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Equalities, Human Rights and Civil Justice Committee

Comataidh nan Co-ionannachdan, Còraichean Daonna agus Ceartas Catharra

Thursday 19 November 2026

Session 7

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EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE
11th 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:

Dr Mhairi Crawford (LGBT Youth Scotland)
Penny Hobman (Equality and Human Rights Commission)
Jennifer Laughland (Equality and Human Rights Commission)
Kate Nevens (Edinburgh and Lothians East) (Green)
Florence Oulds (Equality Network)
Dr Mary-Ann Stephenson (Equality and Human Rights Commission)
Vic Valentine (Equality Network)

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Equalities, Human Rights and Civil Justice Committee

Thursday 19 November 2026

[The Convener opened the meeting at 09:30]

Decision on Taking Business in Private

The Convener (Katie Hagmann): Good morning, and welcome to the 11th meeting of the Equalities, Human Rights and Civil Justice Committee in 2026. We have received apologies from Collette Stevenson. I welcome to the meeting Kate Nevens, who is not a member of the committee but is attending for the public items of today's meeting.

Our first agenda item is a decision on whether to take items 3 and 4 in private. Are members content to do so?

Members *indicated agreement*.

Equality and Human Rights Commission Revised Code of Practice

09:30

The Convener: Our second agenda item is evidence on the implementation of the Equality and Human Rights Commission's revised code of practice for services, public functions and associations. I refer members to paper 1. The revised code of practice came into force on 5 August 2026, with the intention of helping organisations to apply the Equality Act 2010. The code of practice has been updated in a range of areas to reflect changes in law, and it has undergone changes following the United Kingdom Supreme Court's judgment on the definition of sex in the 2010 act.

This week's session is the second of three sessions on the implementation of the revised code. Next week, the committee will hear from the Minister for Equalities and International Development. This morning, we will hear from two separate panels. On the first panel, we have Dr Mhairi Crawford, chief executive of LGBT Youth Scotland; Vic Valentine, Scottish Trans manager at the Equality Network; and Florence Oulds, Scottish Trans policy and public affairs co-ordinator at the Equality Network. I welcome you all to this morning's meeting.

We will move on to questions from committee members in a moment. Last week, I opened the meeting with comments from the Scottish Human Rights Commission, which made it clear that members of the Scottish Parliament serve as guarantors of human rights in Scotland, both as legislators and as members of an accountable body that is exercising devolved public functions. That is a role that each of us on the committee has and must perform in our work.

I will come to each of the witnesses in turn. As we start the session, it would help to hear your reflections on the guidance. I ask all witnesses and committee members to remain focused on the implementation of the code. It is fair to say that there has been a lot of interest in the wider subject, but we want to really focus on what the changes mean for individuals and organisations. Throughout the session, it would really help if you could provide any examples of how the code has impacted individuals.

Dr Mhairi Crawford (LGBT Youth Scotland): Thank you very much for inviting us here. For those who might not know, LGBT Youth Scotland is a charity that supports young people aged 13 to 25 across Scotland. Throughout today's session, I

will use their voices where possible and will bring in their information. In preparation for this session, we spoke with the trans rights youth commission, which has directly fed us evidence. We are also able to bring to the committee very early data from the life in Scotland for LGBTQ+ young people research, which involves engaging with young people across Scotland every five years. That data will be published next spring, but the data analysis closed last month.

The key point that the trans rights youth commission wishes me to share is that it feels that it has been raising similar points for years about life getting worse for trans young people in Scotland. That has been the general trend, but it feels as though things are much worse following the Supreme Court ruling and the implementation of the EHRC code of practice. The commissioners do not see any evidence that day-to-day life is improving for trans young people, who do not see any evidence of a more positive future for themselves.

More broadly, the Scottish Parliament incorporated the United Nations Convention on the Rights of the Child into Scottish law, and, under the UNCRC, it is imperative that all children and young people in Scotland are protected from harm. The trans rights youth commissioners and young people across Scotland feel that that right is not being upheld, due to the code of practice and additional challenges.

The trans rights youth commission also wants me to flag that the EHRC code of practice is having a detrimental impact on children who want to live their lives as their authentic selves, particularly young people who do not live in a welcoming home environment. It is challenging to come out as trans, and there are increased risks when the young people have hostile or homeless living environments. Those people are now not able to access support and facilities in the way that they used to be able to, which is having a further detrimental impact on them.

More broadly, about 50 per cent of the more than 700 respondents to the life in Scotland research that I mentioned were trans or non-binary young people. They indicated that there has been a detrimental impact on their mental and physical health. Many of the young people said that they are losing hope for the future. They noted adverse effects on their ability to participate in society. They feel unable to carry out certain parts of their jobs. They feel unable to attend school.

Underlying all of that is a huge issue relating to safety. People have an increased sense of fear—fear of attack and of discrimination—and they feel that the code of practice has given people permission to discriminate against LGBTQ+ people.

The Convener: Thank you for those opening reflections. As I said, when we get into the questions, it is important that we focus on those impacts.

Vic Valentine (Equality Network): Good morning, everyone. Thank you for inviting me.

Ultimately, we think that implementing the code will increase the inequality and discrimination that trans people face. It will result in the human rights of trans people—and, sometimes, in the human rights of people who are not trans—being breached. Often, implementing the code will be fundamentally incompatible with all three arms of the public sector equality duty. It will not be possible for public bodies with duties under the Human Rights Act 1998 to implement the code in a way that complies with that act, so they will be stuck between two legislative frameworks that no longer complement each other.

We acknowledge and agree that the code simply describes the law. However, if it describes the law accurately, ultimately, our equality law is broken when it comes to protecting trans people, so it needs to be fixed.

I can say a lot more on all those points, but those are my overall views.

The Convener: Thank you for those opening reflections.

Florence Oulds (Equality Network): Good morning. I will talk about what I have heard from our colleagues who work quite closely with the trans community across Scotland, especially my colleague who works at a lot of prides. They said that, since the Supreme Court judgment, that is really all that anyone has spoken to them about at prides over the past 18 months. It is one of the key issues that our community faces.

People are incredibly pessimistic. There is a general and incredibly pervasive feeling of loss, misery and despair among the community. That feeling is felt across Scotland, from the central belt to rural areas. As has been said, from anecdotal evidence, it feels as though there are fewer trans people at prides and at community events, and it is getting harder to book community events if it is mentioned that they are specifically for trans people. Many people in our community want to know what they can do, how they can help and how we can make things better, and of course we want to help them with that. For many people, however, it feels so crushing and difficult at the moment, and incredibly hard, when it feels like we have had so many losses as a community over the past few years, and a significant regression in rights.

Although the judgment itself said that it was strictly about interpreting the Equality Act 2010 and not about answering wider social questions, to some degree it is hard not to feel that the approach that the EHRC has taken in the code is very much coming down on one side of those social questions. It shows no real interest in helping services, public functions and associations to include trans people, or in addressing the significant issue of our exclusion if that is what must be done. It is really hard for people, as it feels like our equality regulator, which is supposed to be looking out for our human rights, is very much not looking out for their human rights.

While we try to remind people that there are some positive things in the code, such as its being unlikely to be lawful to exclude trans people from necessary services and that policing of services at the point of use is unlikely to be proportionate in most cases, those are buried in a 300-page document that is quite hard to follow, both for trans people and for service providers. The difficulty is that, although there are some moments of reassurance in the code, what it represents for trans people and the way that it empowers people to exclude us are a totally different thing.

I will stop there.

The Convener: I thank each of you for those opening comments. You have touched on some of the very difficult realities that some of the people you are supporting and working with are experiencing right now, and it is important that we gather that evidence base. Last week, I referenced Stonewall's report on LGBTQ+ life in the UK, which contains reflections on single-sex spaces. It would be interesting to hear your reflections on that report, which was published last week, although I appreciate that you have your own evidence on such things.

The committee has heard from a number of public service bodies, including the police, leisure services, prisons and the national health service. I will come to you first, Vic, because you are sitting in the middle. Are you and your members experiencing different outcomes across those different services? Are there some areas of public service in which you feel that the code is being implemented in a better way than it is in other areas? Are there key areas across health, policing, leisure services and prisons where you feel that you would like to highlight the impact of the code?

Vic Valentine: Ultimately, if we focus specifically on what the code says around services provided separately for women and men, which is the area of the code in which the EHRC now directs organisations to treat trans people very differently from how it did before the ruling and in the previous code, the issue, from our perspective, is that those services cannot now be delivered in a way that meets trans people's needs if organisations follow the advice that is provided in the code.

Fundamentally, trans people are people whose needs are different from those of other people. Where it is totally appropriate, right and normal to treat people who are not trans in line with their sex in services provided separately for men and women, for trans people, it is a bit more complicated. The code now says that the only option is to treat us in line with our sex at birth, and that just will not work. Hospital wards are a key example. NHS England—it was NHS England, as opposed to NHS Scotland—published an updated policy on the provision of what it calls same-sex care: single-sex wards, essentially. In its own equality and health inequalities impact assessment, NHS England notes

"a number of potential adverse impacts for trans people".

Those include that they might

"fear and potentially experience discrimination by being 'outed' as trans"

and might

"fear being accommodated on a ward that aligns with their biological sex, which could lead to avoiding accessing healthcare".

The impact assessment refers to

"delays and a greater risk of 'corridor care' … with a negative impact on … physical and mental health and wellbeing",

and it highlights

"a risk that hospital estates will not have the capacity to provide side-rooms … forcing trans people into … potentially distressing"

situations.

In referring to the need to "balance" rights, it talks about

"the potential to create animosity and division between"

the groups of people whose rights need to be balanced.

We have already heard of a number of trans people who have chosen not to be admitted to hospital wards because they were told that they would be accommodated in line with their sex at birth, against medical advice.

Again, the problem for us is that, although the committee is interested in implementation of the code, our question is, can the code be implemented in a way that does not result in harm, inequality, discrimination and human rights breaches? I simply do not think that it can.

09:45

The Convener: Thank you for that. Would Mhairi Crawford or Florence Oulds like to add anything on whether people have had different experiences of the implementation of the code across different public services?

Florence Oulds: We have some examples from TransActual and from our work on community health and wellbeing. I suppose that this is not a public service, but toilets are obviously a huge area. Where we hear from trans people who are experiencing issues in accessing services that are provided differently on the basis of sex, toilets seem to be the most common service that people have issues with. However, leisure centres and similar facilities also come up quite often, because they seem to be completely inaccessible to people when no gender-neutral facilities are available.

A lot of people have told us, for example, that they have been made to get changed in a disabled toilet and have had to be escorted to use swimming pools, lockers and things like that, because access is generally through the men's or women's changing rooms. That often cuts trans people off from access to things such as exercise, which would massively improve our wellbeing.

As Mhairi Crawford said, there is a wider compounding social impact on trans people from facing exclusion, or expecting to face exclusion, across several different areas of life. We often find, with trans people and many other marginalised groups, that if someone has experienced an issue with accessing one service based on who they are, they might expect to face the same experience somewhere else. That means that people are very much retreating into themselves, not leaving the house, working remotely and things like that.

The Convener: Mhairi, do you have any final reflections on that?

Dr Crawford: May I come in with a couple of quick quotes from some of the young people?

The Convener: Of course.

Dr Crawford: We are not seeing a very positive picture, as we touched on earlier. For example, one 19-year-old said that general guidance about how to treat transgender patients—the sex-based wards and so on that Vic Valentine spoke about—and their previous experience of something that is colloquially called "trans broken-arm syndrome", whereby someone turns up at hospital with a broken arm but the hospital says, "Oh, you're trans, so it's not that," make them reluctant to engage with or speak to any healthcare professionals at all. The life in Scotland data shows that cisgender people are about 20 per cent more likely to feel safe on public transport and in public spaces than trans and non-binary respondents, and more than twice as likely to feel safe in public toilets.

I have one final quote from a young person—which I have now lost.

I have found it. It is from a respondent to the life in Scotland survey who is 24. They fed back that the recent EHRC guidance makes it a lot harder for them to function in public places now, given the fact that, if they were arrested, they would be sent to a men's prison, which for them feels like a death sentence, in effect, and that makes them disproportionately afraid of interacting with the police.

The Convener: Thank you for that. Claire Baker, you indicated that you wanted to speak, so I will bring you in.

Claire Baker (Mid Scotland and Fife) (Lab): Last week, the committee heard from Community Leisure UK and NHS Scotland. I want to get some clarification of the concerns that people have expressed.

Last week, Community Leisure UK told us that it had not implemented the code, that there were already facilities where there were mixed family changing areas, and that it had not seen any examples of people being excluded from accessing leisure centres because of any changes. It expressed to us that the changes had not been made yet and that it felt that the facilities that it had in place could accommodate people. It was maybe looking to make changes, and it said that it was currently carrying out an audit, but it did not bring to us examples of people being escorted or having to use different changing rooms, disabled toilets or anything like that.

With regard to hospitals, we do not have single-sex wards throughout Scotland—there is a lack of progress on that. You might be aware that the Women's Rights Network published a report about quite a high level of sexual assaults in hospitals in Scotland not being reported and not receiving proper investigation. Part of that comes from the fact that we do not have single-sex spaces in hospitals.

I have met Vic Valentine a number of times during other debates. You recognise that there is nuance in the 2010 act, which was always about understanding how people's rights come up against each other. When we think about single-sex wards, there are concerns about women's safety in wards, and it is about balancing those rights. However, the NHS has also said that it will always go with clinical need. Its first priority is to treat somebody, regardless of where they might have to be placed.

Florence Oulds and Vic Valentine might want to respond to the evidence that we heard last week

about how the code has been implemented in Scotland and the pace of its implementation.

Vic Valentine: I will be honest: we are not aware, or able to be aware, of exactly which organisations have or have not made policy changes. However, from what we have seen, more organisations made changes immediately after the ruling, rather than waiting for the code. We have not seen a rush of changes following the publication and commencement of the code.

I totally accept that there are times when services have to balance the needs of different users, which involves thinking about all their rights. However, the way that the code describes separate provision for men and women is that no balancing can happen for trans people. The code says that there are two options: services are open for everyone or they are separate for men and women on the basis of biological sex. There is no room to provide separate services for men and women on a trans-inclusive basis. Previously, you could provide them separately for men and women on a trans-inclusive basis, or separately on the basis of biological sex if that was a

"proportionate means of achieving a legitimate aim."

Balance is really important, but that is one of the issues on which the code does not feel balanced. That cuts across human rights for trans people.

Article 8 rights around privacy are not only about our right to not be outed; they are about our right to have our personal identity recognised and respected. Gender identity is very much understood as being a part of that, whereas now the code says that the only way that services can treat us is according to our sex at birth or by segregating us from other people where those services are provided separately. Balance is really important, but that is not what the code facilitates.

Claire Baker: It is based, though—to use these words again, as we have many times—on what is "proportionate" and "legitimate". Organisations have to decide whether it is proportionate and legitimate to introduce any single-sex services on the basis of biological sex. They have to meet that test, which still exists.

Vic Valentine: It absolutely does, but the issue for services is that they are now stuck between a rock and a hard place. Sometimes, it might be harder for them to justify the provision of a single-sex service because of the negative impact on trans people, whereas previously, when you had two options for separate service provision for men and women—a trans-inclusive option and one based on biological sex—there were many more options for service providers.

Hospital wards are among the best examples of that. I agree that separate provision for men and women is really important, but if the knock-on impact of that is that trans people can only be accommodated in line with their biological sex at birth, the consequences for trans people are so stark that it feels harder to justify the single-sex hospital ward provision in the first place. That is why it feels that there is a lack of balance. It really does not serve trans people's needs at all, which is one of our concerns about the implementation of the code.

Claire Baker: Last week, I raised the fact that NHS England has produced guidance on the matter, which we do not have in Scotland. Would it help if the Scottish Government did the same? The witness from the NHS last week thought that it would be helpful.

Vic Valentine: It would help in the sense that it would be useful to know what the policy was, and it would probably be useful for boards to operate the same practice across the country. It would also help in terms of understanding what the results might be for trans people, depending on what it said needed to be mandated. However, it would depend on its content.

Claire Baker: Thank you. Do you have anything to add, Florence?

Florence Oulds: I do. I thought that it might help to share another example, which was shared with us by an organisation called TransActual. It is about a trans woman in Scotland who had been using a leisure centre for the past couple of years, including after the Supreme Court ruling. She spoke to the staff there and was told that they thought that it was fine for her to use whichever changing rooms she preferred. However, after the introduction of the code of practice and the ukactive guidance, they told her that they had been told that, unfortunately, she could no longer use any of their changing rooms. They had some rooms that she could use, but they did not have similar facilities to the changing rooms.

The organisation that ran the leisure centre also ran another leisure centre on the other side of town, which did have gender-neutral changing rooms, but the organisation did not have the funds to build them in the first location. The trans woman was unable to travel to the other leisure facility on the other side of town, so she ceased going to the leisure centre. It perhaps seems a proportionate response that the organisation had a room that was sometimes available for her and that it had other facilities that she could use that had gender-neutral changing facilities, but, unfortunately for her, that led to her no longer being able to access those facilities. That meant that she no longer had access to the exercise that she regularly did.

In discussing hospitals, I want to mention another thing. We are aware of at least three trans

people to whom we have spoken, and other trans people from whom we have had evidence, who have not gone to hospital, against medical advice, because they were concerned about where they would be placed on a ward. I think that that is a very common sentiment. We heard from a trans woman who has been out for almost 20 years and who recently had a head injury. She would normally not have thought twice about going to hospital, but this time she did, and she stayed at home against advice. She knows that that was not the right thing to do medically, but she did not feel that she had any other choice.

Claire Baker: I have a couple more questions. Is part of the responsibility of organisations such as yours to reassure people that if they need medical attention they really should go to hospital?

I have a final question on the leisure centre that you mentioned. Do you know whether that was a private leisure centre or one in the public sector?

Florence Oulds: I do not know whether it was private or not.

I suppose we do try to reassure people of their rights and, to some degree, of what they can expect, but I think that people feel incredibly strongly and are deeply worried. Trans exclusion and anti-trans sentiment have been on the rise for a long time; the desistance that we have seen from all sorts of public services did not come about just with the Supreme Court judgment and the code of practice. We do our best to assure people when we can, but we are increasingly seeing these experiences happen more and more often within the community.

The Convener: I reiterate what Claire Baker highlighted there. When we heard from the NHS representatives last week, they were very clear that their first priority is clinical need. If we get anything out of today's session, therefore, the message has to go out to the community that, regardless of circumstances and regardless of the code and its impact, clinical need has to be a priority. Thank you for those reflections.

Holly Bruce is looking to come in, and Amanda Lindsay has also indicated that she wants to speak. I will come to Holly first.

Holly Bruce (Glasgow Southside) (Green): I thank the witnesses very much for coming to committee today and sharing their experiences within their organisations. I know that it cannot be easy to talk about the subject, and I hear the pain that you have had to go through in telling those stories.

I want to talk about the NHS, which we have touched on already. My point goes back to what Vic Valentine mentioned earlier in relation to article 8 on the right to respect for private and family life, and how that does not necessarily work in tandem with what we have in the code. I will give an example. In the NHS, if a trans man is placed on a female ward, that poses a risk to both the trans man and the women on the ward, so balancing those rights is extremely difficult and privacy is therefore not being upheld for either of these groups of people. Do you feel that article 8 is working in tandem with the code as it is written now?

Vic Valentine: My short answer would be no. Overall, we feel that implementing the code will not be able to uphold trans people's human rights.

I will mention another specific point. You gave the example of a trans man on a women's ward, but what the code says about trans men in particular is that the general rule should be that trans people are treated by services in line with our sex at birth, but if we present as the opposite sex to a strong enough degree that we might cause "discomfort or distress" to others, we should not be provided with services in line with our sex at birth either. The UK Government described that as "double exclusion" in its equality impact assessment of the code.

10:00

On how we expect to provide guidance to service providers on how they should make subjective decisions about whether trans people's appearance causes "discomfort or distress" to others—well, good luck in designing that training package. The code cannot be a legal framework that is really able to meet the needs of everybody if those are the kinds of things that we are having to say that service providers have to consider.

Another point is that we are talking about a foundational principle of what it means to be trans. If our interaction with states, services and public life constantly requires us to indicate as, be accommodated as and turn up as a person who we really strongly and deeply do not feel that we are, the cumulative impact of that is to constantly chip away at our article 8 rights to be free in and express our identity, and to have our gender identity. I do not see the code as being compatible in that way.

Holly Bruce: At last week's committee meeting, I shared testimony from a constituent who got in touch with me to describe their experience of being challenged for using the bathroom as a cis, butch-presenting lesbian. Flo, you highlighted that that issue has also impacted trans and non-binary people in bathrooms. You have outlined the issue, but I would like some more detail from all of you. What has the real impact been on people? You mentioned self-exclusion, but what other impacts is the code having on people, including cis, trans

and non-binary people? Do you feel that people are confident enough to report such incidents?

Florence Oulds: One impact that we have heard about from both cis and trans people is that people are changing the way that they present and the clothes they wear, and the spaces that they go into, in order to go about their life more easily. Of course, that is not limited to just the situation that you outlined or just to trans people, but people have told us very specifically about it, down to the specific items of clothing that they are no longer wearing—items of clothing that helped them to feel more comfortable and confident and that they enjoyed wearing.

We are hearing a lot from cisgender people who are also experiencing issues—again, especially with bathrooms. We have heard that from people who may present in gender non-conforming ways and may look more masculine, but we also heard—again, via TransActual—of an instance in which a woman and her son, who is disabled, went to the public library together. Her son has long hair. The disabled toilet was locked and the woman could not find anyone to open it, so she took him into the women's toilets with her, which the code says is sometimes an acceptable reason why somebody of the opposite sex may use a single-sex space. When she came out, she was confronted by another member of the public, who said—I do not have the exact quote in front of me—something like, "Trans women are not welcome here." The woman's son was not a trans woman—he was a young boy.

The code says that, in general, that is not the correct move for other service users, and that if they have an issue with a service user and are concerned that that person is in the wrong space, they should speak to management and raise it as an issue. However, we are seeing an increase in people confronting others in these spaces and enforcing policies when they may not be aware of the policy that the space actually holds.

People have definitely said that they have noticed an uptick in other people feeling bolder and more confident to challenge them. That does not simply involve saying, "I think you're in the wrong space"—it is often quite aggressive and can involve insults and threats as well.

Dr Crawford: We have had quite a bit of feedback on that, too. Some of the older young people whom we support welcome the fact that they are no longer teenagers, because they are now in a position where they can advocate for themselves. Conversely, as a younger trans person, they would have really struggled because they did not have the confidence, the knowledge or the surety.

There is a lot of feedback from young people who express confusion about what the EHRC code of practice is. It is there as guidance for service providers and employers, but it is actually impacting them in their day-to-day lives and they do not understand the impacts or how it is being interpreted, or that it is being interpreted differently in different spaces. As a result, they are having to advocate for themselves strongly in a range of spaces.

That is the case not only for young trans people. I note that a 24-year-old cisgender respondent says that they feel a lot less safe after the recent ruling about trans women. They say that, even though they do not identify as trans, they have seen and heard much more homophobia and transphobia, because people feel that such views are now protected, so they can express them openly. The respondent feels more anxious going out in public and more fearful that they will be attacked or verbally abused. They feel much more afraid for any trans people in their life and for their wellbeing, and they do not feel safe in Scotland.

That sentiment is echoed in dozens of quotes in a similar vein from cisgender and transgender young people, who say that there is a lack of safety and surety, and that the right to privacy under article 8 of the European convention on human rights, or to non-discrimination under article 2 of the UNCRC, is just not being upheld for them.

Holly Bruce: Thank you for sharing that experience. That is harrowing to hear.

We have spoken a lot about human rights and European conventions. Have the international human rights experts responded to the direction of travel that the UK has been going in since the Supreme Court ruling and how it has materialised in the code?

Vic Valentine: There have been a number of reactions from international human rights experts. In particular, the Commissioner for Human Rights for the Council of Europe has made several public remarks. At one point, he wrote to the Joint Committee on Human Rights and to the Women and Equalities Committee at the UK Parliament. He has also commented in a number of publications that have come out since the Supreme Court ruling and the publication of the code. He has highlighted that the UK is a bit of an outlier among the Council of Europe member states with regard to how it is treating trans people. He has also commented directly on the fact that conversations in the UK unhelpfully frame human rights as a zero-sum game, in which women's rights are pitted against transgender people's rights, when that does not need to be the case, as human rights are for everyone. He has also commented on the fact that the code describes

exclusion as a necessary way of organisations discharging their legal duties, which means that they are unable to uphold trans people's human rights.

The UN has made statements in a similar vein. In particular, the UN independent expert on protection against violence and discrimination based on sexual orientation and gender identity—try saying that 10 times fast—in co-operation with other colleagues, has highlighted the fact that human rights are not a zero-sum game and has asked how everyone's human rights can be upheld when exclusion becomes mandated. That is the kind of question that has been asked.

In addition, the UK has fallen to 22nd in the ranking of European countries on LGBTI equality policy that the International Lesbian, Gay, Bisexual, Trans and Intersex Association—ILGA—Europe produces each year. We were ranked first, I think, in 2015, and although we have fallen to 22nd overall, we are actually 44th out of 49 countries on trans people's equality in Europe—I think that we are ahead of Slovakia, Bulgaria, Hungary and Russia, although you should not necessarily quote me on that.

The direction of travel with regard to how we are doing on upholding trans people's human rights is clear—it is a downward trajectory. As I said, the UK is frequently being highlighted as an outlier on such issues.

The Convener: Thank you for that. Before I bring in Amanda Lindsay, I have a small supplementary question to ask. The code is for service providers, public bodies and associations. It makes it very clear that, when someone is challenged in a public space on their sex at birth, that must be done sensitively and with respect.

Florence, the example that you gave involved members of the public. It is hard to hear about members of the public acting in that way, but the code is for organisations. Do you have any examples of how individuals have been approached by organisations? Do you know from any discussions that you have had with trade unions and the workforce whether workers feel supported in how to implement the code? It is hard to hear about cases in which individuals have been challenged by members of the public, but that is not what the code is there for, so to speak. Do you have any other reflections that you can share?

Florence Oulds: I certainly do not have any positive examples. We have heard from people who, instead of being confronted, have been told in advance that they cannot use certain facilities. Often, that is done by members of staff who very much wish that things could be done differently. Obviously, that is appreciated, but from what I have heard from trans people who have had those experiences, it almost always feels quite humiliating and dehumanising.

The code does not really wrangle with the sheer emotional and cognitive effect that such exclusion can have on people. It mentions that people have to be sensitive in asking questions about sex, that that can be difficult to ascertain, and that it should be done privately and so on. That is good advice, but it will always be fundamentally difficult for trans people to have such conversations and to be told that we cannot use the facilities that we have been using for the past few decades. I do not have a positive example of how that would work.

The Convener: Mhairi, do you have any examples from the public sector?

Dr Crawford: I will give one example. Although we are talking about the EHRC code of practice, which has limitations in where it is applied, it is very difficult to separate that from the fact that the code is linked to wider public discourse. That means that members of the public, having seen the code of practice and heard it talked about publicly, feel empowered to challenge things publicly. I will give an example that comes from a school, although I do not think that it is possible to separate this from the fact that members of the public feel empowered to challenge and to put trans people at risk of having to defend themselves or of outing themselves and impacting their human rights. I just do not know how we can separate that.

The example comes from a school in the central belt of Scotland, where a young person was participating in a drama showcase. During the intermission, the young person used the girls' bathroom. While they were in the bathroom, a teacher shouted at them and asked them to leave. The young person reported that, shortly afterwards, a younger girl entered the bathroom, and the teacher again shouted at the young person, asking them to leave. The young person felt that the teacher's actions implied that she was posing a risk to the child by simply being present in the bathroom and being trans, and they found that very upsetting and discriminatory. Unfortunately, the young person responded by shouting back. They are autistic and can struggle to regulate overwhelming emotions. Again, unfortunately, that led to the young person being injured, with a laceration to their forehead and a concussion. The parent—the mother—was able to resolve the issue and took the young person out of school, but that is an example where the teacher and the trusted adults in the school did not support the young person to access facilities safely.

The Convener: Thank you for that example.

Amanda Lindsay (Central Scotland and Lothians West) (Reform): I thank the witnesses for coming. From listening to the discussion, it is

clear that many of the issues and the feeling of loss that you talk about among your community come from the fact that people have been misled into believing that they had rights that they never had and that, over the past few decades, organisations have misrepresented the law as per the Equality Act 2010.

My first question is for the Equality Network and Scottish Trans. Those organisations receive most of their funding from the public purse. This year, the Equality Network's equality and human rights fund award is more than £500,000, which is about 89 per cent of your income. The information on the award says that the work involves advice and guidance for public sector bodies. Since the code of practice came into use on 5 August, which guidance, training materials or policy advice that you have produced for schools, health boards, councils or the Scottish Prison Service have you withdrawn or revised? Have you told the bodies that use that advice? Can you provide a list to the committee?

The Convener: To clarify, is the question in relation to the code of practice? I want to ensure that we are talking about the implications of the code.

Amanda Lindsay: Yes, absolutely. It is about advice and guidance based on the code of practice.

The Convener: Okay.

10:15

Vic Valentine: We do not have any existing policy documents that recommend how any of those public bodies should behave in relation to trans people that we need to update. It would be fair to say that, although we have not proactively reached out to organisations to inform them that the interpretation of the law has changed, I feel relatively confident that all those organisations are already aware of that and do not need us to contact them to tell them it.

It is important to acknowledge that the Supreme Court ruling and the code now reflect a very different understanding of the law from what we had previously, and I include in that "we" the UK Government that passed that law, every UK Government since then and the Equality and Human Rights Commission until the Supreme Court ruling. As early as 2002, the UK Government, at the European Court of Human Rights, said that trans people had access to services such as hospital wards and prison placement in line with our gender identity on a case-by-case basis, and that that was why the UK Government did not need to provide us legal gender recognition. I accept that, previously, we would have advised public bodies to act in line with the previous interpretation of the law, but it certainly was not an interpretation that was only ours; it was shared by the people who passed the law and the regulators of that law.

The Convener: I would like to clarify and make a point that I made in last week's meeting. This is a large topic and our focus today is on the implementation of the code, not whether the code is correct or why it was put in place. It would be helpful if we focused on the impacts of the code, and that would provide consistency with last week's panels.

Amanda Lindsay: When your current guidance uses the expression "gender identity", does it tell public bodies clearly that gender identity is not a protected characteristic in the Equality Act 2010 and that it cannot be substituted for sex?

Vic Valentine: Which of our guidance are you referring to?

Amanda Lindsay: You mentioned in your statement that you were—

The Convener: Sorry, but, to clarify, we are not here to look at individual organisations' guidance. We want to focus on implementation of the code. If guidance has not been updated, which was what the first question was about, I am not sure that starting to delve into specific policy will be helpful in considering the implementation of the code. Perhaps you want to rephrase the question so that we can focus on that, Amanda?

Amanda Lindsay: I think that all my questions are pertinent to the implementation of the code.

Vic, in your statement, you made a couple of references to gender identity. I think that that gets to the nub of the issue. I want to ask whether any guidance or publication uses that term, and whether it is clear that the term is not a substitute for biological sex.

Vic Valentine: Certainly, we accept that gender identity is a separate concept from the protected characteristic of sex in the Equality Act 2010. I do not think that we provide any guidance that is specifically on implementation of the Equality Act 2010, but gender identity is a well-recognised concept that is used widely in international human rights law.

Amanda Lindsay: It is not part of the Equality Act 2010.

Vic Valentine: I accept that.

Amanda Lindsay: The protected characteristic is gender reassignment; it is not gender identity.

Vic Valentine: Indeed.

Amanda Lindsay: That is what I am trying to get at. I want to make sure that that does not appear in your advice and guidance.

Vic Valentine: I remain a bit confused about what advice and guidance you are referring to. We would not provide advice and guidance on the Equality Act 2010 that misstated any of the protected characteristics in that act—I agree with you that they do not include gender identity—but we use the term "gender identity" widely across our work because it refers to the personally and deeply held identity that a trans person has in relation to their gender, and it is a commonly used term across trans equality and in international human rights law.

Amanda Lindsay: I understand that the £500,000-plus award states that your work involves producing advice and guidance for public sector bodies.

Vic Valentine: I feel that I have answered the question. When we give advice to public bodies and they ask us about the Equality Act 2010, we are accurate in terms of using the words that are used in the act and the protected characteristics in the act, but some of our advice and guidance will continue to use the term "gender identity", because it is the relevant term for talking about what we are describing.

Amanda Lindsay: Okay, so what is your operational definition of "gender identity"?

Vic Valentine: A person's deep and internally held sense of their gender in relation to being a man, a woman or something in between or beyond those things.

Amanda Lindsay: So, it is a belief. Thank you.

Meghan Gallacher (Central Scot and Lothians West) (Con): Good morning. I will follow up the questions that I asked last week. This touches on the convener's question about interaction with public service organisations and the Scottish Government. What engagement have you had on the implementation of the Supreme Court ruling, and can you give examples of the level of involvement that you have had with various levels of government but also with public bodies?

Dr Crawford: Our work has primarily been about supporting children and young people through this. We do work with public bodies across Scotland, but it has not been focused on the implementation of the EHRC code of practice. The work that we are doing is trying to support young people across Scotland who are having an increasingly difficult time. Sometimes, we will support them to advocate for themselves in those environments, but we have not been consciously or proactively engaging on a policy or trying to influence an aspect of policy.

Meghan Gallacher: May I ask why? With regard to the implementation, it is important that we hear from all sides of the argument, so has there been no interaction? Has no one reached out to ask your views on this?

Dr Crawford: We have the views that we are bringing here today. This is one of those interactions. Yes, we have other engagements, but, again, our role is to feed back the voices of young people, including about where they are finding things difficult—where they are finding challenges or opportunities with regard to where they can be supported.

Vic Valentine: I do not think that we have directly worked with public bodies on implementing the code. Flo, please correct me if you can think of anything. The only directly relevant thing that I can think of is that we are a member of the NHS Lothian trans and non-binary stakeholder group, which was working on a policy that was not related to wards but involved making a statement to reassure trans people and encourage them to still attend hospital and have healthcare. We talked to the group about how it could best word the statement, following the ruling and the publication of the code. I will check, but I am fairly confident that we have not been involved in any updated policy development.

Florence Oulds: The only other thing that I can think of is that we were consulted by Police Scotland as part of its sex and gender data review last year, but that was very much in response to the Supreme Court ruling itself rather than the code of practice. I can speak more about that if you like, but it is not directly related to the code.

Meghan Gallacher: That is helpful, thank you. We have heard examples this morning of lived experience from the community. Something that Vic Valentine said struck me. Vic asked whether the code can be implemented in a way that does not result in harm to the trans community. Just to give the other side of the argument, it is important to put on record the harm that could be done to women who need single-sex spaces and could be denied access to a single-sex space if the code is not fully implemented. It is important that we balance those arguments.

I am looking at the advice and guidance on the LGBT Youth Scotland website. This touches on Amanda Lindsay's points. The guidance, which might be accessed by young transgender or young LGBT people, reads:

> "Depending on your needs and your school, this could include: using the toilet that matches your biological sex, gender neutral provision, or your gender identity."

To me, that is inconsistent with the code, so could your advice be updated to reflect the code, or is it the case that you will not be updating the

information and guidance that you give to young people who contact your organisation in order to reflect the code of practice?

Dr Crawford: The guidance is designed to support young people to have a discussion with their school, and each local authority and each school is looking at its own implementation of the code. The advice and guidance are designed to enable a young person to be more informed about what they can ask for in their school. I am happy to revisit that and look at it, but I am not going to say right now that we will update it.

A child rights impact assessment looks at the rights of all young people and at the impacts across the school and for the individual young person. Each young person has a right to education, a right to privacy and a right to non-discrimination. From that perspective, if the young person has the information to be able to have a discussion with their school themselves, we support that.

Meghan Gallacher: Do you continue to have interactions with schools regarding support but also in relation to changes that they will be making to provision in the school estate?

Dr Crawford: With regard to the school estate and provision, we are fully supportive of the Scottish Government's "Supporting Transgender Pupils In Schools" guidance, and we regularly refer to that. We are aware that the building regulations will be updated, and, again, we will support that. When we work with schools directly, we refer to those and to the code of practice. Again, it is for organisations to make decisions about how they implement the code, but we would always argue for the child's rights to be respected, and that includes trans children.

Meghan Gallacher: As long as it is compliant with the code.

Dr Crawford: Yes, absolutely.

Meghan Gallacher: Thank you.

The Convener: Meghan Gallacher touched on the point about public sector engagement with organisations. At last week's meeting, Police Scotland gave evidence that it had engaged with a wide range of organisations. Florence Oulds, you gave one specific example of engagement with Police Scotland, but may I ask LGBT Youth Scotland whether it has had any interaction with the police?

Dr Crawford: We are a third-party reporting centre, and we engage quite regularly with Police Scotland. At times, officers come to our groups and engage with and support young people. We have done various pieces of work with Police Scotland, and we will continue to work with it, but, no, we have not engaged with it specifically on the EHRC code of practice.

The Convener: Community Leisure UK gave evidence at last week's meeting. In essence, it was here to represent local government, so we were not able to delve into the issues that Meghan Gallacher touched on in relation to schools. On leisure facilities, it referred to the fact that it had carried out a wide consultation exercise when developing guidance for the leisure sector. Were any of your organisations contacted by Community Leisure UK in the development of guidance for leisure?

Vic Valentine: I do not think so, although we do not do lots of work around sport, so that is not necessarily an omission on its part, I suppose.

The Convener: Florence and Mhairi, have you had any interaction with that body?

Florence Oulds: Not that I am aware of, no.

Dr Crawford: No.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I thank the witnesses for their evidence so far. My question is more general, unfortunately, because a lot of areas have been covered. I want to touch on the discrepancies in the evidence that the committee has been hearing. One of last week's witness panels included For Women Scotland and others—I am sure that you watched it. We heard that those organisations have concerns that the code is not being implemented quickly enough or well enough and that it is causing some difficulties, as they see it, for the people they support. The NHS was used as one example—I think that Claire Baker referred to that earlier. However, some of the examples that have been given today suggest that the code is perhaps being implemented too harshly, without mitigations being built in to achieve the right balance. Again, some prominent NHS examples have been given.

10:30

I do not know how other committee members feel, but, to me, that paints a chaotic and inconsistent picture across the country. Judgments could come down to individual establishments or even to individual workers—Mhairi Crawford gave the example of a teacher, although we do not know the full circumstances of that case. Do the witnesses feel that that is the case? If so, how can the situation be made better? How can we implement the code, which is the law, while ensuring the balance and mitigation that everybody wants?

I will ask all my questions together, if that is all right, while I am on a roll. The witnesses touched

on this in earlier answers, but how could communication about the code be improved in individual places?

Vic Valentine, you are looking at me, so I will come to you first.

Vic Valentine: We mostly hear from and speak to trans people, but there certainly remains a lot of uncertainty for everyone about the policies of different organisations. Some organisations made policy changes pretty quickly following the ruling. If an organisation has a high profile, the changes might be well known, whereas, for a little organisation, it comes down to how it communicates any changes to its service users.

Ultimately, I keep coming back to what I see as the central problem. I absolutely agree that organisations must comply with the code, because it is the law. However, public bodies, in particular, must also comply with the Human Rights Act 1998, and I think that some services, if they really think about their obligations under both legal frameworks—the Human Rights Act 1998 and the Equality Act 2010—will find themselves unable to deliver services in effective and practical ways that uphold the human rights of everyone and ensure that nobody faces discrimination.

It would be helpful for organisations to be clear and up front in providing information about how people can expect to be treated. In that way, regardless of whether we agree on whether an organisation has made the right decision, people would at least be empowered and have the knowledge to make decisions about what services they wanted to use.

Ultimately, however, I am concerned that organisations are not able to run their services in ways that meet the needs of everyone. For me, that is a much bigger problem than a communication problem about sharing information on what policies are in place.

Fulton MacGregor: On my point about inconsistency, among the people your service supports, are some people saying that they feel that they can access a particular leisure centre or hospital, for example, because it has a good way of approaching things, and are other people, who might not be far away geographically, saying that they cannot access such places? Are you coming across those views, or are most of the responses negative?

Vic Valentine: For context, I point out that our organisation does not provide services to people. We carry out community engagement and development and then do policy work on the basis of what we learn from that.

Fulton MacGregor: I am sorry—I meant feedback.

Vic Valentine: To be honest, it would be a fair reflection to say that people are much more likely to contact us when they are experiencing difficulties, as opposed to reporting good experiences, because we do not generally facilitate social support. However, we definitely know that, when people have long-established relationships with services, they tend to find things less difficult, but that is not the case universally. Even people in those situations report problems.

Florence Oulds: I will address that final point before addressing the others. Most of the good experiences that we hear involve members of staff going out of their way to make trans people feel respected, seen and included. Even though the treatment that they receive might be less than ideal if it involves having to use a service that they are not comfortable using, it still means a lot to them when people show them respect and dignity. When they report positive experiences, it feels as though the bar is quite low—they might say, “I felt like a human being when using this service”—but that is where we are.

On your question about whether the code is being implemented too quickly or not quickly enough, organisations need to follow the law. When the Supreme Court judgment was made, lots of people said, “Finally, some clarity—that’s very welcome.” However, I have not heard anyone say that in response to the code of practice, because it is a fundamentally confusing and difficult document to follow. From what I have seen, the EHRC does not seem particularly bothered about that. It often instructs organisations to seek legal advice, but there seems to be an unbelievably wide range of legal advice, which is often completely conflicting. I have heard of trans-inclusive organisations, which want to do the right thing and remain trans inclusive while remaining within the law, spending lots of money on legal advice and not really getting anywhere, with specialist lawyers saying, “We don’t really know.”

Implementation is very difficult when the document is fundamentally difficult to follow for many organisations, even those that have dedicated human resources staff to look into these things. It is incredibly difficult for smaller organisations that do not have experts on human rights and the Equality Act 2010.

The document is not written in a way that supports trans people being included in all sorts of services or being treated with dignity. If trans people are to be denied access to services—in some instances, to both men’s services and women’s services—it would be helpful for the EHRC to set out what organisations can do to mitigate the negative impacts that we have talked

about today and how staff can be aware of such issues and handle them in the best way.

As has been said many times, the EHRC code of practice does not make the law; it simply describes it. If the code is the EHRC's understanding of how the law has to be, that is what it is, but we would expect it to be shouting from the rooftops that this is a completely unacceptable state of affairs, with trans people needing to be excluded from so many services.

On the point about communication, one of the best things that an individual service or organisation can do is to make the way in which it is implementing the code as public as possible. It should put a statement on its website and have documents available so that trans people know, ahead of time, what service they are likely to experience, what they are entitled to, whether there is a gender-neutral changing facility, whether there is a disabled toilet and so on. It can be incredibly difficult for someone to disclose that they are trans. It can make them feel incredibly vulnerable, especially if they have had difficult experiences previously. We should think about them having to do that several times a week to understand which toilet they can use—

Fulton MacGregor: I am sorry to interrupt, but how realistic is it that, in all instances, information will be able to be provided to people beforehand? A lot of the examples that have been given, both last week and this week, particularly in the NHS, seem to be on an emergency basis. Do we need to provide communication across the board so that people know the position, not just before they are about to access a service but in case they need to access a service when they wake up one morning, for example? I might not be explaining this very well.

Florence Oulds: It is obviously much more difficult if you are not expecting to have an accident.

Fulton MacGregor: It is not even just in the NHS. Someone could be out with friends or colleagues, and someone could say, "Why don't we all go down to the gym?" It could be anything.

Florence Oulds: That is a tricky problem that trans people have faced before and still face now, especially if the people you are with do not know that you are trans.

I still think that, although it might not be possible for people to know in advance in all situations, in the same way that organisations often publish information about the accessibility of their spaces, they could make some effort to make this information available online or on a sign to allow people to read it without having to disclose their trans status to staff. That would be ideal. Training for staff on how to have such conversations sensitively would also be good. That is mentioned in the code, but it is not mentioned in any particular detail. The code says that it is something to be sensitive about, but it is not clear about what that means or how people should do it.

Dr Crawford: I have one tiny little quote from a young person, which fits nicely. They said:

> "As a trans young person, I find it incredibly hard knowing where to start when trying to access reliable information around the EHRC guidance. It would be wonderful if there were more accessible ways to find reliable information so that I know what I can do."

Young people are not sure where they can go because of all the different organisations interpreting the proportionality element differently, depending on what the facility is. That is very hard for them, as Flo just said. I thought that it was quite nice that a young person told us that directly.

The Convener: I am conscious of time, but Meghan Gallacher and Claire Baker want to come in. Meghan, I will come to you first. If witnesses could keep their answers quite short, that would be helpful.

Meghan Gallacher: I will pick up on the human rights message that has come through strongly this morning. On prisons, For Women Scotland's court case was all about human rights and ensuring that people were protected, but it also said that, if someone was detained and went to prison, they should go to the appropriate place.

However, Fulton MacGregor raised another point about organisations and public bodies that related to what I was trying to get at earlier. Your organisations could play an active role by ensuring that, if public bodies communicate such messages, you give people who contact you help and support on the back of that. Are you going to do that? You can better engage with public bodies and people who implement the code so that that guidance can be filtered down as part of the wider communication message.

Vic Valentine: The short answer to that question is yes. As much as possible, we try to keep trans people updated about any policy changes or general changes that might affect their rights.

What happened in relation to prisons was not as a direct result of the code, although the interpretation of the law that the code describes and the Supreme Court ruling are directly connected to why that ruling was made.

It is worth highlighting that the policy that we have now to house all prisoners on estates according to their sex at birth is how we used to make decisions about trans prisoners in the past across the UK, and a reason why that was

changed was the deaths of trans women by suicide during 2015 and 2016. We have been here before; this is how we treated trans people when we placed them in prison before, and the results were pretty stark—as stark as they could be. We have very serious concerns about the human rights of trans people in prisons.

Claire Baker: My first question is on the comments that have been made about legal advice having to be sought to understand the code because it is so complicated. We had a similar situation with the previous code, and we got to a stage where women's organisations felt that it was difficult to deliver single-sex services and the code was making the situation unclear for them. It is almost like we are looking through a mirror now, and we are seeing the other side. Do you recognise that there was complexity with the previous code and that there were challenges with how to implement it?

10:45

Florence Oulds, you talked about organisations not being able to book venues and being challenged, and others have talked about assaults and threats. To what extent is the code responsible for that? If people will not let you book venues, that is clearly discrimination. The code does not allow that. That comes under equality and discrimination laws. Threats and assaults should be reported to the police. I know that it is sometimes difficult for people to go the police, but it is against the law to threaten or assault anybody. It might be argued that that is part of the context surrounding the code, but there has always been a code, even if we now have a new code.

Florence Oulds: I mentioned it being harder to book spaces and there being discrimination to give wider context about what trans people and organisations are experiencing in Scotland at the minute. The Equality Act 2010 covers discrimination, as does the code, and the code is clear that trans people are covered on the basis of gender reassignment. However, this code has changed how people decide what discrimination on the ground of gender reassignment is, and the code has changed its recommendations on how trans people should be treated.

Previously, if a trans person was turned away from a gym and they were told that they could not use the gym for being trans, they might quite easily say that that seems like discrimination under the Equality Act 2010. However, now, if a gym has followed the code of practice, it can say that it only has male and female changing rooms, that it thinks that it would be inappropriate for a trans man to use the women's changing rooms and that it does not consider itself to be an essential service, so it thinks that that would be a case in which it would be proportionate for a trans man not to use that gym at all. That sounds like discrimination to me.

Claire Baker: At the moment, we do not have evidence that that is happening in the public sector.

Florence Oulds: We have talked about it many times.

Claire Baker: Last week, the Government said that it was doing an audit of what facilities there were. I do not know what stage that is at, and you might argue that that will be the conclusion, but we do not have evidence that that is happening at the moment.

Florence Oulds: Many trans people have told us that that is happening.

Claire Baker: Okay.

The Convener: We have run out of time. Thank you to our panel for coming to see us this morning. I reiterate what I said last week, which is that, if you want to share any further evidence or examples with the committee, please get in touch. We would be delighted to see that.

We will now suspend briefly to allow for a change of witnesses.

10:47

Meeting suspended.

10:52

On resuming—

The Convener: I welcome to the meeting this morning's second panel of witnesses, who are all from the Equality and Human Rights Commission. We are joined by Dr Mary-Ann Stephenson, chair; Penny Hobman, deputy chief executive; and Jennifer Laughland, head of Scotland legal. Thank you all for attending.

We have a range of questions that we will have a back-and-forth exchange on, but, before we start, I invite Mary-Ann Stephenson to give the committee some reflections.

Dr Mary-Ann Stephenson (Equality and Human Rights Commission): Thank you very much, convener, and thank you for inviting us to appear before you. We are really glad to be here.

I thought that it would be helpful to start with a common understanding of what our code of practice does and does not do. I know that this has been covered by previous witnesses, but I think that it is important to state that the EHRC does not make the law—Parliaments do. The Equality Act 2006 sets out a range of powers and duties that we have, including the power to issue codes of practice, but the code itself did not, and does not,

create new law. It does not remove the rights of trans people; and it does not require every service to be single sex.

What it does is to provide an explanation of the law and practical guidance on how to use the Equality Act 2010 in everyday situations where separate or single-sex services are allowed on the basis of biological sex—for example, for the protection of women's privacy, safety or dignity. Indeed, having met a number of men's groups earlier this week, I should also say that separate or single-sex services for men can be important as a proportionate means of meeting a legitimate aim.

It is also important to point out that the issue of separate or single-sex services is one aspect of the code, which is a 300-page document that covers all protected characteristics and all services, public functions and associations and gives real-life examples of where everybody's needs can be met. This is one small section of that 300-page document.

We were really pleased to see those who gave evidence to the committee last week explaining how they were implementing the law. Those bodies seemed to believe that working within the code was something that they were able to do.

Another point to flag up is that we do not enforce or implement the code. It is statutory guidance—it is not a set of rules that we enforce. We do enforce the law, where needed, but our first step in our role as regulator is to help those who bear duties under the law, such as providers of services or public functions, to understand the law so they can take all necessary steps to comply with it and to protect the rights of all protected characteristic groups. The code is one part of that understanding and compliance.

We are engaged in ongoing monitoring and work to ensure that the code is understood, and we are talking to a wide range of stakeholders. However, it is important to recognise that the code has been in place only since August, so it is quite early to be assessing its implementation.

The Convener: Thank you for those comments, which provide a helpful starting point for us. It would also be really helpful if, in your responses, you could give us any experience or examples of how the code is being implemented from a Scottish perspective, or any points on which organisations in Scotland have contacted you for further guidance. I appreciate that the code applies to all four nations, but as we are in Scotland, I think that it is important to have that Scottish perspective.

Dr Stephenson: The code does not cover Northern Ireland, because the 2010 act does not apply there. It has separate equality legislation.

The Convener: Thank you for that clarity.

As a starter from me, I appreciate your comments about the role of the regulator, but do you have a sense of how the code has landed with public sector organisations? You have already referred to the reflections that we heard last week, but have you had many direct approaches for further guidance?

Dr Stephenson: It is one of the areas that we are looking at. Because it is broad and covers all protected characteristics, the code does not go into every single potential scenario or situation. We are aware that public bodies and other organisations have produced guidance; as was mentioned last week, NHS England has produced sector-specific guidance, and Michael Dickson, I think, from NHS Scotland said that similar guidance would be helpful for Scotland. Guidance has been produced by ukactive for the leisure sector, and UKHospitality has produced guidance explaining the key changes and their relevance to hospitality businesses.

Although the code sets out what the law is—and the law itself is clear—how it is implemented will be sector specific. Because different sectors provide services in different ways and do different things, there is often a need for sector-specific guidance.

The Convener: You said that the code covers a whole range of issues. We have spent quite a lot of our time talking about single-sex spaces et cetera, but are there other areas of the code, and any implications in that respect, that you would want to draw our attention to?

Dr Stephenson: The largest group of inquiries raised with us is around disability. I have spoken to the Advisory, Conciliation and Arbitration Service on this, too; although it is in the employment space rather than the services space, those views are still relevant. When we think about, say, access to facilities, it is important to recognise that millions of disabled people do not have the access to facilities that they need when they are in public spaces. That lack of accessible facilities is something that we really need to think about.

We also know that the UN is considering a convention on the rights of older people, which makes the provisions on age discrimination particularly relevant. Therefore, we are keen to hear insights into and examples on that evolving area of human rights.

11:00

The Convener: You have made it clear that the guidance that has been produced does not set the law; it is simply guidance. As an organisation, how often do you review the guidance?

Dr Stephenson: The previous code of practice was published in 2011. We started work on updating the code of practice in—was it 2023?

Penny Hobman (Equality and Human Rights Commission): It was 2022.

Dr Stephenson: That was long before my time. A draft had been submitted to the minister before the judgment in the For Women Scotland case, and that section had to be revised to take account of the judgment in that case.

The codes of practice are big, because they cover all services, public functions and associations across all protected characteristics, and there is a lot of case law that needs to be taken into account, which takes a significant amount of time. We also produce other guidance. We produce technical guidance and guidance that is short of a code.

The code has a particular status. Although it does not make the law, it can be taken into account in courts and tribunals. However, we produce all sorts of focused guidance on specific areas, such as guidance for employers on how to support women who are going through the menopause or how to deal with sexual harassment. Those are areas in which we have recently produced different forms of guidance. Some of that guidance is more detailed, technical and legal, while some of it is more general and accessible.

The Convener: You mentioned that you produce technical guidance. Have you been requested to produce further technical guidance on how to implement the code in respect of the issue of single-sex spaces, which has been discussed quite widely?

Dr Stephenson: We are currently looking at areas in which it seems as though more guidance is needed. I might come to Penny Hobman on that, because she has been leading on that work. The production of such guidance might be for us or it might be for other organisations.

For example, we have been in contact with the Charity Commission, which is producing its own guidance on the Equality Act 2010 for the sector in England. We have also reached out to the Office of the Scottish Charity Regulator to understand in which areas it is receiving queries on the code, because there are issues for charities where the 2010 act and charity legislation intersect. Similarly, in the area of employment, the health and safety at work legislation intersects with aspects of the code. Therefore, we are looking at areas where more guidance might be needed.

Penny, do you want to say a bit more about that?

Penny Hobman: Sure. We are doing a piece of work on understanding of the code to identify whether there are any gaps in knowledge or understanding where additional support might be needed, either from us or from other regulators or umbrella bodies. We are taking a very evidence-based approach so that we can identify those knowledge gaps. For example, we are drawing on various sources of evidence, including our own internal evidence, on issues that have been raised directly with us through correspondence or referrals, or that have come to light through our own research or through our awareness of discussions in the media and social media. We also undertaking structured engagement with stakeholders, using a structured set of questions, so that we can gather evidence.

That work might help us to identify where we need to do further research or further targeted engagement, with a view to understanding whether there are gaps in knowledge in particular areas, where we might want to do something over and above the code to support particular sectors that are struggling to understand and implement the law.

The Convener: Thank you for that. I will bring in Claire Baker.

Claire Baker: Could you say a wee bit more about the ongoing monitoring? You said that it is early days. Will the ongoing monitoring include Scotland? Our evidence sessions have been focused on the guidance on single-sex spaces, but you have mentioned older people and disability. Will the monitoring cover all aspects of the code?

Dr Stephenson: Yes, the ongoing monitoring will cover all aspects of the code, because we want to know how well the code is helping people to understand their obligations under the Equality Act 2010.

Jennifer Laughland might want to say a bit more about what is happening in Scotland.

Jennifer Laughland (Equality and Human Rights Commission): As part of the overall piece of work, we are looking at how the law applies to organisations in Scotland. As Dr Stephenson mentioned, we recently had conversations with OSCR about how issues for its sector might be dealt with.

Claire Baker: Last week, we heard from the Scottish Prison Service, the NHS, leisure centres and the police. Are those organisations involved in the monitoring, or is that a misunderstanding of the monitoring? Is it a broader approach?

Jennifer Laughland: It is broader than that. We look at evidence from a range of organisations and sectors, so it is not targeted specifically at a particular organisation. Obviously, we are interested in what bigger organisations and public sector organisations have to say, given their remit,

how many services they provide and how many people they cover.

Dr Stephenson: The evidence that you receive is also useful for us. We watch all the evidence sessions closely to see what is coming up and whether we need to follow up on any areas.

Claire Baker: I do not know whether you were able to listen to the evidence given by the previous panel of witnesses, which included Scottish Trans and the Equality Network.

Dr Stephenson: Yes.

Claire Baker: Towards the end, they described the code as confusing and difficult to follow, and they said that it was leading to lots of confusion and the need for legal advice. Do you recognise that description of the code? Where do you think that understanding comes from?

Dr Stephenson: I disagree with that interpretation of the code. I think that the code is straightforward. I am aware that there has been lots of commentary that has described it as, for example, unworkable. I have had meetings with people who have publicly said they think the code is unworkable, and, when I have asked them what aspects they think are unworkable, they have said that they think there is something in the code that is not in the code, and we have been able to point that out. There has been a huge amount of misinformation about what the code is and what it requires. We have been trying to counter that through social media, interviews and talking to people, but it is very difficult when people say that the code requires certain things that it does not.

Secondly, some of the belief that the code is unworkable is because people want to do things that would open them up to a case for discrimination under the Equality Act 2010. That is not a question about the workability or otherwise of the code; that is about them disagreeing with the law. Of course, we are all entitled to have different views on the law and to campaign to change the law, but that is not a question of workability; it is a question of the law.

Claire Baker: Can you confirm that the code has been updated but the law is still the same as it was?

Dr Stephenson: The law is still the same as it was.

Amanda Lindsay: I understand that the EHRC reviewed 404 examples and contacted around 19 organisations whose policies misrepresented the law, and all 19 subsequently removed those policies. How many of the 19 operated in Scotland and, of those, how many received Scottish public funding or provided advice to Scottish public bodies?

Dr Stephenson: I do not know the answer to that. Do you, Penny?

Penny Hobman: By way of background, that was a piece of work that we undertook early last year, before the Supreme Court judgment. That was based on the UK Government, prior to that judgment, issuing a call for input, asking for examples of where organisations were misrepresenting the law. To some extent, it was not a complete monitoring of the whole country; it was what people had chosen to send in to the Government. It then asked us to review those cases, and we looked at them. As you say, 404 were passed on to us. We reviewed all of those, and that was when we found that organisations were misrepresenting the law by saying that there was a right to access services on the basis of self-identified gender, which, since the first For Women Scotland case, was clearly not in line with the law.

As you say, we then wrote to those organisations and asked them to remove or revise their policies, and they all did so. We were satisfied that that action had been taken. I do not have the data on where those were, geographically. In general, in our enforcement work, we tend not to want to give a running commentary on whom we are engaging with and why. Basically, that is to allow the enforcement to take place in appropriate circumstances.

Amanda Lindsay: When a Scottish public body identifies third-party guidance that conflicts with the statutory code, what should it do immediately to implement the code?

Dr Stephenson: Sorry, but are you asking about when a public body has statutory guidance that conflicts with the code?

Amanda Lindsay: If a public body in Scotland identifies third-party guidance that conflicts with the code, what should that body do?

Dr Stephenson: All bodies, including public bodies, have a duty to follow the law, so they need to follow the law—the Equality Act 2010—as is set out in the code. Third-party guidance can be a combination of legal advice and lobbying, or policy advice. That can be useful, but organisations need to use their judgment on whether such guidance helps them to provide services in a better way while still being in line with the law. When such guidance advises them to break the law, they should not be breaking the law.

Amanda Lindsay: Thank you.

Holly Bruce: I thank our witnesses for coming to speak about the code and flag that the UK Government's equality impact assessment of the code of practice highlighted significant concerns about the impacts on trans people specifically. A lot of our witnesses have used the term "double

exclusion", which I am sure you will have heard in discourse. Essentially, it means that trans people could be barred from the space aligned with their gender and the space aligned with their birth sex, effectively leaving them with no service at all. Just in the past hour, we have heard that that is happening on the ground for trans people. Will you comment on that? Will that issue be considered in the ongoing review and monitoring of the code?

Dr Stephenson: That certainly should not be happening. We make it very clear in the code that trans people should not be left in a situation where there are no services that they can use.

On what is referred to as double exclusion, there are two separate things going on. The first and primary point is that the starting point of the Equality Act 2010 is that you should not discriminate against anybody on the basis of a protected characteristic, and that includes the protected characteristic of sex. Where there are exceptions—where doing so is a proportionate means of meeting a legitimate aim—that allows you to provide separate or single-sex services. It was clear in the 2022 Supreme Court judgment in the first For Women Scotland case, and in the more recent case, that that is on the basis of biological sex. In those circumstances, obviously, we say that there needs to be provision for trans people who do not want to or cannot use the services for their biological sex.

On the second point, about exclusion from services for your own sex, we put something in the code on that, because it was specifically covered in the Supreme Court judgment. It is something that could be referred to in court, so it is important that service providers know that this is in the Supreme Court judgment. It is worth reading it out. It states:

"Moreover, women living in the male gender could also be excluded"—

that is, from a separate or single-sex service for women—

"under paragraph 28 without this amounting to gender reassignment discrimination. This might be considered proportionate where reasonable objection is taken to their presence, for example, because the gender reassignment process has given them a masculine appearance or attributes to which reasonable objection might be taken in the context of the women-only service being provided."

That is not a general exclusion; it applies in a very narrow set of circumstances. The reason why that was included in the code is that it was included in the Supreme Court judgment and we felt that it was important that service providers were aware that that is the law. However, we tried to clearly explain that that would happen only in certain limited sets of circumstances; that the judgment involved had to be a balanced one, weighing up all other things; and that trans people should not be left in a situation in which there are no services that they can use.

11:15

Certainly, however, if there were instances when there seemed to be misunderstanding of what that means, we would look at ways of filling that information gap. That is an example of the point that I made earlier about the code having been talked about in a way that has served to stoke people's fears about things that are unlikely to happen or should not happen. One problem is that, particularly in these days of artificial intelligence, when people are not sure what to do and put a question into ChatGPT, they can get all sorts of inaccurate information back and then think that they are obliged to do something. If people are not certain about something, they should read the code rather than commentary on the code. Then, if they do not know exactly what to do in their particular circumstances, they need to take independent legal advice.

Holly Bruce: I referred to people being left with no service at all—that is happening on the ground. People are choosing to self-exclude from services because of safeguarding risks. What do you say to that?

Dr Stephenson: As I said, people should not be left in a situation where there are no services that they can use. Since I started in this role, I have been clear that we want a society in which everyone has access to the services they need. Sometimes, those services can be provided equally and in the same way to everyone; sometimes, they have to be provided differently to different groups of people. For example, disabled people might need particular services, or there might be needs for separate or single-sex services. Those are often ways of realising people's human rights. For example, women's article 8 or article 3 rights might be realised through the provision of separate or single-sex services.

In those circumstances, it is important that alternatives are available for people who cannot or do not want to use the services for their biological sex. We make that very clear in the code, and we give lots of examples of how that could be done. We talk about ways of providing unisex or mixed-sex services, to try to ensure that everyone has access to the services that they need.

Jennifer Laughland: I was interested to hear what one witness in the previous evidence session—I cannot remember who it was—said about the information that is available to users of services. That was a really good point, and it is important for organisations to think about that. Public sector organisations should probably be

doing that anyway when they are considering their public sector equality duty. They should think about how to provide information, so that service users know what to expect. For example, with appointments at premises where information has been provided in advance, it is usual to get information about how to get there, transport and so on. Service providers could think about providing information on what services are available for different groups of people, so that people know what they can access before they get there.

In relation to the urgent situations that were discussed earlier, that is a bit more difficult, but it can be helped by having signage, perhaps outside buildings before people come in, so that they do not feel that they need to have a difficult conversation or a conversation that they do not want to have with someone they do not know. Those are things that organisations can usefully do to help people feel able to access services.

Holly Bruce: Thank you for that clarity.

I have one final question. You mentioned people seeking legal recourse if they feel that the code has not been met or their rights are not being upheld. It is not easy for people to seek legal advice. It is expensive, and people might be unable to do so or be scared to venture down that route. Frankly, some people do not have the confidence or belief that they will be heard. I understand that, under section 28 of the Equality Act 2006, your organisation can provide legal assistance, including on rights. Is that provision being utilised at the moment by groups such as trans people?

Dr Stephenson: In terms of our power to provide legal assistance, one thing that I should highlight is that we have had an extremely significant cut to our budget. When we were established, 20 years ago, our budget was £70 million. It was successively cut and was set at £17 million 10 years ago. It has broadly remained the same ever since, so we have had a real-terms cut. All of that has significantly affected our capacity in a whole range of areas. For example, periodically, we used to offer funds that people could apply to for small amounts of money for particular cases. We have not been able to do that for a while. It would be good to do so again.

I absolutely take your point that going to law is expensive and difficult, and that it can be off-putting for people. That is one of the reasons why our enforcement strategy is based on providing guidance and advice, to get upstream of that. You can see our code as a way of helping people to understand equalities legislation without having to get their head around it and how it works. Beneath that, there may be a series of more specific, focused and tailored pieces of work looking at different areas. As Penny Hobman said, we are actively looking at that and developing our plans for what we are going to do.

Holly Bruce: I absolutely hear you on legal action being the last port of call, but some people feel that they cannot even get there. Will you clarify the position? Do you offer legal assistance to people under section 28?

Dr Stephenson: We used to have a helpline that offered advice. However, that was taken off us several years ago, so we no longer run it.

Jen Laughland wants to comment on that.

Jennifer Laughland: The helpline still exists, but it is not directly run by us.

We do not provide representation to, for example, a member of the public directly. Potentially, legal aid is available for that type of work if someone has a solicitor.

We still offer section 28 funding. However, as Mary-Ann Stephenson said, it is more limited. In the past, we ran specific projects in which we offered funding on specific themes. That is more limited now.

However, we continue to consider funding requests on a case-by-case basis for matters that fall within our remit. When an applicant already has legal representation, any funding granted is provided directly to their solicitor rather than to the individual.

The Equality Advisory and Support Service, which runs the helpline, provides us with data and reports, so we get information about the cases that are coming to it, and we use that information to consider what other actions we might take in the future. If, for example, we are seeing a pattern in the cases, that might prompt us to consider how we might respond.

Holly Bruce: That is great to hear. You said that the funding has been used to help people with other protected characteristics and that disabled people are one of the primary groups you hear from. Could existing funding be extended to trans people who are experiencing difficulties?

Jennifer Laughland: As Mary-Ann said, we do not have a fund for a specific protected characteristic group, but we have provided funding for specific themes. It is possible for us to provide funding in individual cases if people present to us. As Mary-Ann also said, the funding is limited, unfortunately, so we are not in a position to take on a huge number of cases involving any protected characteristic at this time, because of our resource constraints. We have a system for triaging any cases that come to us and deciding which we will take forward and which we will not, and we have

published information online about how we make those decisions.

Holly Bruce: Thank you.

The Convener: Before I bring in Meghan Gallacher, I just want to jump on the back of that response, if I may. I absolutely appreciate your comments about your funding capacity and the things that you are not able to take forward, but, with regard to implementation of the code, do you have any data on whether such requests have increased? I appreciate that you might not be able to take those requests forward, but what does the data look like? Has there been an increase in requests for support? I do not necessarily expect you to have that data to hand today. If you do, that is great, and I will pause there. However, if you do not, it would be wonderful if you could send it to the committee following the meeting.

Jennifer Laughland: Off the top of my head, I am not aware of any increase. However, I will come back to you on that.

The Convener: Thank you.

Meghan Gallacher: Good morning to you all. I accept that it is still too early to measure the impact of the code's full implementation, but these sessions have been helpful in highlighting some of the concerns that are coming through, and I welcome the clarity of your responses. The evidence has been really helpful, not just as a reminder to us but as an indication of the issues that we might revisit some way down the line.

I want to return to the issue of misinformation, which I think is important, even though the implementation of the code itself is still in its infancy. As we have heard, there is a lot of misinformation and misinterpretation going around. Do you feel that it is incumbent on all organisations, whether they be women's groups or LGBT groups, to provide the correct guidance on the code to ensure that there is uniformity in what is expected? I think that that is where some of the misinformation is stemming from.

Dr Stephenson: There are a few things to highlight in response to what, I think, is a really important question.

Clearly, there are profound disagreements about what the law should be. We live in a democracy; people are entitled to disagree, and they are entitled to campaign for the law to be changed. To that extent, people can say all sorts of different things, because they are talking about what they would like to see. However, when it comes to describing what the law actually is, it is really important to be accurate to ensure that individuals know what to expect and that service providers, who might be taking advice from specialists, know that they can trust it.

There is a separate point that is less about accuracy and more about the tone and tenor of the debate. It is really clear that significant numbers of trans people, particularly younger trans people, feel very anxious at the moment. Some of that is to do with the fact that what they thought the law entitled them to turned out not to be the case, and that was a surprise and a shock. I can understand why that has upset people. Obviously, there were other people who felt very upset about how the law had been understood, and many women, in particular, are happier now because of their desire to have single-sex spaces.

However, some of this is about the way in which the code has been characterised and talked about, and the really inflated language that has been used about its excluding all trans people from public life, about genital checks to ensure people's access to services—all that sort of stuff. I understand that feelings are running high, and people are upset, but that sort of thing does not help. What it does is create more anxiety among people about things that the law—and the code—does not say.

I think that it is incumbent on all of us to try to take the temperature down a little bit in this area and to recognise that at the heart of the Equality Act 2010 is the aim of trying to build a society where everybody is able to live with dignity, to have access to the services they need, not to face discrimination, and so on. That includes within it treating some people differently in some circumstances, and that is legitimate.

11:30

That needs to be done in a way that ensures that other people still have access to services, and we need to work through how to do that. Sometimes, it is straightforward; at other times, it is a bit more complex. For example, we heard in the discussion about health that clinical needs will always come first. Those needs would come before any sort of single-sex service in the NHS if there is an emergency, for example.

We need to be able to talk about this in a calm and respectful way, recognising that there are multiple people in these situations who have rights, and sometimes people want incompatible things, so we have to work out how best to get there. What we have done in the code is to set out what the Supreme Court ruled on the Equality Act 2010 and to say that this is where the law is now in terms of how these rights are balanced.

Meghan Gallacher: That is really helpful and, again, I appreciate the way that you are balancing this and making sure that we are fully cognisant of what the code does and does not do.

My view is that it is also incumbent on organisations that directly support people through particularly challenging times—and this could be one of those times—to make sure that they are providing the correct guidance so that it does not cause any further upset or any further difficulties.

On the legal points that have been mentioned previously, I fully appreciate that resources are tight, but I wonder whether organisations could, if they wanted to, look to support individuals with these particular types of cases as well. I understand that there is a lot in this—there is a lot to grapple with and there is a lot to understand—but, again, it should not fall wholly on you and the work that you are carrying out. I would suggest that there has to be a shared responsibility, so that anyone who is trying to access wider support could go to the organisations that provide that and also get the funding to do that from Government.

Dr Stephenson: People receive support in these areas in multiple ways. We also need to recognise a broader context, which is the overall reduction in advice and support services, which means that it can be much harder, as well as involving court backlogs and so on. These questions exist within that wider context. However, I think that you are right about other organisations. Our role is to provide guidance that helps duty bearers—the people who have the responsibility to uphold the law—to know what they are obliged to do. Other organisations can also play an important role in helping to break that down for different audiences or make it accessible for a general audience. We are also looking at where we can fill those gaps, so this is a shared responsibility.

Meghan Gallacher: That is helpful. Thank you.

Penny Hobman: I spoke earlier about the work that we are doing to identify gaps in understanding. In doing that work, we recognise that the EHRC is not always necessarily the right organisation to fill those gaps in understanding, so we will consider which other organisations we might need to work with to help to fill gaps in understanding of the law or to address barriers to complying with the law. We will continue to do that and to work with partners where appropriate.

Jennifer Laughland: Often, specific sectors will know better than we do what will work within their sector in terms of applying the law, so it is important that we are not only producing guidance ourselves but encouraging and speaking to other people who have those responsibilities within their own sectors.

Meghan Gallacher: That is helpful. Thank you.

The Convener: You have said that you will work with other partners to take the heat out of the situation. Who will you work with in Scotland? Are you able to give some examples? All sorts of phrases have been used. People have talked about misinformation and the code being unworkable, and comments have been made about double exclusion. That should not be happening, but it is clear that different information is being provided. Which other partners are you working with in Scotland?

Penny Hobman: I will make some more general points, and then Jennifer Laughland will speak specifically about the situation in Scotland.

As I said earlier, we are taking an evidence-based approach, which will help us to identify the right partners. We are using the evidence that we already have and are gathering more targeted evidence to understand where there are particular gaps. So far, we have found that those gaps tend to emerge on a sectoral basis. Mary-Ann Stephenson mentioned that the charity sector was one that had come up, as there are some gaps in people's understanding of how the Equality Act 2010 works alongside charity law. We have reached out to the regulator in England and Wales and to the regulator in Scotland to understand what sort of queries they are receiving and whether there is a need for further support to help to fill those gaps.

My answer to your question is that the evidence-based approach will lead us towards which partners we need to work with. We are not presupposing that there are particular sectors that we will need to work with. We are assessing the evidence across England and Wales and across Scotland.

The Convener: It is wonderful that you are following the evidence—it is absolutely right that you are doing so—but I am trying to ascertain how you are ensuring that you are not self-selecting who you want to speak to. How will you ensure that an open dialogue takes place? A lot of the misinformation is coming from the public rather than from the service providers, public bodies and associations that are implementing the guidance. How will you ensure that members of the public can feel confident that the right people will be at the table when it comes to ensuring that the guidance is implemented as it should be, that it is not unworkable and that people will not experience exclusion from multiple angles?

Dr Stephenson: As well as meeting providers and regulators in different sectors, we spend quite a bit of time meeting stakeholders. We have expanded that activity in the past year. Because lots of people have written to us asking to discuss the code, I have spent a lot of time meeting LGBT and trans organisations in Scotland as well as in England and Wales. I have also met lots of women's organisations and service providers in

the domestic abuse sector, as well as organisations that provide services to men, including groups for male survivors of sexual abuse and organisations such as men's sheds, which do work on mental health.

We are continually picking up experience from organisations that deliver services and from regulators, as well as from organisations that represent groups with different protected characteristics and people on the front line in small organisations. As has been pointed out, it can be complicated and difficult for organisations on such limited budgets to obtain legal advice.

Jennifer Laughland will be able to talk specifically about the situation in Scotland.

Jennifer Laughland: Mary-Ann Stephenson has mentioned the organisations that we have met. We have met the Scottish arms of UK organisations, as well as Scotland-specific organisations. I am a bit reluctant to give you a list off the top of my head, in case I miss people out.

I would not say that we are self-selecting in the sense that, when we have spoken to people about the changes, we have tried to cover a wide range of organisations and, as Mary-Ann Stephenson has pointed out, have specifically sought out people who have different views, who provide different types of services and who work in different sectors, and we have engaged with them.

The Convener: Okay, thank you. If you are able to provide further details following our session, that would really help the committee's understanding of where we are.

Claire Baker: I have two questions. In the interests of time, I will ask them together.

Last week, the Women's Rights Network said, in relation to the pace of implementing change, that there was "inertia" across the public sector. After the Supreme Court judgment, the EHRC said that the legal position had been clarified and was effective immediately. Although the code was published this year, a longer timescale has been associated with it. What is a reasonable period within which organisations should comply with the code?

Evidence has been centred mainly around spaces and physical places, but last week For Women Scotland referred to the delivery of care, and in particular intimate care. Can you clarify how the code applies to delivering that service? It rubs up against other rights that people have in terms of the information that they have to disclose to their employer. That is quite a complicated area, so I wonder whether you could say a bit more about it.

In summary, my questions are about the timescale for implementation and about the delivery of intimate care.

Dr Stephenson: You are absolutely right. There was a whole message being shared, to the effect of, "We have to wait for the code," but we said, from the moment that the Supreme Court judgment was given, that organisations did not have to wait for the code before they acted. We also said, "You are vulnerable to legal challenge now if you don't look at any policies that you might change." Indeed, we saw legal challenges occur in the intervening period. Service providers should have been aware of the changes.

However, it is very easy for those of us who are steeped in this area to think that everybody knows about it. In the public sector, people should be aware and taking action. However, if you are a smaller business that does not necessarily pay a huge amount of attention to the news, you might not be aware of the Supreme Court judgment at all. In terms of how we seek to work with organisations, we do not seek to jump from a great height on people who are acting in good faith and taking action now to sort out issues that they might not even have realised that they needed to address before the code was published.

Your question about the delivery of intimate care has raised a really important point about people's rights in relation to such care as a service and about the need for the sex of the person providing that care to be specified. That also interrelates with employment issues, so the issue can become more complicated. People are aware of their own sex, and they are aware that, if somebody requests care from a person of the same sex, they should respect that request. That is a really important issue for a lot of women, particularly older and disabled women.

The Convener: No other committee members are looking to come in. We have a little bit of time left, so Kate Nevens, do you want to ask any questions?

Kate Nevens (Edinburgh and Lothians East) (Green): That would be great, thank you. What is the EHRC itself doing to implement the code in its own work and workplace, and has it faced any difficulties or issues in doing so?

In terms of helping other organisations understand the code, I am sure that you are aware that there are a number of women's organisations, including service providers or associations, that wish to include trans women but not cis men in their work. Is that option still possible under the law, and how can the code help organisations that are in that situation? If it is not possible to do so and still be in line with the code, is the balance fair?

11:45

Dr Stephenson: Penny, do you want to answer the question about workplace?

Penny Hobman: Just to be clear on the first point, the code covers services, public functions and associations; it is not an employment code. We have a separate employment code that covers the employment sphere. As EHRC is not a service provider or a provider associated with public functions and associations, the code is not directly relevant to the role that we play as an employer.

Does that help? I am not sure whether that was the question. More generally, as an employer, we would uphold our duties in that circumstance.

Kate Nevens: You have a physical space and, like the Parliament, you have people visiting. Does the code apply in any aspect of your work?

Penny Hobman: The code is about the provision of services, public functions and associations as an employer, which I suppose is what you are asking about. We will need to provide updated guidance to the employment sphere in due course, but, yes, we are cognisant of the principles around provision of facilities in our spaces.

Jennifer Laughland: Perhaps you are asking whether we provide services to members of the public, but we do not provide services where members of the public come into our buildings, so that is not an issue that we grapple with.

I am not sure whether that is what the question is about. I think that the employment issue has been addressed, though.

Dr Stephenson: On your question about women's organisations, it depends on what those organisations are, what they are doing and how they are set up. If you are talking about a club or an association—a group of women who are meeting and organising activities among themselves, which are not open to the general public—one of the things that the code makes clear is that it is possible to have an association that is open to people with more than one protected characteristic. You could, for example, have an association that was open to women and trans people.

For a very small group of fewer than 25 members that does not have a formal constitution—for example, most book groups and informal walking groups—the 2010 act does not apply, so people can organise themselves in whatever way they want. If you have, say, six or seven people meeting for a book group, you can do what you want.

If you are providing services to the public, the code is clear. You do not have to provide single-sex or separate services. There are situations where not doing so might amount to sex discrimination against women, if they have a particular need for that, but, where you do, that has to be done on the basis of biological sex.

That does not mean that services cannot provide single-sex services and have some services that are available to trans people. For example, a rape crisis centre could offer a universal service that is open to everybody and, within that, some female-only space. You might see a centre that has different offers for different groups of people on different days, depending on their needs. Some services might not generally admit men but might have some facilities that they provide to them.

In relation to domestic and sexual violence centres, there is a difference between services such as helplines, which might be open to everybody—one person ringing a helpline does not affect another person wanting to ring the helpline—and other services such as residential accommodation, where there is a clear need for single-sex provision. However, even there, some domestic violence services might have a combination of shared accommodation and self-contained accommodation, which in the past might have been developed, for example, for women who have older teenage boys whose presence might make other women in shared accommodation feel unsafe but who obviously also need to flee the family home. In some cases, that accommodation is offered to trans women if it is needed.

There is a wide variety of ways in which organisations can provide single-sex services when they are needed and trans-inclusive services when they are needed.

Kate Nevens: That is incredibly helpful. Is the EHRC providing guidance to organisations?

Dr Stephenson: As we have said, we are looking at whether more guidance might be needed in this area. In fact, a large number of organisations in the violence against women and girls sector are already doing what I have set out. They might have provided single-sex services for a long time but felt under threat about doing so because of pressure from funders and commissioners not to do that in certain circumstances. Other organisations might always have provided a mix of general services and women-specific services.

One of the issues that has come up in England—I doubt that the position will be much different in Scotland—is that some organisations were obliged, under the terms of the funding available, to offer services to both women and trans women. If organisations have a contractual

obligation and a legal obligation, that needs to be worked out. Statutory funders have obligations to ensure that the services that they commission are in line with equalities legislation, but I imagine that such issues can be resolved relatively straightforwardly.

Penny Hobman: Some of the examples that Mary-Ann Stephenson has talked about are provided in the code. We provided examples of mixed-sex services being provided alongside single-sex services, and we provided examples of different types of association based on one protected characteristic, or two or more. Those examples are included in the code, even if there is still a lack of understanding and we need to do more.

Claire Baker: I want to clarify something. If a rape crisis centre or a women's aid centre wants to provide only single-sex services, can it do so without the risk of challenge?

Dr Stephenson: It absolutely can. Service providers can provide a combination of different services. Commissioners need to look across the piece and ensure that they commission services for everybody. That will probably include a combination of more generic services and specialist single-sex services. However, we must recognise that the provision of single-sex services is an important way of ensuring that women's human rights are realised. Failure to provide such services can sometimes amount to sex discrimination. I am not saying that all services should be obliged to do these things. What I am saying, to those who say that they want to do these things but are not allowed to, is that actually, there are lots of ways in which they could do so.

The Convener: This has been a helpful evidence session. I thank all our witnesses for coming today—I really appreciate it. It has given us lots to think about, especially in relation to how we take the heat out of the situation. As I said at the start of the meeting, the Scottish Human Rights Commission has said that, as MSPs, we have a key role as guarantors of the human rights of everybody in Scotland.

That concludes our business in public. We will move into private session to consider the remaining items on our agenda.

11:54

Meeting continued in private until 12:50.

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