacted but not particularly financially, if that was part of the question. Certainly, staff capacity has been affected, as it has in other organisations, but we have tried to adapt to that as best we can by using modern technology to further our work.

The Convener: Lynn Welsh, do you have anything further to add in answer to Gillian Martin's question on the impact that Covid has had on your priorities and on your staffing and resourcing?

Lynn Welsh (Equalities and Human Rights Commission Scotland): I do not think so. John Wilkes has covered it quite adequately, thank you.

Joe FitzPatrick (Dundee City West) (SNP): Thank you for your opening remarks, which have given us a good insight into how you have worked during the pandemic. In your business plan, as well as talking about facing and responding to the challenges of the pandemic, you talk about tracking Brexit and what that means for human rights. Could you talk a little bit about that work?

John Wilkes: Yes, certainly. Lynn Welsh is better placed to talk about that, because she leads on some of that work for us in Scotland.

Lynn Welsh: We are still keeping a close eye on it. We want to ensure that any equality or human rights issues or legislation that comes from Europe remains to protect the people of Britain. We are inputting to various consultations that are on-going, and I am tracking the general effects of Brexit now that we have left the European Union.

Joe FitzPatrick: Those are two really big things for the commission, coming at the same time. Is that giving you scope and capacity to look at other areas? Last year, we saw significant Black Lives Matter protests. Do you have any capacity to look at human rights in the wider context, or are those two big issues making it very difficult to do that?

Lynn Welsh: No, we are also involved in juggling other quite large areas of work. Our interest is more in equality than in human rights. Our sister organisation—the Scottish Human Rights Commission—is the next panel of witnesses. We are, or have been, very much involved in looking at the incorporation of this work, which is quite a large piece of work, and we have been feeding in equality aspects. The race inquiry, which John Wilkes has already touched on, is part of our response to how Covid has affected the black community. Aside from that, we are also looking at how best we can assist the Sheku Bayoh public inquiry that is under way as part of our race piece of work.

The Convener: John Wilkes, do you wish to add anything to that?

John Wilkes: We decided to launch our race inquiry on the back of the Covid impact and because, like everybody else, we were aware of the focus on Black Lives Matter. We felt that the inquiry was the best way that we could use our powers, tools and focus to contribute to the issue, which is why we chose to look at the impact that those things are having. We will continue to monitor all those things as we go forward.

09:15

Alexander Stewart (Mid Scotland and Fife) (Con): John Wilkes, in your opening remarks, you talked about the disadvantages and inequalities that are experienced by different groups. The pandemic has meant that things have been done at speed, because action has needed to be taken quickly. On balance, do you think that the Scottish Government has undertaken sufficient equality and human rights impact assessments on legislative and policy changes?

John Wilkes: We have been working a lot with the Government over the past year, and I think that it is fair to say that our view is that it has been a mixed bag. Some considerations might be more difficult to take into account when things happen at speed. We have been talking to senior officials in the Government about trying to ensure that, across all its many functions, the Government—whatever policy or new legislation it is looking at—fulfils its obligations, particularly around the public sector equality duties. We have pointed out areas where we have felt that that had not been, or we could not see where that had been, taken into

account. On the whole, the Government has been responsive and has come back to us in many areas but, overall, our sense is that the picture has been variable.

Alexander Stewart: Consultation with organisations such as yours is vital, as you have a key role to play. Have you had to ensure that that key role has been reinforced? You indicated that it has been a bit of a mixed bag. In amongst all of that, have there been areas on which you have felt that you should have been consulted and given more information and support to ensure that the Government was able to manage the process?

John Wilkes: It is not our role to dictate how the Government fulfils its responsibilities. We have tried to be helpful to the Government where we can in certain areas that are new. We have pointed out areas on which it had not exercised enough focus. There has been a lot of activity on all sorts of fronts, so there has been a lot of work involved. Response to discussions has generally been very positive and steps have been taken to redress some things that we felt had not been completed. It is not just about Government—the wider public sector has also had to deal with its responsibilities in this new environment.

I do not know whether Lynn Welsh wants to add anything. She leads the compliance function, which involves working more directly with public authorities and the Government on some of those areas.

Lynn Welsh: I am happy to add to what John Wilkes has said. Over the past year, we have kept a very close eye on things, not only with Government but with others. We have played a supportive role for the past short period rather than a very regulatory one because of the emergency and the difficulties that that has produced. At the beginning of the pandemic, we were a bit more hands-on when it came to the provision of help than we would normally be. We have produced extra guidance for organisations.

Unsurprisingly, the pandemic has shone more of a light on existing inequalities than shown us new ones. It is important to think about the data gaps that we have seen. That is a fundamental problem that we have found specifically over this period. Not enough information is being gathered about people in Scotland generally and particular groups so that we can ground the equality impact assessments and decision making. That is an area on which there needs to be a focus as we go forward. I am hoping to do a bit of work from April to encourage others, along with us, to fill some of the data gaps. It has been very clear that good decision making is difficult without that information.

Alexander Stewart: As you have identified, lessons will be learned from this whole process.

Government and others might not have been as involved as necessary or mistakes might have been made; equally, some of the agencies and other bodies might have been caught on the hop, because the priorities had to change. I think that your organisation has a role to play in guiding things for the future. How do you see that role developing as time goes on?

Lynn Welsh: That is fair comment. In the coming year, we are planning to do more work on the capabilities generally. A Government review of those is due, and we have been doing our own work on what does not work and what we can look to improve. The pandemic has shone a light on certain issues, including the unpreparedness of all of us for dealing with some of the stuff that it has turned up. We will focus substantially on the PSD review and how to embed equality issues into organisations and their work. If and when the social care review that has come out turns into work after the election, we are very keen to discuss with the Government how equality can be built into a new system, if a new system is to be produced. Instead of simply saying to organisations, “Here’s a system and equality sits here—remember to do your equality duties,” we want them to automatically have integrated into them the equality issues that they need to think about, so that requirements to collect data are built in. If a new system is to be built, we hope that there might be an opportunity to make it one that works fundamentally better.

The Convener: The committee certainly recognises your comments about data and about equality being at the centre and not on the side.

Mary Fee will ask some more questions on the public sector equality duty, but I want to ask you about human rights. You refer to your involvement in the national task force for human rights leadership, which is due to report in March. Are you able to provide any reflections on that for the committee? I will go to John Wilkes.

John Wilkes: Again, I defer to Lynn Welsh on that. She has been our lead on the work of the incorporation task force.

Lynn Welsh: This has been front and centre in the work of our sister organisation, the Scottish Human Rights Commission, but we have, as we said earlier, been involved in the task force. Our main aim for that is to look at the intersection between the incorporation of human rights conventions and equality—especially given that equality is, to a great extent, reserved—and how that works most effectively.

Overall, our view is that Scotland is leading on a marvellous piece of work to incorporate human rights directly into our systems. As an organisation, that is something that we support

across Britain, and we very much look forward to seeing the changes that that can make over the next few years. The work that has been done has been very inclusive. There has been an awful lot of going out to different groups and different parts of civil society, as well as to academics, lawyers and those who are normally involved in such situations, to take views. We hope that the task force will produce a very good report at the end of the process, which the Government will take forward thereafter.

The Convener: The United Kingdom Government is currently reviewing the Human Rights Act 1998—it is looking at whether it is working in practice and whether it needs to change. Will your organisation submit a response to that review? If so, are you able to give the committee a sense of what your response might look like?

Lynn Welsh: Yes, we intend to respond to the consultation that is on-going. We have not yet put in our response, and I would not want to jump the gun on that. However, generally speaking, I think that we would not see a need to change the areas that the consultation relates to specifically. We think that it works effectively as the legislation is now.

The Convener: That is helpful.

Mary Fee (West Scotland) (Lab): Public authorities have been asked to provide a statement if they are unable to provide the equality outcomes that are required under the public sector equality duty by the end of April this year. Could you give the committee an update on how that is going? Have you had discussions with public authorities about delays in meeting the PSED? Are you aware of any difficulties or other experiences that public authorities are having in attempting to complete the equality outcomes?

The Convener: Who would like to come in on that?

John Wilkes: I think that Lynn Welsh is best placed to do that. She leads on the work on compliance with the public sector equality duty.

Lynn Welsh: Over the past few months, we have been doing quite a lot of work with the public sector to help it to get ready for the reporting this year in a way that we have not always done. For example, in October, November and December, we ran some specialist round tables for the public sector to look at—[*Inaudible.*]—not only because that is a difficult thing to do during Covid, but because we wanted to see improvements in the way in which outcomes were being set by public authorities.

Overall, our understanding is that organisations will produce the reports and the outcomes that

they need to produce. Even with Covid, we have not had substantial numbers of organisations saying that they will not be able to do that. Earlier in the year, we wrote out saying that we expected that bodies would still be able to produce the reporting that they were required to do—as did the Government—and the majority of feedback that we have had is that people will be producing those reports as required.

Mary Fee: Are you confident that all the reports will be completed on time?

Lynn Welsh: I would never say “all”. At the moment, we have no feel that there are huge numbers of organisations that are unable to provide them. The organisations that came to our round tables—which included most health boards and local authorities; in other words, the large organisations—were all intending to report within the proper timescales.

Mary Fee: That is helpful.

You touched on the review of the public sector equality duty and your involvement with that. Will you say a bit more about that? The Scottish Government has said that the review will be done in two stages between now and the summer. There will be an effectiveness report, which will be followed by the development of specific proposals. Could you talk to the committee about your involvement in each of those? Do you think that the timescale that the Government has set is achievable?

Lynn Welsh: I will pass that one back to John Wilkes.

John Wilkes: We have been involved with the Government since it first set out its intention to review the specific duties under the equality duty in Scotland a couple of years ago. We did a review of how effectively the public sector equality duty has worked from our perspective; we published that a couple of years ago. Obviously, Covid has intervened and delayed the original plans. We have on-going and regular discussions with Government about the progress of its review, and we feel confident that we will be fully involved in that.

We have our own thoughts about how we might be able to improve the functioning of the duties in Scotland, and I think that the experience of the year that we have just been through on Covid has helped to reinforce that. Whether the process is doable will be largely down to the Government, which will be running the process. There is a Scottish Parliament election in the middle of that period, and I do not know how that will interfere with the process but, so far, we have been fully involved. I think that the Government has wanted us, as the regulator, to be involved in the thinking behind all that. We are confident of our ability to

be involved. Obviously, we will wait to see whether the thoughts that we have are taken up.

Mary Fee: That is very helpful. Thank you.

09:30

The Convener: Can I press you on that a tiny bit? Would you be able to give us some examples of your thoughts on what could improve things?

John Wilkes: Yes. We have been thinking about various aspects of how the duties are currently structured. For example, how effective is the mainstreaming part of the duties? Lynn Welsh has already mentioned data gathering, and that is still a big area of work for all public authorities to focus on.

There is a question as to whether public authorities can be more focused in the equality outcomes that they set. Our experience of how the duty operates is that public authorities tend to set quite general approaches to their reporting outcomes. We do not think that that is always the most effective way to do it. We think that public authorities could be bolder in using the evidence that they have to look at the period that they are looking at and say, "For this period, we're going to focus on these particular areas." How we make the duties work better to achieve those goals is an issue that we need to think more about. I do not know whether Lynn has any more thoughts to add.

Lynn Welsh: I think that the area of outcomes is one of our main focuses, as you have probably gathered, simply because that is the bit where we think that organisations can make a real difference to people on the ground, which is what the duty is for. Sometimes, information is collected and nothing much happens with it, but the area of outcomes is one that we think can make a fundamental difference.

We are looking to have a system whereby the Government can set or identify the biggest inequalities in Scotland, in health, social care or whatever area is being looked at. That way, the public authorities that are working in that area will be able to draw down the outcomes that they should be setting for the four years to change that situation. We want the process to be much more focused on measurable change so that we can come back in four years and say, "Yes, this has improved," whether it is attainment at university, health records or whatever, and track the change. The Government would be able to do that as well. There needs to be a lot more focus on measurement of outcomes. That might involve having fewer but more important outcomes. We see outcomes being set that say, "All the people of Scotland will get a better service from us." That is always how it is done. That is not an equality outcome, as it does not involve looking at

particular inequalities or particular protected characteristics. That whole area is one that we think could have real power if it is done properly.

We have done little pieces of work—for example, with the Scottish Funding Council—where we have tried to use that kind of model. That will involve the Government saying, "These are the outcomes that we expect further and higher education bodies to achieve," and we and the Scottish Funding Council saying, "Here are your equality outcomes. We will help you to measure those to see the changes that you achieve." Covid has delayed that slightly, but we hope that we can see that working in one area and perhaps extend the model.

The Convener: That is key. Equalities and human rights work has to be evident in making a difference to the people who it is for and who are experiencing inequality, rather than just being a nice thing to talk about.

Alison Harris (Central Scotland) (Con): The committee has made calls this session for the development of human rights budgeting. The recent "Equality and Fairer Scotland Budget Statement 2021-22" outlines the 10 key risks to progressing national outcomes as a result of the Covid-19 pandemic and the EU exit, and considers how policy and activity funded by the budget will respond to those challenges. Do you support that new approach? Do you think that the Scottish Government is making progress on equalities and human rights budgeting? I do not know who would like to answer.

John Wilkes: I will go first. The concept is not necessarily new. There has been a focus on equality budget aspects for a number of years, and we have been part of the discussions and groups to help to advise Government on that focus. More recently, the general concept of a wider focus of equality and human rights budgeting is something that we would support. Our sister commission, the Scottish Human Rights Commission, has been much more involved in the human rights aspect. That is probably the SHRC's mandate, so you would need to direct questions about the human rights side to it.

How has the work on equalities and human rights budgeting been progressing? Again, it is a slow burner. Learning has to go on all the time about how to ensure that the impact of the allocation of resources on different groups in society is taken into consideration. Consideration needs to be given to what evidence there is to support that. Some work has been done, but there is still some work to be done.

I do not know whether Lynn Welsh wants to add anything to that.

Lynn Welsh: No, thank you.

The Convener: Do you have a follow-up question, Alison?

Alison Harris: No, thank you. That was interesting. Thank you.

The Convener: No other committee colleagues have questions to ask, so that brings us to the end of the evidence from our first panel. I thank John Wilkes and Lynn Welsh. It has been very informative for the committee. Thank you for your time.

09:36

Meeting suspended.

09:45

On resuming—

The Convener: I welcome our second panel, from the Scottish Human Rights Commission: Judith Robertson is chair of the commission and Dr Alan Mitchell is a commissioner. Judith, I invite you to make an opening statement for the committee, please.

Judith Robertson (Scottish Human Rights Commission): Thank you for the invitation to come and give evidence to you today.

Let me give a brief introduction. As you know, we are Scotland's A-status independent national human rights institution. The A status means that we work in a way that complies with the law that governs the practice of national human rights institutions around the world—the Paris principles. It means that we are deemed to be primarily independent of Government and Parliament and able to work on behalf of the people of Scotland in relation to our human rights mandate. We are a body of the United Nations, and we exist because the UN recommended that states would benefit from having national human rights institutions to support the development of human rights within them.

As you are aware, we have a foundation in national law: the Scottish Commission for Human Rights Act 2006. That law gives us a range of different powers, including that of our general mandate. Our general mandate is to promote human rights and to build on best practice in relation to human rights. Our powers specifically enable us to intervene in civil cases in relation to human rights in Scotland, to undertake public inquiries and, in the context of a public inquiry, to enter a place of detention.

As a result of our A status, we are the only Scottish organisation that can make direct contributions to the UN Human Rights Council on issues that affect people in Scotland. We act as a bridge between human rights in Scotland and the

international human rights system; we monitor the implementation of international human rights treaties as they apply in Scotland; and we work closely with civil society and others to gather evidence and produce recommendations.

As the convener said, I am the chair of the commission and Dr Alan Mitchell is one of three further commissioners who work in partnership to oversee the commission's work and guide our strategy and development.

The last time I gave evidence to the Parliament, we were in the final stages of preparing our strategic plan. That was some 18 months or nearly two years ago. We are now at the very end of the first year of our new strategic plan, and we have four strategic priorities on the basis of that plan. Our first priority is to progress understanding and strengthen legal protections around economic, social and cultural rights. Our second priority is around strengthening accountability and meeting international human rights obligations. Our third priority is to build wider ownership of human rights, and our fourth priority is to advance best practice locally and share our learning globally.

At this point, I will not go into a big elucidation of those priorities—I suspect that that will come out as our discussion unfolds—save to say that, even after year 1, we were making significant progress in relation to our strategic priorities. As we go on, I can talk about how we are doing that.

The Convener: Thank you. That was helpful. We will go to questions now, starting with Gillian Martin.

Gillian Martin: Thank you for that introduction, which leads me nicely on to the impact of Covid-19. Every organisation has had to reprioritise during the pandemic, and I imagine that human rights organisations, in particular, have had to do that as developments have had an impact on people's human rights and equalities. Over the past year, how has the pandemic reset your priorities and work programme?

Judith Robertson: You are absolutely correct in assessing that the incidence of Covid has made a huge impact on our work programme. We made a statement in March 2020, at the beginning of the lockdown in Scotland, advocating that human rights standards guide the responses to the pandemic in Scotland. In the course of the unfolding of all the different dimensions of the pandemic, we made a series of interventions, briefings and recommendations to Government across a whole range of work areas to illustrate how human rights were and are being impacted by the pandemic.

That started particularly with the emergency legislation. As we know, the emergency legislation—at the UK level and then, following on,

at the Scottish level—brought in some extraordinary peacetime restrictions on people's movement and activities. The rationale for that was very much around protecting the right to life, so there was a legitimate basis for that intervention. However, as we commented back then, we felt that some interventions and restrictions might be inappropriate—with maybe too much of a blanket approach to application—and needed to be unpacked a little, explicitly from a human rights perspective, so that they could be moderated and managed over the period of the pandemic.

Dr Mitchell will talk at some length about the work in relation to prisons, but would it be useful to give you a brief overview of the different work areas that we focused on in relation to the pandemic? That would serve the purpose of explaining not just the range of issues on which the pandemic impacts but the range of issues to which the commission is able to respond.

As well as doing a lot of work around prisons, not just on the regulatory framework around the permissions that prison governors were given but on what was happening in prisons, which was important, we engaged in the independent advisory group on police use of temporary powers in relation to the coronavirus crisis. We were and still are part of the group that John Scott QC chairs, which monitors how the police are using the powers that they have. Initially, we gave a very robust and complete analysis of the human rights issues at stake. Latterly, we have brought that up to date in different areas to do with peaceful protest and assembly, because, throughout the pandemic, the police have had to deal with other dynamics, such as Black Lives Matter and protests, which have been quite challenging in times of social distancing. The rights that the police had to work on were very much part of what we were talking about. One of our other commissioners, Susan Kemp, led that work on behalf of the commission.

We produced clinical guidance for the chief medical officer on the ethical support framework that was put in place, way back at the beginning of the pandemic, in relation to decisions about people's treatment in care. We provided a human rights perspective, which, as I understand it, was very influential when it came to revising the clinical guidance and producing human-rights-respecting guidance for health and social care workers who take decisions daily about people's lives.

We worked closely with the Mental Welfare Commission for Scotland to develop a human rights framework for scrutiny of the use of the emergency powers in relation to adults with incapacity. We had concerns that the legislation had the potential to overreach what was

appropriate in terms of people's rights. In fact, the powers were never used, which was a good thing. In September, the commission welcomed the expiry of the powers in the legislation.

We did a lot of work around social care. Following the introduction of the Coronavirus Act 2020, we could see that social care was—indeed, it continues to be—an area in which people's rights to care and rights to be involved in decisions around their care were in serious jeopardy. We did a monitoring exercise and produced a report with other stakeholders that outlined how much local authorities had felt they had to limit the care packages for people, often without any consultation with either the individuals themselves or their families and carers. That was causing considerable human rights breaches. We continue to be concerned about the issue, which will impact on our work.

There are other areas that I will touch on, convene, but I will pause there to allow you to open it up for questions or to bring Dr Alan Mitchell in to talk about prison engagement.

The Convener: Thank you. That was helpful. Joe FitzPatrick will ask about work on the prison population, so we will wait to bring in Alan Mitchell—I hope that that is not too confusing; I am keeping track of things. We will go back to Gillian for her follow-up questions. Then, when we move on to Joe, we can talk about prisons.

Gillian Martin: To be honest, I am keen for colleagues to come in, because they will ask about a range of things and pick up on some of the detail. Perhaps Judith Robertson wants to finish her comments about other work priorities, so that my colleagues can dig in on the issues.

Judith Robertson: Fine. At the beginning of the pandemic, we looked at our strategic priorities and considered whether we would, in effect, have to rewrite our strategic plan to deal with the issue. We said, "No, we don't. The broad issues that we're looking at in relation to the plan are still very relevant and absolutely apply." Strengthening people's protections in relation to economic and social rights is absolutely at the core of what was at stake in the pandemic. Accountability and holding duty bearers to account were absolutely what we were actively focusing on in a number of areas—I talked about the policing dimension, and Alan Mitchell will talk about prisons—and with Government more broadly, to say, "You have an obligation to ensure that these responsibilities are overseen, in line with human rights obligations."

We prepared a number of briefings on specific areas to do with economic and social rights. I have touched on the social care piece; we also did a briefing on care homes, which was an important area. There were significant concerns—indeed,

more than concerns—about the very severe impact of the pandemic in care homes. We unpacked that from a human rights perspective and prepared a briefing that outlined what the duties were for Government and duty bearers such as public authorities in relation to those issues.

We also wanted to highlight the broader issues, in relation to economic rights and social rights, such as the rights to health and food, which became an acute issue for a lot of people over the pandemic, as well as the right to housing. We prepared briefings on all those areas, so that not just the Government and the public authorities but civil society organisations were able to bring the rights framework and rights themselves into the conversations that they were having with other duty bearers, other civil society organisations and funders.

That issue was peppered throughout the analysis that I saw, particularly around the right to food and what it takes for food to be provided with dignity. Food banks are not considered to be a rights-compliant means of providing food to people. We saw the Government boost funding strategies so that direct cash payments through the welfare fund could be made to people. That is a much more rights-respecting way of ensuring that people's rights to an adequate standard of living and rights to food can be realised on the ground in communities, by according people dignity, choice and the ability to use the funds that they are provided with on what they feel are the best things for them. That is always a better approach than actually providing food. Internationally, just providing food is not deemed the best approach. Again, I am using an example that illustrates the range of things that we were covering.

10:00

Gillian Martin: As I listen to you, the impact that you have had is apparent. You have informed many parliamentarians' questions about, and challenges to, some of the coronavirus legislation as it has unfolded. Thank you very much for that.

The Convener: There will never be a bright side to any of this, because so many lives have been lost. However, lessons can be learned and we can make things better for the future. On the inputs that you have had in relation to the various strands that impact on the lives of our citizens, do you think that there might be opportunity for progression because people on the ground have seen the difference that taking a human rights-based approach can make to our citizens? Does that make sense?

Judith Robertson: Yes, that totally makes sense. I agree with you: there is no bright side but, in the context of a human rights perspective, the pandemic has enabled us to demonstrate to people how rights can enable their decision making in really challenging contexts. If they take a rights-based approach, that decision making can be balanced, it can be respectful and it can bring people into the room in an equal way.

As you know, underpinning the rights framework is a series of principles around participation in decision making, better lives, accountability and holding duty bearers to account. Those are really important components of the framework. Time and again, I saw civil society organisations, parliamentarians and all sorts of key public authorities using human rights to guide some of their decision making. They also gave us a platform from which to say to them, "You need to do this. You're not doing enough of this. You need to be bringing human rights much more solidly into what you are doing."

It is about not just what has happened but what will happen, and that heightened awareness has done a number of things. As well as increasing people's general understanding of the rights framework and how it can be brought into play appropriately and meaningfully, both in the Parliament and externally, there are a number of key areas in which human rights can continue to play an enabling role.

One element of that is around how we make policy and conduct our budgeting process. An area of work that I have not mentioned is the support and guidance we have given to the Parliament in looking at budgeting processes from a human rights perspective. You need to think about human rights when looking at the pandemic budget. Where is money being applied? Is it being applied in such a way that the principal beneficiaries are only people who already have money, or is it being applied in such a way that it is genuinely supporting those who are the most vulnerable and the most caught and impacted by the pandemic in economic and social terms? It was felt that that approach was being taken. I would say that that has also been taken on as we look ahead to coming out of the pandemic and rebuilding our institutions and policy making. That is a really important component of what we have done.

The other area that I will mention—this is not the final area; there will be others—is the public inquiry on the impact of the coronavirus. The inquiry needs to be extensive, and how it is to be framed is still in development. We understand why it is not happening yet, but it obviously needs to happen. The inquiry needs to take a rights-based approach. It needs to be built on an understanding

of what rights were at stake and in play, how rights were realised or not, and how rights were respected up front in decision making.

The public inquiry also needs to take a rights-based approach. The people most affected by the pandemic are the families of those who have died, the people whose livelihoods have been completely cut away from them and the people for whom visits to care homes and so on were stopped.

The public inquiry will need to peek into the lives of a huge range of people and ensure that their participation in the process is real and builds on their experiences. The inquiry must not just look at the issues from the perspective of the state organisations that are doing the work; it must look at those people's experiences of what happened. Public inquiries are required to do that, and taking a rights-based approach is crucial.

The Convener: Yes. I can safely say that the committee is in total agreement with that. We will move on to Joe FitzPatrick's questions now.

Joe FitzPatrick: That was a helpful overview. Some of the detail was really useful, and it has covered some of my questions. There are two areas that I want to ask about that you have had a focus on, the first of which is mental health. You have covered some of that in terms of adults with incapacity. The other is the prison population, which the convener mentioned. The prison population relies on the rest of us to protect their human rights, so it has been good that you have placed a focus on that. It would be good to hear from Alan Mitchell an outline of the work that has been done throughout the pandemic and maybe a bit about how the focus has changed as we have moved through the pandemic. Also, I would be keen to hear whether some of the lessons that we have learned from the pandemic will help to improve human rights in the prison population after the pandemic. I am certainly hopeful that they will.

Dr Alan Mitchell (Scottish Human Rights Commission): Thank you for the question. The Scottish Human Rights Commission chairs the independent prison monitoring advisory group of Her Majesty's chief inspector of prisons for Scotland, and it has done so since the inception of independent prison monitoring, five years ago. That has given the commission a unique platform on which to have an oversight of the human rights obligations as they are applied to people in prisons.

On 20 March 2020, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment—known as the CPT—which had most recently visited Scotland's prisoners in 2018 and 2019, issued a

statement of principles that is applicable to all member states of the Council of Europe. The statement includes a number of fundamental rights that should be afforded to all persons in custody during the pandemic and during a period when increased restrictions are placed on them. The fundamental rights include time out of their cell; access to a minimum of one hour of outdoor exercise every day; appropriate access to soap, water and showers; access to telephones; and access to healthcare.

During the pandemic, the SHRC has been involved in a series of meetings with the Cabinet Secretary for Justice in which we have outlined our concerns and belief that not all of those rights are being fully respected in all Scotland's prisons, particularly in relation to those prisoners who have had to self-isolate on account of being symptomatic and who have then perhaps been confirmed as having Covid, and those who have been in close contact with such prisoners.

One of the big challenges is that a risk for Covid transmission is being in an environment near someone who has been infected. At the end of last week, Scotland's prison population was around 7,400 and I understand that we have fewer than 7,000 cells, which means that a number of people are having to share cells. It is often the case that cells that are designed to accommodate one person are now accommodating more than the one person, which undoubtedly increases the risk of an individual being exposed to Covid.

Covid has affected not only prisoners but prison staff, and staffing numbers have been reduced in Scotland as a result of staff having to self-isolate and shield. We are concerned to have found that there have been a considerable number of instances of prisoners being locked in their cells for 24 hours a day for a number of days and, in a few instances, for a number of weeks, without access to showers or outdoor exercise.

The situation in relation to maintaining contact with families has much improved due to the introduction of mobiles in cells. That has been absolutely fantastic, and we welcome that.

At the beginning of the pandemic, the Government introduced emergency powers that led to the numbers in prison being reduced. At the beginning of the pandemic we had around 8,000 people in prison. That figure dropped to just under 7,000; however, with court activity resuming, the number is creeping up again.

Around a quarter of all those who are in prison are on remand. In some prisons, the percentage of people who are on remand is far greater than that. When their case comes to trial, many of those people will not return to prison, because they will have been found not guilty or they will have been

given a custodial sentence, which is deemed to be served by dint of the time that they have already spent in prison while on remand.

Thanks to the engagement that the SHRC has had with the Scottish Prison Service, the Government and the chief inspector of prisons, the human rights of those who live and work in prisons have been given a platform and a prominence that they perhaps did not have before the pandemic.

One of the big challenges is the changes to prison rules that were introduced in the early part of the pandemic that give governors wide-ranging powers to restrict the activities that are on offer. One of our frustrations is that the Scottish Prison Service is unable to tell us to what extent the powers under the amended regulations are being used in each establishment.

I hope that that is a helpful overview. I would be happy to take further questions, if that would be of assistance.

Joe FitzPatrick: Thank you for that. That is really helpful. You mentioned the number of cells and prisoners. We all know that we have a higher proportion of our population in prison than other countries do, and we look to you to help us to keep a focus on reducing that number. There is an imbalance, because we have more prisoners than we have capacity for and we need to protect the human rights of those people who need to be in prison.

That is an area that Mary Fee is really interested in, and she is desperate to come in. I will hand back to you, convener, so that she can do so.

The Convener: I cannot see everyone, so I ask members to type an R in the chat box if they want to come in.

I ask Alan Mitchell to expand on his point about the amendments to the rules and not being able to get information on what powers are being used. It feels like a fundamental safeguard that, where people's rights are being limited, we can understand the extent of that. Will you say a bit more about that before I bring in Mary Fee?

10:15

Dr Mitchell: If my memory serves me correctly, the amended prison rules were introduced in May 2020. The rules give governors far-ranging powers. Initially, the powers were about restricting access to washing facilities, the range of foods being made available—if there were challenges in that regard—and time out of cells. The rules have since been amended to allow governors to confine persons to their cells for public health reasons. However, when we have asked the Scottish Prison Service for information on the extent to which those powers are individually being applied and

used by governors across each of Scotland's 15 prisons, that information has not been made available to us.

The Scottish Prison Service has made public information on, for example, the number of persons being isolated either because they are symptomatic of Covid-19 or have been in close contact with a person who has tested positive. However, that information is available only on a Scotland-wide basis rather than an individual prison establishment basis. To that extent, there is a lack of transparency as to how the pandemic is being managed in individual establishments, particularly with reference to persons being confined to their cells in accordance with the amended prison rules.

That has been a challenge, because we understand that the situation has varied from prison to prison. During the pandemic, prisoners in some smaller prisons such as Inverness have been able to have much more time outside the cells and engaged in purposeful activity than, for example, prisoners in Barlinnie, Edinburgh and Addiewell. In a number of respects, the commission has a concern that the way in which prisoners' rights are being restricted across the 15 prisons in Scotland is somewhat unclear.

I hope that that is helpful.

The Convener: It is helpful. On a practical level, given that public health advice for the general population is to take fresh air and wash regularly, it feels that prisons are not only restricting rights but perhaps exacerbating harm with some of those actions. That is concerning.

Dr Mitchell: Absolutely. A number of prisoners have been subject to de facto solitary confinement for periods of time—for a few prisoners, it has been for a couple of weeks. It cannot be good for people's physical or mental health not to be allowed to leave the room in which they are living, particularly given that the rooms often have a window that does not open.

Mary Fee: The update that you have given us on the situation in prisons has been useful. I convene the cross-party group in the Parliament on families affected by imprisonment and, although I am not standing in the election in May, I hope that the cross-party group will continue. It would be good if the cross-party group could invite you to one of its meetings in the next session of Parliament to talk about the work that you do with prisons and the prison population.

Members of the cross-party group have raised a couple of issues in relation to prison visiting. I do not know whether you have picked up on this as well, but there have been concerns about the availability of virtual visits and how those visits are planned and managed. Issues have been raised

about prisoners being able to maintain contact, particularly with young children. Prisoners' relationships with children are important, not only to them in prison but when they leave prison. There has been a fragmentation of the on-going relationship that prisoners can have with their family.

Another point that has been raised with me as a convener of the cross-party group is that there has been almost a lack of communication about the health and wellbeing of prisoners. There has not been on-going communication with families about what is happening in the prison and how the situation will develop.

Another issue that has been raised is that, where physical visits have been possible, given the situation with transport, some families have had great difficulty in visiting family members. There has been a lack of support for people to physically visit prisons.

I do not know whether the commission has also been made aware of those issues, but I would be keen to hear your comments on them.

Dr Mitchell: The commission has been aware of the issue of virtual visits and how many prisoners have been able to access those, as has Her Majesty's chief inspector of prisons. Figures are available on the number of opportunities that there have been for virtual visits across Scotland, but we do not know how many prisoners have been able to participate in one virtual visit, or two or more.

Again, the picture is incredibly unclear. Our understanding is that virtual visits cannot take place in an individual's cell; they have to take place in a designated facility in the prison. On account of the restricted regime, there are real challenges with prisoners being able to access slots and staff being available to undertake the necessary escorting of the prisoners to the virtual visit facility. Undoubtedly, there are people in prison who are very much missing the opportunity to engage with their family and friends.

The issue of transport for physical visits is a real challenge. There is a balance to be struck between the "stay at home" message in relation to protecting public health and undertaking essential journeys. My personal view is that it is essential that those in prison and their families have every opportunity to maintain family contact. We know that maintaining family contact is a positive in relation to reducing recidivism in the longer term among those who are currently in prison.

The Convener: We would probably want to note that, when we talk about prisoners not having contact, it is helpful to reverse that and say that children and young people face the hardship of not

having contact with their parents at what is a very difficult time for them anyway.

Alexander Stewart: At the beginning of the evidence session, Judith Robertson gave a good overview of what has been happening. She talked about how different disadvantaged groups of people have managed during the pandemic and the impact that it has had on them. We have already discussed the issue of decisions having to be made quickly to ensure that we keep pace with the spread of the pandemic and the difficulties that people have had to endure because of that.

On balance, has the Scottish Government undertaken sufficient equalities and human rights impact assessments of legislation and policy changes?

Judith Robertson: The term "on balance" is an interesting one. My honest answer to that is that, on balance, it has been patchy. There has been some good practice. Practice has improved and people have become more cognisant as we have gone through the process. In most of the key areas that we engaged in—actually, it was probably all of them—the response that we had was, at the very least, "We need to know about this and consider it more." As Alan Mitchell has referred to, there have been instances in which there has been a reluctance to provide data or to be transparent in the way that we require to do the work that we need or want to do, and that continues to be an issue.

On balance, I would not say that there has been a systematic, thorough and coherent equalities and human rights impact assessment of every decision that has been made in relation to the pandemic—I could not say that, to be honest. However, in broad terms, consideration has been given to human rights, although obviously more could be done. We are cognisant of the very tough choices that have to be made, as the First Minister has said pretty much every day.

In some respects, we are in exactly the kind of scenario that human rights were designed for. They were designed to enable people to weigh up the harms, to look at things from a responsible and legal perspective and to make decisions based on the law and on how human rights play out. Therefore, there is absolutely more to do, particularly when it comes to the engagement of people in vulnerable groups.

As we have understood more about the impacts of the pandemic, we have understood more about how black and minority ethnic communities and people with disabilities have been affected. We could have understood that earlier if we had asked questions of those individuals up front and built our processes on that.

My honest answer is that good work has happened and there is more to do.

Alexander Stewart: Thank you for that frank response. As you say, it is a balancing act between rights and responsibilities. Individuals and organisations need to be protected but, at the same time, they have rights in the process.

Dr Mitchell, in your role as a commissioner, have you been consulted? You talked about what is happening in the Scottish Prison Service, but are there gaps in other sectors that need to be looked at and lessons that need to be learned so that we encapsulate the issues and support individuals by ensuring that their rights are protected?

10:30

Dr Mitchell: The commission feels that, in relation to the rights of people in prison, it has been helpful that we have been able to have open dialogue with colleagues in the Scottish Prison Service and the Scottish Government.

You asked about broader questions and whether there are other lessons to be learned. On access to healthcare services during the Covid pandemic, much effort has been made in relation to the provision of services as they directly relate to people infected with Covid, and health boards across Scotland have had to reconfigure their services to become Covid responsive. Unfortunately, that has meant that a number of services have not been able to be provided for patients as they ordinarily would be.

Generally speaking, there has been a lack of engagement with patient groups and patients as to what their priorities might be. The health service has a focus on urgent care. What is urgent for one patient might not be wholly in keeping with what health providers and hospitals have categorised as urgent care.

The participation in the discussion on rights and access to rights has been more limited than it could and should have been. We have to do better at engaging. We need clearer and more open dialogue between duty bearers and rights holders. There needs to be a much clearer recognition that rights holders—citizens who have had their freedoms restricted and patients and older and younger people in care homes—can usefully engage in the conversations that need to take place on prioritisation.

Alexander Stewart: You have identified health as an area where some lessons need to be learned. One of the big issues that we have heard about for the general population has been the effect on mental health. We are dealing with that in the prison environment as well. Have there been

gaps in that sector in support for individuals who are incarcerated and in support for the families, which Mary Fee talked about? Are we ensuring that a support mechanism is there for individuals who have difficulties with their mental health?

Dr Mitchell: In each of Scotland's prisons, there are multidisciplinary mental health teams. Because of the ways of working since the start of the pandemic, by and large, there have been many fewer face-to-face interventions between staff generally, including healthcare staff, and individual prisoners and patients. Although in-cell resources can be made available, in relation to mental health and wellbeing, those resources can at times be no substitute for a face-to-face or in-person conversation and intervention.

In the health service generally, there has been a move towards remote consulting. That remote consulting and interaction has also been effected in a number of prisons. When we lock people in their rooms and cells for a longer period of time, that will inevitably lead to a deterioration in mental health and wellbeing.

The challenges with contact—through virtual visits and in-person visits—have caused people in prison to be worried about themselves and their families. Also, families outside are equally concerned about the health and wellbeing of their mums, dads, aunts, uncles, brothers and sisters in prison.

Mary Fee: Judith Robertson, can you give us an update on the work of the national task force on human rights leadership?

Judith Robertson: I certainly can. The SHRC is a member of the national task force, which is co-chaired by the former chair of the SHRC, Professor Alan Miller, and the Cabinet Secretary for Social Security and Older People, Shirley-Anne Somerville. We are nearing the end of our process. I say that with a smile because the work has been intense, particularly in the past three months. Some of the work of the task force had to be put on hold, as the real force of the pandemic was being felt right across Government and by the organisations that are participating in the task force. However, we are still on track to complete the report before the end of this parliamentary session.

The SHRC has been very much involved in supporting the understanding of economic, social and cultural rights and the right to a healthy environment, and looking at how those rights—and the rights under the additional treaties of the UN Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of all forms of Racial Discrimination and the UN Convention on

the Rights of Disabled People—can be incorporated into Scots law. That work is on-going.

We have had, given the pandemic, quite significant engagement across Scotland with civil society organisations. One of the benefits of remote operating is that you can speak to people in all corners of the country without having to travel or deal with other complications. That has been an upside. The downside is that people who do not have access to the technology find it much harder to engage. You have swings and roundabouts there.

We have had extensive public engagement on a range of issues in relation to the task force process and unpacking what the implications are of incorporating those treaties into Scots law. That has been a hugely positive process and has helped the task force to understand what is at stake and what is required. A key part of that has been what we have called the more public engagement—that is, engagement with rights holders, and specifically people for whom engaging in these conversations on a professional basis is not happening or is not an option. We worked with the Human Rights Consortium Scotland to develop a suite of materials of all our rights in law, to enable anybody to join the conversation about what those rights mean and how they will be better once they are realised in Scotland.

I do not think that it will come as a surprise to this committee that people not only want information about their rights—a core aspect of empowerment and the human rights framework is that there is a responsibility on duty bearers to give people information about their rights—but want to know that, when something goes wrong, they can access justice quickly, affordably and effectively and in a way that works for them. That is the biggest gap in Scotland, in my view. Our strategic priorities reflect that in that we recognise the access-to-justice gaps in the law in Scotland. The processes and means by which people access justice around their rights are very time consuming. Often, if something goes to court, it is very expensive. The process takes ages, and most people cannot do that. The reality is that people are not able to go through any kind of justice process.

Complaints mechanisms are robust. They are effective at that level but they are often not fully reflective of the human rights framework. They do not necessarily take people's human rights into account in an explicit way, so unpacking how we can make those rights more accessible to people has been a key topic in the task force.

Mary Fee: That was very helpful. Given the situation that we have been in over the past year, it is remarkable that that piece of work is on track

to be finished before the end of this parliamentary session. On the back of that, there are a couple of things that I want to ask you. How will you continue that work as we go forward? Given that we have been in a pandemic for the past year, what have you learned that you will build into your work going forward with regard to how we need to change and adapt to make sure that people can achieve their rights?

Judith Robertson: I will answer the second question first. It is a good question, and—I will be honest—I do not think that we have fully thought that through. What I can say—I do not know why I am saying this is a lesson, because I know it intrinsically—is that we have a constant sense that you get a much better answer to the question if you talk to people whose rights are affected. Therefore, we reach out and have that conversation, and we draw on that experience. We hear how people are, and—this is a personal comment but I know it applies across policy making—when that is heard, the response necessarily has to be completely different.

I know that the committee has been working on the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill. When you hear from stakeholders—children and young people, in the case of that legislation—whose rights are being affected by things, it changes the dynamic, your understanding and the outcome and the response. That continues to be a lesson that I learn, and I see other people learn it, not daily, sadly, but repeatedly. We need to keep factoring into our thinking ways of putting time, energy and resources into ensuring that participation is enabled, is meaningful and is influencing the outcome. That is important.

The answer to your first question, which concerned what we are going to do going forward, flows from that. What happens politically is not for me to comment on, but, from an SHRC perspective, I come back to our strategy. That is one of our key strategic priorities over this period. It is not just about the task force, because we know that, when you speak to people about their rights, the first things that they talk about are their economic and social rights, and, increasingly in this context, what is happening in relation to climate change and climate justice—obviously, those issues are raised when we are talking to young people, in particular, and we have been pleased to be part of the conversations around incorporating or bringing the rights of a healthy environment into that process.

We will continue to engage in whatever process comes after. That is important. It is important that the SHRC informs that process and is informed by it. We will also continue to work on that capacity building more broadly—capacity building within

civil society organisations and public authorities to ensure that, if this legislation is brought into law, they will know that they have to be able to factor all that understanding into their thinking and policy making, as was the case with the discussion around the CRC. Policy makers, duty bearers and public authorities in Scotland are genuinely waking up to that fact. A lot of what needs to be done is not new. That is the reality. However, in order to be competent and on top of these issues, they are going to have to do the work, understand what is at stake and bring that much more into their thinking and practice. It is part of the SHRC's role to support that happening. We are very conscious of that. However, we are also conscious that our capacity to do that is constrained very much by our size. That has also been part of the conversations around the resourcing of the SHRC and other organisations to do that work. That also needs to be factored into the process.

The Convener: For the benefit of the *Official Report*, I note that we have a message in the chat box from Alex Cole-Hamilton, saying that he has had to leave the meeting and will not be coming back.

The UK Government is reviewing the Human Rights Act 1998 at the moment. Will the SHRC submit a response to that review and be in a position to share some reflections with the committee on that?

10:45

Judith Robertson: Yes, we are submitting to the review from the perspective of the impact that the 1998 act has had in Scotland, as you would expect, but also from the perspective of the longstanding SHRC perspective that the act has been a key piece of legislation in terms of driving the change in relation to people's rights on the ground in communities.

Some of the conversation that we have just been having around prisons is underpinned by the 1998 act. It is an important piece of domestic law, and it helps people in the UK to enforce their rights. That is the key. That sense of bringing rights home is real and enables people to proactively engage domestically around their rights.

Again—this is relevant to what I was just saying about economic and social rights—people's sense of being able to access their rights or get access to justice if their rights are infringed is acute, and it applies just as much to civil and political rights as it does to economic and social rights. That is an important aspect.

The reality is that people in Scotland want to see rights strengthened. That is partly why we are engaging in the task force process. Around the

world, the Human Rights Act 1998 is hailed as a positive piece of domestic legislation in terms of incorporating rights. We do not think that it requires to be changed. It is a good piece of legislation and delivers in various ways. We will publish our submission. It is not finalised yet, but it will have a much more detailed analysis of the legal implications.

The Convener: Your strategic plan talks of working with the Scottish Parliament to help the Parliament to become a guarantor of human rights. Looking forward to the next session, how do you see that working? What can the next Parliament do more of or do better?

Judith Robertson: Thank you for asking that great question. In the course of this session, this committee has pursued a full inquiry into that process and produced a full report on it. Much of that work stands and it is still relevant. I will give you a brief update as to where some of that is from the SHRC's perspective.

What I would hope to see from the next session of parliament is the human rights component of the Equality and Human Rights Committee remaining alive and well and being resourced so that that explicit statement of human rights remains within the committee structure and is taken into the next session. That is one key thing from my perspective. That has been advantageous within the Parliament, and it has driven an increase in understanding of the necessity to engage with human rights.

More needs to be done, and one of the things that we have been piloting is training work with MSPs—some committee members, or previous members, would have been part of that. I cannot remember the exact number of MSPs who participated, but we had a schedule of three training sessions on different aspects of the human rights framework, which were orientated directly to training MSPs on what they have to contend with as they draw up legislation and deal with constituency issues.

We managed to have only two of those sessions before the pandemic hit, and then it became impossible to do the third one. That project involved piloting bespoke training for MSPs that could potentially be rolled out as part of the induction process for new MSPs. That is still the plan, and we are in early discussions with Parliament about how we can do that in the next session. My understanding is that, because of the pandemic and remote working, there are some challenges around that and that the induction training for new MSPs is being modified or tailored to the circumstances. That is completely understandable, but we are very much in the frame in relation to ensuring that new MSPs get that induction into the rights framework and an

increased understanding of the issues, so that they come to the role with that perspective.

There is still an on-going challenge in working with existing MSPs. Obviously, we will not know until the election how many MSPs are new and how many are returning, but we are keen to enable that training to happen with everybody as much as we can. In as much as our citizens want to know their rights, we are very much aware that MSPs have a huge responsibility in discharging that.

As there is more engagement around the key rights issues, such as the incorporation of the UN Convention on the Rights of the Child, awareness and understanding of rights grows. We have been heavily involved in taking forward work on historical abuse and providing financial redress for survivors of historical abuse. That is very much built on the human rights framework, on what access to remedy looks like and on what fair remedy looks like from a human rights perspective, as well as on enabling survivors to have their space within that discussion meaningfully, allowing that to guide the process. As that has happened, I have seen people's understanding of people's rights grow.

Capacity building among MSPs is an important part of that, and, if the Parliament embarks on a process of incorporating a large number of treaties, that will bring about increased capacity building. However, it will also require a recognition that dedicated, specific and expert resources need to be put into that from a parliamentary perspective. That was one of the recommendations of the committee's report, and it remains outstanding.

The Convener: Alan Mitchell, I am conscious that you did not get a chance to come in there. Do you have anything to add on either the Human Rights Act 1998 or what more the Parliament can do as a guarantor, or are you content?

Dr Mitchell: I am content. What the SHRC is keen to see in relation to the review of the 1998 act is that there be no regression. The act has been a positive force, and we should continue going in that direction.

The Convener: Thank you. That is helpful.

We will now go to Alison Harris, who has been waiting very patiently.

Alison Harris: My computer has just gone off. That is sod's law. I am sorry about that.

The Convener: That is okay.

Alison Harris: This is not going well, convener. I am sorry, but I do not know what has happened.

The Convener: Would it be helpful if I picked up the issue that you were going to ask about?

Alison Harris: Would you mind? My question is about budgeting. Actually, I can ask it now. I am sorry about that.

The committee has made calls in this session for the development of human rights budgeting. The recent "Equality and Fairer Scotland Budget Statement 2021-22" outlined 10 key risks to progressing national outcomes as a result of the Covid-19 pandemic and the EU exit, and it considered how policy and activity funded by the budget will respond to those challenges. Do you support that approach? Is the Scottish Government making progress in equality and human rights budgeting? I think that Judith Robertson mentioned budgeting earlier, but I would like to expand on the issue.

The Convener: Does Judith Robertson have any more remarks to make on equality and human rights budgeting?

Judith Robertson: Yes—inevitably, I do. There is a lot of work to do in that area. That is not to say that I do not think that work has been done; I think that work has been done. The Scottish Human Rights Commission is now represented on the equality budget advisory group, which is one of the reasons why members will see increased referencing of human rights in the equality statement relating to the budget. The key point is that that cannot stay in the equality statement. The narrative around human rights and responding to human rights obligations from a budgetary perspective are a key part of the Parliament being the guarantor at one level and the Government fulfilling its state obligations to the treaties that it has signed up to.

Some work has happened. We have engaged quite extensively with some of the finance teams, particularly through the equality budget advisory group on the human rights conversation and what the implications are of bringing human rights into the budget process as it pans out. Some members will be aware of a report that we produced on the open budget initiative, which analyses budget processes. That is done at a state level, and, in our case, the UK is the state. The commission worked with a team of others to look at how Scotland does the process using the same measurements as the global open budget initiative uses.

It was fortunate on one level that, when we started that work, the year that we were able to use was prior to the recommendations that had come out of the Parliament's own review of the budget process, all of which referenced the need for more participation and a wider ability to scrutinise from all committee perspectives. There was a whole unpacking of how the budget process could be improved. That remains relevant, important from a human rights perspective and

apposite in terms of the changes that we would want to see.

The real gift or prize is what happens upstream of the budget. The conversation that takes place in the policy rooms and the decision making on what the money will be spent on have the biggest impact on human rights. The policy analysis up front requires human rights to be built into it. If a decision is being made about social security payments, for example, and the scope of the budget in relation to them, that needs to be made with a fundamental human rights analysis in play, on the table in the room. It is about really understanding issues that we have described in relation to prisons with all the data, as well as the data being able to inform decision making on who is most vulnerable and who is most effective. Do we know the answers to the questions of who is winning and who is losing out in those dynamics? We know that women lose more out of social security processes and that children do not benefit in key ways. Are we factoring that knowledge into our decision making? That policy bit up front has the biggest chance of influencing how we proceed.

The other key question is: are we able to follow the money? Do we know what happens to the money? That is one of the real challenges that the commission has found, and it is not just the commission that has found that challenge. We have seen other organisations, such as the Poverty and Inequality Commission, picking up those tools and using them in their own processes. We need to scrutinise how we look at child poverty targets, for example, and how we track how the money is being spent. Frankly, that is almost impossible—if not impossible—at the moment. Transparency that enables that analysis has to be a key part of how we see that work unpacking.

There is a lot in that. It is a marathon, not a sprint in this particular area, and it will take time for all of that to unfold. Things are there, but they could be strengthened. There can be a commitment to embracing that approach so that the committee, for example, is able to track what we are spending and what we need to spend in order to achieve the outcomes that we want to achieve from a human rights perspective.

11:00

The Convener: Thank you. That is helpful.

Alison Harris: I found that very interesting. Obviously, the tracking of the money is absolutely essential to measuring the outcomes. If people are not able to do that, that is very worrying. Judith Robertson's comments are very helpful.

The Convener: No other member has indicated that they wish to speak, so that concludes our evidence session. I thank the chair of the Scottish

Human Rights Commission, Judith Robertson, and the commissioner, Dr Alan Mitchell. The session has been full and informative. We appreciate your time and all the work that you are doing.

That concludes the public part of our meeting. The committee will next meet on 4 March, when we will take evidence from the Minister for Older People and Equalities. A debate on international women's day 2021 is also currently scheduled for that date.

The committee will now move over to Microsoft Teams for agenda items 3 and 4.

11:01

Meeting continued in private until 11:24.

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