



OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities, Human Rights and Civil Justice Committee

Tuesday 6 December 2022

Session 6



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**EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE
31st 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:

Eilidh Dickson (Scottish Human Rights Commission)

Ian Duddy (Scottish Human Rights Commission)

Jim Farish (Scottish Human Rights Commission)

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Equalities, Human Rights and Civil Justice Committee

Tuesday 6 December 2022

[The Convener opened the meeting at 10:00]

Scottish Human Rights Commission

The Convener (Joe FitzPatrick): Good morning and welcome to the 31st meeting in session 6 of the Equalities, Human Rights and Civil Justice Committee. Our first agenda item is to hear from the Scottish Human Rights Commission. I refer members to papers 1 and 2.

From the Scottish Human Rights Commission, I welcome Ian Duddy, chair; Eilidh Dickson, policy and international officer; and Jim Farish, commissioner. I invite Ian Duddy to make a short opening statement.

Ian Duddy (Scottish Human Rights Commission): Thank you very much for inviting us along. We recently published our annual report for 2020-21. I should stress that none of us was in position during that period, but we are happy to take questions on the report and set out our vision for the years ahead. I also take the opportunity to thank my predecessor, Judith Robertson, who led the organisation for six years and who left office in March 2021.

I thought that it might be helpful to briefly explain our mandate and some headline issues. We are a public body that is independent of the Scottish Government but funded by the taxpayer via Parliament. My position—the chair—is appointed by Parliament, and we have under our mandate up to four commissioners who work part time. Jim Farish is one of those new commissioners. We currently have three commissioners in position.

Our powers are to conduct inquiries, intervene in relevant civil court cases, publish research, give training and make recommendations as to law, but we do not have powers to litigate, nor are we able to take on legal complaints.

The United Kingdom has three national human rights institutions: the Equality and Human Rights Commission, the Northern Ireland Human Rights Commission, and the Scottish Human Rights Commission. We are a little bit unique in having three institutions that are recognised by the United Nations.

In 2020-21, we had a budget of £1.2 million. Most of that was spent on our staff; around 85 per

cent of our total budget is staff costs. Our total staff head count is 12.5 and we are hoping to increase that to 14.5 in the next financial year. We have submitted a budget bid for the next financial year of £1.37 million.

Compared with the other two UK NHRIs—the EHRC and the Northern Ireland commission—we are quite lean. The Northern Ireland commission had a budget of £2.3 million in 2020-21 and 22 staff, and the EHRC had a budget of £17.1 million and 183 staff. Our mandates are a bit different, but we are a small NHRI in comparison with those two.

We are halfway through our four-year strategic plan, which runs from 2020 to 2024. We have four key strategic priorities that we are aiming to deliver: to progress the understanding and strengthen the legal protection of economic, social and cultural rights; to strengthen accountability for human rights; to build wider ownership of human rights; and to advance best practice locally and share our knowledge globally.

In relation to what is covered by the 2020-21 report, I also want to mention that our A status as a national human rights institution was reviewed and, I am pleased to say, renewed by the UN.

In the year ahead, we plan to work on issues including the Scottish Government's plans for a new human rights bill and to incorporate several treaties into Scots law. That will be a big piece of work, which may result in the commission having additional powers. We therefore need to think through what it means in relation to our own work and resourcing.

Just last month, the United Kingdom was reviewed on its human rights record, under the universal periodic review process at the United Nations. Commitments were made by the UK and Scottish Governments, which we will look to follow up over the next year or two.

We work quite heavily in the justice sector, in the context of prison inspections and monitoring. That work was suspended during Covid, but we want to renew it, working hand in hand with His Majesty's Inspectorate of Prisons for Scotland.

In the year ahead, there will be work to address the cost of living crisis, particularly in the context of housing, health, access to mental health services and minimum core obligations.

I hope that I have given the committee a flavour of some of the things that are coming up in the year ahead and which the committee might want to look at.

The Convener: That is really helpful. Thanks.

You mentioned Covid. Some work has been paused, to a degree, because of Covid, including

the development of strategic litigation. It would be useful to get an idea of what else has been paused and what plans there are to pick up such work, post-Covid.

Ian Duddy: In 2020-21, we had to divert some of our work to Covid. During that period, the commission issued quite a lot of guidance to Government and the chief medical officer, for example on recommendations on vaccine certification. We made a statement about human rights in care homes. We have fed into the Scottish Government's Covid inquiry and its terms of reference.

We had to divert a fair bit of work, so that we could respond to Covid. At the same time, other work was paused. I mentioned prison inspections, and we hope to work with partners to pick that up in 2022-23.

Some of our work on participation and lived experience had to be paused or done differently. There is a digital divide, which has been a bit of a challenge in the context of Covid; not everyone is able to dial in via Zoom, so reaching more marginalised or vulnerable communities can be a challenge.

The pandemic highlighted new areas, some of which we mentioned in our report to the universal periodic review, such as mental health, social care, disabilities and the struggle for some communities to access services locally.

The Convener: Rachael Hamilton is keen to press you on prisons, which you mentioned. This is probably as good a time as any for me to bring her in.

Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con): Thank you. Will the commission talk us through the recommendations that you have made and how you expect HMIP's independent review of the response to deaths in prison custody to be acknowledged by the Parliament?

Ian Duddy: My predecessor Judith Robertson worked closely with the inspectorate and Families Outside—a civil society group—on the deaths in custody review, the report of which was published this time last year. We understand that the Scottish Government accepted all the recommendations, but, one year on, we have some questions about whether they are being followed up and implemented.

Gill Imery, who is currently reviewing that work, is expected to publish a report very soon. We will want to ensure that the recommendations, to which the Scottish Government agreed, are implemented. A key recommendation was that there should be an independent investigation

whenever there is a death in custody. We would like to see that in practice.

Jim Farish might want to add something, given his background.

Jim Farish (Scottish Human Rights Commission): I only want to say that we met with Gill Imery and we know that there is on-going work to challenge the uptake of the recommendations. Some actions have already been taken that relate to how to contact next of kin and who, from the establishment, should make that contact, so some work is being done, but the report is not due to be published until the middle of the month.

Rachael Hamilton: Obviously, it is a very important report. What power does the SHRC have over the Parliament to ensure that it carries out the recommendations that you have made? What is the process for that? In the past, were those reports put to one side if the Parliament decided not to take up the recommendations? Is it in the Parliament's gift to be able to take this forward or can the commission put pressure on parliamentarians?

Ian Duddy: Those are really interesting questions. Some of the responsibility lies with the committee. There is separation between us and the prisons inspectorate, for example, and as such we do not have powers to litigate against the Scottish Government if we find it to be failing. I think there is a role for us, as the NHRI, to explain and question when public commitments are not followed up.

We have also done some work on remand in Scotland, which is a related matter. The figures on that are quite high when compared with the rest of the UK, so we want to follow up on that with the justice sector next year.

Pam Duncan-Glancy (Glasgow) (Lab): Good morning, and thank you all for the information that you have provided so far.

During the pandemic, a number of things had to be paused, and you did some work on the Covid inquiry. In your view, do the terms of reference, which have been updated as a result of Lady Poole's resignation, now take account of human rights? Do you expect that the inquiry will be framed by that, and can the committee or parliamentarians do anything to ensure that that is the case?

Ian Duddy: We lobbied openly and publicly for the inquiry to take a human rights-based approach. I am pleased by the Deputy First Minister's commitment that that approach will be included in the terms of reference. We are pleased that has been made explicit.

One of the roles that we have is to ensure that that approach is implemented throughout the

inquiry, so we will follow up with Lord Brailsford and the Covid-19 inquiry team about next steps on that.

Pam Duncan-Glancy: Do you have a view about what that would look like?

Ian Duddy: It is too early to say, but I think that the inquiry team will need to strike a balance between ensuring that those who are most affected by the pandemic and the most marginalised groups and individuals have a chance to give evidence. There should be a proper participatory process for those most affected by the pandemic. A balance has to be struck, because 15,000 families might want to give evidence, so perhaps it should be done in as inclusive a way as possible so that everyone has a chance to contribute.

Pam Duncan-Glancy: Do you think that the inquiry will take your advice on that? Do you intend to give it advice to do that, or do you know how it will approach it?

Ian Duddy: We have not met the new chair of the inquiry team yet, but we plan to do that before Christmas and we will have that conversation.

Pam Duncan-Glancy: I have one further question about staffing and resources. In your opening statement, you mentioned that you are a “lean” organisation and you said that you hope to build up to having 14.5 members of staff during the coming year. We will talk more about the incorporation of the new human rights bill, but if that was required, do you think that you would need to exceed that number of staff for further incorporation, and do you have a sense of why you are leaner? Are you proportionately leaner, or do you have less resource and staff?

10:15

Ian Duddy: Our mandates are a bit different. The Northern Ireland commission has powers for strategic litigation—we do not. If the new bill meant that new obligations were placed on us as a commission—in particular, around legal powers—we would need to increase resources, because we are not staffed for that at the moment. Basically, the bid that we have put in for the next financial year is steady state, just to keep the ship sailing. If we have additional powers, we will need additional legal resource. At the moment, we have two full-time legal officers. We are quite lean.

Maggie Chapman (North East Scotland) (Green): Good morning, everyone, and thank you for joining us.

Ian Duddy, I follow on from Pam Duncan-Glancy’s line of questioning on staffing. How is the commission, at the moment? We have been through Covid and its impact—some of which we

have talked about—and, as you outlined in your opening remarks, there has been a significant amount of organisational change, about which I have a few questions. I am interested in how the staff in your team are feeling.

I should declare that, as a member of the Scottish Parliamentary Corporate Body, I will be scrutinising the budget bid that you have put in for next year.

Ian Duddy: It has been a challenging year, not just because of Covid but because of quite a big change in staff and a new set of commissioners.

Between my predecessor’s leaving and my starting, there was a gap of three to four months. In the future, perhaps succession planning can be looked at, when it comes to recruitment, in order to avoid such a gap. That is within the committee’s gift.

We have also had quite a bit of staff turnover, so we have had to ruthlessly prioritise what we have been working on. I am grateful to the corporate body for providing us with a finance director so that we were able to complete our report and continue to pay all our invoices and our staff. Two new senior staff are joining us in January: a new executive director and a new finance director. That will help us to rebalance.

It is worth clarifying that there is a difference between the role of the chair, which is full time, and that of the commissioners, who are part time. As a commission, the part-time commissioners, including Jim Farish, are responsible for strategic oversight, but the operational, executive decision making rests with the chair.

In addition, we are looking to outsource some functions, such as payroll. We are quite a small organisation—fewer than 20 people—so we are being encouraged by the Parliament to look at shared services. We already share our building and reception facilities with a number of other public bodies.

Maggie Chapman: The Scottish Human Rights Commission is not the only commission that is talking about sharing services such as payroll and back-office functions.

Jim Farish, in your newish role, how do you find the balance between the strategic work that you and your fellow commissioners are asked to do and the operational side, which Ian Duddy heads up? Notwithstanding the requests for additional staff that Ian has outlined, have we got the balance right between strategy and operations?

Jim Farish: An on-going analysis needs to be undertaken as to what that balance is. Coming as I have from a big organisation to such a small organisation, I have found it impressive that such

a volume of work is produced by such a small core group of staff. Credit is due to them for that.

Some work needs to be done on the balance between the strategy and the operational side of things, and on making sure that the commissioners are there to help to develop a noses-in, fingers-out approach, because that balance was perhaps not quite right in the past.

We have already discussed that, and we will look to develop that approach over the coming months, especially when the two new senior staff members come in. We will then have an operational function in the commission staffing group that will allow a lot of the work that has slipped to the commissioners to be rebalanced.

Maggie Chapman: That is helpful. Ian Duddy, you talked about the shift from 12.5 to 14.5 members of staff, which you described as “steady state”. Given what is coming at us all with the human rights bill, incorporation and the distinct legal and constitutional challenges around that, never mind just the human rights bit, when you say “steady state”, how much additional resource do you anticipate needing? I know that you will have started some of those conversations with staff who support you in the Parliament, but where are those conversations going?

Ian Duddy: That is a good question; a key challenge for us in 2023 is to map that out. To be clear, the two additional staff would come from regularising two fixed-term contracts, so it is not an overall addition to our capacity, although it is an overall addition to our permanent head count.

We will need to see the shape of the bill when it comes through; we were expecting a consultation before Christmas, but I understand that that has been pushed into 2023. We need to see the detail to work out exactly what is being proposed—and again, the role of the commission in relation to the new treaties that are being enshrined in Scots law is in the hands of Parliament—but from initial conversations we understand that there could be a move to the commission having a type of regulatory function that would be different from the mandate that we have at the moment. If that means things such as strategic litigation, I would envisage our needing a new set of lawyers to be able to take cases to court and follow them all the way through.

Maggie Chapman: That is helpful. I will ask one more question, if I may. There have been discussions about having commissioners for other bits of rights. How do you view the SHRC’s role as an overarching body? How do you see that role developing?

Ian Duddy: That is an interesting question. There have been several proposals for additional public bodies covering women’s rights, and there

have been proposals for an older persons commission, a victims commission and, I think, a commission for autism and neurodiversity. We are open minded on that. Our mandate is clear that we should not duplicate functions, and that should work both ways, particularly given the challenge that we all face on public finances. If new commissions are created, we should make sure that there is clarity of purpose and that they do not duplicate functions that we carry out. We are the NHRI for Scotland, and our mandate is meant to be broad and to cover all human rights issues, so the devil is in the detail on that one.

Maggie Chapman: I will leave it there.

Pam Gosal (West Scotland) (Con): Good morning. Ian Duddy, in your opening statement, you mentioned that you are setting out a plan and a vision for the future. With that in mind, we all know that the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill would have had a significant impact on the Scottish Human Rights Commission, such as through the powers in section 10A. Is the continuing uncertainty around when the amended bill will be reintroduced causing issues for the commission in its long-term planning, and would the commission like more clarity from the Scottish Government on the timescale for the bill’s reintroduction?

Ian Duddy: In some ways that relates to the previous question. There is a separate office for the Children and Young People’s Commissioner Scotland. Again, we try not to duplicate its work. It has led on most of the work on policy and legal analysis of the CRC bill, given that it is within its mandate. As the NHRI, we support the work of Bruce Adamson and his commission. We want to see clarity from the Scottish Government about the bill and its introduction. We hope that it will lodge the announced amendments as soon as possible.

Pam Gosal: Thank you for that information. You have spoken about your budget and your ask for the year ahead. For clarity, is that included in the figure, or is there uncertainty because you are looking for more staff and more money but you are not certain about when the work will come through? That could affect your long-term planning and the budget side.

Ian Duddy: On our medium-term planning, we await the detail not just on UNCRC but on the new human rights bill. We want to ensure that we are properly staffed and have the right budget for that. At the moment it is a bit difficult to predict what we will need in future years, but I think that we will come back to the committee in 2023 with a firmer proposal about our needs.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good morning to the panel. My question follows on from Maggie Chapman's line of questioning. You will be aware that the UK Government is proposing a British bill of rights and the Scottish Government has plans to introduce a Scottish human rights bill. What are your thoughts on how those might change the human rights landscape across the whole of the UK and with a particular focus on Scotland? Has your team any thoughts on how those bills might interact?

Ian Duddy: Sure. I will ask my colleague Eilidh Dickson to respond to that question. For the record, as a commission we have been quite open and public about our concerns about the Bill of Rights Bill and its implications for Scotland, given that the Human Rights Act 1998 is enshrined in Scots law. We think that the 1998 act is working well for Scotland. We are not clear about the intent behind the Bill of Rights Bill and are concerned about its regressive effects; in summer we published a briefing on it and we have given evidence to the Joint Committee on Human Rights at Westminster. We understand that there may be a second reading of the bill before Christmas and we intend to continue with our advocacy on and questioning about it.

Fulton MacGregor: Thank you for that. Many members here share those concerns. Will you commit to keeping this committee up to date with your thoughts on and analysis of the bill as it progresses?

Ian Duddy: Sure. The evidence that we gave to the Westminster committee in the summer and all our evidence—whether to that committee or this one—is public and is published on our website. We will be working on that in the year ahead and we will keep the committee informed.

I will just check with my colleague Eilidh Dickson whether I have missed anything there.

Eilidh Dickson (Scottish Human Rights Commission): No—thank you, Ian. As we have outlined in submissions to Westminster and the Scottish Parliament, we are quite concerned about some of the technical impacts of the Bill of Rights Bill. It was noticeable that in the universal periodic review a significant number of recommendations from other states referred to the proposals—some at structural level and others at a more technical level.

One of our concerns about the general landscape, which you noted in your question, is about the Scotland Act 1998 and the restriction on the legislative competence of the Scottish Parliament when it comes to convention rights, and how that might lead to uncertainty in the legal landscape about the level of protection or the interpretation of convention rights under the

Human Rights Act 1998 and the Scotland Act 1998. We are concerned that not enough scrutiny has been given to that particular point in the conversations so far.

10:30

We are aware that the UK Government is engaging with the Scottish Government around some of the more technical matters of the bill, but we are not yet seeing any evidence that the UK Government really understands the constitutional impacts of some of the recommendations and how they might lead to uncertainty in the process.

Fulton MacGregor asked us to update the committee. We can commit to sending you things that we publish. We intend to put out a briefing and a summary of our concerns around the time of the second reading of the Bill of Rights Bill. As far as I am aware—yesterday, I caught up with my colleague who is leading on that—that has not yet been scheduled, but we expect it to be forthcoming in the next few weeks.

Fulton MacGregor: Thanks for that response. There was quite a big statement in it around your feeling that the UK Government is not quite getting the complexities of how its approach could impact on Scottish law on human rights. I know that both of you have touched on this, but what work to advise the UK Government has been done and is continuing? Is there any interaction between the Scottish Government and the UK Government to make the point clear? It would not be good if something happened just because of a lack of knowledge. Does that question make sense?

Eilidh Dickson: It is fair to say that consultation between the Scottish Government and the UK Government is a matter for them. We have certainly raised points about some of the technical implications and about challenges in relation to the broader culture of human rights protection. We have raised points about some of the duties on public bodies that have been mooted for the forthcoming bill of rights in respect of specific treaties and some of the rights in the International Covenant on Economic, Social and Cultural Rights, which will be brought forward in the Scottish Government's proposals, to protect social, economic and cultural rights.

There is still a lot of room for movement around what the Scottish human rights bill will look like. We are not at a stage of being able to comment on how those duties might look. However, we and a number of other public bodies have made the point about the need to fully understand what some of the differences might be for public bodies in understanding their obligations under the Scotland Act 1998 and the Human Rights Act 1998.

Fulton MacGregor: I also have questions around the national action plan, but first I thank you for those answers. I am sorry if my first question was a bit rushed; I was not expecting the convener to call me that soon. A lesson for me as a committee member is: always be prepared. *[Laughter.]* I thought that there was somebody else before me, but there you go.

My second line of questioning is around the second Scottish national action plan, which has been touched on already. Will it help the commission to meet its strategic priorities to promote and protect human rights? What contribution will it make to the changing human rights landscape in Scotland?

Ian Duddy: The second Scottish national action plan is currently being developed. We are part of the leadership panel with the Scottish Government and a number of other civil society organisations. The action plan has been several years in the making, and some of the work was paused during Covid. The group has been trying to agree a set of actions that will be launched as part of a new national action plan in the new year. We are getting to the business end of that process just before Christmas, so the wording of those actions is now being agreed. I think that the Scottish Government's intention is to launch the action plan in March next year.

As with everything, it is one thing to make commitments, but they need to be followed up, which may be something for the committee to think about and be involved in in the years ahead. I think that around 50 actions will be included in the action plan. Ensuring that the plan and all those actions will be resourced, prioritised and implemented is a big piece of work. The plan could be great and transformational for Scotland. It is being co-produced with civil society and groups that are perhaps most affected by inequalities, but it will stand up only if it is fully delivered and implemented. Part of our role as the NHRI is to ensure and monitor the follow-up.

Fulton MacGregor: That is a very important point to make. I have a supplementary question. Do you have any idea how you will be able to measure whether there has been success, whether there have been outcomes or whether things are moving on? Have you thought about the measurement tools?

Ian Duddy: That is currently being discussed in the leadership panel and it is easier in some areas than it is in others. How to measure impact and success is always quite challenging in public policy, but there are indicators and proxy indicators that can be used for some actions—for example, child poverty rates. We have already discussed the justice sector, prison populations and remand. There are metrics that can be used.

For other things, we will need more qualitative evidence, such as feedback from civil society and from those with lived experience on what they think and feel.

Fulton MacGregor: Thank you very much. I am happy with that, convener.

Pam Gosal: In your opening statement, you mentioned the big areas that you will focus on. How do you come to a conclusion on which areas you would like to focus on in creating your vision and plan?

Ian Duddy: Some of that is done through horizon scanning and working out the big issues that are coming up in the legislative agenda. The human rights bill will involve a big piece of work, and I think that there is a role for us as the NHRI to lean in on that and ensure that it is done well.

On responding to lived experience and the feedback that we receive from civil society, we have a lived experience group that represents various communities and individuals. Getting feedback from them helps to inform our work and priorities so that we respond to the human rights issues that are pertinent to Scotland. We have done some recent work on that.

I ask Eilidh Dickson whether she wants to mention the recent work on the International Covenant on Economic, Social and Cultural Rights and some of the lived experience work that we have done.

Eilidh Dickson: Absolutely. We are working through the current strategic plan. Next year will be a strategic planning year. When the 2020 strategic plan was drafted, we undertook a significant amount of consultation with public bodies that we work with and with civil society. We had an open call for evidence on what the priorities should be, and it was clear from that work that economic, social and cultural rights were a priority for the public at large and for us. Obviously, we now have the incorporation agenda and the potential incorporation of the International Covenant on Economic, Social and Cultural Rights. The strategic priority around economic, social and cultural rights and the protection and understanding of those rights is a big factor in leading our work over the next few years.

As an NHRI, we also have a number of responsibilities under international law to report on various treaties. We are coming into the reporting process for the ICESCR treaty to protect economic, social and cultural rights. That process will begin in the new year. The first stage of that involves stakeholders, including NHRIs, producing written reports that summarise some of the key concerns.

Obviously, we are well aware of some of the impacts of the current cost of living crisis. We have held a workshop with civil society organisations in which they were asked about some of the impacts that the cost of living crisis was having on the groups that they work with. We also looked at the various treaty articles in ICESCR that provide protections in relation to housing, health, education and culture. The cost of living in particular was looked at. That added to the workshops that we have done over the past year to inform our universal periodic review work.

All that has fed into our report, which we plan to publish early in the new year. That will be the beginning of a process that is likely to take a couple of years with regard to the UK reporting on how it protects economic, social and cultural rights.

Jim Farish: I am a practical person, so I apologise if this is a bit basic. In my book, the most powerful metric that you can have is whether rights holders understand their rights and how to access those rights. It is about engaging with individuals and understanding how that happens. On the website, there is an excellent little film about rights in a care home. This lady says, "I always thought rights were out there, but it actually applies to me." That was a powerful statement. The legal and policy aspects are vital, but underneath that is the impact for rights holders and whether they are seeing benefits, change and more empowerment. That is the means by which we identify progress in the broadest sense.

Pam Gosal: Thank you.

I had a catch-up call from Ian Duddy, as I am sure my colleagues did. One of the questions that he asked was what the top priorities are in our constituencies and regions. That is important. I do not know how many MSPs the commission has reached out to—perhaps it was just committee members—but all MSPs represent a constituency or region, so it might be good to reach out to them to see what their top concerns are. We are on the ground and we listen to people. Obviously, you mentioned the cost of living, but there are many other areas, so that might be a good idea.

Ian Duddy: Thank you. We are happy to receive feedback from committee members with regard to the casework inquiries that you get, which I understand are significant. In some ways, that gives us a picture of the concerns that are being raised at local level in your communities.

Eilidh Dickson: Now is an excellent time to raise your predecessor committee's 2018 report "Getting Rights Right: Human Rights and the Scottish Parliament", which talks about an expansive role for the Parliament and a collaborative role between NHRIs and the

Parliament as the protectors of human rights. The report considers how we can work together to ensure accountability for human rights, that the right issues are being raised and that we are giving proper scrutiny to the actions of the Scottish Government and other public bodies.

There are lots of recommendations in that report. Because it was published in 2018, I think that it fell victim to Covid, but the committee has an excellent opportunity to look at some of the recommendations, taking into account what we have said about our resource and desire to work collaboratively, to see whether there might be opportunities to regularise the communication between us. By that, I do not just mean with the committee but with MSP colleagues from across the chamber.

Karen Adam (Banffshire and Buchan Coast) (SNP): Good morning. I will follow on from what we have just been discussing. Jim Farish talked about people understanding their rights, and Eilidh Dickson talked about people generally knowing what human rights are and how they interact. In his opening statement, Ian Duddy, said that training is one of the commission's remits. What does that training look like? Who does it apply to? For the benefit of the committee, how do you roll out that training?

Ian Duddy: To step back for a second, there are two sides to our mandate. With regard to protecting human rights, we carry out legal and policy analysis, but we also promote human rights. As Jim Farish said, it is about making the legal floor real for the ordinary person in Scotland. Part of our job is to communicate and promote that, and we do some of that through training. We have offered training to parliamentarians, and we are happy to do that. We have done training sessions on human rights budgeting, on incorporation and on the new human rights bill. That training is not just for Parliament but for other public bodies in Scotland.

10:45

If the human rights bill develops in the way that we think that it will, that will bring new obligations to public bodies and local authorities in Scotland. Part of our role is to make sure that public bodies understand those new obligations. I am slightly concerned that not all of them fully understand the implications of the human rights bill and what it would mean for them. Those rights would be justiciable in Scottish law, which means that, if they are not upheld, citizens will be able to assert their legal right to remedy. Therefore, we have a role to play in training and working with public bodies to help them with that.

I might be bold and suggest that that is a critical component for MSPs, too, as, ultimately, you are the human rights guarantors in Parliament. Such training could form part of the core training for new MSPs, and we would be happy to provide it.

Karen Adam: That is interesting. It is crucial that people understand how the issue of human rights interacts with all policy and legislation. I remember that, when I was a councillor, we would read through reports, at the end of which would be a section on the equality impact assessment. It seems as though that approach should be flipped on its head and human rights should be a foundation of the approach to many things.

How crucial is it that all committees, not just the Equalities, Human Rights and Civil Justice Committee, put human rights at the foundation of their policy making and scrutiny?

Ian Duddy: That is a good question. In the past few months, we have been working on broadening awareness of that beyond this committee. Recently, colleagues gave evidence to the Health, Social Care and Sport Committee on the National Care Service (Scotland) Bill and some of our concerns about it. Colleagues have also spoken to the Finance and Public Administration Committee on human rights budgeting. We are happy to do such work.

It is important that the Equalities, Human Rights and Civil Justice Committee is still the functional home for human rights in the Parliament, but we are happy to work with other committees, because there are so many cross-cutting issues, particularly when it comes to finance, resources and implementation.

Karen Adam: In relation to the impacts of Covid, I was struck by what you said about people's ability to access resources locally. People might not think that the Rural Affairs, Islands and Natural Environment Committee, for example, would have any obligation to underpin human rights, but rurality is a hot topic in the context of the debate about our neighbourhoods and people's ability to access healthcare, for example. It is really interesting to hear your testimony on that.

Ian Duddy: That is a classic example of an area in which there are cross-cutting issues. We have been working with a women's group in the north Highlands on the difficulties that they have in accessing gynaecological care in remote areas. There is a trade-off, or a balance to be struck, between offering centralised, very specialised centres of excellence and making sure that they are accessible. In some rural parts of Scotland, there are questions about the extent to which centralisation of public services—which has happened for understandable reasons—puts up a

barrier to women accessing healthcare in rural areas.

Karen Adam: That is fascinating.

Pam Duncan-Glancy: You made the point that there are two aspects to your work: protecting the legal floor for human rights and promoting human rights. In relation to protecting that floor, the committee—I am a member of two committees, but I am pretty sure that it was this one—heard from a group of learning disabled people, who spoke to us about their experience.

It was clear to me, given the number of people who are dying of preventable illnesses and the thousands of people who are stuck in hospital—in some cases, for years at a time—that the floor that we would expect for them is not being met. How can the committee ensure, through things such as the universal periodic review and the review of the 2018 report that Eilidh Dickson mentioned, that the floor is protected? What would you expect to see with regard to policy and budget that would allow us to tell whether we are protecting that minimum core?

Ian Duddy: I will ask Eilidh to speak about that in detail, but those are some of the issues specific to Scotland that we raised in the universal periodic review because they are devolved areas for which the Scottish Government has responsibility. The UPR is a good tool to hold Government to account on the recommendations that it has agreed to accept in those areas, and in terms of the resourcing.

Eilidh, I know that you have been working closely on the UPR.

Eilidh Dickson: With regard to making sure that the voices of incredibly vulnerable communities are taken into account, we have a statutory obligation to pay particular attention to marginalised groups. We take that obligation very seriously and try to mainstream that across our work. One way in which we are thinking about better systematising that throughout our work, including the policy work that we publish, is by reverting to treaty and looking at the specific treaties that exist. There are gaps with regard to older people and LGBTI rights, but the core treaties that the UK has signed up to include a substantive equality provision around some of the marginalised groups to which you refer.

This committee has an important role in ensuring accountability. We try to do that as the NHRI, but the committee has a public parliamentary democratic voice to ensure that the reports from the UN and their scrutiny are brought home. As the NHRI, we think of ourselves as the bridge between domestic policy and international policy. We can advise and explain some of the human rights standards that exist, but the

committee can really hold the Government and other public bodies to account in relation to the protection of those standards and the regression that we sometimes see around them. I encourage the committee to similarly look at what it can do in the space around the human rights treaties.

The treaties are not the answer to everything—they are cyclical and there are considerable gaps in some of the reporting processes. Therefore, we all have an important role in mainstreaming across different committees, working collectively around human rights budgeting and taking a preventative approach.

On the universal periodic review, the commission attended a pre-session for NHRIs in civil society, which gave us direct access to some of the representatives from UN member states so that we could spend time explaining some of our core concerns. We were lucky to have the Scottish Commission on Learning Disability come from Scotland, which was able to raise its concerns directly. However, not every organisation can do that every time, and we think that it is important that we reflect those concerns through the participatory work that we do in developing our reports. We try to raise issues of concern on behalf of organisations when they do not have access to those systems. Domestically, it is much easier for some of those organisations to participate; therefore, it is great to create a space for them to do that.

A final comment on the universal periodic review is that there was a marked increase in the number of recommendations that came from other member states. The UPR is a peer review system under the Human Rights Council, which is the most senior stand-alone human rights body in the UN system, and all states participate as equals. We saw a number of recommendations around tackling structural racism and racial bias, and a huge number of recommendations around women's rights, gender equality and violence against women, as well as around disability and the exclusion of disabled people from public life. We also saw a number of recommendations around LGBT rights and some of the policy changes that are on the table in that regard.

There was a marked increase in that more focused approach, which we really welcome and which gives us a good basis for on-going dialogue around progressing human rights in Scotland.

Pam Duncan-Glancy: Do you have a sense of the reason for that increase?

Eilidh Dickson: There are a number of reasons. We did advocacy around our report, and some of those issues came up in our report but, as with all policy, there was not a clear sense of why those things had happened. However, Covid has

certainly shone a light on some of the inequalities that are deeply rooted in different structures around the world, and that has probably helped the conversation at the international level, but I do not think that there is only one single reason for the increase.

In March, we saw an increase in recommendations relating to economic, social and cultural rights, as well as environmental rights. It is interesting to watch how, in different states, the focus on one area of human rights does not dissipate but moves into other terrains.

Pam Duncan-Glancy: What is your view on the Scottish Government's response to the recommendations?

Eilidh Dickson: The Scottish Government has not responded yet. We have the draft recommendations and it is now up to the UK Government to respond to each of the 302 recommendations.

We hope that the Scottish Government will produce a position statement that will outline its responses to some of the recommendations, and we are committed to helping it to understand how some of the higher-level recommendations can have a Scottish focus. For example, the recommendations talk about domestic abuse policy in the UK but, obviously, we have different law and policy. We are open to doing a bit of work to map some of the recommendations to developments in Scotland.

The Scottish Government produced a position statement in October, ahead of the UPR, that was very comprehensive. It set out the areas of progress, but also went through a huge number of policy areas. We should ensure that we hold the Scottish Government accountable for its voluntary commitments, as the UPR does.

Pam Duncan-Glancy: Do you know when we can expect the UK Government's responses?

Eilidh Dickson: The UK Government has until March 2023 to respond.

The Scottish Government does not have a formal role in the UPR, so it does not have a formal deadline, but I imagine that it will work to a similar deadline as that of the UK Government, as it will want to respond relatively quickly.

Pam Gosal: Two weeks ago, the UN special rapporteur on violence against women and girls, Reem Alsalem, raised a number of concerns about the Scottish Government's proposed Gender Recognition Reform (Scotland) Bill. As you will be aware, Ms Alsalem raised concerns that the Scottish Government's proposed reforms could

“open the door for violent males who identify as men to abuse the process of acquiring a gender certificate and the rights that are associated with it.”

and that

“This presents potential risks to the safety of women in all their diversity”.

Does the SHRC have any comments to make on that intervention by the United Nations, and do witnesses agree with Reem Alsalem that the bill should be postponed so that such concerns can be properly addressed?

Ian Duddy: Yes, we have seen that letter, and we are still working through it.

She is one voice of several in the UN; there are a range of opinions within the organisation. I note that the letter she recently submitted contradicts an earlier letter that she sent in 2021, in which she appeared to support self-identification, with a number of other UN special rapporteurs.

We are still working on our response. Personally, I am not convinced that she has presented new evidence that has not already been debated at length in the Parliament.

We presented our evidence in June after the committee had heard from a lot of individuals and groups. During that evidence session, we tried to respond to the evidence that the committee had heard previously.

I am concerned about an underlying narrative that is being developed that trans people are sexual predators. I worry about that, because they are a marginalised and vulnerable group, and I recognise that the bill is contested. It is now up to parliamentarians to reach their conclusions, but our initial view is that we stand by the evidence that we gave in June and recognise that there is a range of opinions, including within the UN.

11:00

Pam Gosal: Thank you, Ian. You are absolutely right that human rights should be for everybody—I have said that many times in the committee and in the chamber—and that is why you are here today. We are talking about these rights, and, yes, these rights should be there to protect trans people as well as women and girls, and that is why the concern exists: we do not want predators out there pretending and able to obtain a gender recognition certificate to do that.

You have talked about concerns; you have mentioned that. Do you not think that it would be a good idea if the Scottish Government were to postpone the bill to look at the concerns, because they have been highlighted? We cannot just dismiss somebody from the United Nations saying something now; I know that you have said that

they said something else previously, but it is very clear that that has been said now, so should we not look at that?

This is to protect trans people as well, so that they do not get blamed later on for something. I have said it very plainly and clearly in the committee that we should have rights for everybody, and we need to make sure of that. Trans people really need those rights, and they have been fighting for them. They should get their rights, but we should also make sure that women and girls are safe from the actual, real bad people, not the trans people.

Ian Duddy: Some of the concerns that the special rapporteur mentioned in her recent letter have been considered at length by the committee. Our understanding of the equalities law in the UK is that it would still be possible to exclude trans women from women’s safe, single-sex spaces, if there is a justifiable reason to do so. The bill is appropriate in terms of striking that balance and simplifying the process that already exists with regard to issuing gender recognition certificates. My colleague Eilidh Dickson, who has followed this file for many years, might want to add something.

Eilidh Dickson: We are still working through the letter, and we are obviously aware of a couple of civil society letters that have been exchanged with the special rapporteur, who has indicated her desire to respond to those. As committee members know, I worked in the women’s sector for a very long time, so I have been across this particular issue, and I have looked through the letter from Reem Alsalem. We noted that the advice that she presented did not appear to be Scotland specific. There were a number of references to the UK Parliament’s Women and Equalities Committee and to the prison services in England and Wales and how they do their allocations, which is different to Scotland.

Therefore, our preliminary view is that the letter does not raise anything new. We are still keeping an open mind about what the civil society responses might say, but, again, we encourage the committee to listen to the voices of those in the women’s sector who use the exceptions in the Equality Act 2010 and understand how they work in practice. Really, the equality act would be the basis for any exclusions, so, in our view, the Gender Recognition Reform (Scotland) Bill would not change that.

The Convener: For the record, it is probably worth my saying that, as far as I am aware, Ms Alsalem did not make any attempt to contact the committee to present any evidence throughout the entirety of our stage 1 or stage 2 proceedings.

Ian Duddy: We had no contact with the special rapporteur either, so we were not aware of the letter until it was published.

The Convener: There might be an issue of clarity with regard to where the research that she did, in order to justify the letter, came from.

Rachael Hamilton: Mr Duddy, if I am right about what you are saying, I am not sure whether you referenced Ms Alsalem's letter correctly. She said:

"However, I share the concern that such proposals would potentially open the door for violent males who identify as men to abuse the process of acquiring a gender certificate and the rights that are associated with it. This presents potential risks to the safety of women in all their diversity (including women born female, transwomen, and gender non-conforming women)."

I want to put that on the record.

Will the committee see your response to the UN special rapporteur? When is it likely to be completed? We know that women's services can use exceptions in their services for trans people through the Equality Act 2010, but why do you think that Reem Alsalem talked about her concerns around the access to single-sex spaces for women? Will you address that in your response, and will you invite the Scottish Government to broaden its discussions, examinations and reform processes beyond the changes that it wishes to introduce to the Gender Recognition Act 2004? It is important that we recognise that women feel safe, as well as trans people. Will that be part of your response to the letter?

Ian Duddy: We very much think that women's rights and trans rights can go hand in hand. Human rights are indivisible, and we do not think of a hierarchy of rights.

My reference to the underlying narrative was not a reference to that letter per se, but to the debate in general and to comments that have been made, particularly on social media, about predatory trans people—which I worry about.

We recognise the comments that the special rapporteur made, which have been addressed several times in this committee. That debate has been going on for a number of years now.

I cannot speculate on the reasons why she wrote at this time or who she contacted to get her evidence.

Maggie Chapman: Thanks for your comments, Ian. In your initial response to Pam Gosal's question, you said that you stand by the evidence that you gave in June. During the same meeting, we also heard from the UN independent expert on protection against violence and discrimination based on sexual orientation and gender identity,

Victor Madrigal-Borloz. In his evidence, he was quite clear that, in the work that he has undertaken, the so-called competition of rights has come up before. He said that he has found no evidence to support that there is

"any systemic identifiable pattern of risk in ... the situation that is created by ... self-identification."—[*Official Report, Equalities, Human Rights and Civil Justice Committee*, 21 June 2022, c27-28]

Does the SHRC agree with that view of the situation, and, from your understanding of other countries where legal recognition by self-identification works, have you heard any evidence to suggest that there can be conflict, as the letter by Reem Alsalem suggested?

Ian Duddy: Yes, we were at the meeting in June when the committee took evidence from the UN independent expert on sexual orientation and gender identity.

There are diverse views in the UN. I stress that the Office of the High Commissioner for Human Rights has come out in support of self-ID. A number of states also support self-ID, and we have not seen the concrete harms that have been hinted at throughout the debate. We therefore still stand by the position that we took in June, because, looking at the evidence from countries that have introduced self-ID, some of the concerns that were expressed have not materialised.

I also emphasise that, when we gave evidence in June, we said that we recommended that the legislation be reviewed in two years to see how it works in practice. We still stand by that recommendation.

Eilidh Dickson: It is important to remind committee members that countries that have introduced self-ID—there are now a number of them—have different equalities processes and different exemptions that might apply. Some countries have exceptions, which are similar to that of the Equality Act 2010, that allow service providers to exclude a person on the basis of their gender reassignment status, regardless of their sex—legal, biological, presentational or whatever. Therefore, comparing countries is challenging, but we have not seen any evidence that self-ID has caused a systemic problem.

The exceptions in the 2010 act exist for a reason, and it is not for the commission to go into the detail about how the exceptions work, because we are not the equality regulator. However, the EHRC has a role to advise service providers on how to use those exceptions properly. That advice perhaps needs to be updated in the light of self-ID, but it would be a matter entirely for the EHRC.

Maggie Chapman: Thank you very much for that clarity.

The Convener: That concludes the public part of today's meeting. I say a huge thank you to all three of you for a really interesting session. We move into private session to discuss the remaining items on our agenda.

11:11

Meeting continued in private until 11:38.

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