



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Equalities, Human Rights and Civil Justice Committee

Tuesday 2 December 2025

Session 6



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EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE
28th Meeting 2025, Session 6

CONVENER

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

DEPUTY CONVENER

*Maggie Chapman (North East Scotland) (Green)

COMMITTEE MEMBERS

*Pam Gosal (West Scotland) (Con)

*Rhoda Grant (Highlands and Islands) (Lab)

*Paul McLennan (East Lothian) (SNP)

*Marie McNair (Clydebank and Milngavie) (SNP)

*Tess White (North East Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Professor Angela O'Hagan (Scottish Human Rights Commission)

Jan Savage (Scottish Human Rights Commission)

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Equalities, Human Rights and Civil Justice Committee

Tuesday 2 December 2025

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Karen Adam): Good morning, and welcome to the 28th meeting in session 6 of the Equalities, Human Rights and Civil Justice Committee. We have no apologies this morning. Agenda item 1 is to agree to take items 3, 4 and 5 in private. Item 3 is consideration of the evidence that we will hear this morning, item 4 is consideration of a draft report on the committee's pre-budget scrutiny for 2026-27, and item 5 is consideration of an approach to the committee's inquiry into neurodivergence in Scotland. Do members agree to take those items in private?

Members *indicated agreement.*

The Convener: Thank you.

Scottish Human Rights Commission

10:00

The Convener: Item 2 is our annual evidence session with the Scottish Human Rights Commission following the publication of its annual report for 2024-25. I refer members to papers 1 and 2.

I welcome to the meeting Professor Angela O'Hagan, chair of the commission, and Jan Savage, its executive director. I invite Angela O'Hagan to make a brief opening statement.

Professor Angela O'Hagan (Scottish Human Rights Commission): Good morning. Thank you very much for having us back. We seem to be regular guests, which we are very pleased about. It reflects something that comes through very strongly in our annual report, which is the increased level of engagement with the Parliament and the key oversight committee. We are very pleased to be here.

As you know, I have been in post since 26 August 2024, so part of the period of this report covers the start of my tenure in this role in the commission, which I have had the privilege to lead for that time. What is clear from our report and from our engagement with the committee is that human rights are vital to the enjoyment of a good life for people in Scotland and how far we are from that in Scotland, and that those rights that have been hard fought for and that we thought were secure, are increasingly precarious. They are increasingly precarious in the everyday lives of people in Scotland. Our mission and vision, as we see it, is to make rights real in the everyday life of people in Scotland, wherever they are and whoever they are.

What is set out in our annual report shows the progress in the first year of our 2024 to 2028 strategic plan and shows that we have delivered successfully on our strategic objectives in that time. That includes developing a new theory of change to monitor and increase our impact, embedding a participation strategy in how we work and changing the way the commission works, engaging much more directly with communities across Scotland and putting lived experience at the heart of our work.

We have three key strategic pillars in our plan—people, purpose and performance—and you see that reflected in the annual report, not just in how it is structured but in the content of the work and the way the commission works. For example, on people, you will see the engagement across Scotland, from throughout the Highlands and

Islands to Castlemilk and Tranent and across Scottish Gypsy Traveller communities. We worked with disabled people and people with experience of social care and their carers to measure the extent to which there has been any progress in relation to people coming out of institutional care and coming home. Across all our work, we have sought to frame the challenges not just as local issues but as rights violations. In our spotlight projects—our domestic monitoring, as we call it—a series of research reports have focused on the real rights challenges that people face in relation to social care, economic, social and cultural rights and access to justice.

The purpose of the commission, as we see it, is to hold the Parliament and duty bearers to account for the rights realisations or gaps in rights realisations in people's lives. As I said earlier, we have seen a significant increase in our engagement with the Scottish Parliament and an 85 per cent increase in mentions of the Scottish Human Rights Commission in the Parliament. The tangible outcomes of our findings and of our scrutiny have led to action on fatal accident inquiries following our deaths in custody review. We have seen debates in the Parliament on economic, social and cultural rights, progress on human rights budgeting, and the interest of this committee in people in institutional care, and we have contributed to a number of parliamentary bills, including the Assisted Dying for Terminally Ill Adults (Scotland) Bill, in the period of the annual report.

We have contributed to the Scottish Government's mainstreaming strategy. We have worked closely with Audit Scotland on human rights budgeting, as well as with the Scottish Government's human rights and equalities budgets advisory group.

Performance is also about building a strong organisation and a strong evidence base. Our international treaty monitoring has included the "Economic, Social and Cultural Rights in the Highlands and Islands" report and contributions on the cost of living to the Council of Europe inquiry, as well to the treaty bodies on the elimination of racial discrimination and the rights of disabled people. We have been working through a project on the rights of Gypsy Travellers who were victims of the tinker experiment. That is not just a historic reality but a current reality for many people.

Our "Tick Tock" spotlight report focused on the realisation of the rights of people with learning disabilities and autism to move away from institutions. Our access to justice spotlight report, "Review, Recommend, Repeat", which was published in July 2024, showed that there had been very little progress on the international monitoring recommendations on custody and

detention. Of the 29 recommendations that had been gathered together over 10 years, 24 were still on red. Our work is continuing in that area, and our annual report reflects a number of outputs and products from our access to justice work, including an advice map across Scotland and some more recent publications on the complaints process and updating the prison rules.

Collaboration domestically and across Scotland is very important to us, as is our international role. We work with rights holders, duty bearers and our sister national human rights institutions across Great Britain and the United Kingdom. We have increasingly presented Scotland's evidence to United Nations treaty bodies on the rights of disabled people, the elimination of racial discrimination and economic, social and cultural rights. Our work is held in very high regard by the international communities, with our work being cited as good examples by our sister organisations and the European Network of National Human Rights Institutions and the Global Alliance of National Human Rights Institutions.

Looking ahead, I note that some of our spotlight work is continuing. Our strategic focus on human rights and poverty, which we set out in year 1, is continuing. We are moving our economic, social and cultural rights monitoring work to the south of Scotland, and we are growing our evidence base to hold duty bearers accountable.

In closing, I would like to draw the committee's attention to the closing remarks in my foreword to our annual report, which summarises where we feel we are as a commission but also where we are in Scotland and for the Parliament and this committee. We need to be

"alert to the changing external environment where rights and freedoms are under threat domestically and internationally. As the respect for the rule of law and the dignity and equality of individuals, and particularly marginalised rights holders, are increasingly challenged in political and social discourses, I call upon all of us in Scotland to 'recognise the humanity of the person standing beside us' and work together to ensure that respect is what unites us and gives common purpose to our public authorities, government and parliament and our communities."

That commitment to recognise the humanity of the individual standing beside us is the core of our strategic plan and the core around which the work of the Scottish Human Rights Commission is presented in this annual report.

The Convener: Thank you.

We will now move to questions from members, and I will kick us off. You spoke about your strategic objectives of purpose, people and performance. How do you measure success against those and where are you seeing progress and challenges?

Professor O'Hagan: We have a number of formal auditing and performance measurement processes, as you would imagine, and we have laid our annual accounts before the Parliament as part of the process of laying the annual report. Jan Savage can speak more to the specifics of the audit process.

Internally, we have, as you would expect of a well-run public body, we have an updated risk register, key performance indicators that are regularly reported on through the commission and a range of other metrics, some of which we touch on in the annual report, in relation to monitoring the media and our engagement with the Scottish Parliament and the Scottish Government.

As I mentioned in my statement, we have a theory of change. What impact are we having on the organisations and individuals with whom we work and engage across Scotland? What have they learned? How do they feel about their learning from or engagement with the Scottish Human Rights Commission?

We have seen an almost 20 per cent increase in our media coverage, and that is obviously important. It means that we are reaching more and different audiences. We have seen a very significant increase in our social media engagement, and we are increasingly using that as a tool to tell people's stories and to make real and visible what human rights realisations and human rights denials look like in people's lives.

Jan Savage will give the specifics of some of the measurements.

Jan Savage (Scottish Human Rights Commission): As Angela O'Hagan has outlined, we have three strategic objectives—purpose, people, performance—in the strategic plan, and a further one around strengthening the organisation. Sitting under each of those objectives is an ambition statement, and that informs a suite of key performance indicators of how well the commission is performing that we report on as a staff team, on the basis of some of the evidence that Angela has explained, so that we are accountable to the commission for how that is being managed.

We also have an executive scorecard, in which we monitor not just the delivery of our outputs—for example, the number of reports that we said we would publish; that is quite operational progress management—but how we are working, which has been critical to the commission in this strategic planning cycle. For example, on purpose, we monitor how well the commission is achieving its objective of working better with the Scottish Parliament. That is a critical and different strategic objective under purpose.

As Angela O'Hagan says, the metrics demonstrate that, through diverting our resource away from where it had previously been—supporting Government perhaps to develop its policies—we have now seen an increase in mentions of the Scottish Human Rights Commission in the Parliament by 85 per cent, and the Scottish Human Rights Commission's evidence is now informing parliamentary business, whether that has been through members' business debates or through informing evidence sessions at committees. The KPIs demonstrate that specific progress.

On people, we do not just monitor how many spotlight reports we have published; we track for the commission how people have directly been involved in and have informed the work of the commission. That been quite a big strategic shift for the organisation, and our KPI metrics demonstrate that. We have to measure and monitor how often people are directly engaged in the work of the commission.

On performance, we are demonstrating a greater evidence base from the commission in respect of Scotland's performance against its human rights obligations—we not just doing that in an international space but doing more domestic monitoring locally. One of the challenges that we are starting to see coming out of that is the implementation of the commission's recommendations. It is quite a new space for the commission, to make recommendations to duty bearers, the Government and the Parliament through its spotlight work on specific areas of human rights violations. It will become an increasing priority for the commission to monitor how those recommendations are being implemented. At the moment, that is quite a new relationship that the commission has entered into with the Government and the Parliament. There are challenges and opportunities in that evolution, and it is quite an exciting space for the commission to be in to consider how best to monitor and support the implementation of the commission's recommendations.

The Convener: You touched on the fact that there has been an increase in the number of references to human rights and the Scottish Human Rights Commission in the Parliament and in Government documents—an 85 per cent increase, which is quite incredible. What accounts for that increase, and how do you interpret it in relation to human rights in policy making?

10:15

Professor O'Hagan: What accounts for that increase? First, the range, focus and quality of the evidence that we bring to the Parliament; and, secondly, as Jan Savage has said, the pivot

towards the Parliament to support it in its scrutiny of public bodies as duty bearers and in its scrutiny of the extent to which individuals and the population across Scotland are seeing their rights realised. We have increased engagement directly with the Parliament and with committees but also through our domestic monitoring, through the “Economic, Social and Cultural Rights in the Highlands and Islands” report, through our “Tick Tock” report on deinstitutionalisation and people with severe learning disabilities and/or who are autistic in inappropriate institutional care or long-term institutional care and through the range of advice that we have given through the legislative process.

There has been a lot more activity directed towards the Parliament and the committee engagement has increased as a result. We have seen that most recently the last time I was in this room with you, when we were looking at the Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill. As a national human rights institution, we are doing what we should be doing, which is doing the human rights analysis of legislative proposals and bringing that analysis to the Parliament to support the parliamentary scrutiny process and the process of holding duty bearers accountable.

Are we noticing it in policy? In some ways, that is also for the committee to adjudicate and scrutinise. Are you seeing human rights thinking—ways of thinking and doing, I always say—coming through in the legislative proposals that you are scrutinising?

There is a commitment from the Scottish Government to its mainstreaming strategy. As we said in our response to that strategy, that means:

“Adopting a human rights based approach as standard informs decision making about public expenditure and resource allocation which prioritises outcomes for people to live well in their communities as their rights are respected, protected and fulfilled.”

That is the aspiration for policy making and we are hopeful that that continues to be a work in progress but, again, it is for you and others to engage in that scrutiny of legislative proposals as they come before the Parliament and committees to see whether that is what is happening in practice in policy making.

The Convener: We will move on to questions from Maggie Chapman, please.

Maggie Chapman (North East Scotland) (Green): Good morning. I thank both witnesses for joining us and for their comments so far. My first question is on the new powers that the SHRC received under the United Nations Convention on the Rights of the Child (Incorporation) (Scotland)

Act 2024. I am curious to understand how that act has affected your work. Have you used the new powers yet? Do you have the resources for them? Do you have what you need to make best use—full use—of those powers and have you been able to do so?

Jan Savage: As you know, the Scottish Human Rights Commission was granted new powers via the passage of the 2024 act. As a result, the commission negotiated with the Scottish Government that there would be a resource transfer into the commission for an initial period of at least two years to enable us to get up and running with what it takes to implement those powers.

I say for clarity that the powers provide the opportunity, for the first time, to bring own-name litigation under the terms of the 2024 act—so that applies only to rights that are protected under the scope of that act. The act extended our power of intervention in existing legal proceedings, specifically in relation to rights that are protected under the scope of the act. The act also created new obligations to participate in the consultation process on the development of the children’s rights scheme and so on. That basically describes the additions to the commission’s powers and duties.

Through the funding agreement with the Scottish Government and the Scottish Parliamentary Corporate Body, we were in a position to advertise for a new member of staff. The 2024 act came into force last summer and, by the time we got the cash in and got the job advert out, it was spring before we were in a position to recruit. That has enabled the commission to bring in a qualified practising human rights solicitor who is experienced in court litigation. That person has been really excited to join the commission and create the space to develop new test cases and test the law, because this is the first time that a human rights duty has been incorporated into Scots law. It is a moment for all of us in this space to test the resulting opportunities through the legal system.

At this stage, the team member who has joined us is building networks across the children’s litigation sector, working with partners such as Clan Childlaw, Together and the Children and Young People’s Commissioner Scotland and supporting the courts to get to grips with the new powers, to ensure that, procedurally, courts and the tribunal system are aware of the notifications that need to come to the commission and to the children’s commissioner.

We are mapping the new powers to our strategic priorities. We cannot intervene in every case or take an interest in every issue, but we can map the powers to our strategic priorities to see

where there may well be cases in the public interest that the commission would have an interest in. We are now regularly scanning what is happening through the courts and, at their meetings, commission members are getting regular advice on emerging cases that may be of interest. We have not yet intervened or raised a case, but intelligence is coming through regularly to the commission about areas that are of interest.

Through the new staff member, we have provided a lot of advice on the Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill. Her advice has been exceptional internally—and, I think, externally, in informing the Parliament about the bill's impact on the integrity of the incorporation process. That is enabling the commission to test in real time the implications of incorporation in the devolved context.

There are challenges in what the scope of the legislation means for access to justice and what cases can be progressed. It is early days, but we have done everything that we can, with the support of the SPCB and the Scottish Government, to bring resource into the commission to take us forward. We have at least another 12 months of that to go, after which we will provide a report to the SPCB and the Scottish Government on the impact of that work.

Maggie Chapman: That is helpful. As you said, it is quite exciting to be laying down that vital foundational work. You have gathered so much evidence and scoped so much in the spotlight projects that you will be identifying potential areas for intervention or litigation.

I will move on to ask about where a couple of spotlight projects will go next. First, I will ask about the project on moving from institutions to independent living. I was interested that Angela O'Hagan talked about the increased engagement that there seems to be with the Parliament. Given that too many people remain in institutional care, are commitments from the Scottish Government not being borne out in people's lived experience or realities? Is the increased engagement masking real action? Are we talking about stuff but not actually doing it? In relation to institutional care, where are the challenges? What barriers are preventing the implementation of the recommendations that the Scottish Government is seeking to follow?

Professor O'Hagan: The title of the report on that project was "Tick Tock". That came from one of the participants, Kate Sainsbury, whose son Louis has been in long-term care. She has worked tirelessly to support him to live independently. We called the report "Tick Tock" after Kate had said, "Tick, tock; the clock is ticking and time is passing while we sit and talk about this."

I reaffirm what Maggie Chapman said, which is that progress is slow and continues to be slow. We are expecting an action plan from the Scottish Government by the end of this month, as per the recommendations in the "Tick Tock" report. That was meant to be a fast action plan that would pick up on not just our recommendations but the framework using article 19 of the United Nations Convention on the Rights of Persons with Disabilities, on the right to independent living, that set out where the gaps were and where needs were to be met. We launched the report at the end of January; we have still not received an action plan by December.

We will be doing our own evaluation of progress against the recommendations, a year on from the report, and we encourage the committee to maintain its focus on scrutiny. The committee's evidence session with us, which Jan Savage spoke at, was enormously helpful in raising the profile of the findings and challenging duty bearers to think about how resources are being used and where resources are going. We are still waiting for the follow-up on the financial tracing of how coming home budgets have been used.

At the core of this is taking a human rights-based approach to service design, service monitoring and supporting individuals to realise their right to independent living. That requires a significant shift of resources within duty bearers and in the structure of how services are designed and set up to create provision. Creating the provision to support people to live independently requires a shift of mindset away from institutionalised care and towards supporting people in the community and thinking about what that means, which is reallocation and an increase in resources in some contexts.

While there is a narrative of political priority, there also needs to be a structural shift to integrate human rights at the core, to integrate human rights into thinking about public service reform and to think of human rights first in the provision and design of social care. Unless and until that happens, we will continue to find ourselves—whether it is in relation to social care or other issues—in the same loop of saying, "Here are the recommendations." We see that from the "Review, Recommend, Repeat" report on places of detention, which I just mentioned. We deliberately used that report title to call out the cycle of reviewing, recommending and repeating because we need to shift that cycle in duty bearers and particularly in relation to people who are still experiencing long-term institutionalised care, to respond to Maggie Chapman's question.

Maggie Chapman: The rhetoric and the comments from so many people in this building and beyond—from duty bearers and those who

support duty bearers—are about wanting to make the change and make the shift. I appreciate that you have not yet done your assessment of the position 12 months on from “Tick Tock”, but is there something that you can put your finger on now? I suppose that, if you could answer yes, you would have done that by now.

Is something blocking the cultural shift—the move away from the review, recommend and repeat cycle—in detention and so many other areas where that cycle applies? We know—or think that we know—where we want to get to, but there seems to be no pathway and there is a reticence to publish an attempt at that pathway. Eleven months on, we still have no response from the Scottish Government, for example. Can you put your finger on something or is it just that the cultural change—the refocusing and reorienting towards rights realisation in everything that we do—is a very big thing, so it takes time? The situation is incredibly frustrating.

Professor O’Hagan: The answer is yes to all of that. This is a big thing and a cultural shift, and it will take time. The human rights framework is not new, but it has not been foregrounded in service design, evaluation and allocation. Colleagues in this room are familiar with our work on human rights budgeting—the process of following resource allocation to see the extent to which rights are being respected, protected and fulfilled.

To give a personal view, which is not phrased in this way in our reports, there is a complex institutional and organisational structure here. The landscape is cluttered, so working in concert across different bodies is challenging. That is why we said in the “Tick Tock” report that we were providing a framework for duty bearers to work across and with one another.

10:30

Our intention in providing that framework was to make the big thing, as you called it, a bit easier, by plotting a pathway to challenge the path dependencies—the established ways of working between institutions. Achieving the outcomes will mean disruption to those ways of working.

Kate Sainsbury and her family, and many other families, have shown that such disruption is possible, but that comes at huge personal cost and investment. We have seen and heard about that from the families who were a huge part of the process in our spotlight project on moving from institutional care. Committee members will be familiar with the perspective of family carers and the pressure on them; they have to acquire knowledge and they need resilience to engage with and confront relentless institutional structures. We should not have to be using language such as

“resilience” and “confrontation” when talking about realising rights and securing the right to independent living.

Political priority and pressure and on-going scrutiny from the Parliament will be key to the matter, as well as our engagement elsewhere with the Convention of Scottish Local Authorities and others in government and across the sector to build their knowledge and confidence to take the approach and make the progress that is needed.

Jan, do you want to add anything?

Jan Savage: I will say just a few things. You do wonder, and I think that the commission has shared the frustrations that, 12 months after “Tick Tock” was published, we do not have the work plan. Part of the response was to provide the human rights framework and the article 19 pathway to deliver change, so that is hugely disappointing. As Angela O’Hagan said, political will is critical. She often speaks of the tolerance for human rights violations. We have pointed them out and provided the evidence but, 12 months on, we seem to have tolerance for allowing those things to continue.

In the past 12 months, there have been missed opportunities in respect of some recommendations of the “Tick Tock” report—for example, on law reform. The Parliament had opportunities around the national care service and around a learning disability, autism and neurodiversity bill. There are long-standing promises to reform adults with incapacity legislation. All of that is wrapped up in the circumstances that contribute to continuing the inappropriate long-term detention of people with learning disabilities and autism. Some of those moments have been lost in the past 12 months. Access to justice, which is a core theme in all the spotlight reports, is a critical issue for this population.

Angela O’Hagan mentioned the huge emotional toll on people who are advocating for family members in that position. It is not easy to access information about your rights and it is even harder to fight for those rights. Once someone has done that, they are exhausted and are not going to be thinking about fighting for everyone else’s rights. Through its spotlight project evidence and through keeping an eye on the situation, the commission continues to monitor where the commission might go next in using its powers. There are definitely gaps in the commission’s ability to move things forward in the public interest.

The team keeps a close watching brief on any cases that make it through the legal system where a family member has managed to break through and pursue the interests of their loved one in relation to breaches of article 19. We are also concerned that breaches of article 3 of the

European convention on human rights—on inhuman and degrading treatment—may well be happening behind closed doors in places of detention. Our worry is that it might take something like that to force the political will. At the moment, some of the levers do not exist or are too difficult for family members to pull. That is an unhappy set of circumstances.

As we said, now that we are developing more of an evidence base and have a clear set of recommendations, we have to stick by them and continue to monitor implementation or the lack of it. That is the commission's commitment.

The situation is complex but, over the next number of months and years, we will certainly start to have a clearer picture about where the problems are in the system. It will be fascinating for us to see how that maps across all our spotlight projects. Will themes start to emerge around redress, access to justice and political will? We will get a sense of that.

Maggie Chapman: That was really helpful, and I know that the committee will be keeping an eye on that in our inquiry in the new year.

My final question is on the human rights assessment that you are doing on the tinker experiment. In your opening remarks, Angela, you mentioned the work that the commission has done with Gypsy Traveller communities. Thinking about the apology that was given in June, and which came after many years of campaigning—and I pay tribute to people like Roseanna and Shamus McPhee and Dr Lynne Tammi-Connelly for their work in that respect—I am just curious about how your work intersects or integrates with the work that the Scottish Government has done and is doing.

Also—and this picks up on a point that Jan Savage just made—what does redress for victims mean? What would that look like, given how long the tinker experiment went on for?

Professor O'Hagan: Our work with the community is on-going, and we are working in partnership with Rajpot, a voluntary organisation that works to give indigenous and cultural communities a voice.

We are completely independent from the Scottish Government in all ways, including in this area of work. There has been a separate report by the Scottish Government, as well as another report by St Andrews university, but our work is separate from both of those streams. Indeed, it is really important to the communities that it is independent.

What we are doing is supporting community researchers Roseanna McPhee and Rhona Ramsay in their work on an archiving project of the

tinker experiment and on building that evidence base. We have also committed to an independent legal analysis of what form redress might take, and we are consulting with the community on the recommendations around that and what that might look like. We are looking at, for example, recompense and compensation; full apology and redress for individuals; questions of memorialisation; and recommendations on ensuring, and supporting, culturally appropriate accommodation.

There is a range of recommendations that, at the moment, are the subject of live engagement with the community, and we will be producing our report over the course of the next annual report period—sooner rather than later, I hope. There has been an apology on behalf of the Government, but it is not an apology to or by anyone, and the community clearly feels very strongly about that.

So, there is still work to do. Indeed, work is going on independently of our work, with community organisations such as Making Rights Real supporting some of the Scottish Gypsy Traveller communities in challenging the current state of settled accommodation sites, and a significant intervention by the Scottish Housing Regulator in issuing notices of serious concern to Fife Council and Perth and Kinross Council on the state of the settled accommodation.

There are a lot of pockets of activity happening with the purpose of supporting Scottish Gypsy Travellers in naming and claiming their rights; evidencing the historical nature and the institutional collusion that was the tinker experiment; and highlighting the on-going realities for people in terms of their family life, their health, the early mortality and high morbidity rates, and the economic and social exclusion that individuals and families who were the subject of the tinker experiment continue to experience.

Maggie Chapman: Thank you. We look forward to reading that report.

The Convener: We now move to questions from Rhoda Grant.

Rhoda Grant (Highlands and Islands) (Lab): Thank you for your economic, social and cultural rights report on the Highlands and Islands. That really helpful research has highlighted gaps with regard to housing, fuel poverty, healthcare, access to justice and lots of other things. I think that we already understood what the issues were, but it is good to have them written down, because it gives strength and courage to people who have been fighting against those things for a long time. It has also been helpful to parliamentarians, as we have been able to have discussions in the Parliament on it.

How have the Scottish Government and other public authorities reacted to the report? Are there any commitments that you are aware of to address some of the issues that have been highlighted?

Professor O'Hagan: I will probably take that question in two parts.

First, I want to express our appreciation to you, Ms Grant, for your intervention and engagement with the report. Your members' business motion resulted in the first chamber debate on a Scottish Human Rights Commission report, and the way in which it made the role of the national human rights institution visible and brought it to the Parliament's full attention was an important and significant first step. We would like that approach to be replicated for all the NHRI findings and for our reports to regularly be the focus of chamber debate in the Scottish Parliament.

As for whether there has been follow-through from the Scottish Government, there is, perhaps, less to say on that than there is about our next steps. Jan Savage might have more to say about some missed opportunities with regard to legislation and policy scrutiny and the extent to which we are seeing a difference in approach.

One systemic issue that we highlighted in the report was how, in addition to the systemic nature of rights denials, rural proofing in policy making happens at a distance. Indeed, we have raised that very issue with the Rural Affairs and Islands Committee. What we need is the shift in mindset that we have already talked about, and something that I have said a lot in connection with the report is that people might live remotely, but their rights should not be remote, and they should not be remote from power.

That came through very strongly in the context of decision making, and participation in that decision making. There are opportunities in what some of the local authorities and other duty bearers are engaging in, but that is not happening from a human rights framework perspective. I was going to say that we introduced that idea, but it has always been there; we just held up to duty bearers the notion that there is a different way of doing things.

What we did in that report was to, very deliberately, build knowledge of international convention rights and set out what needed to be done to meet thresholds of adequacy, accessibility, appropriateness and quality of the services and to see where the gaps were. Therefore, it took not only a diagnostic approach—in other words, it asked, "What is the problem?"—but a prognostic approach in setting out what needed to be done to address it. We will be revisiting that, and we hope to see that sort of thing coming through from the Scottish

Government. However, evidence of mainstreaming in policy making and specific responses to some of the gaps in resourcing or design of services seem to be taking a while to come forward.

We are about to embark on the next phase of our reporting, with a focus on the south of Scotland; the desk-based part of that project has already started, and we will be gathering evidence into the new year and working with communities through the spring. Over the cycle of our strategic plan, we will come back to that evaluation of what we found, what has happened as a result of our findings and where we need to go next. As we move into the next parliamentary session, we will still be looking for that close parliamentary eye on and scrutiny of the progress being made by duty bearers on the back of the commission's findings.

Jan, do you want to add anything?

10:45

Jan Savage: I will add just a few things.

First, thank you for the positive reception of our work, and for your engagement with it, and the engagement of your constituents, too. It is great to hear that you feel that it has given individuals strength and courage to name and claim their own rights, because that is what the work is all about; it is about educating folk on their own rights and to ensure that they feel seen, and to educate the general public and duty bearers on the fact that these are human rights issues and that there is an international framework that can be really helpful in informing service design and accountability at a local level.

As for the response that we have had so far, we published the report in November 2024. In May 2025, we received quite a fulsome written response from the Minister for Equalities in which she welcomed the report and the framework and reassured the commission that it would be helpful in the Government's on-going approach to policy making. The response did not necessarily engage with our points on the retrogression of particular rights, the areas where we had seen things getting worse and, as a result, the remedial actions that the Government and local partners would be taking to move things forward. Those questions are still live.

That said, it has been great to see local community members using the report in their own advocacy. That is excellent, because it should continue to have a life. As Angela O'Hagan has said, the commission will come back to it as we monitor the implementation of our recommendations.

In the meantime, we would encourage local people to keep doing what they are doing with the report. Post its publication, commission members have gone back to the Highland and island communities deliberately to have conversations with local duty bearers, leaders of councils and health boards and so on, and it is fair to say that the reaction has been positive. It has been quite a shift for people to see some of these issues through a human rights lens.

Our hope is that, over the next four years, the report will have contributed to quite a different approach to local decision making and policy making to ensure that those rights are realised. However, the proof of the pudding will be in the eating, and we have the framework to be able to evidence that.

Rhoda Grant: Will you be measuring that? I know that other duty bearers—local authorities, health boards and the like—have welcomed the report in so far as it gives them something to go to the Scottish Government with. However, I am not that convinced that they are using it as a barometer for their own work. Will you be monitoring that situation to ensure that changes are made?

Professor O'Hagan: It is helpful to hear that more local perspective. The answer to your question is yes. As Jan Savage has said, following the publication of the report, I and members of the commission went back round those areas, and I met local authority leaders, chief execs of health boards and other members of Parliament as well as individuals from communities.

I think that there will be a lot more local monitoring. There is already a strong human rights defender community across the Highlands and Islands, and the report was definitely another tool in their box and one that is being effectively used.

Those relationships are on-going at that informal level. Aside from that informal feedback loop, though, we will absolutely look at what difference duty bearers are making in relation to the report's recommendations and findings. After all, we want to test the method, and ensure that the framework is working for duty bearers. That was partly the intention behind it; it was not supposed to be a stick to beat people with, because that will not bring about change. Change comes about by ensuring that duty bearers have the information that they need and a steer on how to approach some of the changes that they need to make.

That was what we were trying to do with the framework, and with the way in which we presented it in the report. We will absolutely keep an eye on how it is being used, and what changes are being made locally, as well as press for

greater clarity on how policy making is shifting at national level.

Tess White (North East Scotland) (Con):

Thank you for coming this morning. My question is about the spotlight project on places of detention. It highlights a number of areas of serious concerns, including the widespread use of segregated or solitary confinement and lack of mental health care support for women. What changes, if any, have you seen in response to the findings?

Professor O'Hagan: Um; sorry, I did not mean to do a big sigh. That is another huge issue. Our criminal justice system and our places of detention are experiencing severe strain and constraint in resources, such as across the prison estate. We highlighted a number of concerns in the "Review, Recommend, Repeat" report. It took findings from a range of international monitoring mechanisms over a 10-year period and looked at which of those recommendations had been implemented and where concerns remained. That is what was highlighted in the annual report.

On the widespread use of segregation, we have written in conjunction with the National Preventative Mechanism, and we have written separately on separate concerns in concert with the Children and Young People's Commissioner Scotland, about the use of segregation and restraint, solitary confinement and other isolation measures. Lack of exercise and time out of cell was highlighted during the recent visit by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which happened just outwith the timeframe of this report—early in the summer, or possibly in March. During that visit, the international monitors were concerned about the lack of time out of cell. We have raised those concerns with the Scottish Prison Service, which is alert to the issues and to trying to manage the overcrowding crisis and the very high levels of inflow from the courts to prisons. There are on-going issues with overcrowding, resourcing generally and the availability of resources within the Scottish prison estate.

We are members of, and I chair, the National Preventive Mechanism Scotland sub-group—which is a mechanism under the Convention for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment—which convenes the inspectorate bodies. Both His Majesty's Inspectorate of Constabulary in Scotland and His Majesty's Inspectorate of Prisons for Scotland are concerned about a number of things, as we are. The Scottish Prison Service, the inspectorate bodies and the Scottish Government are aware of this, but it comes back to Maggie

Chapman's earlier point about what it is going to take to change it.

There is resource going into the prison estate to create new prisons—HMP Glasgow and elsewhere—but that is not resolving things right now, which includes pressures on staffing and rostering within prisons, and the pressures from the inflow from the courts and the overcrowding of the prison population, which results in some of the practices that we continue to highlight as being of significant concern in relation to the rights of people in detention.

Tess White: Thank you. I will talk about hospitals in a minute, but in relation to prisons, have you been consulted, and has your input been requested, in relation to looking at the rights of everybody in hospitals—that is, biological men, biological women and trans people? Have you been approached by the Prison Service for comment or guidance?

Professor O'Hagan: In relation to hospital care?

Tess White: In relation to prisons and the Prison Service.

Professor O'Hagan: In relation to the hospital care of people in detention?

Tess White: I will be talking about hospital care in a minute. This is just about prisons and the Scottish Prison Service.

Professor O'Hagan: Right. So, have we been consulted—

Tess White: On the care and the human rights of biological men and women and trans prisoners.

Professor O'Hagan: Not specifically on health care in prisons.

Tess White: I mean in general.

Professor O'Hagan: We have a biannual meeting with the Scottish Prison Service, where we discuss a range of issues, including overcrowding and the realisation and care of all prisoners in the prison estate.

Tess White: Is that discussion included in the biannual meetings?

Professor O'Hagan: Yes, the meetings cover a range of topics.

Tess White: So, the Prison Service has sought your opinion.

Professor O'Hagan: Not formally. I am not quite sure what you are asking.

Tess White: You have done some excellent work. Admittedly, you have only been in post for less than a year. There has been some great work on the spotlight reports and in clarifying issues in a

complex landscape, so given everything that you are doing, if I were the Prison Service, I would come to you, as an organisation that is independent of Government and the Parliament, to seek your input and advice on a very complex topic. Has the Prison Service sought your advice and input?

Professor O'Hagan: The principal route for that is through the biannual meeting with the chief exec. I have now met twice with the management and the head of the organisation, and we have raised a number of issues, including those coming out of the "Review, Recommend, Repeat" report—overcrowding, the management of overcrowding and our concerns about ensuring human rights compliance in managing that crisis within the prison estate, and the implications for all prisoners who you have categorised.

The National Preventive Mechanism has raised a number of concerns with the inspectorate bodies, for those bodies to raise with the Scottish Prison Service, in relation to the use of seclusion and restraint. We have a number of concerns about the time of prison transfers, time in custody, and mental health and general healthcare transfers in prison, as well as some significant concerns around data and how data is collected across sites of detention and custody. That includes questions about deaths in detention and how causes of death are recorded. There is a whole a range of issues.

We have written to the Scottish Prison Service about a number of issues, including, most recently and outwith the time frame of this annual report, at the end of the summer, the operation of orders of lifelong restriction sentences. We have also worked closely and in effective partnership with the Scottish Prison Service on the complaints process in prisons, and we have done work on updating the prison rules—which was another project that was outwith the timeframe of this annual report, but which came out of the "Review, Recommend, Repeat" report—which we did in concert with Parkhead Citizens Advice Bureau.

Tess White: That is a chunk of work in itself.

Professor O'Hagan: It is a big area of work.

Tess White: Thank you.

My second question is about hospitals and the Women's Rights Network report, "How safe are our Scottish hospitals?" I mention this because it is about humanity and people when they are at their most vulnerable. People are at their most vulnerable in prison—I spoke about prisons—or in hospital.

The report highlighted significant systematic failures in Scottish hospitals, especially mental health wards. That was amplified by the *Sunday*

Post coverage, and there was a parliamentary debate and a round-table event. There is another round table tomorrow, which will include some of the health boards, Health Improvement Scotland and the new Patient Safety Commissioner for Scotland, and it will focus on mixed-sex wards.

We are talking about humanity, safety and human rights. I mentioned the report, as well as the *Sunday Post* article. We had a big debate in the Parliament, framing the issue as both a public health issue and human rights issue. However, the Scottish Human Rights Commission has not touched on the issue. I realise that you cannot boil the ocean, but it is a big issue and has been a big issue this year.

Professor O'Hagan, the SHRC is independent of the Scottish Government and the Parliament. Is the Women's Rights Network report on your radar and do you think that it should be?

11:00

Professor O'Hagan: That specific Women's Rights Network report is news to me, but our strategic plan does frame rights at risk as one of our priority areas. When rights at risk are brought to us by members of the public, by duty bearers or by others, we will act. However, this report has not been brought to our attention.

Tess White: There is a place for you tomorrow, from 12.00 pm until 2.00 pm, if you would like. We would like you to come.

My final question relates to access to justice. Prisons and hospitals are almost like burning bridges—they need immediate action. My question is about the direction of travel in relation to access to justice and relates to adults with incapacity work, which is the largest case type, by volume, for civil legal aid. Lawyers who provide legal aid work in that area are struggling to make ends meet, and the direction of travel basically means that access to justice for the most vulnerable will be withdrawn because there will be no lawyers, or only a few—they will be like hen's teeth—who are prepared to do legal work in that area.

On 11 November, on the Scottish Legal News website, Govan Law Centre's adults with incapacity unit raised serious concerns about the potential wider impact of the proposals to replace detailed fees with block fees. Jan Savage is nodding, so she is aware of that.

Solicitors doing that work are already in short supply, as I said. They believe that the proposals are poor, are being bulldozed through and will exacerbate the existing access to justice issues for the most vulnerable in society.

The lawyers from Govan Law Centre produced a report in which they say:

"increased state intervention, where an adult or those close to them cannot access justice, is unlikely to be compliant with the European Convention on Human Rights. Delays in the current system already have profound consequences for vulnerable individuals and wider society, such as bed-blocking in hospitals."

What is the EHRC's role when such alarm bells are sounded and access to justice is being further eroded?

Professor O'Hagan: The Scottish Human Rights Commission's role is to be alert to rights at risk—and we are. We were discussing the issue just yesterday in the commission. We have already made statements, including within the timeframe of the annual report, on legal aid and our deep concerns about its erosion in terms of access to justice, particularly for the most marginalised communities and individuals.

We are working increasingly closely with the community law sector to build our intelligence, as it were, or to build up the information that we have. As you know, and as we have discussed already this morning, our powers are limited in terms of taking cases in our own name and being able to provide advice to individuals. We are limited in what the Scottish Human Rights Commission, as the national human rights institution, is able to do directly by way of intervention. That is why, as I say, we are working increasingly closely with the community law sector. We have discussed with colleagues in that sector how we can intervene through their work and their own interventions and how we can support their work.

In relation to adults with incapacity, as a commission, we are considering the follow-on actions from our inquiry, which Ms Chapman asked about earlier. As Jan Savage highlighted, there has been a missed legislative opportunity to reinforce or strengthen the legal basis around adults with incapacity. However, our work is continuing. One of our commission members is a member of a newly established Scottish Government working group. We need to let that working group start up to see whether it is effective and whether the commission should be involved.

In the meantime, we are looking at scope; we are looking at our powers of inquiry; and we are looking at strategic litigation and how we might intervene in and support other cases. We are very alert to legal aid issues and to the fact that access to justice is fundamentally floundering because of the constraints around and reduction in legal aid. The commission is actively sighted on everything that you mentioned from the Govan Law Centre report.

Tess White: This is where the rubber hits the road on this issue for the committee. Let us say that we are raising a red flag now. You agree that

legal aid is a huge area in relation to access to justice. We are going into human rights budgeting, and this is a case in point. A decision is about to be made, following poor consultation, that is based on finances—block fees basically average out cases and treat people like widgets, not human beings. The solicitors are apoplectic, I would say. They are massively concerned and have come to us and asked whether we can do anything. Can the commission raise red flags? If so, how can we work together—the commission and the committee—and say, “Put the brakes on”?

Professor O’Hagan: I know that you are a strong supporter of a human rights-based approach to budgeting, and of scrutinising how resources are being raised and allocated and whether the requirement to respect, protect and fulfil human rights is being met. One way to ensure very close scrutiny by this and other committees, from a human rights perspective, would be to ask what funding is being allocated to or taken away from legal aid.

It will be central to work across committees—the Finance and Public Administration Committee, the Health, Social Care and Sport Committee and this committee—on this issue, so that, across the Parliament, flags are raised to show that there is a real concern about the lack of resource, because that means that there is a lack of access to justice. If we can further contribute to that work, we can certainly explore that further.

Jan Savage: I want to support and acknowledge that point. I was nodding vigorously earlier because, yes, the issue was discussed at the commission just yesterday. It is part of our job to horizon scan and bring these matters to the attention of commission members, and they have asked us—the staff team—to look at the sort of intervention that would be helpful for us to make at this stage. We were reflecting earlier on the progression of the commission’s role in providing proactive advice to Parliament, and that is the space that you might expect to see us in with this particular issue.

We need to make a recommendation to members as to what to do on the issue of access to legal aid for adults with incapacity—which is a new issue for us—and how that relates to the commission’s existing priority concerns.

Certainly, the commission is in a space now where you can expect to see more proactive interventions and communications with the committee on this and other issues. I would want to make sure the commission had a chance to talk about that again before I put on the record anything about what we will do, but to reassure you, we are there.

Tess White: Before I hand back to the convener, I note that I have raised three issues for your horizon scan, as you call it—and it is good to know that you do that. Those issues are women in prisons, women in hospitals, and the huge issue of adults with incapacity and the legal aid system. Thank you.

Pam Gosal (West Scotland) (Con): Good morning, ladies. It is good to see you back. Thank you for all the information that you have provided so far.

The mapping exercise on access to justice found that only 38 human rights services offer legal representation, out of 262 services. As you have probably heard, the committee has taken evidence that indicates that people in rural areas are even more disadvantaged than people in urban areas, as access to justice is even more restricted.

We heard an example of a woman in the Highlands who had contacted a solicitor 116 times about her divorce case. That is not an isolated case; some women have contacted between 30 and 60 firms to try to get a legal aid lawyer—sometimes successfully, but sometimes unsuccessfully.

As you know, it takes a lot for a woman to come forward, especially when they have been domestically abused and are at their most vulnerable. For them to not have access to justice just puts them behind and makes them ask, “Why am I doing this? Why come forward when there is no service to help me?” What steps should be taken to improve access to justice, especially in rural areas?

Professor O’Hagan: In our 2024-25 annual report, we talk about the access to justice map, which was published in September 2024 and which shows, as you said, that there are very significant gaps. Those gaps point to the consequences of the withdrawal of funding and services across local authorities and by other agencies, and the severe constraints under which the community advice and community law sector functions. This relates to Ms White’s point on legal aid and access to justice, too—the issues are all bound up with one another.

There are on-going conversations with us and with others around the next generation of legal practitioners and having a focus in the curricula, as well as within practice, on human rights law and taking an approach to practice that is rooted in human rights.

Another piece of work that we undertook during the period covered by the annual report looked at fatal accident inquiries. We published that work yesterday, so it is not mentioned in the annual report. The work was done across the year and

culminated in a family listening day in October. Our work on fatal accident inquiries, which is ongoing, has revealed another very significant advice gap in relation to access to justice, with families really struggling to find local solicitors with sufficient knowledge and confidence in the fatal accident inquiry process. Again, there are implications for the interface with legal aid.

It is a huge issue. Individuals will have their own experiences, but if you take an intersectional equalities approach, you can see the ways in which particular groups of people are further disadvantaged by the absence of effective, accessible, adequate and appropriate legal advice and access to legal aid. That is where we have concerns, because that is about not only the realisation of economic, social and cultural rights, but—as we highlighted in our “State of the Nation” report on civil and political rights, which we published this time last year—the very significant gaps in legal aid and access to justice, which affect people in lots of different ways. You highlighted the example of women experiencing domestic abuse; we also highlighted that in the “State of the Nation” report, alongside questions around housing, housing accessibility, secure tenancies and a whole range of other issues around housing rights that speak directly to that point about access to justice and advice.

Pam Gosal: Thank you for that. I asked a question last week about joint working, which you have just mentioned, especially in relation to housing and access to GPs. Nothing works in a silo. Actually, to be honest, some things do work in silos, but we want services to take a joined-up approach. When we are dealing with a domestic abuse case, silo working is of no use if we need to take the survivor away from the perpetrator, given that they may require housing and, right now, as you know, there are housing shortages in many rural areas.

Services cannot work without one another. I want to hear a little bit more about joined-up working. I have said to the Minister for Equalities, Kaukab Stewart quite a few times that we need to start right at the top. It is about budgeting—making sure that the Scottish Government is setting the right budgets—but also ensuring that departments speak to one another. The majority of the time, that does not happen—we have seen evidence of that. Budgets are created for different areas and departments, and they are maybe not speaking to one another. On the ground, as you can see, that becomes a broken-up approach.

We have spoken about how people who are experiencing domestic abuse may not get a house, and there are issues with people not getting GP appointments and difficulties with transport links. I just want to hear a little bit more

from the commission about how important it is that the Scottish Government implements a joined-up approach to its work, from those at the top down to those on the ground.

11:15

Jan Savage: You will find no disagreement in anything that the commission has said on that point.

It might be relevant here to raise the work of the commission in its reporting to the Council of Europe on the Istanbul convention, particularly in relation to the points that you have raised around women’s rights and survivors of domestic abuse. I refer you to the Scottish Government’s recently published response to the recommendations of the Group of Experts on Action against Violence against Women and Domestic Violence—GREVIO—which is the committee of experts at the Council of Europe that monitors the Istanbul convention.

To the Government’s credit, just last week it pulled together a quite significant seminar for key actors across the public sector and civil society, including advice providers, survivors and so on, to talk about how to get over the issues that you have talked about, such as the problems that inevitably get in the way of joined-up working and prevent the progress that we would all like to see. Actually, that is not just something that all of us would like to see, because it is required by international conventions such as the Istanbul convention and the United Nations Convention on the Elimination of all Forms of Discrimination Against Women.

To reassure you, the commission absolutely makes recommendations into those processes and holds the Government to account on the progress that it is making—or not making—in respect of its commitments. There is a live action plan in development at the Scottish Government level based on the framework of the Istanbul convention and the GREVIO recommendations. That was a baseline assessment for Scotland—it was the first time that Scotland had been assessed against that particular convention.

Our message into that seminar, which was attended by the minister, was that, in this space, accountability is your friend. The framework provided by the Istanbul convention and the GREVIO recommendations give that improvement pathway—that is what human rights can do.

Therefore, there is a pathway to work our way through all of this. It requires political leadership at the top, and it requires all the right decisions to be made around budgets and bringing the right people together at the right time to have those conversations. Certainly, the political commitment

was there last week. Our job will be to continue to monitor the progress that is made.

Just to reassure you, those issues are very live at the moment and have been recognised by the commission in its approach to influencing both those processes.

Pam Gosal: Thank you, Jan. If I may, convener, I will just come back on that. It is good to see that you have put forward some good, robust recommendations. You talk about holding the Scottish Government to account, and you have said that you certainly hope that it will implement the approach. However, I feel that, from what I have seen as a member of the committee and from the evidence that we have taken over the past couple of years when I have been talking about these issues, nothing has changed—and, unfortunately, people on the ground in rural areas are feeling that even more.

Obviously, you will keep bringing the situation up with the Government. Is there anything else that you could do to push the Government to make sure that it is implementing and delivering?

Professor O'Hagan: On domestic abuse specifically, or—

Pam Gosal: Just overall, on the services we are talking about, basically, and joint working more—

Professor O'Hagan: Absolutely. You started off looking at this through the lens of human rights budgeting, and that is where we are pushing very hard. I have been in front of this committee a number of times, as have my colleagues from the commission, and during the period on which the annual report is focused, we produced our second run-through of the International Budget Partnership's global open budget survey. In that, we asked how transparent budget documents are, how participatory the budget process is and how policy commitments are then evidenced in budget action. Maintaining that focus is absolutely crucial

One of the really important relationships that we have developed over the reporting period is our relationship with Audit Scotland and the Parliament's Public Audit Committee in order to have that scrutiny of how public bodies are functioning and whether they are working not in silos but across portfolios and in service design. People do not exist in isolated categories, and services need to be designed and structured in such a way that the starting point is not only what people's rights are and what compliance looks like, but what people's experience is of those services. That applies to Tess White's earlier points about services where people are in the care of the state, such as hospital or prison care, as well as to public services across the piece.

We have been providing multiple frameworks across our spotlight projects. We have been drawing on the international conventions on economic, social and cultural rights and setting out frameworks of appropriate, adequate and quality standards for public services. For duty bearers and public authorities to be effective, they need to think in the round and across services, and they need to look at how resource allocation supports that.

Jan Savage: Working to hold Government to account on the impact of its actions is a common theme that is coming through the work of the commission in the accountability space. It is that accountability gap that I think you are referring to.

One of the challenges that the Scottish Human Rights Commission experiences in that space is that there is no requirement on the Government to respond to our recommendations or other outputs. Fortunately, the Government has been very polite and respectful and it has responded to much of what we have recommended over the past 18 months or so, but there is no requirement on it to do so, and there is no public space in which that should happen. We hope that, over the next parliamentary session, Parliament will have some time to look at the commission's mandate and how it might progress.

As an addition, or an alternative, to that, we are continuing to work with the committee to create the space for greater accountability of Government progress against our recommendations. Surfacing what the challenges are will help all of us in respect of real scrutiny. The issue has come up in various lines of questioning today, but quite often what we are struggling to get to is an understanding of the barriers so that we can move things forward. That is just observation about how we could perhaps work together, institutionally, over the next session of Parliament to improve things.

Marie McNair (Clydebank and Milngavie) (SNP): Good morning. Welcome back to the committee.

You mentioned in your opening contribution that next year the commission will focus on poverty and human rights. I am interested to hear a bit more detail about the proposed work on those important issues.

Professor O'Hagan: The commitment to a spotlight report on poverty and human rights is in our 2024 to 2028 strategic plan. We have been very busy with all the other spotlight reports, which will feed into that because, obviously, the economic, social and cultural rights evidence base is there and is generating an evidence base that is helping us refine where we can make a difference and where we can add value to the huge amount

of work that goes on across civil society and third sector organisations on poverty and the evidence that there is on, for example, the child poverty targets and the national performance framework, which are the mechanisms that should, hopefully, drive Government policy and focus parliamentary scrutiny.

The very first thing that we have done is our evidence base and then we have listened to what a range of organisations are saying. Again, it is outwith the reporting period that we are talking about today, but we have started with a round table that I convened about six weeks ago with a range of third sector organisations to work through with them what work they are doing and where the commission can add value.

The first thing that we can do is to map out for duty bearers, rights holders and human rights defenders that the experience of poverty is a human rights issue and the responses to poverty—to speak to Ms Gosal's point about working across portfolios—have to be a concerted effort. Where there are rights to housing, to shelter, to food, to safety, to living with dignity and so on, those are human rights. They are human rights that are not being experienced by people who are living in poverty.

Our spotlight work on poverty will take a different form, in that we have had an emphasis on a primary research base for our previous spotlight work and had quite big, chunky reports as a result of that. Most likely, and what we have discussed in the commission, is that there will be a number of different types of outputs from this report, but key to it will be the ways of working of the commission—participation, working with a range of organisations and a range of rights holders in surfacing that evidence in an intersectional, cross-service way. That will very much characterise how we will work in our forthcoming spotlight work on poverty.

Marie McNair: Thank you. I look forward to that. I will keep an eye on it.

Obviously, we are aware of the commission's disappointment following the Scottish Government's announcement that it is postponing the human rights bill until the next parliamentary session. You have already mentioned the framework, but what impact does that have on the framework and what engagement have you had with the Scottish Government on it?

Professor O'Hagan: Do you mean engagement around incorporation?

Marie McNair: Yes.

Professor O'Hagan: Within the period of the annual report—that was when the announcement was made by the Scottish Government to step

back from the commitment to bring forward incorporation in the current parliamentary period—we have had on-going conversations at Cabinet level, including with the First Minister, the Cabinet Secretary for Social Justice and the Minister for Equalities. We have had on-going conversations with officials following the publication of the discussion paper by the Scottish Government at the start of the summer.

As a commission, we have been looking at our positions and our evidence base on incorporation, formulated over many years. It is clear to us, and hopefully to this committee, that incorporation has already begun with the UNCRC (Incorporation) (Scotland) Act 2024 but that incorporation is the panacea. There are opportunities for the Parliament and the Government to ensure that human rights are integrated across legislation, in housing, education and so on. It is not an either/or. It is not incorporation or bust. There are already requirements for legislation to ensure that it supports and protect rights, and the Parliament has a key role as the guarantor of rights.

There is that commitment for the next parliamentary session from the current Government, which may or may not be returned as a future Government, so what there needs to be is an appetite and commitment from the new Parliament to support, protect and promote human rights through legislative provisions, whether that is full incorporation or across the legislative programme.

That also requires ensuring that there is a strong and robust independent national human rights institution. Jan Savage has already mentioned where there is opportunity and we have highlighted a couple of the gaps and limitations in our current mandate. Again, as this committee will be aware, the SPCB Supported Bodies Landscape Review Committee's report highlighted a positive case for reviewing the powers of the commission.

As I have said to the committee, that has to be about powers for a purpose. It is not about aggrandisement of the commission. It is about making sure that the independent national human rights institution has the most effective powers that it needs to best serve people in Scotland. Therefore, that raises questions about the commission taking cases in its own name; the commission being given the agility in the strategic legislation space that colleagues have raised today; and the other mechanisms to strengthen legislative scrutiny and the scrutiny of the actions of duty bearers, including a national oversight mechanism on deaths in custody and deaths in detention.

In parallel with the incorporation project, there needs to be a strong focus and support for a strong NHRI. We are currently an A-status

national human rights institution in terms of the UN framework. That means that we are at the top level of NHRIs that can participate in the UN monitoring process. For the people of Scotland, that means that there are eyes on Scotland. It means that people are heard from Scotland in that international system. We have submitted our paperwork for reaccreditation, and we will go through the committee scrutiny of the sub-committee on accreditation within the human rights system in the early spring. We began that work within this reporting period. It is a very big process, as you might imagine. What you see reflected in our annual report has informed a significant part of our reaccreditation submission, and that is where the support of the committee and the Parliament for a fully mandated, strong NHRI now and in the next session is important.

Marie McNair: Does the delay to the legislation have any impact on the Scottish human rights framework?

11:30

Professor O'Hagan: The delay to legislation is about a delay to rights realised for individuals, because one of the main benefits of incorporation is bringing rights home, so that rights can be actioned in the Scottish court system. That is one of the most significant delays. However, the changes to and support for a stronger NHRI in Scotland are not and should not be dependent on incorporation.

Marie McNair: Thank you. That is helpful.

The Convener: We have another question from Tess White.

Tess White: The chair said in the foreword to the annual report that human rights feel "increasingly precarious". Can you share with us what developments are behind that statement?

Professor O'Hagan: When you look across the evidence base of our spotlight projects, whether that is people in detention, people in institutional care, or the access to justice questions that we have been discussing today, there is a dilution of the delivery of rights. That means—and your questions around legal aid highlighted this, Ms White—that the most marginalised, most vulnerable people in our communities are increasingly removed from access to justice. Their rights are really precarious.

In public and political discourse, where human rights are used as a means to divide rather than unite people, it makes rights precarious. Where rights are politicised above and between and among different groups, rather than adhering to that central character of rights being about the dignity and respect of the individual, where rights

are weaponised as a reason not to act or to act against institutions, where rights are weaponised as a means to diminish the protection for individuals and the actions of institutions, that makes rights precarious and further removed from the individuals.

The kinds of things that we have seen in political discourse and on our streets in Scotland mean that rights are, if we are not careful, increasingly precarious. That is our message to the committee and the Parliament—to be careful in the protection and promotion of rights.

That is not just us as Scotland's national human rights institution saying that; we are hearing that from colleagues across Europe. The Council of Europe's Commissioner for Human Rights, Michael O'Flaherty, talked about this being a collective effort. We secured these rights collectively through political and civil society institutions that resulted in the UN declaration that resulted in the European convention, and it is incumbent on us and those with a concern for strong democracies, strong civil societies and the wellbeing of our communities to protect the rights that we have and to avoid further erosion and political weaponising of rights.

Tess White: I hear you and I think that this committee hears you. There are multiple layers to what you have just said, but how can the commission help navigate through that?

Professor O'Hagan: That is what we are trying to do every day by saying that human rights are about people's everyday lives. They are not an importation; they are not a foreign interest or a conceptual distance. They are about social care, about access to transport, about access to legal aid, about access to residential care, about ensuring that your mum and dad have the right to be in the same residential care home, and about ensuring that children have the rights that they do. They are about our everyday lives. They are about access to food, access to housing and access to transport. We have shown very effectively in the "Economic, Social and Cultural Rights in the Highlands and Islands" report that they are absolutely about the everyday.

When we launched that report, I was asked in the first media interview that I did why we were talking about things such as food and transport and housing, because human rights are something a bit further away and we think of them in terms of international wars or whatever. That is precisely the point: human rights are about the everyday. They are about the everyday responsibilities of our statutory local authorities, health boards and education providers, and the Scottish Government and all the public bodies that it funds—those are about securing the protection and promotion of rights.

We are highlighting that erosion in our spotlight work and calling for a halt to it and for a greater and more concentrated approach to making human rights and rights realisation at the core of public service and public service design in Scotland.

Tess White: I accept your point, but if you look at human rights budgeting—the workshop that you ran was excellent—you say that you almost judge on output. If you look at where spend is taking place, that is politicised. Whoever will be leading the Government after May next year, it is politicised—you cannot detach the two. One could say that it is naive in the extreme to think that you can divorce politics from it. Take, for example, free speech. There is a huge debate going on right now about what is free speech and the right to free speech. I suppose that I hear what you say, and I think that the committee has heard resoundingly what you have said. You are a small but mighty team and have been very effective in the first year, but you do not have enough teeth to mandate anything.

Even when it comes to the absolutely superb, poignant comments about human rights budgeting, it is flaccid. It is not going anywhere because the budget will not change. We will go through a budget round and human rights budgeting is ninth, after paperclips. What guidance or input can you give to us as a committee so that we get something like human rights budgeting right at the front of healthcare or housing?

Professor O'Hagan: There is a lot to say in all this. We have really laboured and sought to emphasise the point about parliamentary scrutiny—the forceful interrogation of budget, the intent and not politicising rights. By that, I mean not making them party political. Of course, rights realisation is within the political process and the legislative programme and budget scrutiny that the Parliament is engaged in are part of that political process, but we need to avoid the point scoring and the party politicising of rights. Rather, we need to have a common understanding of the role of Parliament as the guarantor of human rights, and for this committee and other committees—it needs to be across all committees—to carry out robust interrogation of spending proposals from a human rights perspective.

You made a point about freedom of expression. We need to understand the difference between absolute and qualified rights. There has to be that balance and an understanding that, ultimately, there has to be the realisation of dignity and respect for all, because rights are universal, and that requires the full engagement of the Parliament in chamber and across committees.

Tess White: Jan Savage would like to add something.

Jan Savage: I just have some reflections from recent meetings with members and internationally as well. It is precisely at times of political turmoil that the integrity of the human rights framework and the institutions that exist to uphold the rule of law independently—the courts, the judiciary, the national human rights institutions—must be protected and strengthened so that those protections for everyone's human rights can continue to be enjoyed.

In respect of how the Parliament might be in a position to expect better adherence to the principles of human rights budgeting or human rights analysis in critical public policy interventions such as the budget or proposed legislation or at local level, that is where a version of a human rights bill for Scotland can mandate those changes.

There are definitely conversations to be had into the next session of Parliament about what is required to progress with the objective of making rights real through public policy making. There is advice that the commission will continue to provide into that process.

Just to reinforce that point, strengthening the independent mechanisms to uphold the integrity of the human rights framework is probably one of the most critical things that this Parliament could do at this juncture to ensure that those rights are protected regardless of what happens next politically.

Tess White: Thank you, Jan. We hear you.

Paul McLennan (East Lothian) (SNP): I am conscious that we are probably already over time, but there are a couple of key things for me.

In your introduction, you talked about the participation strategy. When it comes down to it, the work you do is all about people and the lived experience. We can all talk about the politics and whatever else, but the work is all about people and how it impacts on their lives. A key question for me is: how can you use lived experience going forward? We have had various evidence sessions, and what really strikes me is when people tell us how something has individually impacted on them. How do you bring that lived experience into the work that you continue to do?

I agree with you that there is a role for us all. If we are talking about the broader equalities agenda, it is political, but it is political for all of us. It is obviously more so for the Government, but it is politically on all of us to make sure that we bring in lived experience. The political discourse on equalities is just awful at the moment, so can you say more about how we make the lived experience as real as possible?

Professor O'Hagan: One of the innovations in the reporting period that we are talking about today is the participation strategy, which is a formal declaration from the Scottish Human Rights Commission that we mean for participation to characterise how we work as Scotland's national human rights institution. It is about amplifying the voices of rights holders and taking a challenge to duty bearers.

National human rights institutions are often described as the bridge between citizens and the state, and that is absolutely our role. Having a formal participation strategy is a first step in embedding participation as a way of working in the commission. We have introduced what we hope are good practice elements in supporting effective participation: paying people for their participation, recognising the time and financial cost that it takes to engage, and going beyond consultation.

In fact, going beyond consultation is how I would characterise our work with the human rights defenders in the "Tick Tock" project on deinstitutionalisation, how we have sought to support Scottish Gypsy Traveller communities to participate in the spotlight report, and how we have worked with prison communities and people in detention on prison complaints and the prison rules review.

Participation is something we are monitoring, and this goes back to the first question about how we measure our success. How do we measure our success in how well we are known, who we are working with and how we are working with people to bring in lived experience?

Next week, we are launching our "State of the Nation" report, which will have clear personal stories of individuals we have worked with across the year—again, outwith this reporting period. Two examples are our evidence to the cost-of-living crisis reporting into the Council of Europe and our reporting into the UN Committee on Economic, Social and Cultural Rights, bringing forward evidence from the engagement we have had with, for example, the human rights housing project in Castlemilk and various other community reports, including from Cables Wynd house and other human rights housing projects.

We are bringing all of that lived experience to the attention of this committee, to Parliament and to the international scrutiny bodies, and that absolutely characterises how we are working.

11:45

Paul McLennan: Jan, would you like to add anything?

Jan Savage: I will mention something we are really proud of in the commission. It is easy in a

strategic plan to say, "We will respect the humanity of the people standing beside us" and "We will put the human into human rights" and to do all that good stuff. However, we have put the money where our mouth is. We have developed a four-year participation strategy that is influencing the skill set that we have recruited into the commission and everything that we do in engaging with people. I often say to the commission members that my hope is that we will not always need a participation strategy because it will just become how we do things in the commission, but it will take us a four-year period to properly embed it in our practice.

We are also really proud that our participation officer has been sharing the strategy as best practice with other national human rights institutions across Europe. In fairness, institutions like ours sometimes struggle to get participation right—not so much in Scotland, I have to say—but we are determined for it not to be a tokenistic phrase. I would commend the strategy to you, and I will make sure that you have a copy of it.

Paul McLennan: Thank you—it is key.

My final question is: if we are sitting here five years from now and having the same kind of session, what does success look like in what the Scottish Government does, what the Parliament does and what the wider public sector does? Where do we want to get to for the Government, for Parliament and for the wider Scottish public sector?

I know that that is a big question, but what does success look like in a few key objectives? It is on all of us as Government, as parliamentarians and the wider public sector to act, and we want to be able to say, "You told us five years ago that we had to deliver on this; it is up to every single one of us to deliver for you."

Professor O'Hagan: There are some key success factors, starting with the reality of people's everyday lives. Are there fewer people in poverty? Are there more people accessing adequate, appropriate, accessible health care that is of a quality that is needed? Are public services being designed and resourced in such a way that they will make real those objectives and outcomes? Are service providers across public bodies designing their own reporting and evaluation mechanisms from a human rights perspective? Are they effectively realising people's rights?

We have our own success factors as an organisation, and strengthening our organisation and securing a strengthened national human rights institution for the people of Scotland over the course of the next five-year session of Parliament is one of our key objectives.

There was something else I was going to say, which has completely gone out of my head, so I will pass to Jan Savage.

Jan Savage: This is exactly why we invested in developing a theory of change for the commission—so that we could demonstrate change over a longer period of time. Let us face it: it will take longer than five years to make the societal shifts that we are looking at.

Through that theory of change, we identify that ultimately we want to see a reduced number of human rights violations for individuals, a strengthened legal framework to protect everyone's human rights, greater vehicles for access to justice, and public services designed and delivered in a way that is compliant. Critically, we do not want to see retrogression: where things have achieved a certain standard, we do not want to see them getting worse.

The theory of change that we have developed is the longer-term impact measurement mechanism for the commission. It will be a long-term opportunity for us to look back—against every strategic planning cycle—to say on a four-year cycle, “How are we doing?”

It is a great question, and I assure you that it is a question we are asking ourselves every day with every piece of work we take on and every decision we make.

Paul McLennan: That is the key thing for us all and, as I said, it is a challenge that we need to accept as parliamentarians. If we are back here in five years, asking the same questions, and we have failed, it will be a failure on us all. It is not just on the Government or Parliament; it would be a failure on us all.

Professor O'Hagan: That is the point that went from my mind when I was speaking, which is about a strong committee. In the next parliamentary session, there needs to be a strong oversight committee on human rights—an equality, human rights and civil justice committee.

There are proposals in the landscape review report for a pilot committee, but that is about scrutiny of the officeholder body. We are concerned to ensure that there is effective scrutiny on human rights realisation and protection across Parliament, through a strong lead committee with strong members and a strong relationship across other committees. While the committee can give the lead, it is essential that there is engagement and a human rights perspective across all the parliamentary committees. It is not the sole business of this committee; it is the business of Parliament to secure the protection and realisation of rights.

Paul McLennan: That is an ideal way to finish, convener. Thank you very much.

The Convener: I will come in to ask about the expectations and perhaps priorities of the Scottish Government on human rights, particularly going into the next session. We cannot escape the fact that, while we are—rightly—focusing on the Scottish Government and this Parliament, we are a devolved Government. We are behest to a United Kingdom Government that still has a lot of reserve powers, and we are also behest to local authorities and their priorities. For example, the committee did some work on public sector equality duty.

How does that situation factor into your priorities and the expectations you have? How do you take account of the restrictions and boundaries—if we look at the UNCRC, for example, and how that was watered down? There are crossover challenges in terms of government, but it is also complex to look at human rights within the devolved Parliament's competencies. How do you face those challenges?

Professor O'Hagan: The Scottish Human Rights Commission is a very active partner in the international framework—both the international monitoring framework through the UN, and the networks of the European Network of National Human Rights Institutions and the Global Alliance of National Human Rights Institutions.

We actively raise many of the issues that you have raised as a committee both with and alongside our sister national human rights institutions, which are the Equality and Human Rights Commission—the national human rights institution for England and Wales—and the Northern Ireland Human Rights Commission. We therefore work in partnership and concert with our sister NHRIs, both through the international system and increasingly in the domestic sphere in relation to the UK Government. Jan Savage might speak a bit more about that, having just been engaged with the Ministry of Justice.

There are opportunities for this Parliament to engage internationally on the protection of our domestic rights framework and to speak up and speak out about challenges to that framework. That could be on some of the proposals that are as yet lacking in detail but are signalling some political messaging on article 8 and other protections within the European convention on human rights. Indeed, we all have a collective responsibility to be concerned about the integrity of the European convention and to halt the erosion of and challenges to the security of the European convention at the international level.

There is a meeting next week within the Council of Europe structure where there will be concerted

efforts from national governments to challenge the European convention. Having the voice of the Scottish Parliament as a counter-challenge to those efforts or proposals to weaken the convention is important, just as it is with the UK Government.

In terms of strengthening the powers and mandate of the Scottish Human Rights Commission, there are implications with the GB Human Rights Act 1998. Again, there are conversations to have with this Parliament and, through it, with the UK Government. Jan Savage might like to add something.

Jan Savage: The complexities are inevitable, given the devolved context and the circumstances across Great Britain and Northern Ireland. Certainly, the Scottish Human Rights Commission—in no small way prompted by the process of reaccreditation that we have to go through internationally to demonstrate compliance with the Paris principles—has been working closely with the Ministry of Justice to ensure that its commitment to the devolved framework of national human rights institutions is a continuing priority of the UK Government. We have had written confirmation that that is the case, which is important.

It is incumbent upon us as NHRIs, as much as it is incumbent upon Governments, to liaise on the implications of the framework for how each country wishes to take forward greater compliance with human rights standards. That means that for the incorporation agenda to move forward there will require to be more collaboration, and that will shift depending on the political nature of the relationships that exist at any given time.

The current members of the Scottish Human Rights Commission are clear that, while the enabling powers within the Scottish Commission for Human Rights Act 2006 are applicable only to devolved areas of competence, the commission's mandate is to speak out on and to have an interest in any matter that impacts on any person living in Scotland in respect of their human rights enjoyment. That gives the Scottish Human Rights Commission the opportunity to give more advice and to speak out more often on some of the different areas of policy that might originate from and be controlled by Westminster but have an impact on how human rights are enjoyed here in Scotland.

There is a real clarity of appreciation of the mandate of the Scottish Human Rights Commission, and there is commitment from the current membership to drive us in that direction.

The responsibilities of local councils and devolved government is an area I get exercised about, given our size and scale—16 staff—and the

work that we have now started in Highlands and Islands in particular. We can see real value in the commission working alongside devolved local government in more of a supportive fashion, to ensure that work can be taken forward. There is just a resource constraint that we have in our way.

There is lots to explore. The complexities do not go away but, by putting them on the table and being aware of them, we will find our way through them. That is the commitment of the commission.

The Convener: That is really helpful—thank you. Having the golden thread running through everything helps with tying it together; it does make a difference.

You were speaking earlier about human rights and what they mean on the ground. For example, with library closures in my constituency, it is a question of trying not just to educate our constituents on how it is a human right to have that valued service in their area but to ensure that all spheres of government know and understand that and have it as a priority. It is a helpful side note to know that you are working on that as well, so thank you.

We will have a supplementary from Pam Gosal.

Pam Gosal: It is just to correct the record, convener. I am not sure whether I made it clear that the woman in the Highlands actually contacted 116 different lawyers. I may have phrased it that she contacted someone 116 times, so I wanted to correct the record. She contacted 116 different lawyers.

The Convener: Thank you, Ms Gosal.

That brings this session to a close. I thank the witnesses very much for their time, and I thank members for participating. We will go into private session to discuss the remaining items on our agenda.

11:58

Meeting continued in private until 12:36.

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