



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Equalities, Human Rights and Civil Justice Committee

Tuesday 7 June 2022

Session 6



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**EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE
17th Meeting 2022, Session 6**

CONVENER

*Joe FitzPatrick (Dundee City West) (SNP)

DEPUTY CONVENER

*Maggie Chapman (North East Scotland) (Green)

COMMITTEE MEMBERS

*Karen Adam (Banffshire and Buchan Coast) (SNP)

*Pam Duncan-Glancy (Glasgow) (Lab)

*Pam Gosal (West Scotland) (Con)

*Rachael Hamilton (Etrick, Roxburgh and Berwickshire) (Con)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Dr Kevin Guyan (University of Glasgow)

The Rev Karen Hendry (Church of Scotland)

Anthony Horan (Catholic Parliamentary Office of the Bishops Conference of Scotland)

James Kerr (Scottish Prison Service)

Paul Lowe (National Records of Scotland)

Chris Ringland (Evangelical Alliance)

Robert Strachan (Scottish Prison Service)

Fraser Sutherland (Humanist Society Scotland)

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Equalities, Human Rights and Civil Justice Committee

Tuesday 7 June 2022

[The Convener opened the meeting at 10:00]

Gender Recognition Reform (Scotland) Bill: Stage 1

The Convener (Joe FitzPatrick): Good morning, and welcome to the 17th meeting in 2022 of the Equalities, Human Rights and Civil Justice Committee. We have received no apologies.

Item 1 is for the committee to continue to take evidence on the Gender Recognition Reform (Scotland) Bill. I welcome our first panel of witnesses to the meeting. Paul Lowe, registrar general for Scotland and keeper of the records of Scotland at the National Records of Scotland is joining us virtually. James Kerr, deputy chief executive, and Robert Strachan, head of strategy and improvement, are both from the Scottish Prison Service. Dr Kevin Guyan is from the University of Glasgow.

I refer members to papers 1 and 2, and I ask our witnesses to make some short opening statements, starting with Paul Lowe.

Paul Lowe (National Records of Scotland): Good morning, convener, and thank you for the invitation to the meeting. I will keep my remarks brief.

My role as registrar general will be to implement the elements of the proposed legislation as they relate to my functions and the functions of NRS. NRS has a long tradition of dealing with similar life matters since the introduction of civil registration in 1855. We administer the registration systems for births, deaths and marriages along with adoption and, more recently, the regime for civil partnerships. We have broad experience of dealing with the different sensitivities and importance of those life events, so my role will be to execute the will of the Parliament and the terms of the legislation as it is passed.

I am happy to take any questions.

James Kerr (Scottish Prison Service): I start by thanking the committee for the invitation to attend today's meeting.

I see today's meeting as an opportunity to reaffirm the Scottish Prison Service's commitments: to creating a culture in which equality of opportunity, diversity and human rights

are actively valued and promoted, and in which discrimination is not tolerated; to being clear about our commitment to progressing, protecting and promoting the rights of all the people who we care for in Scotland's prisons; to illustrating that our individualised risk assessment approach to the placement and management of those who are in our care does not conflict with our continuing strong commitment to advancing equality and protecting the rights of all, and that it is consistent with our wider commitment to the health, safety and wellbeing of the people who live and work in Scottish prisons; and to updating the committee on the SPS policy review that is currently under way, and the constructive engagement that has taken place so far with a range of stakeholders across communities of identity and interest, including staff and service users.

Convener and committee members, the Scottish Prison Service is a rights-based public service. We play a distinct role in Scottish society and we take extremely seriously not just safety and security but public protection, supporting wellbeing, rehabilitation and reintegration. We know that we must play that role in a way that protects the rights of the individual and the rights of those around them.

The individualised way in which we place, manage and care for transgender people is an example of how we protect the rights of the individual and those of others. Moreover, we do so in a way that does not conflate the management of risk with gender identity.

The Convener: Next is Dr Guyan, and I apologise for mispronouncing your surname earlier.

Dr Kevin Guyan (University of Glasgow): Decisions made about who to count, what to count and how to count are not value neutral. They bring to life a certain vision of the world around us. Data should reflect the vibrancy, messiness and ups and downs of our experience, but it should not define who we are or how we live our lives.

I thank the committee for the invitation to present evidence. I will focus my contribution on aspects of the bill relating to the collection, analysis and use of data as it reflects my expertise as a researcher, particularly in relation to LGBTQ data in Scotland.

The vast majority of data collection exercises across Scotland's public, private and voluntary sectors do not currently ask questions about an individual's legal sex. In other words, and in plain English, how someone answers a sex question in a survey or other data collection exercise is not contingent on whether that individual has a gender recognition certificate.

Ahead of today's evidence session, I reviewed major data collection activities that involve the capture of information about sex, including quantitative social research, reporting requirements for the public sector equality duty in the Equality Act 2010, gender pay gap reporting, crime and police records and census data. All those data collection activities follow a self-identification approach that acknowledges that individuals are best placed to describe themselves.

There is nothing radical about a self-identification approach to data. Such an approach is the status quo in social research and is used for questions on race, religion, sexual orientation and disability.

The people who are opposed to the bill and who are working to delay its passage through the Parliament cite concerns about data collection or the lack of existing data. I have witnessed, through my work, how demands for more and more data can operate as a mechanism to stall meaningful action. The mention of data can obscure the topic under discussion and give credence to abstract concerns about policy making and the law. Contrary to claims that we need more data, I believe that we are drowning in data, which demonstrates the need for reform.

The proposal for a self-declaration system is not untested. Such an approach is happening today in many countries around the world and has been happening for the past 10 years.

Although my work focuses on data, we must not lose sight of the people behind the numbers. It is vital that we design data collection tools that are robust and inclusive, engaging as many people as possible.

I reiterate that data collection activities in Scotland do not currently ask individuals to share information about the sex that is recorded on their birth certificate or GRC. With that fundamental point in mind, we see that the bill will not impact the collection, analysis and presentation of data.

The Convener: Thank you very much. We will move on to questions.

Maggie Chapman (North East Scotland) (Green): Good morning, panel. Thank you for joining us and for your opening remarks.

My first question is for Paul Lowe and is about the processing and assessing of applications for GRCs. Can you outline how you would go about that? Would it merely be about accepting the statutory declaration at face value? What checks and balances do you envisage having in place?

Paul Lowe: The bill is founded on the principle of the legal declaration and there being a legal sanction if a person deliberately makes a

fraudulent application. We will design application processes and systems, and ways of confirming the information that is passed to us, but it is not our role—unless there is evidence to the contrary—to contradict people who satisfy the legislation in making declarations to us.

If I am concerned—or if my staff or others are concerned—about an application that has been made, the bill envisages procedures for escalation to the sheriff court. That will be an important additional protection, which we would certainly be open to using if we had any concerns.

Maggie Chapman: Thanks for that.

Conditions will need to be satisfied for any GRC application and you will then be required to give information as to the effect of the GRC, as per section 3 of the bill. Have you determined what that information will include and what you will be looking for?

Paul Lowe: Not at this stage. We recognise that the bill is at stage 1 and is liable to undergo some changes. We will design our processes, procedures and information to ensure that they are compatible with the act that the Parliament passes. We have started preliminary work to look at the issues, but I would not say that we have a concluded point on that yet.

Maggie Chapman: Okay. Do you anticipate that you will determine what to include once the bill is at stage 3? In any process, will you seek clarification around, for example, any evidence that is required?

Paul Lowe: Thanks for clarifying that. We are working very closely with the Scottish Government and the policy teams that are devising that, and there is regular dialogue between our teams about the practicalities of the system in relation to the policy and the legislation. There is the potential to provide for regulations that are made by me to add further detail, if required. It is about us keeping in touch as the legislation develops and evolving those issues as we go along. At this stage, it would be premature to say, "Here is a definitive set of guidance or information that we would issue".

Maggie Chapman: Thank you; that is helpful.

Pam Duncan-Glancy (Glasgow) (Lab): Good morning to the panel and thank you for your opening statements, which I found really helpful.

My first question is also for Paul. Will you set out what the effect of a statutory declaration is and give other examples of how they are used in Scotland today?

Paul Lowe: Statutory declarations are used for a range of application procedures. For example, when people marry, they make statutory

declarations, and when people apply for benefits or a range of other services, they make a statutory declaration about their circumstances and the accuracy of that declaration. As currently drafted, the bill anticipates there being legal sanctions for people who make fraudulent declarations in a statutory declaration in this procedure.

Pam Duncan-Glancy: On that point, is there a need for the bill to include that offence, or is it already an offence under other legislation? Do you understand why it is included in the bill?

Paul Lowe: I think that there are general principles of criminal law around fraud but, in my experience, it is not uncommon for there to be specific criminal sanctions in founding legislation in relation to applications, whether for marriage or in other aspects of life. I do not see the inclusion of the offence in the legislation as unusual. People make false declarations in relation to marriage and other serious matters. In my view, it feels relevant and is proportionate to what we see in other legislation.

Pam Duncan-Glancy: On your point about regulations, what support and guidance would you be able to offer people who apply for a gender recognition certificate? Have you had any conversations with the Government around the guidance that is mentioned in the bill? In particular, what additional support would you be able to offer to 16 and 17-year-olds?

Paul Lowe: It is important that we separate out two sources of advice and guidance. There is the advice and guidance to somebody who is taking decisions as to whether they will apply for a gender recognition certificate and change their sex through that, and then there is the advice that is provided to somebody who is dealing with the process of applying for the certificate. My role is not to replace the current medical panel; it is to establish an administrative system to allow people to apply for a gender recognition certificate.

The function of my organisation is to provide advice to people about the process and to support them in making the application. It is not for us to provide advice and support about how they make important personal life decisions. We anticipate that there will be organisations out there that will be capable of providing personal support and advice to people who are struggling or who want additional information on those elements, which is the nature of the conversations that we are having with the Scottish Government at the moment.

If somebody applies to my organisation, I see it as entirely compatible that our website would provide, through correspondence and various other routes, information about groups that they can access for advice on the broader issues of changing their sex. In addition, my organisation

would provide information about how the process works, what is required and what the consequence is of applying for and achieving a gender recognition certificate.

The core offer from us will be about the process, how it works and the consequences of it and then there is a broader support wrapper, which is about accessing support and advice on the broader decision making for the individual and what it means. NRS's role in that broader support will be in signposting and linking people to it. It would be difficult if we were to try to cover both of those because, ultimately, we are there to make independent decisions about applications, not to steer individuals in their personal decision making.

10:15

We are conscious of the sensitivity of the issue in relation to 16 and 17-year-olds. We propose to offer phone and, potentially, face-to-face conversations with them. Those conversations would not be investigatory but of a support nature. They would be optional—the individual would not need to take the offer up—but, as a matter of course, we would make contact and offer that as part of the process.

I hope that that helps.

Pam Duncan-Glancy: Yes, it is very helpful. At what point would you signpost people to the organisations that would provide the broader support? What kind of organisations are they?

You mentioned that you would give information on the consequences of applying for a gender recognition certificate and changing sex. What do you expect that advice to look like?

Paul Lowe: On your first point, there is still scope and need for conversations about what the organisations would be and how that support would be accessed. We continue to discuss that with the Scottish Government.

On your latter point, people need to understand the legal consequences of being given a gender recognition certificate. That is predominantly where I am coming from.

In the current process, under the medical panel, NRS registers in our gender recognition register decisions taken by the gender recognition panel. We hold a register of people who have applied for and achieved GRCs through the current process. As part of that, as the organisation that is responsible for births and adoption registration, we engage with those individuals and provide them with an outline of the new birth certificate or adoption extract certificate as part of showing them what it would look like and what it would involve before they are formally issued with it.

I envisage that there will be some engagement with individuals on their understanding of what achieving a GRC means legally, what it means in relation to their birth or adoption certificate and how that information will be recorded.

Karen Adam (Banffshire and Buchan Coast) (SNP): Good morning, Paul. Does your organisation have a process for feedback from people who are applying for a GRC? If you do, is there anything that you can tell us about it?

Paul Lowe: I am sorry, was that a question for me?

Karen Adam: Yes.

Paul Lowe: Thanks. We engage with the current medical panel and other registrars general across the United Kingdom on those matters. It is hard to take feedback at every stage of the process because we are receiving an outcome—a decision that the panel has already taken after its consideration. Our involvement in the process is more about recording that decision in the Scottish register and liaising with the individuals in relation to their revised birth or adoption certificates.

I do not have any specific, unique insights from NRS on the process, based on where we sit at the moment. I know that the committee has received various pieces of evidence and views from different groups on that. I recognise and understand those views but we do not have anything new or additional to them or any significant feedback that we get through our present process.

Karen Adam: Although I know that it is operational, I will ask a question about staff training. With the process of obtaining a GRC potentially becoming easier for people, you might have more people coming forward and more work to deal with. Are your staff trained and able to have appropriate communications with people?

Paul Lowe: That is a very important question. Obviously, there is no hard formula for how many applications will result from the bill. I know that the Scottish Government has done some modelling and anticipates somewhere in the order of maybe 250 or 300 per year, based on international experience. We will need to see, but at the moment we are basing our assumptions on those numbers. We will appoint a small additional team of probably three to four people who will handle those applications, but we will need to keep track of the volumes over time.

Those individuals will receive training and support, but that will sit within a broader picture of the type of advice and support that we have to provide to a range of people. A relevant example is in relation to adoptions. We hold the sealed court records and decisions for adopted people in

Scotland and we have in place an adoptions team. Individuals come to see us and we are opening court decision papers for the first time and that individual is seeing them for the first time. In that scenario, we have a private space, people can bring somebody to support them, and the staff are also trained to provide that support; obviously, it can be a very emotive and difficult topic for those individuals. We also signpost people to other sources of advice such as Birthlink and various other organisations. We therefore have staff who are familiar with dealing with those sorts of issues.

We also have people who change their name, which can be an important and significant event in life, and we provide them with support and advice around that. We also undertake the registration of belief body celebrants and new belief bodies, and we have to provide advice and support to them in those circumstances.

We therefore have staff in that kind of registration space who undertake a broad range of duties, including dealing with local authority registrars and with people going through the registration process. Although this is new, there are close parallels to other things that we already do.

The Convener: I wish to let the witnesses know that we are grouping our questions; it is not that all the questions are for Paul Lowe. However, I will take a final supplementary question for Paul from Pam Duncan-Glancy.

Pam Duncan-Glancy: Yes, we will come to the other witnesses shortly.

I should have asked this when I had my turn a minute ago, but the question has just occurred to me, so forgive me for going back to what I already asked about.

Do you expect the information that you give out on the consequences of a gender recognition certificate to change significantly if the legislation is passed, or would it continue to be the same kind of information that you give out on the effect of a GRC now?

Paul Lowe: At present, we do not have that role. The medical panel or committee takes the decision. NRS does not provide information to individuals going through the gender recognition process at the moment. We receive the decision from the panel when it has decided either to agree or to refuse an application. We then register that on our gender recognition register and work with the individual in relation to their birth certificate. We therefore come in very much at the end of the current process. It would be for the panel and the current United Kingdom application process to point out the legislation and the importance and significance of those events. We do not do that at the moment, and we would need to build that area

into the new process. Obviously, it is important for people to understand the importance of the declaration that they are signing and, indeed, the potential sanctions that might exist if they were to make fraudulent declarations in their application.

The Convener: Rachael Hamilton has a further supplementary.

Rachael Hamilton (Etrick, Roxburgh and Berwickshire) (Con): I have a very small question for Mr Lowe. Can you clarify whether the GRC issued to anyone born in Scotland and aged 16 or over will also be available to anyone born here, but who now lives in other parts of the UK?

Paul Lowe: I guess that there are two possible elements to that question. On whether the GRC will be accessible to others, the answer is no, because the gender recognition register is confidential. In its current form, the legislation places an obligation on me to make registrars general for England and Wales and Northern Ireland aware of these activities. Indeed, we engage with our counterparts on a range of different registration activities, so this sort of thing is not particularly new, but we will need to build a process to ensure that that information flows to the registrars general in the other parts of the UK.

Rachael Hamilton: Would the same system apply if someone in, say, an English prison applied for the GRC?

Paul Lowe: If I recall the legislation correctly, our responsibility for making the registrars general of England and Wales and Northern Ireland aware of these things arises when the person in question is from England, Wales or Northern Ireland or is ordinarily resident there but has applied in Scotland.

Rachael Hamilton: Thank you.

The Convener: Pam Gosal has questions about the Prison Service.

Pam Gosal (West Scotland) (Con): Good morning, panel, and thank you for your opening statements.

A freedom of information request has revealed that, as of 3 December 2021, 11 trans women were being held in the Scottish Prison Service and more than half were housed in the female estate. Why are the others not being housed in the female estate? Do they not have a GRC?

James Kerr: Thank you very much for that question. I can give you updated figures: as of 31 March, there were 16 transgender people in custody.

The crux of my response is that, in our gender identity and gender reassignment policy, we take an individualised approach—in other words, things are taken on a case-by-case basis. As members

will be aware, the divulging of a GRC is completely voluntary. Although we would ask people the question, they are under no obligation to share that information with us.

As for why people are placed where they are placed, that is based on a consideration of a range of issues, one of which would be the GRC, if declared. Other issues would include the wishes and welfare of the person concerned; a consideration of those who might live around them; the placing of the person in the prison estate—by which I mean not just the prison but the hall or residential setting—and the appropriateness or not of cell sharing; and their access to services in prison. All those issues determine where someone is held.

I can say that, currently, 75 per cent of transgender males are held in the female estate and 25 per cent in the male estate, while with transgender women, the split is 50:50—in other words, 50 per cent are held in the female estate and 50 per cent in the male estate. Again, that will reflect the individualised, case conference approach to those people and their journey through custody.

Pam Gosal: You said that one of the things that you take into consideration is declaration of a GRC. We know that the Scottish Prison Service's gender identity and gender reassignment policy is currently under review and might well be revised to give priority status, as it were, to GRC holders. Those opposed to the bill believe that the removal of the medical diagnosis of gender dysphoria will make it significantly easier for prisoners to obtain a GRC, which means that the number of those who have a GRC and are therefore entitled to be held in the women's estate will likely rise.

Let me be clear: this is about creating a balance between transgender-related rights and the safety and wellbeing of the female prison population and their protection from bad-faith actors. This is about being fair to all. Do you think that a fair way of reassuring female prisoners would be for the bill to be amended to ensure that the GRC is not effective in prison allocations?

James Kerr: Members will be aware that it is not for the Scottish Prison Service to comment on whether exemptions should be applied under the bill. However, for most people, getting a GRC is a significant life event. Given that we adopt a multidisciplinary, open, case conference approach, which achieves its ends best when we have full engagement from the person concerned, providing recognition of a declared GRC status would ensure that we do that.

10:30

We currently do not see there being a major impact for us. I gave the numbers: 16 people compared with 7,409, which I think was the prison population when we unlocked this morning. This year, I anticipate that in the region of or possibly in excess of 15,000 people will travel through our prisons. Even if there were an increase of people who asked for support in relation to transgender issues, we do not see that as having a large operational impact for us.

Pam Gosal: Is the Prison Service ready to provide that support if the increase happens?

James Kerr: We are ready to respond if there is an increase in the number of people who have a GRC status in the prison setting.

Pam Gosal: I have one more follow-up question. You said that a GRC, if declared, would be a consideration. Would you take other things into account alongside that, or would you just look at the GRC?

James Kerr: GRC is one, albeit important, element of our consideration. Broadly speaking, we consider the wishes and welfare of the person concerned, whether they have a GRC or a social gender issue. We consider where they want to be located. Part of the consideration is the welfare of other people in that location, whether they are men or women and whether it is the male or female estate. Part of it is about access to services, and part of it is about cell sharing and whether single-cell occupancy would be required or the person would share with somebody who might be seen as a support and not a threat. Our wish is that we can have correlation between the wellbeing of others, the wishes and welfare of the person concerned, and good order and access to services in the prison. Where that is not possible, we narrate a defensible decision around the best information, covering a range of issues, that we have available at that point.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good morning. We took a lot of evidence last week on the issue of prisons in relation to the bill. I give credit to the clerks that you are here at the right time for us to follow up on what we heard last week, and I will follow on from my colleague Pam Gosal's line of questioning on one of the concerns that we heard. The whole purpose of the GRC is, of course, to make the process easier. This is a theoretical question and might be difficult to answer fully, but, based on your experience in the Prison Service, do you think that more people in the prison population will seek a GRC if the bill is passed?

James Kerr: It is difficult to predict the impact or outcome of the bill if it becomes an act. However, as I said, my assessment is that we will not be

dealing with large numbers and we are confident that, under our current policy and our revised policy—at this time, we anticipate that we will still take an individualised, multidisciplinary, case conference approach—we will be able to respond to any increase.

Fulton MacGregor: As well as the potential for an increase in applications for GRCs, it is about bad-faith actors: people applying for a GRC to increase the likelihood of their being moved to another prison setting from the one that they are in, for untoward reasons. Are the policies and procedures that you have in place now robust enough to deal with that scenario? I believe that a witness last week said that it is not likely to occur often, but it could occur, and we need to be aware of that. Are your procedures able to deal with that scenario even if the bill is passed?

James Kerr: It is difficult to give an absolute answer to that. Applying risk assessments in relation to how we care for and manage people in custody is a well-trodden path for the Scottish Prison Service, so there is good experience and expertise across the range of professions that make those decisions.

Might people try to use a GRC for nefarious purposes? Yes, that is possible, but the GRC is only one aspect of the consideration that we would give to the care and placement of that individual in custody. I am confident and we anticipate that the outcome of the review will be that our individualised, multidisciplinary, open, case conference risk assessment approach will still be able to respond to that.

I add that, as committee members will be aware, risk assessment is not an exact science; it is a judgment call that is based on the information and facts that are available to us at the time. As I said at the start of my answer, applying those risk assessments is a well-trodden path for the SPS, and we use a number of factors in placing and managing people in prison.

Fulton MacGregor: I have a final question, if that is all right, convener. We spoke about the current policies in the Prison Service, and it was good and reassuring to hear those. It was also helpful to hear the up-to-date position. Will the bill have an impact on how you will manage the situation for people with a GRC and, if so, what will that impact be? Are you confident in being able to manage that?

James Kerr: We do not think that there will be any major impact on our response and approach to supporting transgender people through custody. There may be a slight increase in numbers as a consequence of that but, as I said, we are confident that we can provide a response.

Maggie Chapman: I will follow-up on a couple of things that witnesses have said. It might be appropriate for Robert Strachan to come in here, but that is up to you. James Kerr mentioned that the gender identity and gender reassignment policy is up for review; can you explain that? Has the periodic cycle of reviews led to the current review, or have issues or concerns triggered that at this time? I will come back in on something else related to that, but could you start with that question?

Robert Strachan (Scottish Prison Service): The review was undertaken for a range of reasons. It was paused due to Covid and recommenced in spring last year. We went through a meticulous process to design the review, because we knew that the process was going to be as important as the content. We went through all the methodology design and who we were going to engage with, and we commenced engagement with service users and staff in December. Committee members will be aware that we wrote to the committee to alert you to the review kicking off.

We are currently going through the engagement and evidence stage of the review, so we are not yet at the analysis and recommendations stage of the review. There will be some questions that we will not be able to answer today about the review, because we have not conducted the analysis.

I reassure the committee that the extent of the engagement has included and learned the lessons from the previous review about the equalities impact assessment that was conducted at that time, in that we are engaging with staff, service users and stakeholders across a range of communities of interest and identity. I cannot give you detail on the feedback from the review, but if the committee will permit me, I could give you some observations on what we have.

First, the spirit of the review has been very positive. It is interesting to see what happens online, although I try to avoid it, but when you speak to people face to face, their humanity tends to take over. It has been a positive and engaging review. Across all communities of interest and identity, everybody we have engaged with has been very constructive.

Secondly, we continually need to improve the transparency and communications on this issue, not just as a Prison Service but as a public body. Therefore, as part of our wider reporting on equalities and human rights, we have taken steps to produce quarterly data reporting on the transgender population. I am happy to share that with the committee, if members would like me to do so. Our role is to try and explain the reality of what is happening with transgender people in our care.

Thirdly, there have been some convergence points across the review. Everybody we have spoken to so far wants people's rights respected. They want risks to be managed effectively and they want needs to be met. Therefore, in some ways, the divergence points tend to come when we look at how we achieve those things, rather than at what we want to achieve. We are considering that as part of the review process.

Maggie Chapman: That is very helpful. I completely understand that you cannot go into the analysis of recommendations, because you are not yet at that stage.

When the review was kicked off, paused and restarted, was there any sense that there needed to be a radical change to a multidisciplinary, holistic risk assessment process as part of the policy, or was the review just looking at how things could be better generally?

Robert Strachan: We are a learning organisation, so we are always looking to see whether we can do things better. We have to do that, because we have a serious role to play in Scotland and we take it very seriously. Therefore, it is incumbent on us to keep learning and improving. The policy review seeks to identify whether we can do that work in a better way and in a way that is consistent with our obligations as a public body, as an executive agency of the Scottish Government and as a prison system. Essentially, that is what we are trying to do. Lessons, which are well documented, were learned from the previous policy development in 2014. For example, we have recognised that the equality impact assessment in 2014 did not go far enough. We need to make sure that we conduct the assessment properly in this review, so we have mainstreamed it into the review and we are not leaving it until the end. We are encouraging that conversation about equalities and human rights as part of our engagement, so that we can recognise the full impacts and look at how those impacts can be mitigated.

Maggie Chapman: Finally, do you see any potential issue if there is divergence between how the Scottish Prison Service deals with GRCs—and gender reassignment more generally—and how things happen elsewhere in the UK? Given the changes that have happened south of the border, if divergence happens, do you see any problems?

Robert Strachan: We have been engaging with other prison services as part of the review and we have also looked at international experiences to see what we can learn from other prison services. We are keen to learn and make sure that we understand the evidence and can apply anything that would work better than the individualised case management approach.

We are looking to use all the evidence from our feedback from stakeholders, service users and staff, along with the wider evidence base, to assess what those policy options are. We will happily give the committee an update on that once we have completed that policy assessment exercise. However, if we discover a more effective way of keeping people safe, meeting our obligations as a public body, managing risk and meeting the needs of people, that is what we will look to do.

Maggie Chapman: Great; thank you.

Pam Duncan-Glancy: My questions follow on from those of my colleagues Maggie Chapman, Fulton MacGregor and Karen Adam. Can you tell us how many people have requested a gender recognition certificate while in your care? Has that happened?

Robert Strachan: I do not have those figures with me today. I would be happy to share them with the committee in writing.

10:45

Pam Duncan-Glancy: Thank you. Can people who are currently in your care make statutory declarations?

Robert Strachan: Do you mean in relation to the GRC?

Pam Duncan-Glancy: I am asking about any statutory declaration. Are there any restrictions around people's ability to make a statutory declaration while they are in prison?

James Kerr: Can we check that and come back to you? We can provide that information in writing, too.

Pam Duncan-Glancy: Thank you. I am not being deliberately difficult. I am keen to understand the likelihood of someone being in prison and choosing that moment to make a declaration.

James Kerr: My desired answer would be to say that no one's statutory rights and entitlements should be impacted on directly as a consequence of being imprisoned. However, we will check that and provide the committee with a written response after the meeting.

Pam Duncan-Glancy: I would appreciate that. We know that you are currently reviewing the policy. Thank you for setting that out in such detail.

Throughout the course of our evidence, but last week in particular, we have heard about some undesirable circumstances that have arisen in prisons elsewhere in the UK. Are you able to say why that has happened elsewhere? We have not heard that there are similar circumstances in

Scotland. If there are, it would be good to hear about those. Why is the position in the Ministry of Justice different from what is happening in Scotland just now?

Robert Strachan: I do not know whether I can answer that. We are looking at all the evidence in as much detail as we can to see what learning is available across different prison systems, including from colleagues south of the border. Their approach is different from the way in which we work. We respect gender identity for people in our care. However, we also have to ensure that we are managing risks, meeting needs and understanding the available information and evidence to help us to do that.

Potentially, there is learning that we might gather from south of the border and other prison services. For example, I know that, south of the border, they have a dedicated wing for transgender people in the women's estate. We do not have that type of approach. We need to look at such examples and assess whether that approach would fulfil our policy intent in a better way than our current approach. That is likely to be one of the options that we will consider as part of the policy review.

We have to do it in a way that completely respects gender identity but also takes into account the risks and needs, not just of the person involved but of the people around them. That is what the review seeks to do. We will share any lessons learned when we publish the review.

Pam Duncan-Glancy: Thank you. Could you characterise for us the experience of trans people living in prison? I appreciate that the numbers are very small. Can you describe their experience and the experience of other women who are sharing the prison estate with trans people? How is that going so far?

Robert Strachan: Gathering such information is one of the key areas of focus of the policy review. We have undertaken interviews with transgender people who are in our care, and we have circulated 400 surveys across the women's and men's estates. We will supplement that work with interviews and focus groups so that we can unpick feedback from both estates. We have not yet done the analysis on that so I cannot give you the outcome. There is no evidence to back up anecdotal views, so I would not want to comment on that.

Jim Kerr, do you have anything to add?

James Kerr: No.

Pam Duncan-Glancy: Thank you. I am nearly finished, convener.

Have you any understanding of how things are working in other countries that already have a self-

declaration system? What has been their approach to the prison population?

Robert Strachan: We are just about to do the analysis, so I cannot yet give you the outcome, unfortunately. However, I would be happy to share it with the committee once the analysis is complete.

James Kerr: Going back to your earlier question about the lived experience of people who are in our care, the evidence is anecdotal but the numbers and the spread would suggest that the individualised approach is working. The committee might have heard about the predominance and relativity of consideration of the GRC as regards where people are placed in what we might call the gendered estate. That has not been our experience to date.

The other issue in any comparison with Her Majesty's Prison and Probation Service is economy of scale. Roughly speaking, HMPPS is 10 times the size of our service, so its footfall would be 10 times that of ours. Although it might be appropriate for prisons in England and Wales to have what Robert Strachan described as a wing for transgender people, the ideology that we are trying to implement is—for want of a better phrase—to normalise people's experience as much as we can in the prison setting. Our experience to date has been that not every trans man wants to be placed in the male estate, and not every trans woman wants to be placed in the female estate. Where we can safely accommodate such wishes, taking into account the impact on the regime and the welfare of others, we will try to do so.

Pam Duncan-Glancy: Thank you. I appreciate that clarification, and in particular the point on normalisation and the differences with regard to prison systems elsewhere.

My final question is on a subject that you have already touched on. You said that, just now, although a gender recognition certificate is important, it is one part of the process. Have you considered the legal effect of such a certificate? In your policy review, have you looked at any legal advice that you have been given on that effect as it would apply in future?

James Kerr: The convention prevents us from answering specific questions about legal advice, but we can say that it would be normal practice for our organisation to take legal advice in relation to policy design and evolution.

Pam Duncan-Glancy: That is ideal. Thank you.

Rachael Hamilton: I want to pick up on what Mr Kerr said regarding the allocation of prison accommodation. I would like clarity on how part 13 of the Prisons and Young Offenders Institutions

(Scotland) Rules 2011 works with your policy. The rules state:

“Female prisoners must not share the same accommodation as male prisoners.”

Your current policy states that prison accommodation

“should reflect the gender in which the person in custody is currently living.”

Does that breach the 2011 rules? How do they work together?

Robert Strachan: Our policy tries to fulfil all our statutory and regulatory obligations in the right way, in accordance with the expectations of the SPS as a public body and a prison service, including the prison rules and how they are interpreted. It fully respects gender identity but also takes into account any risks, needs or vulnerabilities that we identify through multi-agency case conferences. It is not our position that that would run counter to our regulatory and statutory framework.

Rachael Hamilton: Does that policy override the legal definition itself within the rules? What happens if there is a legal challenge?

Robert Strachan: It is our position that a gender recognition certificate is a factor that we have to take into account when deciding how to place and manage people in our care, but it is not the only factor.

Rachael Hamilton: Do you think that it would be difficult to challenge or override the individualised assessment that the SPS would normally allow? Do you feel that you are going to be vulnerable to legal challenge?

Robert Strachan: We take legal advice on policy development as a matter of course, but I do not think that I am able to answer that question.

Rachael Hamilton: Would it be possible—

Sorry, Mr Kerr.

James Kerr: Thank you for that question. As I said earlier, a risk assessment—as committee members will be aware—is not an exact science. To answer your question on how we would respond to a legal challenge, and whether such a challenge could actually happen, yes, of course it could. A challenge could happen in a variety of circumstances, even in relation to where we place someone in a prison.

The committee recently heard in evidence that prisons can be quite a “litigious” environment. People can raise legal claims on a number of different issues. Very few people want to be in prison, so it is an environment that invites challenge.

I think that it is right that any subjective decision on the care and placement of individuals should be subject to challenge, but we have to ensure that in taking decisions on how we place and care for someone in custody, we are cognisant of all the facts and information that we have and that, as far as we can garner at that time, those decisions are defensible. We would then have to respond to any legal challenge that was raised thereafter.

The Convener: I call Karen Adam next.

Karen Adam: Sorry, can you hear me?

The Convener: Yes.

Karen Adam: An issue that was raised at committee last week and that often crops up in the discourse is sexual relations in prison. I seek some clarity on the Scottish Prison Service's position, and on sexual relations and intercourse in prison.

James Kerr: Are you asking specifically about whether we think that it happens, or what our worry is there? Sorry to come back on that, but I would like some clarification.

Karen Adam: Yes—both aspects.

James Kerr: I think that we would be naive if we were to say that sexual relationships do not happen in a prison setting, irrespective—to be fair—of gender allocation. However, harm is a specific issue for us, so one of the considerations that we would undertake to assess when placing anyone in a prison would be the issue of harm in relation to sexual offending or sexual assault therein. I do not know whether that answers the question.

Karen Adam: Yes. I would also like to hear about your policy on consensual sexual relations in the Scottish Prison Service.

James Kerr: We can take that away and provide a written response to the committee after today's session.

Karen Adam: Okay. My follow-up on the back of that question was going to be about how the bill as it is currently drafted would affect any current SPS policy on sex and sexual relations.

James Kerr: To reaffirm what I said earlier, we do not, at this time, anticipate that the bill in its current form will have any major impact on our capacity to respond operationally to meet the needs of those in our care who are transgender.

The Convener: We move on to some questions for Dr Guyan, from Rachael Hamilton.

Rachael Hamilton: It is your turn at last, Dr Guyan—you have waited patiently. In your opening statement, you said that data should reflect experience, and that it should reflect who

we are and who we want to be. You said that there is too much data—you can correct me if you did not say that; I was a bit shocked when you said it, so I wanted some clarity there. Is it your position that we should now collect only data based on gender ID, and not data on sex?

11:00

Dr Guyan: In relation to my statement that we are drowning in data, I feel that there is a huge amount of data in support of reform. To signpost some of the work in that space, there have been two massive Scottish Government consultations—as most people will be aware—with more than 34,000 responses. Opinion polling has generally shown that the public are in favour of reform of the Gender Recognition Act 2004, the most recent being a BBC Scotland poll from February this year, and we have had a huge amount of personal testimonies from organisations such as Scottish Trans. I know that the committee had a private session earlier to hear about lived experience of that need for reform. Therefore, there is, in my view, an ample amount of data in support of reform and an argument for proceeding and getting on with things and taking action rather than amassing more and more evidence of that demand.

In regard to the second part of your question, at present, in most situations, data is collected about sex, not gender identity. The difference is in how sex is conceptualised in data collection exercises.

In my opening statement, I mentioned that, across public sector and private sector research exercises, the vast majority of questions are about self-identified sex, so they allow respondents to answer the question as they wish, on whether they are male, female, man or woman. The questions are not about someone's legal sex; they are not about biological sex; they are not about the sex on your birth certificate or your GRC. Therefore, I do not see any change in the position on data collection or in the work that Scotland is doing around data collection at the moment. It is a maintenance of the status quo.

There was a court ruling earlier in the year in relation to the census in Scotland. The Scottish Government was successful in defending its position, which ultimately maintained the same sex question in the census as was asked in 2011. I do not see a departure from how we are collecting data; it is more of a continuation.

Rachael Hamilton: Why is it that you have a different view from that of so many senior quantitative social scientists, who feel that it is very important to collect clear data on sex?

For example, we just spoke with a witness regarding the differences between England and

Wales and Scotland. In the Scottish census, which you mentioned, the meanings of sex are different, so if NRS is then working with other bodies across England and Wales, how does that square?

Dr Guyan: The difference between the censuses across Scotland and England and Wales follows a departure from the status quo in England and Wales, where the guidance for the sex question now advises respondents to answer according to the sex on their birth certificate or GRC. That is a departure from how the question was previously asked in the census.

When we look at how people answer a sex question, whether it is in a census or any other data collection exercise, for the vast majority of the population, whether the question is about sex or gender and whether it is about legal sex, biological sex or self-identified sex, it is estimated that more than 99 per cent of the population will answer the question in the same way.

In a census and in a population-level study, the numbers that we are talking about in relation to the differences in approach are really quite small. The census, in particular, relies on people reading the guidance as well, and some interesting research that National Records of Scotland did ahead of the Scottish census showed that the vast majority of people do not read the guidance for the sex question; they just answer the question.

I do not have concerns about any huge divergence between Scotland and the rest of the UK when it comes to the numbers in the counts. What is important to reaffirm here is that the approach in Scotland is a continuation of how things have been. If we look at longitudinal studies, data sets and large research studies in Scotland, such as the Scottish household survey, we see that they all have all self-identified sex questions that map across to the approach in the census. If anything, it is England and Wales that are departing from how things were in relation to the census, rather than Scotland.

To answer your question about academics and researchers whose opinion differs from my view on the collection of data, I have worked in this space for around five years, on a range of topics, looking at gender, sex and sexuality in the UK and across Europe. It is very uncommon for me to encounter other social researchers who think that we should ask questions about biology or birth certificates. The vast majority of social researchers operate research by asking a self-identified sex question, and a huge number of academics, researchers and quantitative data experts have also written open letters and to Parliament to reaffirm that asking a self-identified sex question poses no risk to the quality of the data that is collected.

I am happy to share with the committee an open letter, from April 2021, in which more than 300 academics, quantitative data experts and scientists reaffirmed the benefits of a self-identified sex question.

Rachael Hamilton: You referenced the census quite a lot, but only 86 per cent of people filled it in and there is concern that that data will not be able to be used in a quantitative manner. The census is a very difficult example to use in the current circumstances.

Everything is based on data. Criminal justice data, for example, is based on sex, not self-identification. I think that some people in public bodies would be concerned that there will be an impact. I do not really agree with what you said, because you started out by saying that you do use data. We use data here; we collected data and did a consultation, and 59 per cent of those who responded to that consultation disagreed with the principles of the bill. There are so many questions to be answered, such as how will the gender pay gap be measured? I am not sure that I feel reassured by your argument that we just need to base everything on self-identification.

Dr Guyan: Thank you for your question. Perhaps there is a misunderstanding about how data practices currently take place. Police Scotland has recently reaffirmed with the court that it does not ask victims, witnesses or suspects questions about birth certificates or biological sex in the reporting of crime. It is self-identified sex data that is collected in Scotland.

You mentioned the gender pay gap. Again, it is self-identified sex data that is collected and reported on for gender pay gap reporting. That has been confirmed in recent guidance by the Scottish Government's sex and gender data working group, which advises public bodies on how to collect data about sex and gender. In that guidance, the chief statistician and the working group confirmed that a self-identified approach to sex would be sufficient for equality reporting for the public sector equality duty. The working group's position was informed by a submission by the Equality and Human Rights Commission, which confirmed its position that self-identified sex data was sufficient for public sector equality duty reporting and reporting on the gender pay gap.

If committee members have not already had the chance to do so, I recommend that they look at the fantastic, detailed written submission by Close the Gap. In its models, it tested some hypotheses for what might happen if—in different, hypothetical situations—some men were changed to women across a range of organisations, and whether that would have an impact on the gender pay gap. Close the Gap highlighted that those changes have no meaningful impact on the data and, in

particular, on how the gender pay gap is addressed.

The gender pay gap calculation is quite complex, and it can vary for a range of reasons—for example, staff turnover at high levels can quite quickly make the gap between male and female pay fluctuate. Therefore, as with any exercise of this type, it is vital that we scratch the surface and see what the data is really getting at, rather than assume that sex is the only thing that researchers and policy makers should be interested in.

The Convener: Before Rachael Hamilton responds, I will bring in Paul Lowe, who wants to make a comment.

Paul Lowe: As the registrar general, I am responsible for taking the census, so as there was some commentary on it, I thought it would be appropriate for me to note a few points.

The first point is about legislation. To be clear, in 2011, the whole of the UK used a self-identified sex question, and it was the intention of the Office for National Statistics to do the same as it went into its 2021 census. That was subject to a court challenge, and an interim decision in the High Court of England and Wales ruled against its approach, so the ONS took the decision not to contest that judgment and instead amend its guidance.

As we are talking about data, it is important to note that that came into effect after ONS had received millions of returns. That change in the guidance happened after quite a large proportion of the population in England and Wales had already submitted their returns using the existing guidance.

In Scotland, the case was subject to both a judicial review and an appeal, and in both of those cases our guidance was found to be compatible with the legislation. The judges who were involved in those decisions noted that there was a wide variety of use and interpretation of sex and gender across a range of different pieces of legislation. To be clear, there is a clear legislative position in Scotland around the issue as it relates to the census, and we acted compatibly with the legislation. Obviously, I cannot comment on a decision made in a court in another part of the UK, based on the information that it had, but it was an interim proceeding, not a full judicial review outcome in that case.

In terms of the comments that have been made about the data, I am not going to pretend that I am happy that I have not got a 90-plus per cent return rate in the census. However, there seems to be great weight of interpretation that because we have not achieved that the census is in some way a shambles—that is one word that I have heard among various others. That is not the case. Our

organisation is the census-taking expert; we have been doing it for more than 200 years. We can produce a good-quality census outcome with the 87-plus per cent return rate that we have received now.

I appreciate that this has been a source of speculation, so I commissioned an international panel of experts chaired by Professor James Brown from Sydney, who is a professor in official statistics, and including the UK national statistician, Sir Ian Diamond. Last week, they issued a statement saying that the census had achieved a solid foundation and that it was appropriate to move on to the next stages.

Modern censuses are not just about the collection of data. That is how it used to be done a long time ago, but for the past 30 years we have been using census collection, something called a census coverage survey, which we are about to start running in Scotland, and a range of other statistical techniques to produce high-quality outcomes. We will use those, advised by the international panel that I have convened, to ensure that we provide high-quality census outputs.

I thought that it would be helpful to clarify those points, because they have come up in discussion.

Rachael Hamilton: My last point is that, with Gender Recognition Act 2004, it already felt as though there had been an impact on the collection and use of the data, because public bodies are either refusing to collect or not collecting data based on sex. I am wondering whether the bill will exacerbate that problem. Do you agree that it could become a problem as we move forward?

It is a difficult question. On whether we bring the age down to 16, people's views and experiences are based on certain points in their life, so, whether it is a job or things such as savings and pensions, there is a lot riding on this. Do you think that it is important, in light of our discussion, that data should be collected on a sex basis, perhaps as well as a gender basis, as you were talking about, so that we can create good policy?

Dr Guyan: As a point of clarification, can you say more about the perceived negative impact of the GRA on public sector equality duty reporting? I have not come across any sources evidencing that.

Rachael Hamilton: I was just referencing the specific examples that I gave, which could be about young people seeking help in gender identification clinics, the gender pay gap and all the other issues that I have raised with regard to how we go through our lives, in terms of how that definition forms public policy, creates services and provides help.

11:15

Dr Guyan: Yes, I can respond to that. Let me go back to my opening statement and again make the point that how we collect data about sex in Scotland does not require a person to say whether they have or do not have a GRC. Whether we are asking someone about work in the public sector, collecting employee data for gender pay gap reporting or asking someone to participate in a survey or research exercise, none of the questions asks what is on their birth certificate, what their biological sex is or whether they have a GRC. In my view, the reform that the bill proposes will make no impact on how we collect data in Scotland at present.

Rachael Hamilton: Does people not saying that they have a GRC have an effect on the Scottish Prison Service? I know that we discussed the issue earlier, Mr Kerr, but I want to ask specifically about Kevin Guyan's point that we do not really need to collect data on sex.

James Kerr: People are not required to divulge to us that they have a GRC. In last week's meeting, the comment was made that SPS is perhaps "blind" to GRCs. I understand where the position has come from, but we are not blind to GRCs; we take them extremely seriously and treat them with the respect that they deserve. However, they are not the only factor that we take into account when we are looking at how we place and manage people.

The reason why we cannot tell you how many people have a GRC is that people do not need to divulge that to us. We have to respect people's rights. We do not collect what is recorded on birth certificates, or that type of thing. This is not something new for us.

Dr Guyan: For clarification on Rachael Hamilton's point, I have not said at any point that we should not collect data on sex. My point is that we are collecting data on sex across a wide range of areas; we are collecting data on self-identified sex.

The Convener: Thanks for that clarification.

Maggie Chapman: Kevin Guyan, thank you for your comments so far. In your opening remarks, you talked about data not being neutral, and in response to one of Rachael Hamilton's questions you said that we are drowning in evidence for reform of the Gender Recognition Act 2004.

Will you comment in more detail on specific public policy areas? Rachael Hamilton touched on a few. A few weeks ago, we heard from the Equality and Human Rights Commission that we need to pause and consider how the proposed reform of the GRA would impact the collection and use of data. Given the numbers that we are talking

about and what we actually use data for, will you talk in a little more detail about the policy implications? What is the material reality of the bill as it stands, in that regard?

Dr Guyan: I was surprised by and interested in the EHRC's submissions, both in its letter to the cabinet secretary at the start of the year and in its oral evidence to this committee earlier in the spring. I was interested to see the reference to data collection as a point of concern about the reform that is proposed in the bill. In oral evidence, it was suggested that the differing judgments in the court cases around the Scottish census and the England and Wales census might have trickle-down effects that in some way inform or shape the bill's impact on data collection. As the judgment in Scotland does not change current practices or how people—with or without a GRC—would respond to a census or any other data collection exercise, I do not see the relevance of that concern to data collection in Scotland.

Excuse me. Will you remind me of the second part of your question?

Maggie Chapman: I was asking about the material reality—the consequences for policy.

Dr Guyan: As researchers and policy makers, it is vital that we ask questions that return data that helps us to solve problems. There is no one-size-fits-all model; how we ask about gender, sex and sexuality depends on the context and on the communities with whom we are working. As a researcher, I always aim to design questions that are robust, inclusive and accessible, and, most important, that will engage the groups that we want to participate in our data collection exercise—there is no point in undertaking a massive research project if your questions are going to dissuade people from taking part in that project.

In all our work, it is vital that we think about who we are engaging with and design questions that are both robust and inclusive. Researchers and policy makers strive to follow that approach across social research. Across all areas of data collection in Scotland, a self-identified approach, be it to sex, gender, race, disability or sexual orientation, has been proven throughout history to be an effective means of engaging communities in policy making.

Maggie Chapman: You said that it is an effective means of engaging people in policy making. Does that link to your point about, in essence, what data is for? We use data in order to inform and change society for the better, rather than it having any intrinsic value in and of itself. Is that more or less what you are saying?

Dr Guyan: That is exactly my point. In a range of areas where we do research, and particularly social research, such as education, housing and

healthcare, I cannot understand the rationale for asking questions about individuals' biological sex or the sex on their birth certificate when what we are really trying to get at is experiences of inequality, discrimination and difference. They are revealed through asking about individuals' lived experience and how they engage in the world. As I said, that is not unique to questions on sex. Researchers follow that approach for all areas of identity.

Maggie Chapman: Thank you. I will leave it there.

Pam Duncan-Glancy: Thank you for that clarity on the value of self-declaration in data collection. Before I ask my final question, I also thank the other panellists, because I have found this evidence session really useful. In particular, I thank James Kerr from the Scottish Prison Service for setting out its considered, sensitive and normalised approach to this, which is refreshing.

How do you think data on the representation of women will be affected by the bill?

Dr Guyan: Looking across the areas that are relevant to the committee, it might be perceived that the bill will have some impact on the collection of data. I mentioned a few examples, such as gender pay gap reporting, reporting of organisations through the public sector equality duty and research studies that are conducted by universities and research organisations, alongside the census or any other future national data collection exercise. Across all those areas, people are currently self-identifying their sex. From my work, I do not see the bill having any impact across those areas on how data about women is collected.

Karen Adam: Thank you for your evidence so far, Kevin. You said that there is an incredible amount of data. With regard specifically to the bill, relative to other data gathering, how do you feel the data is looking in a quantitative way?

Dr Guyan: Thank you for your question. There has been a huge amount of interest in the bill and a huge amount of engagement and consultation on it. Alongside the consultation that the Scottish Government has conducted, there has been, as I said, opinion polling and a huge range of lived testimony from people who may engage with any future gender recognition process. There is both qualitative and quantitative data. I will not go through the details again, but there were over 34,000 responses to the two consultations that the Government conducted and there has been a range of exploratory work looking at international comparators.

I return to my point that the bill as it stands is not an untested project. This work has been taking place for 10 years in reforms around the world in a

range of comparable countries. When we look at what the Government has published on any evidence that the bill may be used in ways that would go against its intended meaning or have negative impacts on other communities, we see that there is very limited, if any, robust evidence to demonstrate negative impacts in comparator countries where this has taken place.

With regard to both the existence of data showing the benefits and the lack of data showing negative impacts, for me, there is a huge amount of evidence in support of reform.

The Convener: I thank all four of you for that really useful evidence session. I will suspend the meeting for about five minutes to allow us to change witnesses.

11:25

Meeting suspended.

11:33

On resuming—

The Convener: I am pleased to welcome our second panel of witnesses, who represent faith and secular groups. We have Anthony Horan, director of the Catholic Parliamentary Office of the Bishops Conference of Scotland; the Rev Karen Hendry, vice-convener of the faith impact forum and minister of Yoker parish church, from the Church of Scotland; Chris Ringland, public policy officer for Scotland with the Evangelical Alliance; and Fraser Sutherland, chief executive officer of the Humanist Society Scotland. You are all very welcome. I invite you all to make short opening statements.

Anthony Horan (Catholic Parliamentary Office of the Bishops Conference of Scotland): I thank the committee for the opportunity to speak on this important matter. The bill that is before the Parliament is part of a wider and intense public debate about sexuality and gender that raises profound questions about human nature and the meaning of human sexuality. The Bishops Conference of Scotland supports calls for all parties that engage in the debate to do so in a respectful manner.

The Catholic church's understanding of the human person and human sexuality is that sex is genetically, anatomically and physiologically fixed from conception. That understanding is widely held by people of all faiths and none. However, although that is the case, since 2004, an individual has been able to legally change gender by following the process that the Scottish Government now seeks to change. Therefore, even as we express our rejection of the idea that one can change sex, we accept that the legal

ability to change gender, and consequently sex, on official documents is the legal framework within which we consider the bill.

The Bishops Conference of Scotland has serious concerns about the bill, not least of which are the removal of the requirement for a diagnosis of gender dysphoria, the proposed reduction of timescales and the reduction in the minimum age for applications to 16 years. Gender dysphoria has been associated with low self-esteem, depression and the taking of unnecessary risks. Studies have found that suicidal ideation and suicide attempts are significantly higher for those with gender dysphoria compared with the general population. To demedicalise the process, as proposed in the bill, would deprive a vulnerable group that is disproportionately affected by suicidality and comorbid conditions of much-needed contact with health professionals.

Furthermore, the proposal to reduce the minimum age to 16 years risks bringing children into a process that they may not be equipped to deal with and that is lacking appropriate medical oversight. We also share concerns about the impact of reform in single-sex spaces and the risk to the safety and wellbeing of people, especially women and girls.

I appeal to the committee, which has an unenviable task of trawling through pages and pages of evidence and of ensuring a respectful yet honest debate on a highly contested issue, to keep an open mind. The bill is not without risk, and the public are concerned about that risk. The significant number of responses to the committee consultation opposing the bill, either in whole or in part, is testament to that.

Every individual who is experiencing gender dysphoria should be treated with justice, respect and charity. We must also be mindful of the vulnerability that is highlighted by the high rates of comorbidities that I have already mentioned. That cannot be ignored.

The Rev Karen Hendry (Church of Scotland): Good morning, and thank you for inviting me to the meeting. One of my Church of Scotland roles is to convene Integrity, our national violence against women task group, which exists to raise awareness and to help to prevent violence against women. We approach all gender-based violence with a survivor-centred, faith-based and gendered lens. The rights and safety of women and girls, as survivors of abuse, along with the safeguarding of single-sex spaces, have been used to justify arguments against reform.

I want to be clear that Integrity is satisfied and convinced by the evidence that has been offered by Engender, Rape Crisis Scotland and Scottish Women's Aid that the advancement of trans rights

does not endanger women and girls or encroach on their rights. We are concerned that the voices of survivors are being used in a way that risks confusing vulnerable women and demonising another vulnerable group. Instead, we think that more needs to be done for all victims of gender-based violence.

The committee will realise that the Church of Scotland is a large organisation that has a broad diversity of views and that there is rarely unanimity. However, I am confident that the opinions that are represented in our written evidence and what I am here to say to the committee today reflect the broad majority of views in the Church of Scotland.

My final opening comment is to commend to committee members our publication "Diverse Gender Identities and Pastoral Care", which is available from our website and which helps to sum up our approach to the issue through the lens of supporting people who struggle against prejudice and discrimination.

Chris Ringland (Evangelical Alliance): Thank you for the opportunity to give evidence today. The Evangelical Alliance is the largest and oldest body representing the United Kingdom's 2 million evangelical Christians. We were founded 175 years ago. In Scotland, we have relationships with Christian organisations and charities, and we have approximately 500 churches with around 50,000 church attendees. Our members run youth clubs, food banks and debt counselling services, working across Scotland in some of the most deprived and the most affluent areas. They work with children, families, those with disabilities and those living alone, and they minister to, and serve, those who experience gender dysphoria and those from the trans community daily.

We commend the Scottish Government for its aims, through this legislation, to improve the lives of transgender people across Scotland. The trans community is one of the most marginalised groups in Scotland today, and it has been historically, and we recognise the role that churches have sometimes played in contributing to that. As Christians, we believe that everyone is made in the image of God and is therefore inherently worthy of love, value, dignity and respect. It is widely acknowledged that the current equality and human rights framework under which we operate in the western world draws from its historically Christian origins.

However, we have significant concerns about the bill as it is currently drafted. We are concerned about how, rather than improving the lives of those in the trans community, the changing of the GRC application process could have unintended consequences to the contrary, as well as about how the proposed process could affect the

protected characteristic of sex under the Equality Act 2010, children's development and pastoral care.

In short, we think that the current system for how one obtains a GRC is fair, balanced and adequate. We note that that view is shared by the majority of the 10,800 respondents in the short survey response to the committee's call for views, with almost 60 per cent of respondents disagreeing with the overall purpose of the bill, and similar majorities expressing concern around the bill's different elements.

We look forward to answering the committee's questions on the key aspects of the bill. We emphasise what the committee strove to do throughout the legislative process, for which we commend it. The debate around these issues is far too toxic and harmful towards those on whom it impacts, so it is our aim to be constructive, loving and respectful in every way, just like Jesus.

Fraser Sutherland (Humanist Society Scotland): I thank the committee for inviting us. As humanists, we are committed to treating individuals as having inherent worth and dignity and the right to self-determination of their own lives and bodies. A move to recognising a self-declaration process for gender recognition is in line with humanist principles regarding the autonomy of the individual over their self.

We believe that the proposals in the bill will make the process of applying for a gender recognition certificate better for those who chose to apply for one.

The Convener: Thank you, all. We move to questions, starting with Maggie Chapman.

Maggie Chapman: Good morning to the panel. I thank you for joining us, and for your opening statements and the written materials that you provided in advance. I have a couple of questions around the need for a diagnosis of gender dysphoria and the medical panel that is in place under the current legislation.

Perhaps I can come to Anthony Horan first. You talked about the higher level of suicidal ideation and the negative health impacts that many members of the trans community experience disproportionately in comparison with the broader population. You can correct me if I am wrong, but I think that you said something along these lines: that you would not want to see a lessening of engagement with, or connection to, the medical profession or the psychiatric profession, and that you would therefore like that panel to be retained. Did I understand you correctly there? However, we have heard from people who have been through that process that they never actually speak to the panel. There is not the patient-doctor relationship, or the supportive relationship, that you might

expect. There is just a body of evidence that is sent to, and then assessed by, what is, for the trans person—to be frank—an anonymous panel.

Anthony Horan: That is, therefore, something that needs to be improved. We cannot hide away from the facts on the statistics for trans people—I think, from your tone, that you accept that—in terms of comorbidities, suicidal ideation, suicide attempts and so on. Given that that is the reality, I think that more needs to be done to ensure that there is medical contact, and appropriate medical contact. It is certainly not the time to be removing any of that.

Maggie Chapman: I accept that members of the trans community have high levels of suicidal ideation, but I do not attribute that to the lack of contact with a medical panel as in the current process. I attribute it to transphobia within society more broadly.

If that diagnosis of gender dysphoria is required, how would you see the GRC process applying to trans people who do not experience gender dysphoria?

11:45

Anthony Horan: The key point is that I do not think that the process should be removed just because there are people who do not necessarily need to avail themselves of it or require that medical interaction. However, the very fact that there will be people who require it, given those comorbidities—and I would say that that is especially the case for young people, who are quite vulnerable in this regard—the medical panel should be retained. As I say, I do not know whether it will ever be the time, but it is certainly not the time now to remove it, given the statistics. It could be dangerous to do that.

I accept that there will be people who do not necessarily have a diagnosis of gender dysphoria, but the point is to capture the people who do have gender dysphoria and give them the appropriate support and treatment, if it is required, but that will be down to the medical professionals.

Maggie Chapman: Diagnosis itself is a current requirement so it does not capture those who do not experience gender dysphoria. The current system therefore does not serve a proportion of the trans community who do not have that diagnosis, which means that we are not supporting them at all through the current process, and I view that as problematic. Given the lack of engagement of the panel with the individual, that medical support is not there. I agree that support needs to be provided, but I am not sure that using this process is the appropriate way.

Karen, I will come to you on this. Is it your clear position that the diagnosis of gender dysphoria is problematic? You have stated that you welcome its removal. What do you see as being legitimate or necessary evidence or criteria for the new process?

The Rev Karen Hendry: In line with the World Health Organization, which has said that transgender or diverse gender identity is not a mental or behavioural disorder, we would say that the natural outworking of that statement is that the diagnosis needs to be removed. We feel that it is not a medical issue and that the people who are transgender and are experiencing their lives in different and diverse gender ways need to be listened to. They have the knowledge and expertise; they are living this experience within their own skins and out in the world, and we need to be a listening ear. There needs to be a pastoral, caring, and valuing response to the individual; that is our main concern.

Maggie Chapman: Thank you for that, Karen.

Chris, in your opening statement, you talked about the concerns about the impact of the bill as it currently stands on other protected characteristics. Can you say a little bit more about that?

Chris Ringland: I will come to that through other questions about different aspects of the bill, but I will touch on the demedicalisation aspect. We want to recognise that every trans person's experience is different, which has come through from the answer to your question, but our concern about the bill is about the potential unintended consequences that it will have for the trans community itself. If that is one of the main ways in which someone is assessed for obtaining a GRC, it could leave the system open to people misusing it. I am not talking about those who you describe as not experiencing gender dysphoria; I am talking about the bad faith actors that have been described to the committee before. I would defer to the national health service about what would be appropriate, if gender dysphoria is seen as inappropriate. I would ask how that fits with the interim report of the Cass review.

With regard to a European comparison, the gender recognition system in the Netherlands requires supporting expert opinion, and the vast majority of European Union member states, such as Croatia, Finland, Germany and Sweden, require supporting medical documentation, so we would not necessarily be out of step by keeping some aspect of medical documentation as part of the process.

Maggie Chapman: I will come to you, finally, Fraser Sutherland. In your opening remarks, you said that autonomy is really important. How do you

see that medicalisation of the process interacting with the notion of autonomy, if at all?

Fraser Sutherland: The bill is about a legal process rather than a medical process. It is important that we keep that context in mind, because, potentially, there are two approaches here. There is the regulated medical support for people who need it, but there is also the legal process, which I see as something different. In essence, my answer is that I do not see the need for the diagnosis for the legal process. I do not think that it is helpful, and removing it would bring us in line with other European countries that have moved to a self-declaration process, such as Ireland, Denmark and Malta. Part of what the humanist movement champions is personal autonomy. The ability for people to make that decision for themselves is quite important.

The Convener: Karen Adam has a brief supplementary question.

Karen Adam: Did the witnesses come to their conclusions on that matter after engagement with trans members of their religion or organisations or with trans community organisations?

The Convener: Please give quick answers. Anthony Horan is first.

Anthony Horan: Most of our evidence is drawn from a number of studies over a number of years. Obviously, those studies involved transgender persons, but we have not specifically spoken to trans people in our community.

The Rev Karen Hendry: I refer you back to our booklet "Diverse Gender Identities and Pastoral Care", which is available on our website and in which we have collated people's life stories in their own words. We have made that resource available for our congregations in order for them to discuss that.

Chris Ringland: Yes, our membership interacts with the trans community in all their services, and we are attempting to represent them today.

Fraser Sutherland: Yes, but specifically on that issue, we sought out external support as well as interacting with our internal membership, including trans members of the humanist community. We spoke to academic specialists in family law, transgender support organisations and children's rights specialists as well as looking at published evidence from the World Health Organization before developing our position on the Government's review, which we did back in 2017 at the start of the process.

Fulton MacGregor: Good morning. I have questions on two provisions in the bill: the provision on living in the acquired gender for three months, and the proposed three-month reflection period.

On the provision on living in the acquired gender for three months, we have heard quite a lot of evidence that suggests that that is unnecessary, both from those who generally support the bill and from those who have concerns about the bill. I am happy to hear from the witnesses in any order, but I will start with Anthony Horan, as that is the order that we have used so far. Anthony, what are your thoughts on that specific provision?

Anthony Horan: We do not have a medical or scientific view on this—we are not that kind of organisation—but, following my earlier answer to Maggie Chapman about the evidence of an elevated risk of depression, anxiety, suicidal ideation and so on, I have to say that I am concerned that any reduction in the timeframe risks a failure to provide space and support for people who are impacted by gender dysphoria. On the face of it, a three-month period seems remarkably short for a decision of such magnitude.

Fulton MacGregor: Thank you very much for that answer, but before I bring in the other panellists, I should perhaps expand my question a wee bit. I hope that I am not misquoting either side of the debate—I do not think that I am—but, generally speaking, those who are in favour of the bill and its provisions worry that such a period is unnecessary in itself, because the people concerned have been living like this for a long time.

Whether we are talking about three months or two years, though, this is a big, life-changing decision, and those with some concerns about the bill are perhaps concerned about the term “acquired gender” and how it might be defined. Maybe I should have given a bit more of an explanation with my previous question, although I appreciate Anthony Horan’s answer. Reverend Hendry, what are your thoughts?

The Rev Karen Hendry: Picking up on your last point, I would say that the Church of Scotland does not have one particular view on whether there should be a three-month period of living in one’s “acquired gender”, as it has been termed in the bill. However, it does query the use of the term “acquired”. The thought is that you do not acquire a gender—it is inherent within you, and there is a process of revelation and of becoming comfortable in your own skin. We therefore ask the committee to revisit the use of the term and look at something that might reflect a transgender person’s reality a bit more.

Do you want me to talk about the reflection period?

Fulton MacGregor: I will come back to you on that separately. Chris and Fraser, do you have anything to add?

Chris Ringland: I will be brief. We think that the current requirement to live in one’s gender for two years is sufficient, but we also acknowledge what previous witnesses have said on the matter. I think that one said that they waited four years for an appointment at a gender identity clinic, but we think that that is all the more reason to keep the current period. In one sense, whether the period is three months or two years is arbitrary, but the reduction to three months along with the removal of the requirement to provide other forms of evidence leaves things open to unintended consequences that will negatively affect the trans community.

I would also put on record that the Cass review, which we might come on to later, is another reason for keeping the two-year period, given the proposal to reduce the age limit to 16.

Fraser Sutherland: With regard to Karen Hendry’s point about the term “acquired gender”, the problematic issue is that it suggests that there is some kind of gender norm or role, and it plays into the idea of people having to fit into a specific category. What would the evidence that you would need to show in that respect look like? I wonder whether that might be slightly problematic for some trans people who might not fit the classical view of what that looks like.

As for the waiting period, I am not sure from the Government’s documentation that there is strong evidence on the need for it. At a faith and belief round-table meeting, I asked the cabinet secretary about its purpose, and we still have not really been given any evidence on why the Government feels it to be necessary, or a robust explanation of its purpose other than “People might change their minds.” The fact is that people change their minds on other legal contracts, and we do not insist on a statutory waiting period in such cases. If there is evidence on why it is a good idea, I would like to hear it, but I do not think that we have heard it from the Government yet.

Fulton MacGregor: Thank you for that, Fraser.

In order to be fair, I will put my next question to the witnesses in reverse order. With regard to the three-month reflection period, which Fraser touched on, we have heard concerns that it is perhaps quite demeaning for trans people to have a reflection period. On the other side of the debate, we have heard that the reflection period is perhaps not long enough, particularly, as has been talked about, for younger people, who are going through a lot of changes in their lives. Can you give us your views on the three-month reflection period, as proposed? That question goes first to Fraser Sutherland.

12:00

Fraser Sutherland: The requirement for a statutory declaration means that the decision that people are making has a strong ramification. I struggle to understand that people are rushing into making that decision all of a sudden. They have probably come to that decision over a protracted period before they have even entered the process. Therefore, telling people that they have to wait another three months after putting in their application in order to complete it suggests that they have not put serious thought into it. People can make other big legal changes in their lives that do not require that kind of enforced waiting period. I am not sure that we have heard strong evidence as to why that is required.

Chris Ringland: I think that the diversity of views is reflected in the responses to the committee's call for views. Nearly 40 per cent of people agreed with the reflection period, nearly 35 per cent disagreed and 25 per cent did not know whether they agreed. That was quite different from the responses to the other questions that were asked about the bill.

We note that Denmark's legislation has a six-month reflection period before legal recognition is granted, and Belgium also requires a period of reflection.

The Rev Karen Hendry: The Church of Scotland feels that the period of reflection is a generally good idea, because it emphasises the seriousness and legal formality of the process. Someone is making a self-declaration, and the period gives them time to reflect on the permanent nature of being granted a gender recognition certificate. We are not sure why the period is three months. We encourage the committee to perhaps tease that out more and give some background as to why three months is the period that has been chosen.

We are also concerned that the three-month period should not simply be downtime, while people wait for a letter in the post. How will people be enabled to reflect during that time and what support will they be given, so that it is a positive time of waiting and of enabling them to be who they feel themselves to be?

Fulton MacGregor: Thank you very much for that; I have a supplementary question for you, before I move to Anthony Horan.

You asked us to tease out where the period comes from when we have the cabinet secretary in front of us—that is a reasonable ask. Do you or the church have a view on whether three months is just about right or too short?

The Rev Karen Hendry: Our only concern is for those who are younger. We feel that that length of

time is right for 18-year-olds, but we consider that a reflection period should take 16-year-olds up to the age of 18. We say that because the definition in the United Nations Convention on the Rights of the Child is that a person becomes an adult when they reach 18. We also note that England has raised the minimum age for marriage to 18. Members will know this better than I do, but Scotland might follow that policy. There are other indications of the difference between 16 and 18—for example, serving in the armed forces. There are also reasons why 16-year-olds are not treated as adults in the criminal justice system. Those things impact our thoughts about the length of the period of reflection.

Anthony Horan: Studies suggest that the majority of young people with gender dysphoria will desist and become settled in their biological sex; that was the case for as many as 85 per cent in a study from 2016. In that sense, a reflection period would appear logical. However, the fact that it is time limited raises questions about other provisions in the bill, which I suspect that we might come on to later.

Pam Duncan-Glancy: Good afternoon to the panel. Thank you for your answers to the questions so far and for the information that you submitted in advance, both of which have been really helpful. I have a couple of follow-on points from what we have heard.

Some of you have said that the reflection period is remarkably short for a decision of such magnitude—I think that that is specifically how it was put. However, we have heard a lot from LGBT people about how applying for a gender recognition certificate is usually the end, rather than the beginning, of a process for them, and that they will have been thinking about it for a significant period of time, so much so that I think that Denmark—Chris Ringland gave it as an example—is one of the countries considering no longer having that period. I will be corrected on the record if I am wrong on that, but I think that Denmark is one of those countries.

What is your response to LGBT people who say that applying for a GRC is the end of the process and that they have already spent a lot of time thinking about whether they want to change their gender?

Chris Ringland: I will go first. We completely acknowledge that. Our general concern, which is a recurring theme in relation to different aspects of the bill, is that the way that it is drafted potentially leaves the door open to people who are not from the trans community to misuse it, because the false application offence is the main barrier to misuse.

A reflection period does not necessarily need to be two years—it could be shorter than that—but having it as just three months, along with the other, different aspects of the bill that we will touch on, is where our concern is for the trans community, and for other people misusing it.

Pam Duncan-Glancy: Thank you for that answer; that is helpful. I will ask a quick supplementary if that is okay, Chris. What evidence do you have that people would use the bill for bad actor purposes?

Chris Ringland: We do not necessarily have evidence for how that would work in practice. It is simply that, in making legislation, even if we expect that only a small number of people would potentially do that, or if it is the case that only a small number do it, even the fact that it could be a possibility is something that the bill should seek to stop. We assume that the committee would agree with that, in relation to people misusing the bill, because of the way that it is just a false application offence, which I am sure that we will come on to in other questions.

Pam Duncan-Glancy: Do other panel members have any comments on the time period?

Anthony Horan: I understand what Chris Ringland is saying about the potential for bad actors and about trying to put people off with a longer time period. I also take Pam Duncan-Glancy's point about some people seeing the GRC as the end of the process, given the length of time they have been thinking about it. However, the Government perhaps needs to consider other areas that are maybe not covered in the proposed legislation and where the process could be improved.

At the risk of sounding like a broken record, I go back to the point that I made earlier, which is that the evidence that we have seen around the comorbidities for that community—particularly for people with gender dysphoria—is very concerning and something that we need to be wary of. The causative effects of that are still largely unknown; in fact, they are very unknown. In that sense, much more research needs to be done in order to find out exactly what is causing those comorbidities in that community.

Pam Duncan-Glancy: I share your concerns about the suicide rates. The poor health outcomes for trans people across Scotland and the United Kingdom in general are a concern for us all. I do not know that the bill is the place to address that. Can you see any other routes to addressing that, so that we can work with those who are not captured by the current process, such as those who are not gender dysphoric? Is there another way to make both work together?

Anthony Horan: That is not something that I have thought an awful lot about. I suspect that there are elements of the process outwith the bill and other legislation that could be improved. Chris Ringland spoke about an individual who had experienced a four-year wait. That is something that could be improved by considering the process, rather than needing any legislative change.

Pam Duncan-Glancy: Thank you.

Karen Hendry, your opening comments were really powerful, particularly in relation to the impact on women and the integrity of the group of people that you described. We have heard in previous discussions, and also today, some worries around bad actors. You were strong in your view on that. Can you tell us how you reached that view and what you think of the issue of bad faith actors in relation to the bill?

The Rev Karen Hendry: A crime is a crime. Nothing man-made will be totally proof against the potential for a crime. That is a different issue. That is not the core purpose of the bill.

Integrity is focused on violence against women. The Church of Scotland has particular concerns. The faith impact forum, which I also represent, has concerns about speaking for the marginalised, the prejudiced and the victimised. There is clear evidence that transgender people experience more violence. We have figures from various pieces of research that suggest that trans women are twice as likely to experience sexual assault as cis women and 47 per cent of trans people have experienced sexual assault. We are also concerned about discrimination and how as a society we can learn to live better with difference.

Pam Duncan-Glancy: Thank you, that is very helpful. If no one else has any further points on that, I have one last question.

In your submissions, you commented on parts of the bill affecting reassignment surgery or irreversible interventions. Can you tell us a bit more about what you mean by that and how you came to those conclusions?

Anthony Horan: Are you talking about the specific point of reducing the age from 18 to 16?

Pam Duncan-Glancy: Yes. Your point was that it was irreversible and that was conflated with the point about reassignment surgery.

Anthony Horan: There are good reasons to protect children from making permanent legal declarations regarding their gender, and there is also good reason to question opening up a pathway to puberty blockers, cross-sex hormones and other, potentially irreversible, treatments and surgery. The long-term effects of a lot of that remain unclear. That is our concern. The science

is not necessarily settled on that. I will quote one study, which says that

“much is still to be ascertained about the impact of medical intervention.”

That applies to adults as much as to children. That is an important thing that we need to think about.

In relation to children, as we said in our evidence, you are not allowed to get a tattoo at 16 or 17 years old—and that is only skin deep—but attempting to change your sex goes much deeper. It would be incongruent to have that inability to get a tattoo at the same time as having the ability to change gender.

12:15

Pam Duncan-Glancy: Are there aspects of the bill that you think would make the process irreversible?

Anthony Horan: Simplifying the process and removing the requirement for a diagnosis of gender dysphoria potentially sets individuals down a path that makes it more likely that, for example, children or young people who have entertained puberty blockers before that point will then entertain cross-sex hormones and go on to surgical intervention, which is generally irreversible. There is evidence that once an individual has engaged in the process by starting puberty blockers, the vast majority will continue through that process, going on to cross-sex hormones and potentially to surgery. There is therefore a danger that at least some of it could be irreversible.

Pam Duncan-Glancy: I do not have any evidence to suggest that it would not be irreversible, so I could not dispute that. What part of the bill would put someone on the path of accessing puberty blockers?

Anthony Horan: There is nothing specific on that in the bill; there is no provision that is directly on that subject. However, as I have said, the removal of the requirement for a diagnosis of gender dysphoria makes it easier, and therefore opens up a pathway for people to go down the route and follow the process that I referenced. It increases the chances of young people who would normally desist from their gender dysphoria and become settled in their biological sex—we have seen evidence of that happening—going on and potentially engaging in irreversible elective treatments or surgery.

Pam Duncan-Glancy: I am sorry, convener—this really will be my final question. Could that be a reason to decouple the medical process from the legal one, so that people are not immediately put down a medical path that could result in the situation that you have described?

Anthony Horan: I maintain my argument that the medical process and medical oversight should be retained, for the reasons that I outlined earlier.

The Convener: Would anyone else like to comment on that line of questioning? It has opened up an area on which it would be useful to hear others' views.

The Rev Karen Hendry: Perhaps the committee could emphasise a point that our faith impact forum and the Church of Scotland came up with: this is not a self-identification route to medical treatment or surgery.

Chris Ringland: On detransitioning, I refer the committee to recent reports and statements in Europe—for example, from the National Board of Health and Welfare in Sweden, and one from the national academy of medicine in France that I think followed it. I implore the committee to explore those. On false declarations, if the aim of the bill as it currently stands is to reduce the age to 16, and then someone detransitions later in life, we do not think that that should be criminalised. However, that is not part of the provisions on false applications, to which I am sure we will come later.

The Convener: Fraser Sutherland, do you have anything to add?

Fraser Sutherland: I have nothing major. At the beginning of the session I said that it would be a good idea to decouple the medical and legal processes.

The Convener: We will now hear questions from Rachael Hamilton.

Rachael Hamilton: Good morning, panel. First, I ask witnesses to explain their views on the proposal in the bill to lower the age for a GRC from 18 to 16. I ask the Reverend Karen Hendry to start. We have heard that the Church of Scotland agrees with discontinuing mandatory assessments but not with lowering the age from 18 to 16. May I have your views, please?

The Rev Karen Hendry: Yes. That view reflects the wider context that the UN Convention on the Rights of the Child defines “child” as a human being under the age of 18. There are other markers. When a person reaches the age of 18, there is a transition from childhood to adulthood. We note that the minimum age for marriage in England has now risen to 18, and there is an expectation that Scotland might follow. We would also support 18 as the minimum age for joining the armed forces. In the criminal justice system, a 16-year-old is not treated as an adult. We are of the opinion that self-declaration requires a degree of maturity that might perhaps be seen more in an 18-year-old than a 16-year-old. We are not saying that you would not engage with a 16-year-old. Our approach is absolutely pastoral, and we would

consider that a 16-year-old would have an extra period of reflection until they reached 18.

Rachael Hamilton: I want to develop that line of questioning. If, for example, the Government reform went through and all the suggestions and policy reforms were passed in the Parliament, would that make you feel uncomfortable about your position of removing the need for an assessment, given that you do not support the lowering of the age to 16? I accept the arguments that you have made. How would you feel about that? How would the church feel about that?

The Rev Karen Hendry: Do you mean how would the church feel about removing the medical diagnosis?

Rachael Hamilton: Yes, but in the circumstances where the age had been reduced to 16.

The Rev Karen Hendry: We would be happy with the removal of the medical diagnosis. We would be concerned about the age being lowered to 16.

Rachael Hamilton: Who does the Church of Scotland engage with to come up with the policy positions that you are presenting today?

The Rev Karen Hendry: The Church of Scotland has two main forums: the faith nurture forum, which looks inwardly and is concerned with the internal dynamics of the church; and the faith impact forum, which is about looking out the way into the world, and I am vice convener of that. The forums are made up of people who have the identified skill sets that are required to engage with and explore relevant news, situations and subjects that the church is engaging with.

Rachael Hamilton: I have looked at your faith forum. In your opening remarks, you mentioned Engender and Rape Crisis Scotland. Who else has the church engaged with to form opinion?

The Rev Karen Hendry: On our integrity group, which I convene, we have a professional violence against women worker. We have engaged in a stakeholder day, when we gathered information from interested parties. We have done a fair bit on having conversations and information gathering. Our main focus is to listen, to understand and to respond in a pastoral way.

Rachael Hamilton: I will extend the question to the other witnesses. Let me ask Fraser Sutherland first.

Fraser Sutherland: We agree with reducing the age to 16. I listened closely to what Karen said about the United Nations Convention on the Rights of the Child. I do not feel that I agree with her assessment of how the United Nations Convention on the Rights of the Child works or

how it is judged that young people reach a capacity age.

I would very much draw your attention to the evidence that you heard from Bruce Adamson on this topic, because he covered very well the question of how capacity is judged in young people. Under the Age of Legal Capacity (Scotland) Act 1991, young people are able to make even life-and-death decisions about medical treatment and end-of-life care, and that shows that a system can be adopted that protects their best interests as well as their voices. I am therefore not sure that I agree with the assessment that the UNCRC dictates that everything must be 18; indeed, that is not my understanding at all from the legislation that has been produced by the Parliament or from having used the convention. I would also point out that, in a previous evidence session, Mhairi Crawford gave a number of very clear examples of the lived experience of young trans people that not just the committee but the wider Parliament would do very well to listen to.

Rachael Hamilton: It is strange how laws and regulations work. After all, you cannot get a credit card, place a bet, get a tattoo or drink alcohol until you are 18. The rules and regulations are strange for 16 to 18-year-olds.

Chris, can I bring you in here?

Chris Ringland: We definitely think that, until the Cass review concludes and we see what comes of that, the age limit should not be reduced to 16. The interim report says that young people's gender identity can remain in flux until their mid-20s. I defer completely to medical professionals on those points, but it seems reasonable not to press ahead with the reduction to 16 with that being known.

Given the different aspects that you have mentioned and which, under the law, you cannot do in Scotland until you are 18, we are not clear as to why the age should specifically be 16. I note that the legislation in Ireland has been previously highlighted to the committee, and I would point out that the Irish gender recognition process for 16 and 17-year-olds requires an application to a Government minister, a court order process, parental consent and medical certification from two doctors—a medical practitioner, psychiatrist or endocrinologist—that you have transitioned or are currently transitioning into your preferred gender. It is perhaps worth the committee reflecting on that or hearing from an Irish representative on the specific point of 16 and 17-year-olds, which, for the record, comes under section 9, I think, of the Gender Recognition Act 2015.

Belgium also requires parental consent and a report from a psychiatrist for 16 and 17-year-olds, and I would also highlight the UK Government's

recent decision to legislate on marriage and raise the minimum age for getting married from 16 to 18 in order to tackle forced marriages. The inherent implication of that move is that 16 and 17-year-olds are more vulnerable than—or, I should say, vulnerable in different ways to—18-year-olds.

Anthony Horan: In one of my answers to Pam Duncan-Glancy, I segued a little into this area, so I might have covered part of the ground already.

Just to add to what I said earlier—and aligning myself with what Karen Hendry has said about the UN Convention on the Rights of the Child defining children as those under 18—I think that the magnitude and consequences of such a decision raises the question whether a child can give informed consent, especially in the formative phase of their social development. As you said yourself just a moment ago, young people under 18 years of age in Scotland are restricted by law with regard to buying alcohol and tobacco in licensed premises, buying or possessing fireworks, watching any film they like or, as I said earlier, getting a tattoo—and I repeat that a tattoo is skin deep while attempting to change one's gender goes a lot deeper than that.

Rachael Hamilton: Chris Ringland, you mentioned the Cass review, which, as we know, is at the interim report stage. In England, there has been a significant increase in the number of referrals of children and young people to gender recognition clinics. You seem to have quite a strong view on the importance of that review; should the bill be paused until the review publishes in full?

Chris Ringland: I think that that would be reasonable. The point has been made many times about how long the process has been going on for and the amount of consultation that has been undertaken—and I, too, am conscious of that—but the findings even in the interim report are important to the thinking around the bill.

Rachael Hamilton: Do any other members of the panel have a view on the Cass review and how important it is in the context of what we are doing in Scotland? It seems not.

12:30

Pam Gosal: Good afternoon, and thank you for your opening statements. As you will probably be aware, if someone wishes to choose the sex of their nurse or doctor, they are free to do so. For example, if a female goes to a doctor's surgery to have a smear test done, she has the right to ask to have it done by a female doctor. If a doctor or nurse is transgender and a patient is not aware of that—as we have heard from many witnesses, there is no requirement for that information to be disclosed to the patient—that could interfere with

their religious practices, whereby women are not allowed to be touched by men. That is of great importance to many people, especially members of the black, Asian and minority ethnic community.

I raised that concern last week. I must put this on the record and make it clear to everybody who is listening: at no time am I saying that the rights of trans people do not matter, or that religious rights do not matter. This is about creating a practical balance between two sensitive areas—rights and liberties. I am raising concerns that have been highlighted to me by many people.

I understand that the practice to which I am referring may not be the practice of every religion and may not be the practice of the religions that you represent. However, it would be great to hear from you, as representatives of your religious organisations, on whether the issue that I have raised is a concern for you or for women of faith, and on whether there are other concerns regarding the practical implications of self-ID that the committee might not have heard about before.

The Rev Karen Hendry: We have not discussed that as a forum, but religious belief is a protected characteristic under the Equality Act 2010, so I would expect the belief systems of members of the BAME community to be respected when they interact with the medical profession or any other profession.

Anthony Horan: I think that the proposals in the bill open up the possibility of legally changing gender to a larger number of people. With that comes a potential increase in the likelihood of bad actors abusing the system for their own ends—for example, by gaining access to women's refuges, safe houses, changing facilities and prisons. There are already examples of that, especially in the prison system. That is not to tar all people in the community in question with that brush; it is simply to say that there may be people who want to use the system for their own nefarious ends. That is very concerning.

It is incumbent on the Scottish Government and the Parliament to ensure that people who express the view that sex and gender are immutable and who thus reject the idea of gender as fluid and separable from biological sex are free to do so. I think that that needs to be protected. That is particularly important for people who work in education or healthcare, marriage celebrants, prison staff and religious representatives, among others.

From a Catholic church perspective, I would argue that we should be able to declare the marriages of people in accordance with our own teaching, which is already protected and should be preserved. The same goes for the teachings of other religious bodies and groups.

Freedom of thought, conscience and religion, freedom of speech and freedom of expression and association are all fundamental freedoms that constitute a precious inheritance that must be preserved and passed on intact to future generations.

Chris Ringland: It is important to again put on the record that religion or belief is a protected characteristic under the Equality Act 2010, alongside sex and gender reassignment. The situation that Pam Gosal referred to might be the sort of thing that the EHRC was referring to when it talked about its concerns about a possible conflict of rights in certain circumstances. That is worth exploring a lot more and I would defer to the EHRC on that.

Fraser Sutherland: My perspective is that the situation that Pam Gosal described does not arise from the bill. That situation could already exist today. The NHS often provides sensitive services to people from different religious communities, and I think that it is capable of doing the same in relation to this specific issue; it obviously does at the moment.

The NHS has a long history of being very aware of and sensitive to individual religious beliefs. For example, it has guidance on treatment such as blood transfusion, given that there are people who refuse to accept blood transfusions for religious reasons. There is no reason why the NHS would have a huge difficulty in doing the same for this issue. From our perspective, any healthcare should be provided on an informed consent basis for the patient. That is the right way to go about it.

To pick up on Anthony Horan's point about not portraying it as a group of people that are a particular risk, it is important to look at how we strengthen protections against individuals who are a risk without implying that a whole category of people should have their rights restricted in order to achieve that. I do not think that history is very kind on that perspective, when we have restricted whole communities—whether that be religious groups or racial groups—on the basis of bad actors from those groups.

Pam Gosal: You are absolutely right that it is already the case that transgender doctors do not have to inform the patient of their transgender status. As there is already a gap in the law, would it not make sense to address that issue now and bring balance between transgender rights and religious liberties? The bill is an opportunity—perhaps the prime opportunity—to bridge that gap at a time when proposed changes to the GRA would make it easier to transition and obtain a GRC. That may mean that the problem will become more widespread and have a greater impact on the faith communities and their right to practise their religions.

Fraser Sutherland: As I said before, I think that it should be on the basis of informed consent and I think that it is for the NHS to put in the guidance and the regulations to achieve that.

Pam Gosal: Can I put the same question to Anthony Horan and Karen Hendry about the gap that is in the law right now and about the new legislation.

Anthony Horan: Parliament needs to be cognisant of the balance between competing rights—I do not know whether that is the right way to put it, but certainly it needs to be cognisant of where tensions may exist.

The Rev Karen Hendry: To go back to the Equality Act 2010 and the protected characteristics, we were of the view that the 2010 act provides protection in such situations, and religion and belief are part of that and are already protected.

Karen Adam: I have a question for the whole panel, starting with Anthony Horan.

We have heard that trans people continue to have almost no visibility in public life, and, whether that is in boardrooms, council chambers, churches or Parliaments, it is hoped that any trans person who has felt unsure about applying for a position on a Scottish public board will be encouraged to do so by these reforms. What is your response to that? Would the reforms change how you would proceed with a request for trans people to be in leadership or decision-making roles in your organisation?

Anthony Horan: That is not something that we have specifically considered but, getting back to basics, every human being, in our understanding, is made in the image and likeness of God; all human beings are to be respected and they all have dignity. We have to meet people where they are.

Although our concerns about and opposition to the reforms in the bill are well known, we obviously recognise that there is absolutely a pastoral duty on the Catholic church and all religious organisations to ensure that all individuals—whatever their sexuality or status—are welcomed into our communities. However, there are protections in place under the GRA on the appointment of priests, for example. I previously mentioned that the Catholic church's vision of marriage between one man and one woman should be protected.

The Rev Karen Hendry: I turn the committee's attention to our equality, diversity and inclusion programme. Our faith's perspective is that all people are loved and welcomed by God, and the programme is about what that means for us as people of faith.

On our website, there is a section called “Diverse Gender Identities and Pastoral Care”, in which we have real stories, and one is from a trans male who gives his life story; he is a leader in a Christian church. Also, the Church of South India has just ordained its first trans woman, and it has run a transgender programme in the diocese of Madras for some time now.

The Church of Scotland is actively involved in considering the story of what it means to be human, what it means to feel loved and valued and what it is to be an inclusive community that can hold the ground respectfully for everyone and open a space of grace-filled listening so that there can be a move to understand one another.

Chris Ringland: All ministers and pastors in our membership seek to love their congregations and support everyone in their spiritual lives, and that includes those from the trans community. It is in our membership’s interest—and the whole of Scotland’s interest—that we get this legislation right and that it works for the benefit of everybody, regardless of who they are.

Fraser Sutherland: Karen Adam’s question was about how our organisations would implement changes relating to the bill, and I do not think there is any specific thing in the bill that would have an impact on our internal processes—for example, people joining as members or taking up positions in the humanist organisation. However, I accept the member’s point about people being more willing to be open about their identity, because people who are already involved in the society might not be open about their identity now, and perhaps it would be more comfortable for them to do that if they were able to access what the bill proposes.

The Convener: Thanks, everyone. Thank you to all the witnesses on the panel; it has been a very useful session for the committee. That concludes the public part of our meeting, and we will now move into private for the final items on our agenda.

12:44

Meeting continued in private until 13:53.

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