Official Report
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DRAFT

Equalities, Human Rights and Civil Justice Committee

Comataidh nan Co-ionannachdan, Còraichean Daonna agus Ceartas Catharra

Thursday 12 November 2026

Session 7

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EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE
10th Meeting 2026, Session 7

CONVENER

*Katie Hagmann (Carrick, Cumnock and Doon Valley) (SNP)

DEPUTY CONVENER

*Meghan Gallacher (Central Scotland and Lothians West) (Con)

COMMITTEE MEMBERS

*Claire Baker (Mid Scotland and Fife) (Lab)
*Holly Bruce (Glasgow Southside) (Green)
*Amanda Lindsay (Central Scotland and Lothians West) (Reform)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
Collette Stevenson (East Kilbride) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Kirsty Cumming (Community Leisure UK)
Michael Dickson (Scottish Ambulance Service and NHS Scotland)
Maya Forstater (Sex Matters)
Mary Howden (Women's Rights Network Scotland)
Adam Jobson (Scottish Prison Service)
Kate Nevens (Edinburgh and Lothians East) (Green)
Assistant Chief Constable Catriona Paton (Police Scotland)
Susan Smith (For Women Scotland)

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Equalities, Human Rights and Civil Justice Committee

Thursday 12 November 2026

[The Convener opened the meeting at 09:31]

Decision on Taking Business in Private

The Convener (Katie Hagmann): Good morning, and welcome to the 10th meeting in session 7 of the Equalities, Human Rights and Civil Justice Committee. We have apologies from Collette Stevenson, and I welcome Ben Macpherson, who is attending as a substitute for Collette. I also welcome Kate Nevens MSP to the meeting.

Under agenda item 1, do members agree to take item 3 in private?

Members *indicated agreement*.

Equality and Human Rights Commission Revised Code of Practice

09:31

The Convener: Agenda item 2 is our first week of evidence taking on the implementation of the Equality and Human Rights Commission revised code of practice for services, public functions and associations. I refer members to paper 1. The revised code of practice, which came into force on 5 August 2026, is intended to help organisations apply the Equality Act 2010. The code of practice has been updated in a range of areas to reflect changes in law and has also undergone changes following the United Kingdom Supreme Court judgment on the definition of sex in the aforementioned act.

This is the first of three evidence sessions on the implementation of the revised code. Next week, the committee will hear from Scottish Trans, the Equality Network, and LGBT Youth Scotland, as well as from the EHRC. On 26 November, we will hear from the Scottish Government Minister for Equalities and International Development.

This morning, we will hear from two panels of witnesses, and I now welcome our first set of witnesses. We are joined by Kirsty Cumming, chief executive of Community Leisure UK; Michael Dickson OBE, chief executive of the Scottish Ambulance Service and NHS Scotland; and Adam Jobson, deputy chief executive of the people strategy, from the Scottish Prison Service. We are also due to be joined by Assistant Chief Constable Catriona Paton, from Police Scotland, who leads on the policing together strategy, but, due to traffic and accidents this morning, she has indicated that she will join us as soon as possible. Rather than waiting, we will crack on. I welcome everyone and thank you all for giving up your time.

Before we move to questions, I highlight that the committee invited the Convention of Scottish Local Authorities to appear at this evidence session, and it put forward Kirsty Cumming from Community Leisure UK to provide a perspective on delivering local authority services in the context of the revised code.

I will start the questions and begin with some words from the Scottish Human Rights Commission, which, in referring to the Scottish Parliament, described MSPs, collectively, as

“the guarantor of human rights”

in Scotland. That is a really important role that all of us on the committee are taking forward.

The code of practice has been published, and it indicates that separate and single-sex spaces can be lawful. However, that is only where there is a legitimate aim and the approach is proportionate. That may include protecting privacy, dignity or safety. It is important that we balance the needs and rights of everyone.

I will come to each witness in turn. From your organisations' point of view, how is the implementation of the code being taken forward, and how are decisions made and recorded? Members will ask a range of questions and we might have quite a free-flowing discussion. I will come to you first, Kirsty Cumming—welcome.

Kirsty Cumming (Community Leisure UK): Thank you. Good morning, and thank you for the opportunity to be here. I represent our members, who are leisure and culture trusts. We work very closely with COSLA, and the evidence I give will be through the specific lens of leisure and culture facilities.

On the code and its implementation, the first thing to say is that our members welcomed the publication of the code in August, which brought some clarity, following the Supreme Court ruling, and they are working to implement the code. However, it is worth noting that it is not just a policy exercise and that, across Scotland, the infrastructure is very varied. There is a lot of ageing infrastructure, a lot of older buildings and a lot of unique set-ups, so we are taking a case-by-case approach to the process of ensuring that members are not just compliant with the code but remain committed to their purpose of being accessible to and inclusive of everyone in the community.

In short, we welcome the code, but it will take some time for it to fully filter through into every scenario, and scenarios are arising regularly. We are very much using the code as the cornerstone for decision making. To understand the implications of the code, audits have been carried out across leisure venues in particular, which are probably most relevant in this context. Most venues that our members operate are owned by local authorities, so there is very close alignment with local authority partners to ensure that the code is implemented in a way that aligns with local authorities and provides consistency of public access across communities.

The Convener: Thank you for that. I might come back with some questions on that, but I will turn to you first, Michael Dickson.

Michael Dickson OBE (Scottish Ambulance Service and NHS Scotland): Thank you. I am sure that you will hear consistency in our approaches. I am here representing not just the Scottish Ambulance Service but national health service boards. We absolutely understand and recognise our responsibility to implement the revised code and comply with the law. Work is under way across the whole of Scotland to undertake assessments and find practical solutions to some of the challenges, and we wish to see lawful implementation. Convener, you commented on proportionality, which is really important, and our services are rooted in local delivery.

The fundamental issue in the NHS is that we are a vast estate, and we provide a vast array of services, from a high-security forensic hospital to a blood donor centre and from an ambulance station—even an ambulance itself—to an acute hospital, so we cannot take a cookie-cutter approach. We need to take a proportionate and considered approach, ensuring that we are compliant with the law. However, we also need to balance the need for national consistency with local service requirements, ensuring that what we are doing is rooted in the needs of the community.

The Convener: Thank you. I will turn to you now, Adam Jobson—welcome.

Adam Jobson (Scottish Prison Service): Thank you. There will be some similarities with what others have said in my evidence, and the Scottish Prison Service also welcomes the code. To give the committee some background, the Scottish Prison Service is responsible for the custody and care of some of the most vulnerable and complex individuals in Scotland. The population has become increasingly complex over recent years, and many people in our care present with multiple and overlapping needs. Our staff are working with record levels of people in prison and do an incredible job to keep our prisons safe.

As a public service, we, of course, operate within a human rights framework, which means considering the rights and needs of all individuals who may be affected by our decisions. Balancing a range of rights, responsibilities, risks and operational considerations is our business, and it is what we have been doing for some time. That is done through a person-centred approach, understanding individual circumstances, rights and responsibilities, and making decisions that are lawful, proportionate and evidence based. That remains unchanged. What has changed is our understanding of the legal framework by which we make our decisions, and we are grateful for the clarification from the code and the additional guidance.

I turn to the approach that we are taking and the actions that we have taken. We have brought together people from across the organisation to look at a number of things, including the rules relating to searching, the various buildings of

different ages in our estate, the toilet facilities, how we handle staffing and recruitment, the complexities relating to data collection and whether information technology systems that have been in place for some time need to be moved.

We recognise the immediate need for action and the sensitive nature of the issue for the small number of people who are affected. We take a person-centred approach and consider things on a case-by-case basis. We avoid any misunderstandings relating to the code through case management and through relationships, whether that is the relationship between a prisoner and their prison officer or the relationship between a member of staff and their manager.

The Convener: I welcome Catriona Paton. We have made a quick start, but I passed on the message that, due to traffic, you would be joining us a bit later. I started off the evidence session by asking the witnesses to give their interpretation of where we are with the code. Do you want to say a few words on that from Police Scotland's point of view?

Assistant Chief Constable Catriona Paton (Police Scotland): Thank you for that welcome. I am assistant chief constable for the policing together portfolio. I will say a couple of things at the outset, and I look forward to further questions.

The code's implementation was not the catalyst for Police Scotland prioritising and focusing on this work. As you might be aware, in September 2024, our chief constable committed to carrying out a review of our data recording relating to sex and gender in particular. Following that work, there was the Supreme Court judgment and the guidance that we are talking about today was published. I emphasise that, prior to that guidance coming before the Parliament in May and being implemented in August, we had issued clear interim guidance to our staff in three key areas relating to the practical effect of the Supreme Court judgment. One of the key areas relates to data recording, which colleagues have already mentioned; one relates to search; and the other relates to our facilities. Police Scotland has a responsibility as an employer and as a public service.

I emphasise from the outset that, as Adam Jobson referenced, it is not just about us providing guidance but about how we have gone about that. That has been critical, because we recognise that this is a contested and challenging environment, so we have ensured that, throughout, we have listened, sought to understand the varying perspectives, thought carefully and sought advice from legal colleagues and human rights advisers. At all times, we must balance our legal obligations with our responsibilities to treat all people with dignity and respect, in accordance with our values.

That work has been extensive, and I hope to get the chance to talk through some of it this morning.

The Convener: I thank all the witnesses for their opening comments. It is helpful to hear that audits and assessments have been done and that guidance has been produced.

As I said, we want to understand the implications of the code. We will be speaking directly to the EHRC and the minister, so it would be really helpful to understand where the code is working well, what the challenges are and how discussions with staff are going. If we can get into a bit more of that detail, it will inform further sessions and whatever we ultimately take back to the Scottish Government.

I do not know who wants to answer that. Michael, do you want to tell us about the assessments that you are doing, and whether you have seen any early indications that might be giving rise to concern within your organisation? Are there any easy things that you can take forward?

09:45

Michael Dickson: One of the obvious issues for us is the estate. The Scottish Ambulance Service has more than 160 stations across Scotland, and a lot of our buildings date back a significant period of time. Even if we were to reconfigure the estate, the estate itself is challenged in terms of its being a modern working environment. We do what we can, but we have constrained capital to invest in it, and we need to prioritise whatever will make the most impact on operational delivery and on ensuring that we are caring for patients in the best possible way. We are making revisions in that respect, but it takes a significant amount of time to review all of our estate, and the associated cost is significant, too.

As for outcomes, we might, depending on the local area, be able to make reasonable adjustments in a short amount of time at minimal cost, but when we look at something far more complicated, such as the forensic mental health network, and at making such changes in a high-security forensic setting, we see that there are significant risks that we need to consider. We often work with IT systems that face challenges in capturing the information that we require, and when it comes to making changes, we find challenges arising with regard to the life cycle of the product that we use and which might require to be reviewed in the very near future. The issue is the amount of investment required to capture that information, so we have to consider whether there are other ways of doing that.

As I have said, some reasonable adjustments can be made quite quickly. Reviewing policies does take time, though, and we ensure that we engage appropriately in that respect. We are well versed in equality impact assessments, which are actually very useful tools in understanding how our decisions can affect and impact on protected groups when we consider the code.

When you stand back and look at the whole of the NHS in Scotland, you will see that this is a complex matter, and we need to consider the impacts on those affected and ensure that we are doing this in a proportionate way. We take our time to do it right, but we cannot forget that it comes with a cost attached, and it is money that, in essence, we are spending to make a change that, if we are being realistic, will not necessarily improve outcomes for patient care. However, we are absolutely clear that we have to comply with the law.

The Convener: That was helpful. I know that Holly Bruce is looking to come in on this issue; if anyone else wants to do so, they should indicate as much. I call Holly, to be followed by Claire Baker.

Holly Bruce (Glasgow Southside) (Green): Thank you so much for coming along today to talk about the experiences in your services.

I want to delve into the impact that this is having on people, whether it be those who use your service, those who are part of your service, or staff members who help to operate the service. Many constituents, and many trans people, have written to me, fearful and really scared, and I am keen to delve into that today and to hear about your experience in that respect.

We know that, as a result of the code, an issue called double exclusion has arisen. It means that trans people could be barred from the space aligned with their gender, because of their sex, and from the space aligned with their birth sex, due to possessing the protected characteristic of gender reassignment. That, in effect, leads to this double exclusion. How are your organisations dealing with this double exclusion that has been placed on trans people?

Assistant Chief Constable Paton: Thank you for the question, and I share your view that it is really important that we get this right for everyone. Certainly, as an organisation, we in Police Scotland have set ourselves up to be a police service for everyone, and rightly so.

Before I touch on the specifics with regard to the challenge that you posed, I will point out that, as I mentioned at the outset, our approach has been one of engaging, listening and understanding. We have been able to do that in a range of ways: in leading the work with particularly affected groups of people, I have had one-to-ones with individuals; our diversity staff associations have been supporting us; and several stakeholder events have taken place. All that work is aimed at trying to bring to life our understanding of the practicalities of the felt experience beyond the rights and wrongs of some of the legal positioning, to ensure that we mitigate those things as much as possible and that we let people know that we understand.

Looking at your question primarily through the lens of facilities, our responsibility, both as an employer and as a service provider, is to ensure that we have suitable and sufficient facilities for all our staff. Similarly to what some colleagues said in their reflections, we have a big estate, in which we have historically had predominantly male and female facilities. Therefore, being able to ensure that we have sufficient suitable mixed, gender-neutral and single-occupancy facilities takes time.

We have approached that process by being really clear with the guidance a few months after the Supreme Court judgment then working towards a prioritisation, which Michael Dickson mentioned. Case by case, when a need arises, we ensure that we quickly provide both gender-neutral and single-occupancy facilities so that there is choice and there is no double exclusion, and so that every aspect of our toilets and our changing and washing facilities have that option across each of our divisions. That is embedded into our broader estates plan.

Holly Bruce: I appreciate your response and thank you for the detail. However, on that point, I would say that providing a third space, such as a gender-neutral space, will ultimately mean that trans staff or service users are outing themselves, which is quite a harmful and scary thing to do. How are you dealing with that issue?

Assistant Chief Constable Paton: That is a lot of the information, narrative and feelings that have been expressed to me over this time. The important thing to remind myself and my colleagues of as we work through this is that there is no hierarchy as relates to human rights and it is our responsibility to treat everybody with dignity and respect. Therefore, if we are saying that we have a single-sex provision, we need to ensure that it is based on biological sex. That protection under our obligations and responsibility to provide suitable and sufficient facilities is equally valid as it relates to single occupancy or gender-neutral or mixed spaces.

Working through that process as an organisation, we have been able to learn from it to understand more of the impact, and we have been absolutely proactive in providing that clarity and

reassurance, as well as the facilities that enable everyone to access our toilets and our changing and shower facilities across our estate.

The Convener: Thank you for that. Does any other witness want to come in on double exclusion—Adam Jobson or Kirsty Cumming, for example? I will try to keep a balance so that everybody gets a fair share of speaking time.

Holly Bruce: I would be keen to hear from Kirsty, if that is okay, on the leisure and culture service user viewpoint.

Kirsty Cumming: I am happy to come in on that. As I referenced in my opening remarks, the leisure estate in particular is ageing. Similarly to Michael Dickson's point, a lot of our leisure infrastructure was built in the 1970s, so it needs significant upgrades. Notwithstanding the issues around single sex and the code, the infrastructure as a whole is in need of significant capital investment to maintain it so that it is appropriate for 2026 and future sustainability. Sportscotland published its estates review earlier this year, which identified the need for a capital investment of £15.5 billion over the next 20 years to ensure that our estate is future proofed.

On your point about exclusion, that very much depends on the facilities. A lot of our members have mixed changing areas, or changing villages, in some of their facilities. That is perhaps a slightly easier way for the trans community to access those facilities and not feel that they are in the spotlight. In other facilities, there is male and female changing. In some of them, some rooms—whether meeting rooms or accessible change rooms—have been used to create that third space. However, we take on board the point that that creates challenges for the people who are using that space.

Another thing to consider is the workforce. We have talked about people and the impact on people. Across leisure, a lot of the workforce is in the younger age demographic. Our members are significant employers of people aged 18 to 24. A lot of those people, particularly in those front-line roles, are in part-time or first-time jobs and are looking to start on a pathway into work, so it is also about how they are able to deal with some of the questions and queries.

The approach across our members is very much around handling queries on a case-by-case basis. However, a lot of work is needed to train staff to ensure that they are confident in dealing with things in a calm and sensitive way while treating people with dignity, and that they understand how to signpost people in a way that enables them to remain active and keep using the services.

The overarching point is that our members are very much trying to ensure that everything is accessible. However, it is not perfect, and it very much depends on infrastructure, investments and the set-up.

Holly Bruce: I assume that some of your staff will be trans. A lot of your service users will be trans as well. Do you recognise the fear among that community of people in relation to trying to access services right now? A lot of people are self-excluding and not using those services because they are truly scared. Is that something that you have seen within your organisation?

Kirsty Cumming: We have worked closely with another organisation, LEAP Sports Scotland, which does a lot of great work in that area and which has shared a lot of its statistics and research. We understand that, even prior to the code and this whole conversation, a lot of that community were perhaps less active and were impacted by health outcomes. That has always been well understood. Our desire in implementing the code is to ensure that things do not get any worse, and that people remain active and included in spaces that are welcoming.

The Convener: Thank you for that. I have lots of questions that I would like to follow up with, but I am aware that Claire Baker is looking to come in.

Claire Baker (Mid Scotland and Fife) (Lab): I have questions about the implementation of the code.

I am curious as to why the Scottish Prison Service took so long to introduce the changes. Police Scotland has spoken about how it started to look at its practices and what it needed to change in order to comply with the law in 2024. The Prison Service seems to have waited for the publication of the code, which resulted in a legal challenge where it was found that the policies that the Prison Service was continuing with were unlawful.

I am curious as to why it took so long for the Prison Service to look at the changes that were going to be required. It has been a short time since the code was introduced. What kind of progress has been made in ensuring that the Prison Service is within the law?

Adam Jobson: The Supreme Court judgment in April 2025 clarified the interpretation of sex within the Equality Act 2010. We recognised immediately that the judgment had the potential to affect a number of things; namely, the things that we have been talking about today, including, of course, transgender prisoner policy and where transgender prisoners are placed within the estate.

However, the Supreme Court judgment did not directly determine the legality of that aspect of the policy; that is, the management of transgender people in custody. It was not until the judicial review that we got the answer to that question. The question that the Lady Ross was considering in the review was about the balance of the Equality Act 2010 and human rights legislation in relation to those complex issues and what position we were required to take. Off the back of that decision, which came in June this year, we took immediate action. The decision was issued on Friday 19 June. We withdrew the policy on Monday 22 June and started the movement of prisoners on 23 June.

We were seeking an answer to that particular question, as opposed to the definition of sex in the 2010 act, and that is why it was not until this year, after that decision, that the policy was immediately withdrawn and the prisoner group was moved.

10:00

Claire Baker: Has the code now been fully applied within the Scottish Prison Service?

Adam Jobson: The policy has been removed, as I was saying earlier. As colleagues have been saying, we need to do a number of things to address some of the issues—for example, the double exclusion and whether we have got everything right for all people. We are complying with the law. The code is giving us guidance on the law, on access to single-sex spaces, on how we use data and on how we ask people questions about their sex when they come to work for the prison service. That is all now compliant with the law.

Claire Baker: I have a question for Michael Dickson. NHS England published "Privacy, dignity and safety in hospital accommodation" on 15 October this year. That guidance has been set out for the NHS in England. Can we expect similar guidance in Scotland? Is that planned?

Michael Dickson: We would welcome the adoption of NHS-wide guidance in Scotland in the same way that NHS England has done. Obviously, as you are fully aware, health is a devolved matter, and the health estate and layout is somewhat different from what we would see in England, but we would really welcome such guidance. The board chief executives recognise that, and we think that there is value in learning from other services. The civil service has a good example of where we can take best practice and adopt that across the whole of NHS Scotland.

Claire Baker: You talked about the challenges in the estate in Scotland. There has long been a commitment or ambition to deliver single-sex accommodation. Parallel to this are issues around women's safety. The Women's Rights Network did a report on sexual assaults and violence in hospitals, which came out last year. The Government said that it was going to take action on that and that it would be speaking to NHS boards. Part of that involves the delivery of single-sex wards. What stage are we at? You talked about the challenges, but do you have an idea of how many people are still housed in mixed-sex wards? What progress are we making towards having single-sex wards?

Michael Dickson: I am not able to provide that detail for you today, but I am happy to follow up later with some further information, if that would be useful.

Claire Baker: Okay; that would be useful. It is disappointing, because the Government said at the time that it would gather that kind of information and make the expectations clear to NHS boards. There were issues around incidents not being properly recorded. We will follow that up with relevant ministers.

Finally, I will come to Kirsty Cumming. In your reply to Holly Bruce, you talked a bit about how the estate is managing the changes. How are things being communicated to people? Are incidents being recorded? What is the expectation on community leisure trusts or local authorities around providing appropriate information for people and how they are recording incidents?

Kirsty Cumming: There are already robust mechanisms in place for recording incidents. Across our members, there have always been mechanisms for recording any incidents. Given the nature of quite a lot of the facilities, health and safety are, understandably, a top priority. Those mechanisms are still there.

Claire Baker: Although there is recording of incidents, do you know whether, at the moment, there is disaggregation of incidents, so that we know what the incident involves, rather than just a general number of incidents?

Kirsty Cumming: Yes. All of our members have groups that look at the incidents, categorise them and understand the detail that sits behind them. There is also representation at the board level for every one of our members around safeguarding and health and safety. There is an escalation pathway in place, and there is an opportunity to look at the data across that and understand whether there is any change or any areas where there is a higher number of incidents across any facility. I would say that that is fairly robust.

The communication point is more challenging, because the code came into force in August. Our members are broadly reviewing their policies and getting legal advice. I would say that there is an

ongoing process around communicating that out publicly.

A lot has been done at a central level to engage with different groups, stakeholders and regular users, and a lot of work is under way on signage in venues to try to ensure that it is clear, but there is still a bit of work to do in order to have a robust policy that is communicated out. That will come in time as legal advice comes through, but the policy is still a bit of a work in progress for some members.

Claire Baker: Thank you.

The Convener: There are several members who want to come in, and there are also multiple questions that members will want to come back to. Amanda Lindsay was seeking to come in first.

Amanda Lindsay (Central Scotland and Lothians West) (Reform): Thank you for coming to speak to us today. I have a question for Adam Jobson. In June 2026, MSPs asked how many transgender or biological male prisoners were held in the women's estate. The answers linked to general statistics, but they did not provide the figures that were requested. Can you tell the committee whether the number of biological male prisoners who are currently held in the female estate is zero, and, if it is not zero, what the number is?

The Convener: Just to clarify, the committee is looking at the implementation of the code of practice, so it would be helpful to get clarification in line with the code rather than have a general conversation on that question. It would be helpful if we could get clarity on data gathering and those numbers, but let us frame the question with regard to the implementation of the code.

Amanda Lindsay: Yes, okay—thank you, convener.

Adam Jobson: I can clarify that, in June 2026, following Lady Ross's determination, we moved a small number of prisoners, and there are now zero biological male prisoners in the women's estate. On a quarterly basis, we also publish on our website the number of people in our care with trans status, so that number is publicly available.

Amanda Lindsay: Okay, thank you.

Kirsty Cumming, do you agree that, before users of services undress or use a changing facility, they should be clearly told whether the facility is genuinely single sex or mixed sex in practice? What sort of information should appear on signage and websites to inform people of that?

Kirsty Cumming: Signage has been updated where relevant, and it is very clear. All our members that have male or female changing facilities are in line with the law as it stands with regard to biological sex. There are changing villages across several leisure facilities that have always been mixed—they are often used by families for family changing—and the signage is clear that those are mixed changing facilities. The signage, as I understand it, is clear and in line with the law.

Amanda Lindsay: Thank you.

The Convener: I come next to Meghan Gallacher, who is online.

Meghan Gallacher (Central Scotland and Lothians West) (Con): Good morning. I give my sincere apologies for not being able to join you in person this morning.

I will follow on from Claire Baker's line of questioning in relation to communication, engagement with stakeholders and the implementation of the Supreme Court ruling. Kirsty Cumming, you said earlier that you have engaged with LEAP Sports Scotland as an example of such communication on implementation. My question to the witnesses is: when you were implementing the long-awaited guidance, which other third-party groups did you consult with? Will you give us an idea of which groups those were and whether they included women's groups and those who were concerned about the Supreme Court's ruling?

The Convener: I see that Catriona Paton is nodding, so I will come to her first. Meghan, if there are any other members of the panel you would like to hear from, please come back in.

Assistant Chief Constable Paton: The short answer is yes, we did engage. We recognised that people with gender-critical views and with gender identity beliefs were both going to be impacted by our work and the Supreme Court judgment.

As I mentioned earlier, we set up a review in September 2024. Right from the outset, we established a governance structure in which I was the chief officer lead. One strand of that work was on communication and engagement. We regularly met a range of experts, including legal advisers, but predominantly, and crucially, people with lived experience, knowledge and expertise.

We held a big in-person stakeholder event at the Scottish Police College, followed by an online survey that was open to a range of people, groups and individuals from across the spectrum. I would be able to share all the details and the names of those who were at that group event. About 66 different groups and/or individuals were represented in some way, shape or form.

That all fed into our understanding of the impact of the practical effect of the Supreme Court judgment and the guidance and of how we, as an organisation, could continue to bring that to life in

a way that demonstrated that we understood the impact and, where relevant, mitigated it, while continuing to take people with us.

I will mention one thing that touches on the point about comms. As we know, the Supreme Court judgment came out on 16 April 2025. I circulated a message on 17 April, the day after. From that point on, regular communications went out to staff, pretty much every other week, to let them know what we were doing, what they could expect and what was coming. We were supported by our communications team, in acknowledgment that although the situation was tricky and challenging we would ensure that our people understood what we were doing and why.

Meghan Gallacher: I would be grateful to get an idea of the stakeholders you consulted, just in case the matter is revisited in future.

Assistant Chief Constable Paton: Absolutely. I will be happy to share that.

Meghan Gallacher: Kirsty, you referred to LEAP Sports Scotland. Have you any further information that you might wish to add?

Kirsty Cumming: Yes, I am happy to. The day after the publication of the code, sector guidance was published by ukactive, which is another organisation that operates across the leisure sector. That is the guidance that a lot of our members have been using, which is fully robust legal guidance on the implementation of the code, specifically within leisure. We are trying to apply that to real-life situations.

Our members did a huge amount of consultation on the development of the code, both legally and with a wide range of stakeholders, on every angle, to ensure that the code was understood before it was published.

Our members work very closely with local authorities, and they operate venues owned by those authorities. There has been close alignment in engaging with local authority partners to implement the code and to ensure consistency.

All our members work closely with a wide range of local partners, from the national level downwards. At a local level, all our members have been engaging with user groups of people who use their facilities and venues and with a wide range of charities and local partners that would be interested in working with them. There has been a huge amount of consultation. I would be happy to follow up in writing on any of that, if that would be helpful.

Meghan Gallacher: Thank you, Kirsty.

Michael and Adam, I am conscious of the time, and I know that other members want to ask questions. Does either of you wish to add anything at this point?

Adam Jobson: I am happy to confirm that we are committed to that consultation with all stakeholder groups. The transgender policy that was introduced in SPS in December 2023 was subject to a full impact assessment in accordance with the public sector equality duty. We can share that, and I point out that it includes information on consultation. That policy has now been withdrawn, but the review and the evaluation, in line with the duty, continued when the policy was in place. That work continues in relation to what we do next. We will continue that commitment.

Meghan Gallacher: I have another question. I do not know whether it is worth asking it now, or I could ask it towards the end instead. I am happy either way.

The Convener: I am content for you to ask it now. A number of members would like to come in, but you have the floor, so go ahead, please.

10:15

Meghan Gallacher: That is appreciated—thank you.

I want to ask about the integration of the Supreme Court ruling with future legislation in the context of public services. You might recall the incident that occurred at St Mary's Kenmure secure accommodation centre in Bishopbriggs, when a 13-year-old care-experienced girl was placed in the same facility as male young offenders between the ages of 15 and 17. Safeguarding issues were raised about the vulnerable position that that young girl was put in when she was placed in that secure unit. In my view, that was a clear breach of the Supreme Court ruling.

Are safeguarding issues, particularly as they relate to young women, being addressed in all settings? To what extent are those considered in relation to existing legislation, legislation that has just been brought in and any future legislation? Adam, have you any comments on that?

Adam Jobson: The Scottish Prison Service no longer has custody of any young person under the age of 18, and, as I have confirmed, the placement of people who arrive in custody is aligned with their biological sex.

However, it is worth repeating what I said earlier—when it comes to risk assessment, we always make decisions based on the full circumstances of the person in front of us and the people who will be around them in the prison. A huge number of dangers are presented when someone enters an establishment, including the

risk of self-harm, as well as harm done by others. People who come into prison need to be kept away from others in the community for various reasons. That process is carried out for anyone who comes into our care, and that will be the case for any issue that arises.

However, with regard to the fundamental issue that we are talking about, the allocation would be done on the basis of biological sex.

Meghan Gallacher: Thank you.

The Convener: I will maybe build on that and ask Michael Dickson to respond. You mentioned that various assessments are undertaken across the organisation. To follow up on what Meghan Gallacher said, the issue is how the code is integrated with legislation. All too often, we hear talk of unintended consequences. Are there any areas that you have identified in your organisation where there might be a conflict? What might those unintended consequences look like?

Michael Dickson: I apologise for coming back to the issue of estates, but I promise that I will respond to your question in a second. Disabled groups have flagged the fact that, if disabled toilets are labelled as gender neutral, that reduces the ability of disabled people to access them. That is not our view; it is the view of disabled groups that have lived experience.

In relation to the safeguarding point, I flag the fact that the NHS is based on clinical need, first and foremost. Clinical need overrides everything. If a person's clinical need outweighs all other factors, that will be the priority. One of the key principles of safeguarding is that we should take a patient or person-centred approach. If we ground all our activity in that principle, we will mitigate most of the risks. In difficult and challenging safeguarding circumstances, there is often not a right or a wrong way; it is genuinely a question of what we can do to protect the individual in the best possible way. That ties in beautifully with the NHS's values, which we are committed to.

A lot of work is being done. The NHS is truly spectacular at navigating difficult, complex situations in an effort to get the person we are caring for to the right place. We must always balance risk and priorities, but clinical need is the first priority, and a patient or person-centred approach is the right approach to take to such situations.

The Convener: I have a question for Michael Dickson before I go back to Amanda Lindsay. Are you confident that clinical need is being met? I am aware that the code refers to situations where there is a "legitimate aim" and the approach is "proportionate". Are you confident that clinical need is coming to the fore in the decisions that are made?

Michael Dickson: I am 100 per cent confident of that. In an accident and emergency department, the clinical condition of the patient is the priority. We have a lot of research on same-sex accommodation, and there is interesting research that shows that, the more ill someone is, the less concerned they are about single-sex arrangements. Obviously, as they start to recover, that becomes a greater priority. If somebody's life is on the line, we do all that we can to ensure that we maintain their dignity throughout that process—it is not about having open curtains. In a critical situation, we provide people with the best and most appropriate care.

Amanda Lindsay: I have a question for Kirsty Cumming, which is on community facilities. The Women's Rights Network has produced a report, which is based on freedom of information research, on the number of sexual assaults in village-style changing facilities—those are mixed-sex changing facilities. What will you advise your members to do about issues concerning the safety of women and girls in such facilities, given what we have learned from that FOI-based research?

Kirsty Cumming: I am aware of the report, and there has been some media attention around it. The first thing to say is that some of the reporting was not necessarily recognised by our members—there are questions about aspects of the data that was used for the report, and those questions are being looked into.

The second thing to say is on safeguarding. As I said in response to a previous question, there is a robust system for monitoring and logging all incidents that happen in premises and responding to those appropriately, whether they happen in a village-style changing room or anywhere else in a facility. Generally, across our members, the number of incidents reported is very low but, where they are reported, they are dealt with seriously.

Amanda Lindsay: But do you accept that there is a greater risk for women and girls in mixed changing facilities?

Kirsty Cumming: That is not something that I have seen evidence to support, so I could not confirm that today.

The Convener: Holly Bruce wants to come in—my apologies, Holly, I missed you off my list previously.

Holly Bruce: That is not a problem, convener.

I have three questions. My first is on the answer that Adam Jobson gave to Amanda Lindsay on trans women prisoners. I have real safeguarding concerns for those prisoners. If they are not being

held in women's prisons, where are they being held? In the impact assessment, was regard given to a safe and humane standard, as per article 3 of the European convention on human rights?

Adam Jobson: Trans women and biological men would be accommodated in male accommodation. That was clarified by Lady Ross—that is the law. It is what we have to—

Holly Bruce: So, trans women are currently being held in male prisons.

Adam Jobson: That is right. Allocation is aligned to biological sex—that is the wording of the lawyers.

Holly Bruce: Have those trans women's safeguarding needs been met? Are they being treated with dignity and respect?

Adam Jobson: Absolutely. We contingency planned on the basis of the possible outcomes of the court case and the decision. We had one-to-one discussions, assessments and plans for each individual person. There was consideration of where they would move to, what their day would look like, which hall in the prison they would live in, what the facilities are in that hall, and their access to wider association, jobs in the prison and so on. That was all mapped out in the plan to support each person.

Holly Bruce: I would appreciate any further information that you can provide to the committee on that issue. I have concerns that real risks will be posed to those women, and I would like clarity on it, if possible.

I will move on to a subject that we have not discussed yet, which is the harmful effects that the code is having on gender non-conforming people, and specifically cis women who present more masculinely.

Constituents have written to me about their experiences when using bathrooms in leisure facilities, pubs, businesses and other settings in society. They have been challenged by people in those bathrooms for using those spaces when they have the right to do so. One constituent told me that they no longer feel safe going on their own to the bathroom, even though they have the right to do so as a cis woman. How are your organisations dealing with those issues, which are clearly harmful? Do you agree that gender stereotyping is harmful to all women?

Assistant Chief Constable Paton: As I mentioned in previous answers, in policing, we have made sure that we have sufficient and suitable facilities to meet everyone's needs. The range that I have already described includes single-sex and gender-neutral or mixed spaces, as well as single-occupancy spaces.

We circulated interim guidance on facilities a few months after the Supreme Court judgment, and we followed that up with work on dignified spaces. That is about making sure that staff across the organisation understand what it means to treat people with dignity and respect. It is also about ensuring that we treat people according to our values when we encounter situations.

Our position is that the Supreme Court judgment is the Supreme Court judgment, and the guidance provides a degree of clarity on what that means in relation to the Equality Act 2010, but it does not bring practical effect to the day-to-day scenarios that we encounter as an organisation. That is why we have had a focus on those three primary areas of data, search and facilities. As I said, I reassure the committee that we want to ensure that we have sufficient and suitable facilities for all and that, when we need to address matters, we do so in a dignified way and in a way that upholds our values. If that was not happening, we would want to ensure that the standards of professional behaviour that we all have to adhere to were being adhered to throughout.

Because of all the work and the communication and engagement, we have not had complaints relating to search. We have had some challenges relating to facilities, for sure, and we continue to work through all of them.

Holly Bruce: Do you recognise that a number of victims will not want to come forward to the police with the harassment that they have experienced in bathrooms for looking a certain way, whether that is because they are more masculine-presenting lesbians or gay women, they are going through cancer treatment and might not have long hair, or they have alopecia and might not have a feminine look? Those people are fearful and are not coming forward. What can the police say to those victims so that they feel able to come forward if such scenarios occur?

Assistant Chief Constable Paton: There are two parts to that. One is about access to facilities and what that looks like, and I have responded on that.

The other part is about how people feel—their trust in the police and confidence to report matters. Of course, dealing with that issue is front and centre in our minds as part of our determination to ensure that we are a service for everyone. I hope that our approach to the work that we are discussing today in itself provides a degree of trust and confidence that we have been proactive in this space and have been seeking to understand the felt experience of individuals across our society. We have been trying to work in a way that is considered, measured and balanced, and that not only upholds the legal position as it relates to

human rights and our responsibilities on workplace facilities, but demonstrates our values in action in that we treat people with fairness, dignity and respect.

10:30

Another area that I have responsibility for within policing together is hate crime. I understand what that looks and feels like both for those in our communities and for people in our organisation—our colleagues—and I am certainly not immune to the cumulative impact that some people are feeling. Two things can be true at the same time: it can be true that we need to move forward in some of these areas, but it can also be true that some people are feeling fearful. My job, and the job of all my staff, is to continue, through our actions, to build confidence and reassurance that we are listening, that we understand and that people will be treated with dignity and respect at all times.

Holly Bruce: Thank you. Finally, I have a question for Kirsty Cumming and Michael Dickson. In your initial remarks, you said that you feel that the code gives clarity. Many of the trans people and queer people whose testimonies I have referred to say that there is no clarity. They are being harassed in bathroom settings, public spaces, leisure facilities and in the NHS. Can you respond to that?

Kirsty Cumming: I am happy to respond. First, I note that, when I spoke about clarity, I was talking about clarity following the Supreme Court ruling. There was a period after the ruling but before the publication of the code during which there was a lot of uncertainty about how to implement the ruling. The code has absolutely brought clarity further to the ruling and provided something as a baseline for our members to understand and work with.

As I said, we also have the sector guidance, which came out on the day after the code was published. As I alluded to earlier, work is still ongoing. Many of our members have not confirmed their absolute policy because there is not absolute clarity, so that is still being worked through.

When I talk about clarity, it is in relation to the judgment being made, rather than confirmation that we have absolute clarity on everything at the moment, which is not the case, unfortunately.

Michael Dickson: I concur on the clarity following the ruling. I assure you that the board's approach is about implementing the code in a way that respects the rights and dignity of all the people who use our services.

I apologise if this is outside the scope of this discussion, but I note that there is a particularly unhelpful political narrative that has enabled people to take particular views, and we see it in all aspects of the society that we live in. That also washes through to our staff and our colleagues. We need to reflect that this is a legal ruling. Implementation of the code is implementation of the code, but people are affected by values and the representations of arguments, often from political leaders, that can make the whole situation far more difficult than just dealing with the legal ruling or the guidance. We do all that we can, but that wider public narrative is being shaped.

Holly Bruce: I hear what you say. I am here as a constituency MSP and as a member of the committee to give voice to experience. That is why I put my questions to both of you today, and that should be recognised and affirmed.

The Convener: Thank you.

I am conscious of the time. Before I bring in Fulton MacGregor, I will ask a question first. Stonewall's report on LGBTQ+ life in the UK was published on 30 October and was launched last night. It is based on evidence that was gathered. It states that 11 per cent of lesbians and 25 per cent of trans+ people reported that they had been questioned about their sex assigned at birth when using single-sex spaces.

It would really help the committee to understand the implication of the code if you could say how your staff are taking it forward in supporting members of the public, and whether they are having to step in and question people. What discussions have you had with trade unions about supporting staff who may find themselves in such situations?

Kirsty, I will come to you first, because local government services are probably the most common setting for such spaces. Do you have any reflections on discussions with trade unions or how staff are approaching these situations?

Kirsty Cumming: I probably could not speak to the trade unions point at the moment, because that would be done locally by our members who have arrangements with trade unions across their own organisations.

On the point about staff, as I alluded to earlier, there is a need for staff training so that they feel confident, empowered and understand how to deal with matters sensitively, operate with dignity and appreciate individuals' privacy. There is no expectation that leisure centre staff should be policing toilets or other areas; that is not an expectation and nor should it be. However, there are mechanisms in place for people to come forward, speak to staff and be treated with the dignity that they deserve and would expect from a public service.

The Convener: In the briefest of responses from the other three witnesses, can you say whether trade unions have raised any concerns about the implication of the code with your organisations? You do not need to go into all the details—if you could share that following today's evidence session, that would be useful—but a simple response now would be really helpful.

Assistant Chief Constable Paton: I will keep it brief, convener, because you want to speak to everyone. The answer is yes. In Police Scotland, we have a collaboration group, which I chair along with the head of human resources. It meets every two months. We also have one-to-one meetings with our various statutory and non-statutory staff associations, which obviously includes our trade unions. The reflections that the committee has heard this morning are, I dare say, reflections that we have heard since we started our work two years ago on the potential implications of the ruling, which is why we have remained really sensitive and attentive to those elements. We will continue to act in that way.

I reiterate that the three elements in our interim guidance that came out within months of the Supreme Court judgment have been reviewed in the light of the code and have not required substantial change, so we have been getting the balance right. That does not mean to say that there are not individual feelings, and we continue to monitor things and to be really connected in order to understand that.

Adam Jobson: We work in partnership with our trade unions and have a good relationship with them. We have worked through the issues closely with our trade unions over the past few years. They are supportive of the approach that we are taking, which we appreciate. If I have to put it from their perspective and speak on their behalf, I think that, if they were here today, they would talk about the level of the prison population, as well as the threat from serious and organized crime and the impact of drug addiction on people in prison. Those are the big issues that affect them and their members. Some of the issues arise because we are a closed environment and are not dealing with the public.

The Convener: My question was whether any of your trade union members have raised concerns about the implication of the code; it was not about concerns on other areas.

Adam Jobson: We have not had anything come through from the unions on the implications of the code.

The Convener: That is fine. I put the same question to Michael Dickson.

Michael Dickson: I will need to come back to you on the wider NHS picture, but I can speak from my personal experience. A number of concerns have been raised, many of which are to do with how we will manage any transition in terms of the estate, recognising that it is constrained. I have had discussions with particular staff, and I have always routed those back to the principle that we should start by treating people with dignity and work from there.

The Convener: If you are able to share information from other NHS areas after today's meeting, that would be helpful.

Apologies, Fulton—I jumped in there. I now come to you. I appreciate that Amanda wanted to come back in, too.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Thanks, convener. I want to go back to the issue of balancing competing rights, which has been a main theme in all the questions and answers. It is clear that that has not been easy for organisations following the ruling, but, from what we have heard so far, there is good evidence that at least the organisations that are in front of us today are doing it proportionately. That is coming across, at least to me.

The code recommends recording the evidence and reasoning behind decisions so that organisations can demonstrate that they have considered proportionality, have assessed the impact on affected groups and have not just applied a blanket rule. I know that I am asking you to repeat some of the things that you have said in previous answers, but can you confirm that you are doing that, as per the code? Do any of your organisations have a specific example of a situation in which that has happened?

I will bring in Michael Dickson, just because he is nodding—the key lesson is not to nod. [*Laughter*.]

Michael Dickson: I entirely agree that the rationale for the decisions that we make needs to be captured, for a range of reasons. One of the first things that we did was an audit of our estate, in recognition of the impact of that, and the decisions that we made as a result have all been captured. That information feeds into our estates group, which has union representation on it. We are taking an open and transparent approach to ensure that, should somebody ask us many years down the line why we made a certain decision, we will have captured that information.

Assistant Chief Constable Paton: As I mentioned earlier, we have robust governance and accountability arrangements. Back in 2025, following our review, we set up a sex and gender oversight group, which provides scrutiny of and accountability for all the decisions that we make. The guidance and the policy decisions that we

have made in the three areas that I mentioned have gone through that group. The independent scrutiny of the Scottish Police Authority also adds value to our approach.

I will give an example of the practicalities. Searching is of real importance to policing, and guidance on that was one of the first pieces of guidance that we produced, in June 2025. Our position is that we search according to biological sex, but, if someone wishes to be searched by someone in line with their gender identity, that can be done through a process of consent. This goes back to some of the earlier questions. The judgment has practical implications for and effects on policing. To put it in context, every year, we carry out more than 40,000 searches, only a small proportion of which are strip searches, which is what the guidance relates to, and we have had to use that consent process only four times.

I want to reassure the committee that, although there will be implications, we treat things on a case-by-case basis and in a proportionate way to ensure that we fulfil our responsibilities. We monitor the impact of the guidance that we have given on both service providers and those who receive the service, and we have had no complaints relating to that process. That is one example.

Adam Jobson: I agree with what has been said. In relation to human rights, there is the right to privacy and the right to not be subjected to degrading treatment. It comes back to the point about consultation and the need to listen to the lived experience of people in our care who have been affected.

In relation to the public sector equality duty, we need to assess the impacts, write them down and then share that information. We should put what we can in the public domain and keep a full explanation of our decision making. We are committed to doing that.

Kirsty Cumming: All decisions that are made across our members are fully documented and supported by an evidence base. Integrated impact assessments are also used, alongside legal advice, to ensure that every decision is robust.

Fulton MacGregor: Your remit is pretty wide. We are trying to get away from the approach of having a blanket rule for individual situations. Do you take decisions on an individual basis, or is it more a case of a blanket rule being applied and then seeing whether something needs to be looked at?

Kirsty Cumming: It essentially cascades down from the code. The sector guidance is used, but as I mentioned previously, every operator and venue is slightly different across the country, so some scenarios need to be dealt with on a case-by-case basis. However, all of our members are carrying out audits of their facilities and are using integrated impact assessments to support decision making.

10:45

The Convener: I am conscious of time. You have waited for quite some time to come in, Amanda, and I would ask that you do so briefly. Then I will call Claire Baker, as I appreciate that she has been wanting to come in, too.

Amanda Lindsay: I have a couple of quick questions for Catriona Paton. On the subject of searches in custody, what test establishes that consent is genuinely informed and freely given, and can either the detained person or the officer refuse without disadvantage?

Assistant Chief Constable Paton: The short answer is yes, of course someone can refuse. Consent is required only when the transgender person wishes to be searched according to their lived gender—it is not a choice for a transgender officer. At that point, our consent and authorisation process, which is really robust, would come into play in, which requires the consent of both the officer and the individual's part, as well as an inspector's approval. As I have said, we have moved to the consent process only on four occasions since our guidance has been in place.

Amanda Lindsay: You talked about the review of how you record data. Does Police Scotland now record biological sex separately and consistently across all the relevant operational systems, and does every operational policy distinguish sex from gender?

Assistant Chief Constable Paton: There is quite a lot in there. The short answer is that we made a policy decision that we would take the term "sex" to mean biological sex, and that that would be replicated. The starting point for that was that the terms "sex" and "gender" were used interchangeably, which manifested into our systems. Back in September 2024, that was our starting point. We made a policy decision that when we refer to and record sex on our systems, it is according to biological sex.

We are currently upgrading 22 primary systems to ensure that we not only record biological sex but provide a function for transgender and, indeed, non-binary people. We have prioritised that for our primary systems—our crime and custody systems through the justice process. As it stands, those systems update according to biological sex, and we are doing the upgrades for the option to have a category for transgender. The officers are already operating in that way, but the IT is following across each of the systems. As I have said, one of the most recent additional elements is that we will

ensure that we also have a non-binary category, so that we are able to capture all that data.

The Convener: I come to you, Claire.

Claire Baker: Thank you very much, convener. The Supreme Court judgment was in 2025. At that point, the law was clarified. However, it took a judicial review for the Scottish Prison Service to change its policy. Would you have changed the policy if a judicial review had not taken place?

Adam Jobson: To go back to my earlier answer, the Supreme Court judgment defined the Equality Act 2010—

Claire Baker: True. However, on the issue of implementation in the prison estate—although the code is relevant to all the organisations that are represented on the panel—you would think that, once it was clear what the Equality Act 2010 was referring to, a women's prison would reach the legal threshold of proportionality and everything else, given that there are fairly vulnerable women in—

The Convener: May I interject? We are talking about the implications of the code. I appreciate that you are asking what would have happened if the code had not been implemented. However, I think that sticking to the effects of the code's implementation and how it has guided the policy would keep us on track and be more helpful than asking what would have happened if it had not been implemented and whether that was going to happen anyway.

Adam Jobson: The code itself was not the catalyst for us withdrawing the transgender policy and moving those transgender prisoners who were not allocated to the accommodation for their biological sex. That was the outcome of the Court of Session judgment, and that was because of the issue that I explained earlier: the balance between the competing legislation, particularly human rights legislation and the risk of breaching it, which was the question put before Lady Ross immediately upon her determination.

In answer to the question, the prisoner group was moved, but that was not done in response to the code.

Claire Baker: I have a final question about the code.

The Convener: We are already five minutes over our time, so it will need to be brief.

Claire Baker: Sorry, convener. It is linked to the question of legal challenges. The organisations have talked about being in the process of implementing the code. I am wondering whether they have any concerns about future legal challenges.

Kirsty Cumming, I will come to you first, because you said that an audit of venues was taking place. As it stands, the code has not been fully implemented in the hospital estate. Do you have any concerns that there might be future legal challenges? If so, how prepared is your organisation to deal with such a situation?

Kirsty Cumming: On the implementation of the code, I would say that it has been fully implemented as far as possible, but there are situations that need to be clarified further and worked through.

In terms of legal challenges, there have been discussions with a number of our members, and good conversation has resolved quite a lot of issues. Our members' intention is to provide safe, welcoming spaces where people can participate in activity. Going back to where the complaints arose from, having a conversation with them and listening to them resolved some of the initial issues.

In response to whether there might be future legal challenges, I do not know, but I hope that there are not. I hope that people recognise that the services are there to offer a positive benefit to everyone in a community.

Claire Baker: Are you in a similar situation, Michael Dickson?

Michael Dickson: We are in a very similar situation. All boards are progressing implementation of the code, but they are at different stages for a range of reasons. The question of further legal challenges is, as I understand it, linked to the evidence that the EHRC provides to Parliament. There is a recognition that legal challenge is a possibility in the future. That is a matter for the EHRC, but we as boards will be prepared to respond accordingly. It is part of our day-to-day practice.

The Convener: I appreciate that we have gone over time. I thank the witnesses for sharing their experiences with us this morning. Members referenced a couple of areas in which they were looking for additional clarity. Given that we will be speaking to the EHRC and to the Scottish Government, it would be much appreciated if witnesses could provide that information swiftly.

We will take a short break before we move on to our second panel.

10:53

Meeting suspended.

10:59

On resuming—

The Convener: Welcome back. This is the second panel of this morning's meeting. The following witnesses join us: Maya Forstater, chief executive officer, Sex Matters; Mary Howden, director, Women's Rights Network Scotland; and Susan Smith, director, For Women Scotland. Welcome to the meeting and thank you for attending.

You were listening to our first panel's evidence, so I will not necessarily repeat my earlier introductions, but I reiterate what I said about the Scottish Human Rights Commission and about our role in the Scottish Parliament as MSPs, as guarantors of human rights in Scotland, which, as I said before, is such an important aspect of our role. We are here for everybody across Scotland.

Thank you for coming to the committee today. As you will know from having been listening, we are looking into the implementation of the code. As with the first panel of witnesses, I will come to each of you in turn for any reflections on its implementation.

Susan Smith (For Women Scotland): Thank you for inviting me.

The code is obviously guidance based on the law. The law has been very clear for a very long time, especially when we are talking about self-identification. That is not just from the time of the Supreme Court ruling; it goes all the way back to 2022, when we won our first judicial review, which established that policies based on self-identification of sex were not lawful. A lot of what we have been hearing so far is about organisations that have moved very late to implement the law, which is troubling. That should have been sorted out a very long time ago. In fact, some policies should never have been adopted in the first place.

The code is broad, and it covers all protected characteristics. It is 300 pages long, and we are dealing with a small part of it. I would urge the committee to look more broadly at the other protected characteristics that may be impacted. It is important that we consider all protected characteristics.

I hope to be able to speak more broadly later about the violence against women sector, which I obviously have an interest in and am involved in, and about how the code is working within that.

Mary Howden (Women's Rights Network Scotland): Thank you very much for the opportunity to be here.

I am the director of the Women's Rights Network, which is a UK organisation. We are concerned about the human rights of women and girls, in particular those who believe in sex realism.

I would like to talk about some of the research that we have done that impacts on the code, which is about sexual assaults and rapes in hospitals and in leisure centres. Our findings show that there are concentrated risks of sexual offending in mixed-sex settings, where women and girls are undressed or highly vulnerable, and that supports the legitimate aims of privacy, dignity and safety that are recognised in the code. There are very real fears for women and girls who are in those situations, where they are at their most vulnerable. They could be in hospital with dementia, they could be unable to look after themselves and they could be really unwell. In settings where you are taking your clothes off, there are high rates of sexual offending, particularly voyeurism, which girls under 13 are experiencing in our leisure centres.

I would like to talk a little bit more about the detail of that, so thank you for the opportunity to be here.

The Convener: Just to clarify, today we are talking about the implementation of the code, so we are not looking at violence against women and girls or why we need a code; that is not what today's session is about. Also to clarify, as part of our work plan, the committee will be doing a specific piece of work on violence against women and girls, and we would certainly welcome evidence from any organisations, including yours, at that point. However, today is not about evidence as to why we have a code; it is about its implementation. If you could keep your responses in that frame, that would be really helpful.

Maya Forstater (Sex Matters): Thank you. I am the chief executive officer of Sex Matters, which is a human rights charity. We take that very seriously. We intervened in the For Women Scotland case in support of For Women Scotland, and we think that its members are national heroes for having clarified the Equality Act 2010, which is there to protect everyone's human rights. Susan Smith went back when that was clarified in 2022, but I would go back as far as the Sex Discrimination Act 1975, which first brought in protection for women and girls in particular but also for men and boys—it works both ways—and said that people should not be discriminated against in the workplace, in education and as users of services. However, the 1975 act recognised that, sometimes, you have to provide separate or single-sex services in order to protect, in particular, the dignity and privacy of and fairness to women. That got lost over recent years.

I understand that the committee is looking at how people are implementing the code, but the code tells service providers how to follow the law, and the law has been in place since 1975. In 2008,

gender reassignment was added to the 1975 act in relation to services, so we have long had experience across the whole country of protecting transgender people from discrimination in general in the use of services, but it was never decided that they should have access to services for the opposite sex. That was always a mistake, so, as soon as that was clarified—in 2022, with the first For Women Scotland judgment, and then in relation to people with gender recognition certificates, which is a small cohort—the law was then clear. We welcome the guidance, but we should not have had to wait for this guidance in the form of this code in order for employers and service providers to come into line with the law.

The Convener: Thank you for your opening remarks. It is helpful to hear from you all about whether you are representing women through your organisations and your networks, and I think it will be really important to hear about the direct experience of your members and of the women and people you are representing and what their reflections are. What are you hearing from your members about the implementation of the guidance?

I will refer to one of the questions that I asked the previous panel of witnesses. Have you heard from trade unions? Are they coming to you and sharing experiences with you, as organisations that represent women in this field?

Mary Howden: I can start, if you like. Members in our network are in the process of taking the unions to court, because they are failing to recognise the protections that women have under the Equality Act 2010. That is a very real experience for them, because they have not been able to gain the services from the union that they pay for and should expect, and they are having to challenge the lack of support from unions for women in that way.

The Convener: Obviously, we cannot reference specific live cases that are going through the court system, but may I ask which aspects of the code are not being implemented and are being raised with you and your members as concerns?

Mary Howden: In essence, it is about the way that organisations are structuring themselves in the workplace. We have inertia across Scotland in relation to the implementation of the code. As Maya Forstater and Susan Smith have said, the law has been very clear for a long time. Since the Supreme Court judgment, we have had a year of waiting for organisations to actually implement the law as it stands, with the excuse that they have been waiting for the code. That has then had an impact on people in relation to their workplaces, where they might be having to use toilets that they do not want to use or having to follow policies that do not recognise that they have a protected characteristic, so they are challenging unions on that basis.

The Convener: Just for clarity, because you referred to inertia on implementation, can you give me some clear examples of where implementation has not been taken forward?

Mary Howden: Last year, in April, we published a report—sorry; it was in April this year, a year on from the Supreme Court ruling. In that report—

The Convener: So, that is since the code was published. I am asking about the code being implemented.

Mary Howden: In terms of the code, we had asked councils what they had done to implement the code, which was available at that point in time, and what they had done in relation to the Supreme Court ruling. No council had done anything in relation to that in their activities. They were maybe reviewing policies or having a look at particular issues, but the reality was that they had not done anything of significant impact that would address situations that women and girls experience frequently.

Susan Smith: Can I just—

The Convener: Sorry—that was in April, and it is now November. Have you got up-to-date information? Have you gone back to the members since April to ask?

Mary Howden: We have not gone back to them, but, equally, there have been no comments from councils to say, “We are now following the EHRC code, and following the Supreme Court ruling.” When I say “inertia”, I mean that there is a lack of actual positive activism in relation to giving out public messages that they are following the law. In many ways, that was represented by the previous panel this morning; we heard things such as “It’s complex”, “It’s difficult” and “We need to think about and consider it.”

I know that Susan Smith wants to say something.

The Convener: I will come to you, Susan.

As I said to the witnesses on the previous panel, if you are able to follow up with the committee with some key concerns and incidences, and evidence of what you are hearing—without, obviously, touching on any live cases—that would be really helpful.

Susan, you are looking to come in.

Susan Smith: Yes—I was going to give you some current and ongoing examples, on which we have had reports. One is about locked psychiatric wards in hospitals, which continue to be mixed sex even though, nominally, they are supposed to be

single sex. We know that women have had extremely unpleasant experiences on those wards.

We also know that there are some people going out on home visits under the NHS—in one instance, the person had two registrations, one as a male and one as a female—where the family has asked for female-only home care and they are being sent a male member of staff. That does not just breach the code—it actually borders on criminality, so there is a real issue, and it needs to be addressed. If you want more information on that, I would urge you to speak to the Patient Safety Commissioner Scotland, because I think that she would be able to provide it.

The Convener: Thank you. Maya, I do not know if you want to come in on that first question.

Maya Forstater: Yes—we have seen unions passing motions saying that trans women are women and that they are sticking with, or seeking for the union to stick with, the misinterpretation of the Equality Act 2010 that existed before the first For Women Scotland judgment.

The fundamental thing that the court cases clarified, and which is reflected in the code, is that there are separate protected characteristics. People are protected against sex discrimination and people are protected against gender reassignment discrimination if they meet the criteria for that in the 2010 act, and those two characteristics are separate.

An ideological catch-up, and an education process, needs to happen for all those organisations that have put those two characteristics together and thought that they could consider the needs and vulnerabilities of women while including some men in that category, which was the fundamental mistake that was made. We are seeing several unions saying, “We don’t support that,” but they need to support all their members—their trans members, but also their gender critical members, and all the women and men who are members of the trade unions. At the moment, we are not seeing them do that, because they still want to stay with the idea, which was wrong about the law, that they had before 2022.

The Convener: If I may, I will just come back on that. I appreciate that a number of members want to come in with questions. You referred to trade unions’ positions, but have any of your members asked the public bodies, as their employers, about that via their trade unions? From your experience, do you have any experience on that aspect?

Maya Forstater: We are a charity—we are not a membership organisation. We do not have members.

The Convener: Okay—thank you. I have a number of members who want to come in. We will go to Amanda Lindsay first and then Holly Bruce, and Meghan Gallacher and Claire Baker also want to come in. If anybody else wants to come in, we will go from there.

11:15

Amanda Lindsay: First, I thank you all for coming in to talk to us. I have different questions for each of the witnesses, but if you want me to come back to the others afterwards, convener, I will.

The Convener: Fire away.

Amanda Lindsay: First, I go to Maya Forstater. With regard to implementation of the code of practice, what are you seeing in terms of compliance with the code across the UK, in particular across different sectors? Are you seeing different patterns in the private, public and voluntary sectors?

Do you see any particular issues or problems with the code as it stands?

Maya Forstater: Although I said that our organisation does not have members, we obviously have an inbox, which is very busy, and we talk to a lot of people, so we have been monitoring compliance.

Broadly, across the UK, we are seeing that the private sector has acted quite quickly. There was a lot of waiting for the guidance, and the guidance, I think, became an excuse. The more organisations were waiting for the guidance, the more other organisations waited, and nobody wanted to move. However, as soon as the guidance came out, we saw quite quick movement in the private sector, and we have seen movement by many local authorities.

Large organisations in particular have the infrastructure in place. When it comes down to the practicalities of male, female and unisex facilities, large buildings like the Parliament already have those facilities and they meet the needs of different people, such as people with disabilities and families. There are different spaces for different kinds of users, and most large organisations already have that infrastructure, so it was really a question of having clarity through clear signage and clear policies.

We saw that happen most quickly in the private sector. We saw it in large parts of the public sector, but we have seen that some organisations have been resistant to coming into line with the law. Some local councils and central Government in all parts of the UK have been slow, and charities have been particularly slow and resistant. That is a

particular problem, because charities—it is not all charities—that have been committed to the idea that gender identity, rather than sex, is how society should be organised have felt that that is something that they want to continue to do, despite the fact that it is not the law. Those charities also train and lobby other organisations. That has been a problem, because every sector needs to follow the law.

Amanda Lindsay: Are you happy for me to continue, convener?

The Convener: Yes—go ahead.

Amanda Lindsay: I come to Mary Howden. It was very interesting to listen to the evidence from Kirsty Cumming on the leisure centre stuff. I wonder whether you could say a bit about some of the research that you have done. I believe that your organisation made a number of freedom of information requests and reported those figures—I have them here—as showing 276 sexual assaults and 12 rapes across hospital sites between 2019 and 2024. You were able to obtain site-level breakdowns from only around 57 of 198 sites. You also submitted FOI requests on risks in leisure centres. Perhaps you can say something about that.

The Convener: I will pause there for a second, if you want to reframe your question. Again, this session is not about violence against women and girls or evidence that has been gathered previously; it is about the implementation of the code. We need to be clear today in focusing on the impact and what is happening on the ground. I appreciate that there are huge concerns that you have raised there, and we can come back to that when we are looking at violence and girls in the future. However, you may want to reframe your question to look at the implications of the code, which is the focus of today's committee meeting.

Amanda Lindsay: I believe that the question that I have asked is relevant to the implementation of the code, because the code is designed to protect women and girls' safety, dignity and privacy. There are exceptions only if it is believed that there are reasonable grounds for not doing that. In the light of the evidence that the WRN has collected on hospitals and leisure centres through freedom of information requests, do you think that the NHS and operators of leisure centres need to look at that issue, given the risks that the research appears to identify?

The Convener: I ask you to respond in relation to the implications of the research for the implementation of the code in the context of the lived experiences of the members you represent.

Mary Howden: The leisure centre work that we did provides evidence that there is a need to consider the privacy, safety and dignity of women and girls in the context of the code. I will not go into the detail of the cases, but all the sexual assaults that were reported to Police Scotland, which we gathered the information from, were committed in mixed-sex venues. Not one was committed in a single-sex space. The figures were proportionately higher for women. There were men who had been assaulted, but the figures were proportionately higher for women. It was overwhelmingly men who committed the offences.

I think that that is relevant to the code. For a long time, we have accepted what I think is described as the modern operational deployment of services. For a long time, mixed-sex changing rooms in leisure centres—particularly on the water side—have been considered very acceptable. However, our evidence shows that mixed-sex changing rooms represent a risk for women and girls. Surely evidence that demonstrates that we are not taking the dignity, safety and privacy of women and girls seriously enough is important.

Amanda Lindsay: I turn to Susan Smith. From the evidence that is available to For Women Scotland, which Scottish public service is furthest from lawful implementation of the judgment and the code?

Susan Smith: That is quite a hard question to answer, but I would say that the NHS really needs to pick up and get in gear. Obviously, we were compelled to take the Scottish Prison Service to court, but we would rather not take anyone else to court.

One thing that I would say about the code is that we are talking about big organisations that have lawyers, and they should have known what the law was before the code came out.

More generally, one sector that has welcomed the code and has moved very fast is the violence against women sector. Many organisations in that sector were already trying to operate on a single-sex basis anyway, but they were able to come out and say that they were single sex only after the ruling and the publication of the code. A case in point is Edinburgh Women's Aid. What happened to it justified the fears that many in the sector had. A male councillor in the City of Edinburgh Council tried to lodge a motion to defund the organisation at that point, which was absolutely disgraceful. It should always have been the case that the women's sector knew that it could operate on a single-sex basis.

In Beira's Place, we have managed the situation very well. People talk about us being trans exclusionary, but we are not. We will see any woman, however she identifies. When I say "woman", I mean in the biological sense, but some of them do not identify in that way. We have done

that, and we manage it in sensitive and appropriate ways. It is perfectly possible to do it.

Several years ago, this Parliament created the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021. That was based on sex and there has been no issue with it. When we talk about issues with implementing the code, we have to look at the fact that the evidence shows that laws based on sex are not that difficult to implement. It is not tricky.

The Convener: That is helpful. As a committee, we are clear that we want to be driven by evidence and facts. It is helpful if, when you are responding, you can give specific examples, for example on why some organisations are furthest from implementing the code.

Holly Bruce: As I said to the previous panel of witnesses, I am looking to give voice to the experiences of people in my constituency, and I want to give voice to a trans man who said:

"All trans people want to do is to live comfortably within our bodies and without fear."

They shared that comment with me as a result of the code. How do you and your organisations feel about the rising hate, harassment and victimisation against trans people, and the rising transphobia as a result of the code?

The Convener: I note again that we are focusing on implementation of the code.

Holly Bruce: As a result of the code—yes.

Susan Smith: First, your constituents include women, and they will include a lot of women who welcome the code and are happy to know that they are protected and that, if they go to a domestic abuse centre, they will not be facing a male person in that environment.

On fear, I keep thinking that men are afraid that women will laugh at them, and women are afraid that men will kill them. A lot of the fear that I think is being talked about here is not the same fear that women experience when they think about their need for single-sex services. We need to keep coming back to that, because the code essentially protects people in distinct, discrete spaces where they need privacy, dignity and safety. It is not about pushing anybody else out of the public space. It is not about discriminating against anybody else. It is about providing alternative services for those people. It is about ensuring that everyone is respected. However, you cannot operate society if you do not respect women and ensure that they are safe. One of the biggest threats to women is male violence, and you have to recognise that.

The Convener: We as a committee absolutely do recognise that. However, as I said, we are focusing on implementation of the code.

Holly Bruce: I was hoping to hear from others, too, convener.

Maya Forstater: If people have been told that it is transphobia and hate to recognise what sex other people are, they are going to find it difficult to move around in the world, because everyone can recognise what sex people are. It is a fundamental fact about people. If somebody identifies as non-binary, identifies as masculine or feminine, wants to change their name, wants to change the way that they present or wants to have cosmetic surgery, those are freedoms that people have. However, if other people recognise their sex, that is not hate or transphobia and there is nothing to fear about that. I think that we are coming from quite different starting points, but if people fear other people recognising their sex, that is a problem to do with an attitude that is being inculcated, particularly in young people, and it is going to make their lives difficult.

Mary Howden: Where we have encountered issues in relation to women who would prefer to identify as men is that there are difficulties around the long-term consequences of surgery that they might have, or medication that they might take, that actually lead to long-standing medical problems for some women who are in that position—

The Convener: Apologies, but we are not here to—

Mary Howden: You asked me about our members. Sorry. I am not meaning to—

The Convener: I would just ask everybody—members and witnesses—to be really respectful in their use of language. As I say, we are here to talk about the implications of the implementation of guidance and the code for public bodies and not about the journeys that trans individuals go through in their lives. Would you respond on the impact that the code has had? I think that that was the question, but I do not want to speak on behalf of anyone. Holly, do you want to reframe your question, so that we can have a clear question and answer?

11:30

Holly Bruce: Thank you, convener. My question is about how our witnesses and their organisations feel about the rise in hate, harassment and intimidation for trans people as a consequence of the code.

Mary Howden: Okay—that is a much simpler question.

Holly Bruce: I said that when I first asked the question.

Mary Howden: My apologies for not understanding it. Harassment of anyone is wrong. We do not want anybody to be harassed, but our priority is—and our concerns are for—women and girls. What I was trying to illustrate—perhaps not very well—was that we have members who have been on a journey and have changed their minds, and that that lived experience is equally important to hear and listen to. That was my intention in giving the example that I gave.

Holly Bruce: I have a couple more questions. We have talked about the code itself, and witnesses have referred to different services not fully implementing it. Do the witnesses understand that the code is about not absolute rights but qualified rights, and that it is within legitimate and proportionate circumstances that changes are to be made?

Susan Smith: Obviously, we took the case to court, so I am fully cognisant with what the law is and what the law says. The law says that there will be areas where you can provide single-sex services or accommodation. You must do that in a way that does not discriminate and that is proportionate. You may have to provide a service for men or for women, or you may have to show that you only need a service for women, which is largely the case in the violence against women sector. You must also be aware that, if you choose not to provide a single-sex service, you might be discriminating against women more generally—especially, for example, women from an ethnic, racial or religious minority who might not be able to go into a mixed-sex space. If it is shown that, by failing to provide single-sex spaces, you are discriminating against those people, you lay yourself open to legal challenge.

It is not an absolute right to have a single-sex service. However, if you fail to provide it, you might be discriminating against women. I am sure that the committee agrees that, as a society, we do not want to discriminate against women, and we do not want that to be an institutional default. That is very important.

However, it is perfectly reasonable to provide services that are mixed sex or gender neutral, and to do so would not be just about people who might identify as trans. There are all kinds of reasons why people might want mixed-sex services or spaces. In the example of changing rooms, there might be someone with an opposite-sex carer. There might be family groups. There are all kinds of people in society who benefit from different provisions, which is what this is about. However, the code says that, when you are talking about the protected characteristic of sex, you provide certain services on a single-sex basis because you have already established that you have a specific need to provide those to one sex or the other sex, or equally but separately. That is what is important.

Holly Bruce: I have one more question. I talked to the previous panel of witnesses about gender non-conforming people. Under a UN treaty, there has been new guidance for all nations, including the UK, that explains that gender stereotyping is harmful to all women and is a cause of inequality and discrimination.

As I mentioned earlier, I have a constituent—a masculine-presenting, cisgender lesbian—who is now too scared to use women's toilets alone because she is constantly challenged. People with alopecia and those undergoing cancer treatment are also being challenged. Does your organisation's approach require policing of who looks female enough to enter spaces? How do you justify a system that actively drives gender non-conforming people, disabled people and lesbian women out of public life?

Susan Smith: That is absolutely false. As a cancer survivor who was bald, I take exception to you saying that you cannot recognise sex if a woman is bald. That is deeply problematic.

Holly Bruce: There are reports of people being discriminated against based on that. I am absolutely sorry for your experience, but there are cases of women who are undergoing cancer treatment being discriminated against by people who think that they are male.

Susan Smith: A lot of anecdotes are rolled out, but the problem is that, in law, you have to have a bright line. You cannot say that the law is that you are on one side of this or the other, but that there is a fuzzy edge around it.

Holly Bruce: The right is not absolute, so there are fuzzy edges.

Susan Smith: The right—

The Convener: Members and witnesses—

Susan Smith: Would I be able to respond to the point?

The Convener: In order to give everybody a chance to speak, I must be really clear that this discussion is about the implementation of the code. I remind members to frame their questions around the code. That would be really helpful. If you are aware of examples of organisations not following the code and are able to share them, that would also be really helpful, but there is a lot of evidence, and how that is quantified will be down to interpretation. There are lots of news reports and so on, and it would be really good if we could

keep the tone as helpful and as stable as possible, because we want to get as much out of this session as possible.

Susan Smith: It is hugely unhelpful to assume that women who want single-sex spaces to be protected also want to impose gender conformity. I deeply resent that suggestion. Among the interveners in our case were lesbian organisations that are made up of very long-standing campaigners who are very determined to protect their spaces, so the idea that the code affects gender non-conforming women has been laughed at by many members of our organisations. People have challenged gender non-conforming women forever, even before the code was introduced. They usually turn around and say, “No, I am a woman,” and people go, “Oh, yes,” and recognise that.

I find problematic the idea that gender non-conforming men should be pushed out of male spaces and into women’s spaces because they are apparently vulnerable in a male space, as that that just means that a woman’s space becomes a repository for men who are at risk. A woman’s space should be for all women, irrespective of whether they have had cancer treatment, they are a butch lesbian or they have flicky long hair and heels. Such spaces are for women, who have unfortunately suffered at the hands of men for a very long time. The code is about protecting them, so I find attempts to undermine it deeply distressing for that reason.

Maya Forstater: I agree with everything that Susan Smith said. We have also taken evidence on that issue—we can share it with the committee—from, as Susan Smith said, women who present as more masculine and who, throughout their lives, have occasionally been stopped and told, “Do you realise this is the women’s? Sorry, son,” and so on, only for them to turn around and say, “I am a woman,” which then prompts the person to say, “Oh”. The voice tells them who is male and who is female. Sometimes, at a distance, people see someone wearing a baseball cap, and they become concerned.

The fact is that men should not be trying to get into women’s spaces. If organisations had not been saying to their employees for the past 15 years that they can choose to use the space that they feel most comfortable in, women would not be on edge, thinking that men were thinking that they had a right to be in women’s spaces. The one thing that we have not seen from organisations that are following the code is an apology to women, and a clear and full-throated message that they were wrong to say that people should use the services that they feel comfortable in. If fewer men were trying to get in, fewer women would be worried, and there would be fewer questions about people coming in and out of spaces.

The Convener: Do you want to come back in, Holly?

Holly Bruce: Just briefly. First, do you have evidence that men are trying to access women’s services?

Secondly, to go back to the crux of my question, constituents of mine who are cisgendered women were challenged when they tried to access a toilet. The challenge did not end with the person saying, “Okay, you’re a woman—that’s fine”; it was quite a forceful challenge. I will not go into the detail of what happened, but it was quite invasive. What do you say to those women?

Maya Forstater: In relation to your first question, I think that there is a difference in concepts. You asked whether there is any evidence that men have been trying to get into women’s spaces. In the previous evidence session, we heard about all the work that has been done to try to deal with the fact that men who identify as women and men who identify as non-binary have been told that they have the right to access women’s services and, in cases in which they have been imprisoned, have been placed in women’s prisons. There is a difference in concepts. You see some men as being women, whereas we recognise that those are men and that they should not be in those spaces.

Holly Bruce: But there is a protected characteristic for gender reassignment of people who identify—

Maya Forstater: Yes, exactly, but—

Holly Bruce: —and there is a proportionate and legitimate aim to—

Maya Forstater: Yes, and this is really important, because this is the underlying point that the Supreme Court clarified: having the protected characteristic of race, of gender reassignment, of disability or of age does not change your sex. If we are going to talk about how we implement the code, we have to understand that having the protected characteristic of gender reassignment does not change a person’s sex. That is not offensive; it is not transphobia; it is not hate; it is the law. If we do not understand that, organisations will keep being confused about what the law is and what their obligations are, and they will keep giving confusing messages to people who identify as trans and non-binary that they have a right to use these spaces when they do not.

After the judgment, Lord Hodge, who was on the Supreme Court panel, said that the problem is that people have misunderstood the law and misunderstood their rights.

The Convener: We have to be really careful here. As has been stated, we are working within the law. Clarity is being provided by the code in relation to how organisations should take that forward. There may well be dubiety about opinions and other issues that will drive some of these conversations, but I am conscious of time and it is important that we move on, as I appreciate that other members are looking to come in. Meghan Gallacher is joining us online, and I will bring her in now.

Meghan Gallacher: Good morning. I apologise to this panel of witnesses, as I did to the previous panel, for not being present in person this morning. That certainly was not my intention.

I want to pick up on the point that I raised with the previous witnesses about the engagement that took place with stakeholders in relation to implementation of the ruling. Were any of the witnesses on the panel consulted on the guidance by one of those public service bodies? Did that happen at any point?

Susan Smith: I believe that we might have been invited to one Police Scotland event, along with very many other people. We had no contact with the Scottish Prison Service, which could have saved itself a lot of money if it had consulted us. We have not had consultation with the NHS, and we have certainly not had any consultation with the leisure services.

As people who actually understand the law—I say that because we won the case that has resulted in the code being brought in—we believe that it would be helpful if some of those organisations started to consult more broadly. Unfortunately, we have found that, when they consult, they pay lip service to the consultation and get a whole host of people—perhaps 60 or so organisations—on a 45-minute call. They really need to start to talk more deeply and in detail with organisations that actually understand what has happened and what the background to this code is.

11:45

Meghan Gallacher: Thank you. Mary and Maya, were either of your organisations consulted?

Maya Forstater: The three of us on the panel all represent tiny organisations. The law is clear and organisations need to follow it. We engage with anyone who will talk to us. We have talked to all the national governing bodies for sports about implementing the code, and the response has been quite positive.

We hear lots of things from people about the code being implemented or not implemented and about the law being followed or not followed. We are about to launch an app, which will be an online service that collates some of that evidence and makes it public and usable. It should not be the case that other organisations turn to three tiny organisations to tell them the law. The law is clear and is set out in guidance.

Mary Howden: We were at Police Scotland's stakeholder event, which Catriona Paton talked about earlier. We have also been consulted by the Scottish Government on a range of issues. Some of that has been at large meetings, as Susan Smith described, and some of it has been at an individual level. Since the Supreme Court ruling, there have been more attempts to consult us, which has been helpful.

Meghan Gallacher: Future legislation that integrates with the Supreme Court ruling might be introduced in this parliamentary session. Do the witnesses have any comments on how that might interact with the ruling and its implementation?

Susan Smith: I will make one important point. I listened to the Scottish Prison Service witness, who talked about its concern that there might be a human rights clash with the Equality Act 2010. We need to be really careful, because the 2010 act has to be fully compliant with human rights. Human rights are its foundation. To pick apart the 2010 act by arguing that there is a human rights angle with which it is incompatible is very troubling—it is not. Prisoners were considered in Lady Ross's judgment. She found that the single-sex approach was fully compliant with human rights.

You have to be really careful with any future legislation, especially if it is coming from this Parliament, that it is not trespassing on reserved matters.

Meghan Gallacher: That is helpful. Maya, have you anything to add on that point?

Maya Forstater: One piece of future legislation that is proposed in England and Wales, and which might be raised again in Scotland, is the draft conversion practices bill. We are very concerned that it will cut across the 2010 act. It proposes introducing criminal law that would make it an offence, with a penalty of up to five years in prison, for somebody to try to change somebody's gender identity or what they believe is their gender identity.

As the earlier discussion with Holly Bruce showed, the difficulty with that is that if what you believe about gender identity is different from what the Equality Act 2010 says—which is that having the protected characteristic of gender reassignment does not change your sex—then explaining or implementing the law and saying to somebody, "No, you cannot use the service for the

opposite sex because you are a man; you cannot use a women's service because you are a man" could in itself be seen as a conversion practice.

Where there are abuses, assaults or electrocutions, they should be considered unlawful—they already are unlawful—but the draft bill threatens to make ordinary implementation of the Equality Act 2010 and of single-sex services something that could be reported to the police as a crime. That would include schools, which now have a clear responsibility to have male and female toilets and separate sports for boys and girls, so if schools say, "No, you cannot play in this sport because of your sex, because you are a boy or because you are a girl and that is the reality," and that is seen as a conversion practice and reported to the police, we will have a conflict among the civil law, the protection against sex discrimination and the criminal law.

Meghan Gallacher: My final question relates to something that has been brought up a couple of times this morning, as I am interested to hear more about it. It is about the other protected characteristics that could be impacted by the implementation of the Supreme Court ruling. It might be worthwhile getting a written submission on that in the future, but I would like to hear any further comments from you on that, because I am really interested to find out how implementation interacts not only with sex but with the other protected characteristics.

Susan Smith: One of the obvious ones is sexual orientation, which was picked up in the Supreme Court ruling, largely as a result of the intervention from the lesbian groups. They wanted to be able to be defined purely in terms of their sexual orientation, rather than, as the judges said in their ruling, attraction to a piece of paper. That is very important.

There are also, as I said previously, issues around religion and race. For some people, there are cultural issues that mean that they need single-sex services. You also have to look at disability to ensure that people with disabilities are not being in any way inconvenienced by implementation.

It is important to stress that there are nine protected characteristics and they overlap. Unfortunately, the characteristic of sex was ignored for a very long time, including in a lot of equality impact reports. The Scottish Prison Service, for example, when it brought in its policy, did not even consider sex, and I would hate for other protected characteristics to now suffer the same.

Meghan Gallacher: That has been very helpful. I thank everyone very much for their time.

The Convener: I think that Mary Howden wants to come in on a couple of points—

Meghan Gallacher: Sorry—I did not see Mary there.

Mary Howden: To add to what Susan Smith said, age is also a protected characteristic, and we are finding that there are issues for older women in particular. We have many members who work in the care service, where there are older women who have Alzheimer's or dementia and who may want to have access to a single-sex service, and that is quite difficult.

Also, in general, women who are older tend to be ignored, so I think that we need to take account of age in the code as well.

Maya Forstater: The Supreme Court said that if you mix up the protected characteristics, the protection against sex discrimination becomes "incoherent" and cannot be used. The UK has a well-established system of equality protection across all the nine protected characteristics, and we should be proud of that.

The committee might hear from future witnesses that the UK has gone down in some international ratings, potentially because of the code. It is important to remember that the law has not changed, and that the Equality Act 2010 protects everyone against discrimination across the nine protected characteristics and is consistent with human rights. Some of the countries that are going up in those international ratings do not have a comprehensive system of equality protection that protects women and gay people against sex discrimination, and yet they are being given gold stars because they have adopted gender self-ID—

The Convener: Can we stick to the code? I appreciate that that is a wider point—

Maya Forstater: The point is that the code covers all the protected characteristics and the law covers all the protected characteristics, and that is something to be proud of.

The Convener: I appreciate that—thank you. The comments around conversion practices came up in our round-table conversation, and we will most likely return to those, as we are the lead committee that will be looking at the UK legislation in Scotland. I say that just to give you some assurance that we will have space to discuss that subject when it comes back to us.

I come to Claire Baker—I am conscious of time, and you have not spoken to this panel of witnesses yet.

Claire Baker: I will try to be brief.

The convener has emphasised that today's session is about the implementation of the code, notwithstanding the path that you have laid out to how we got to the code. Do you have any examples of authorities or organisations that you can point to for best practice, which you feel are making a good job of implementing the code, and examples of organisations that you think might be furthest away from implementing it? For example, this year, there was a case against West Lothian Council about school toilets. If you could give examples of where there is best practice and where you think there is the greatest difficulty in delivering the code, that would be helpful. I will come to Susan Smith first.

Susan Smith: I mentioned before how we do things at Beira's Place. We have always done it like that—we will see anybody who is biologically female. There may be issues—for example, we have had detransitioners come to us who have been conscious of, and worried about, accessing the space because they might have taken testosterone. We make separate and sensitive arrangements for those people, and we are always respectful. We understand that the impacts of trauma are often different for men and for women, and that is why we have that women-only service.

You can do it very easily—it is not as complicated as a lot of people are making out. I know that a lot of the other organisations in the network that we now have in the violence against women sector have been very clear on where they are able to provide advocacy services or other help for men and women, but also on where, if they have accommodation, that is for women only, for very reasonable reasons.

I understand that we have a stretched NHS and there are sometimes going to be instances where there are mixed-sex wards, but mixed-sex wards can be an issue. We heard earlier today that people do not care about that if they are in accident and emergency—

Claire Baker: I am sorry to interrupt. I mentioned earlier that the NHS in England has published guidance on "Privacy, dignity and safety in hospital accommodation". Do you think that it would be helpful to have a similar policy statement in Scotland?

Susan Smith: Absolutely, and I think that the boards should be getting on with that. They should not be waiting for somebody else to come in at the top and do that—they should be undertaking that work now. They need to understand that there are very real reasons—which cut across whatever level of injury or illness someone is experiencing—to have those sorts of provisions.

You mentioned the case against West Lothian Council on schools. I worry that some councils have run far ahead with some of the new builds in advance of the law. There is now a lot of special pleading about how it is expensive to go back and reinstate single-sex toilets, but the issue is that nobody was ever consulted when the council decided to disregard the law. That may be a bit of a lesson for public bodies that in future they have to stay compliant with the law. They cannot act on the assumption that they do not have to bother with the law or that it is likely to change. I hope that it has been a lesson for some of them.

Claire Baker: I know that we are a bit pressed for time, but I want to raise another point, around how we record evidence. The convener spoke earlier about the importance of evidence and facts. Holly Bruce raised concerns from her constituents that she is reporting, but how do we ensure that any evidence is robust and accurate with regard to people's experience of the code being introduced? Who do you think should fulfil that role? Is it just about the authorities gathering data? What kind of approach should we take?

Susan Smith: Gathering data is essential—we are still waiting for the chief statistician's guidance from the Scottish Government, and we need that. Even in this place, there is a lot of talk about equal representation and yet there are MSPs who will not say what sex they are. How can we ensure that women have equal representation if we are not counted? Data is essential, and there should never be any shame in collecting accurate and robust data on every protected characteristic.

Claire Baker: Maya, do you want to come in on those points?

Maya Forstater: Yes—what Susan has said is absolutely right. There is an underlying need to make sure that, wherever information on sex is collected, it is accurate and it is clear that that means sex—

Claire Baker: There are those questions, but I am thinking about evidence around how people are experiencing the code. Holly Bruce gave examples of constituents who had contacted her saying that they are finding it difficult. That involves correspondence between constituents and MSPs, so it does not involve the robust collection of data; it is anecdotal—well, it is perhaps not anecdotal, but it is about someone's experience. How do we approach that data? How do we ensure that, when evidence is provided by you or by other organisations that might come before the committee, it is robust with regard to how people's experience of the code is being recorded?

12:00

Maya Forstater: The Equality Act 2010 has remedy built into it. If, as Holly Bruce has said, people are being harassed, they can, first of all, make a complaint to the organisation and, secondly, they can make a claim. Indeed, if it is a services case, they can make a small claim—it does not have to be expensive. Because the law is clear, everyone can use it.

We also need to be able to make complaints to regulators. We thought it very positive that the code was brought into safeguarding guidance in England and Wales, as it means that it is also regulated by the Office for Standards in Education. If somebody has a problem in a toilet or changing room, it should not be brought to Parliament; it should first of all be brought to the organisation, secondly to the regulator and then potentially to the courts. If all of those institutions understand the 2010 act, the system can work; if not, you end up with the sort of ad hoc examples that cannot be brought up here, because they are about personal experience.

I just want to pick up on the data issue, because it is important. Unless the data is clear about who is male and who is female, you cannot even start to make a complaint, so we hear from—

The Convener: But if I picked it up correctly, I think that the question was about who should be gathering that data. Is that right? It was about implementation, not who should be gathering it and why it should be gathered.

Claire Baker: Yes. It was about understanding the impact of implementation on people. How can we, instead of relying on people contacting MSPs directly, look at the impact more systematically?

The Convener: It would be helpful if you could tell us how you as an organisation are gathering that data. Is that it, Claire?

Claire Baker: Or who you think should be gathering that data. Is that too challenging, or is it possible to do that?

Maya Forstater: The regulators should be doing that, not small charities or the Parliament.

Claire Baker: And you said that, in England and Wales, that sort of thing has been brought into a system involving a regulator.

Maya Forstater: In schools, it has been brought into the safeguarding guidance. However, the charities regulators should be monitoring how charities are doing on that; the health and safety regulators should be monitoring whether it is understood and is being rolled out in relation to health and safety; and the information commissioner should be checking whether organisations understand who is male and who is female in their data. I do not think that it is that difficult. We also have to understand that it is not harassment to say no.

Claire Baker: Okay.

The Convener: Thank you for that clarity.

Fulton, you were looking to come in—I appreciate you have not spoken to these witnesses yet.

Fulton MacGregor: I think that my question follows on from Claire Baker's line of questioning. From the earlier panel, whose evidence you all heard and have referred to, we heard what I would say was a generally positive response to the implementation of the code. However, I am hearing more concerns about it from this panel, with Mary Howden highlighting the local authorities and Susan Smith referring to NHS Lanarkshire. How can the committee get to the bottom of all of this? What sort of information do we need, and what can we ask the minister and the Government in the session that we will have with them in the coming weeks to try to find out where we are? After all, what we are really hearing is two different positions.

Susan Smith: Thank you for the question. It is very important that the ministers who are responsible—for example, the health minister in relation to the NHS—make it clear that they are actively looking to have this sort of guidance produced. Again, in education, the guidance for schools has to be clear. Therefore, there is a role to be played by leadership in ensuring that the message going to public bodies is that there is an expectation that the code is followed.

It does not necessarily sound like much, but when we had a certain hands-off approach—with people saying, for example, “We are not responsible for the prison service”—we were not getting the leadership that was desperately needed in that respect. It would be a great start if the Government led by example. The Government should make it clear that there is an expectation that guidance must be legally sound and robust, and should talk to councils and trade unions to get that message across.

Mary Howden: There is an issue about clarity on what is being asked for and required. Our experience of looking at data has been problematic, because there are different ways of recording things. For example, we recently submitted an FOI request to a health board, which could tell us how many people had reported being assaulted but could not tell us where the incidents had happened and whether they were in mixed-sex or single-sex wards. Obviously, those things have implications for the code.

The issue is about the leadership role. For instance, we need the Scottish Government, Healthcare Improvement Scotland and COSLA to set out concrete implementation plans that they bring to the committee, and to provide you with evidence, rather than saying, "We have done this, that and this." How the evidence is gathered is important, and that goes back to the original question about data and clarity on what is required and expected. As policy makers and lawmakers, how can you provide robust laws if you do not have robust data to support what you are doing? It is crucial that you have more concrete evidence in relation to what is expected and required.

Fulton MacGregor: Maya Forstater said earlier that there is evidence that the private sector has moved more quickly to implement the code than the public sector has. However, are there good examples of public sector organisations implementing the code as per the law and finding that proportionate response? I do not want to put words in your mouth but, looking back on our first evidence session today, the Police Scotland representative seemed to talk a bit more robustly than the representatives of the other organisations and was able to give examples of practice. For committee members, that brings it more into the real-life situation.

Maya Forstater: I think that many organisations are making quite a meal of this—it really is not that difficult. There are two kinds of people and there are three kinds of spaces, and, in most situations, an organisation can provide three kinds of spaces. In some situations, that is not possible, and then you have to think about how to accommodate people who have particular vulnerabilities—there are all kinds of vulnerabilities. That is the law, and it is not that difficult.

We are seeing what we think of as quiet compliance. People do not tend to wave flags on this; they just get in line with the law. However, one issue that it would be good for the committee to consider is that organisations can respond to the law by getting rid of single-sex provision altogether. They can just throw up their hands and say, "It's too political, difficult and controversial, so we just won't have any single-sex services; we'll make everything mixed sex," and that harms women. That is not necessarily unlawful, but it is bad from a policy point of view, and from a public sector equality duty point of view, if public funding is going into it. It would be worth the committee considering whether, for example, leisure centres and local councils are moving away from having any separate provision for males and females and are just putting everything together.

The Convener: Holly Bruce wants to come back in, as she was named in a response. If you could be brief, Holly, that would be helpful.

Holly Bruce: Thank you, convener. Just to clarify, I hope that Claire Baker's remarks were not meant to diminish my constituents' experience by suggesting that they are not robust enough. I hope that that is not what was meant by those comments, and I would appreciate a response to that.

On Maya Forstater's point that it is not an MSP's job to gather evidence, our job is to represent our constituents and their experiences in Parliament. That is what I have been doing today, and it is a fundamental part of our job. I completely agree that evidence and data gathering need to be better in this regard, but it would be insincere of me, and inaccurate, to say that my job does not involve evidence gathering and sharing experience.

The Convener: We are here with a specific aim. I appreciate that Claire Baker has now been mentioned, so I will allow her to make one specific point and then I will draw a line, as I am conscious of the time. We have just a few minutes left, and I have a tiny space for Kate Nevens to come in.

Claire, I will give you a right to respond, and then we will move on.

Claire Baker: Thank you. I was not trying in any way to diminish the reports that Holly Bruce received from her constituents. I was trying to probe how we can ensure that evidence of lived experience is accurately recorded.

The Convener: Thank you.

Kate, we have just a few minutes left, but you can ask a question if you would like.

Kate Nevens (Edinburgh and Lothians East) (Green): Thank you, convener—that is very kind.

We heard earlier about how much money is being spent by public services on future-proofing their facilities to be in line with the code. We know that many women's services that have been providing trans-inclusive services safely for decades are already incredibly stretched for funds and in terms of their capacity to provide their vital services and are now faced with implementing what is felt by many to be an unworkable and discriminatory code.

How do the witnesses feel about time and funds potentially being directed away from survivors' immediate needs to the implementation of the code? What provisions are being made to ensure that trans women have the same level of and ease of access to survivor services as cis women have?

The Convener: Again, I just clarify that we are talking about implementing the code.

Susan Smith: Women's organisations in the network across Scotland, some of which have now disaffiliated from Rape Crisis Scotland and

Scottish Women's Aid, are absolutely delighted, because they were providing women-only services but doing so in fear and feeling under duress, because they worried that their funding would be cut either by the Government or councils if they said that their services were for women only.

Kate Nevens talked about trans women accessing those services. I think that Edinburgh Women's Aid has said that, over 15 years, it dealt with four trans women, and those cases involved only advocacy services; they were never about accommodation. Therefore, Kate Nevens is building something up that is not necessarily an issue. If there is an issue with male-on-male violence—I think that there is—services for that have to be provided separately and with due consideration to the different sort of trauma involved.

Isabelle Kerr, who is on the board of Beira's Place with me and who ran Glasgow and Clyde Rape Crisis for many years and kept it as a women-only service, has said that, many years ago, she was consulted on a project with an LGBT group to try to get equivalent services, and it found the biggest need there was for gay men. The funding for that was cut because there was a desire for those people to go into the women's sector, but that was not an appropriate place, and it was said at the time that it was not an appropriate place.

The Convener: Can we stick to the code? I am conscious of the time.

Susan Smith: Sorry. I am sticking to the code. I am trying to say that, really, the code only says what has been known for a very long time. Anybody who truly works on the front line of women's services will tell you about the need for women-only spaces. That has always been true, and there were fears about that.

For many people in the women's sector, the code has been a huge relief. That does not mean that other services should not be provided, but frankly you need to ask the organisations that represent those groups why they are not providing such services. Why are they not using the money that they get from the Scottish Government to provide those services? Kate Nevens talked about money being spent on changing facilities. Why was that money spent on changing facilities in defiance of the law?

This week, I was at the 50th anniversary event for Glasgow and Clyde Rape Crisis. It is facing a funding gap, which is disgraceful. The Parliament says that it is interested in dealing with misogyny and violence against women. Well, that is a great way to spend money. Money should not be spent on court cases that try to disapply the code, as has been done up to now.

Maya Forstater: If people think that it is discriminatory to exclude all men from a women's service, they should read the code—it is not, and that includes trans women, and men who identify as non-binary. They are not women, and it is not discriminatory to exclude them. That is what the code says.

Kate Nevens: It is discriminatory to—

The Convener: We will come to a conclusion on that point. I thank the witnesses for coming to speak to us today, and I thank members.

Before we conclude, I reiterate what I said at the start of the meeting: we have another two panel sessions next week and then we will hear from the minister. That concludes our business in public this morning.

12:15

Meeting continued in private until 12:23.

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