



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# EQUAL OPPORTUNITIES COMMITTEE

Tuesday 5 October 2010

Session 3

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**Tuesday 5 October 2010**

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**EQUAL OPPORTUNITIES COMMITTEE**

**17<sup>th</sup> Meeting 2010, Session 3**

**CONVENER**

\*Margaret Mitchell (Central Scotland) (Con)

**DEPUTY CONVENER**

\*Marlyn Glen (North East Scotland) (Lab)

**COMMITTEE MEMBERS**

\*Malcolm Chisholm (Edinburgh North and Leith) (Lab)

\*Bill Kidd (Glasgow) (SNP)

Christina McKelvie (Central Scotland) (SNP)

\*Stuart McMillan (West of Scotland) (SNP)

\*Hugh O'Donnell (Central Scotland) (LD)

Elaine Smith (Coatbridge and Chryston) (Lab)

**COMMITTEE SUBSTITUTES**

Rhoda Grant (Highlands and Islands) (Lab)

\*Tricia Marwick (Central Fife) (SNP)

Mary Scanlon (Highlands and Islands) (Con)

Margaret Smith (Edinburgh West) (LD)

\*attended

**THE FOLLOWING GAVE EVIDENCE:**

Elish Angiolini (Lord Advocate)

Alex Neil (Minister for Housing and Communities)

Yvonne Strachan (Scottish Government Equalities and Sport Directorate)

Hilary Third (Scottish Government Equalities and Sport Directorate)

**CLERK TO THE COMMITTEE**

David McLaren

**LOCATION**

Committee Room 4



## Scottish Parliament

### Equal Opportunities Committee

*Tuesday 5 October 2010*

[The Convener *opened the meeting at 09:30*]

### Migration and Trafficking Inquiry

**The Convener (Margaret Mitchell):** Good morning, everyone, and welcome to the 17<sup>th</sup> meeting in 2010 of the Equal Opportunities Committee. I remind all those present, including members, that mobile phones and BlackBerrys should be switched off completely as they interfere with the sound system even if they are switched to silent.

We have received apologies from Elaine Smith. I am pleased to welcome Tricia Marwick to her first meeting of the committee as a substitute for Christina McKelvie, who is unable to be here today. I invite her to declare any relevant interests.

**Tricia Marwick (Central Fife) (SNP):** I have no interests to declare, convener.

**The Convener:** Thank you for that.

The first item on the agenda is an evidence session with the Lord Advocate. It follows on from our session last week with the Cabinet Secretary for Justice, who said that it would be more appropriate to direct our questions on prosecutions for trafficking to the Lord Advocate. I am therefore pleased to welcome the Lord Advocate, the right hon Elish Angiolini QC; Dawn Samson, senior depute at the Crown Office; and Michelle Macleod, head of policy at the Crown Office.

I express a special thank you to Elish Angiolini for attending the committee at such short notice. The committee really does appreciate it, because we are keen to get your evidence. Do you want to make an opening statement?

**The Lord Advocate (Elish Angiolini):** No, I am happy to move straight to the questions that you want to pose.

**The Convener:** Okay.

A recurring criticism has been made throughout the committee's inquiry about the lack of any convictions in Scotland for human trafficking, particularly as there have been successful prosecutions elsewhere in the United Kingdom. Will you outline any difficulties that are being faced in securing convictions for trafficking offences in Scotland? What can be done to address those difficulties?

**The Lord Advocate:** The criticism is not well made, on the basis that we can prosecute only what comes through the door and is reported to us. We are simply not having cases reported to us under section 4 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 or section 22 of the Criminal Justice (Scotland) Act 2003, which are the two main acts that relate to trafficking. There have been very few cases. Four cases have arisen, but because of the sufficiency of evidence we were able to initiate proceedings in only two of them. We took one case to trial at the High Court, but again because of the evidential difficulties, which are significant in such cases, it was not successful.

However, that is not to say that there has not been significant activity in relation to human trafficking in Scotland. There has been activity, not necessarily under those two statutes, but in relation to immoral earnings, keeping brothels and a variety of different offences that we have deployed against a background of human trafficking where we have not had sufficient evidence of trafficking itself. It is important that that is understood. Although the offences under section 4 of the 2004 act and section 22 of the 2003 act are extremely important and have penalties of 14 years attached to them—which is why, if possible, we wish to prove these cases—they do not exist in isolation. There is a significant number of tools in the armoury against human trafficking, which we require to deploy if we are to be effective in disrupting the activity as well as dealing with it and punishing it.

**The Convener:** Thank you. We will develop and discuss the implications of that as our questioning goes on.

**Marlyn Glen (North East Scotland) (Lab):** Thank you for that answer, which has clarified things a little. However, the committee would welcome your comments on whether there is a need for more awareness raising of trafficking issues with prosecutors and judiciary in Scotland. What is the status of the draft guidance for procurators fiscal in Scotland that was identified as a key action in the update to the "UK Action Plan on Tackling Human Trafficking"?

**The Lord Advocate:** I cannot answer for the judiciary. Awareness raising or training for the judiciary is a matter for the Lord President and the Scottish courts administration. However, prosecutors have been very alive to the issue, particularly in the past two years. Great efforts have been made to ensure that, as far as possible, we proselytise to as many prosecutors as we can on the issue, because awareness across the service is important.

You will be aware that the prosecution service has trained more than 500 specialists in sexual

crime since the review of sexual crime, and a key part of that involves an element on human trafficking and recognition of the various indicators of that. During the summer, the specialists who have been appointed to deal with human trafficking out in the areas—we have identified specialists who will deal with these cases when they are reported to them—have also undergone training, which was produced by the Crown Office in conjunction with the other agencies that support us in this.

There is now a national sexual crimes unit in the service, which considers cases from the very beginning. In the past, Crown counsel had the role of dealing with cases that came in from procurators fiscal after an investigation had taken place. The involvement of Crown counsel was at the tail end of the presentation of the case in court. We now have a group of specialist prosecutors in the Crown Office who deal with sexual crimes as soon as they are reported by the police to the specialist procurator fiscal, so we will be able to engage in the case at the earliest stage, which is useful bearing in mind the substantial evidential difficulties that we can face in such cases. That is very important.

To ensure that as much excellence and knowledge are gathered as possible, we have appointed the advocate depute Kathleen Harper, a member of the Crown counsel team, as the national lead in human trafficking. She has been specifically dealing with the two current cases that are under consideration in the Crown Office.

It is important to emphasise that many people who were referred to us from operation pentameter 2, for instance, were prosecuted, but not under the specific legislation that I have mentioned. Some of them were imprisoned and some were fined. I think that you have asked previously about the outcome of pentameter 2. There were several outcomes, ranging from fines to imprisonment.

**Marlyn Glen:** We will have further questions on that later.

**The Lord Advocate:** On training, the guidance is due to be issued at the end of this week, and we will send it out to procurators fiscal. It has already formed part of the training, as it has been developed. Our guidance differs from the English guidance. We have not just focused on immigration but addressed the situation across the board and raised awareness, so that, in every aspect of cases where individuals are reported as either victims or accused, prosecutors are alert to indicators that an individual might be a victim of trafficking. We have hyperlinked that guidance across to other case-marking guidelines, reinforcing the message such that it will not only be sexual crime specialists or those who deal with

gangmasters or similar activities who will be alert to it—the guidance will permeate through the case-marking guidelines. That is important for the purpose of awareness—it should become bread and butter to more people.

Human trafficking is viewed by the public as still a marginal activity, although we know that it is a growth industry, with 12.3 million people across the globe being trafficked for a variety of purposes, not only sexual. Of those people who are involved in serious organised crime in Scotland, 3 per cent are involved in human trafficking. The aim is to ensure that there is not complacency about the situation, and that we are attempting to deal with it.

There is a presumption against prosecution where there are credible indicators that individuals are victims of human trafficking. That is an important step forward in how we address such cases and in encouraging people to come forward and report cases to us.

**Marlyn Glen:** That is reassuring. The committee is becoming increasingly aware that women, in particular, are being trafficked within the UK, not just into the UK.

**The Lord Advocate:** Yes.

**Marlyn Glen:** It is good to hear that you have highlighted that.

The committee has had difficulty in pinpointing who has responsibility for the various parts of the justice system in this respect. I do not know whether there is a difficulty with the different organisations not meshing together properly.

**The Lord Advocate:** I do not think that that is the case. The serious organised crime task force, which is chaired by the Cabinet Secretary for Justice and of which I am a member, along with representatives of the major agencies, has proved a useful mechanism. Over the past two years we have been examining all aspects of organised crime, using a strategic approach. In particular, an intelligence database has been developed, covering who is involved in organised crime—who is in the networks and the hierarchies. That database represents a significant development.

The police and prosecutors in Scotland work together closely, along with other agencies. It is not just the agencies in the criminal justice system that are involved—local authorities, faith groups and community groups have intelligence and background knowledge that can assist.

There has been an emphasis on training. During the past year, Dawn Samson has been involved in the training of social workers, police officers and other groups on human trafficking, to raise the issue that you identified, that is, that the issue is not just about prosecutions but permeates many

areas, such as health. For example, people who come into accident and emergency units to seek treatment might be victims of human trafficking. We must ensure that all members of the community who have responsibilities and can make a difference are co-operating in that respect.

**Marlyn Glen:** Does that still leave us with the problem of whether the judiciary is sufficiently aware of trafficking? You said that you cannot comment on the judiciary.

**The Lord Advocate:** I cannot comment on the judiciary. However, the Judicial Studies Committee is actively looking at a number of issues. I am sure that the Lord President and the committee are planning training or awareness raising on trafficking—that might already have happened.

People who have been involved in the system for any length of time cannot be unaware of the fact that very often what we see in the context of domestic abuse cases, for example, can be evidence that a person is potentially the victim of trafficking. We have often found that individuals were not trafficked into Scotland but came here to seek refuge from the south, where there are larger metropolitan areas and more lucrative pickings from prostitution. Dawn Samson might be able to confirm this, but I think that of 49 individuals who were found to be potential victims of trafficking, only 13 had been trafficked in Scotland. The others had come from the south.

That is an important factor to be aware of. People might come north of the border to seek refuge, but there is much danger of their being further exploited when they are here, because of the very vulnerabilities that they acquired as a result of trafficking or which were the reason for their being trafficked in the first place. For instance, a person with a drug addiction can fall as quickly into the grasp of individuals who will exploit them in Scotland as they would do in England.

**Bill Kidd (Glasgow) (SNP):** You mentioned the different protocols in implementing the law in England and in Scotland. When the United Kingdom Border Agency deals with the prosecution service in Scotland, does it have the knowledge base that enables it to achieve the aims?

**The Lord Advocate:** You referred to protocols; I clarify that there is a prosecution code for the Crown Prosecution Service.

Of course, Scotland has an independent prosecution service, but we do not operate in isolation from what is taking place in England and Wales. The issue is not simply a UK matter. Pan-Europe and worldwide, the closest understanding and collaboration across borders is required, because the issue is not parochial. Prosecutors in Scotland must act along with prosecutors from

other jurisdictions. There are mechanisms such as Eurojust, which ensure that there is understanding.

The UKBA, along with other agencies that report crimes to us, is very much enmeshed in the process. I think that next week senior prosecutors in Scotland will attend a workshop with the UKBA, at which idiosyncratic aspects of the system in Scotland will be highlighted. For example, members will be aware of the evidential requirement for corroboration that applies across the board in Scotland but which does not apply in England and Wales and in other jurisdictions in Europe.

Such issues might be regarded as a further challenge, given that it is extremely difficult to secure evidence of the trafficking aspect. It might be possible to prove evidence of the result of trafficking, where someone is living off immoral earnings or is keeping a brothel, but to prove that they facilitated a person's arrival in the UK is much more difficult when, for example, distance is an issue or there is not a strong body of evidence around the arrival to show that the individual was brought over in the circumstances that are required evidentially to establish that they were trafficked.

I think that the UKBA is aware of the issues. As I said, the issue is not viewed in a parochial way. You will be aware that a few weeks ago a major operation took place, which involved Northern Irish and Scottish prosecutors and police. It is not about this jurisdiction getting a statistical plus by securing a further prosecution; it is about the public interest and how we assist other jurisdictions. We must co-operate with other jurisdictions to ensure that cases go to court elsewhere, even if they do not do so in Scotland. That does not mean an absence of activity here; a prosecution might well arise elsewhere.

09:45

Three weeks ago, I addressed the International Association of Prosecutors in The Hague and I chaired a session there with the world's prosecutors on human trafficking. Even with the additional requirement for corroboration in Scotland, the same evidential difficulties as we face are being faced elsewhere, because of the intrinsic difficulties of victims giving evidence when they are very suspicious of authority and might be culturally opposed—if they come from parts of eastern Europe—even to speaking to police officers.

Victims are concerned about their safety—about their life and limb. A more acute concern is what might happen to their families in the countries from which they come. That concern is less immediate

but is no less a persistent fear for victims in relation to the consequences of co-operation with authorities. As members can imagine, that is a formidable obstacle to overcome for those who are required to give evidence.

The answer is to support people in such circumstances as far as possible, to accelerate the prosecution process when it is used and to look laterally for other evidence to support the victim's testimony, in order to take the weight off the victim. That other evidence might involve surveillance and undercover police officers, and it will mean a considerable passage of time, because such matters can take months. I do not want to say anything about operations that are taking place, but members can take it that investigations into human trafficking are active across the United Kingdom.

**The Convener:** Before we leave the issue, I want to be totally clear about one point. The UK action plan said:

"In Scotland new guidance for prosecutors is in draft form and work is underway in respect of ... training".

That new guidance was expected by the end of 2009. When we took evidence on 14 September this year, it was noted that the guidance is still in draft form. Where are we with the guidance?

**The Lord Advocate:** As I said, the guidance will be published this week—at the end of the week, we hope. We have not simply mimicked the Crown Prosecution Service guidance, because we have had to consider the distinct evidential issues that apply in Scotland, as well as taking a broad-brush approach.

We are not simply examining prosecution under section 4 of the 2004 act and section 22 of the 2003 act; we are considering other aspects of prosecution that can be exploited. We are looking at confiscation, which is a major weapon, and encouraging the use of antisocial behaviour orders to close brothels when the evidence is clear.

Confiscation of assets when prosecution cannot be obtained for a main offence is a method of disruption. Likewise, health and safety legislation and environmental health legislation can be used as part of the process of disruption, to demotivate those who would otherwise think that Scotland might be a place to invest in human trafficking and to make them go elsewhere. That is the strong message. If proceeds cannot be confiscated, HM Revenue and Customs can become involved. That is another fairly effective weapon in dealing with the profits that can be gained in this serious area of criminality.

**Malcolm Chisholm (Edinburgh North and Leith) (Lab):** I presume that the guidance contains the presumption against prosecution when

indicators that someone is a victim of trafficking are present, to which you referred. How does that contrast with the present situation? Is it a significant shift?

**The Lord Advocate:** The committee heard evidence from Mr Watson of Amnesty International, who suggested that victims were not prosecuted in England and Wales. Perhaps he has misunderstood the Crown Prosecution Service guidelines, which do not say precisely that. Similarly to us, the guidelines identify credible indicators that would be taken into account in the decision to prosecute. However, no blanket statement is made that a victim of trafficking would not be prosecuted per se. No prosecutor could give such immunity.

We can say that a presumption would be made against prosecuting individuals when the indicators were present. It is clear that it would not be in the public interest to prosecute people who are victims of the process. The difficulty is similar to that which we face in those situations when someone who been abused as a child goes on in adulthood to abuse other children. The more serious the crime they commit thereafter, and the more remote it is to the act of trafficking, the higher the public interest would be in prosecuting. For example, if someone commits murder or another serious crime, or traffics in drugs at a serious level, and there is no immediate manifestation of the fact that they are acting under duress or force, or have been drugged, the public interest would promote the decision to prosecute. The situation is not absolute, but there would be a presumption in those cases that relate to trafficking itself.

**Malcolm Chisholm:** Is there any shift on that in the guidance that is due to be published next week, or is it just a restatement of the current situation?

**The Lord Advocate:** It is, I suspect, a confirmation of what procurators fiscal would do, while making it absolutely clear that there is a presumption against prosecution in those circumstances.

**Malcolm Chisholm:** Do you think that that has been happening?

**The Lord Advocate:** Prosecutors always exercise their common sense and look at the individual facts and circumstances of a case when there is a suggestion that there are strong mitigating reasons and that the person is a victim. The difficulty lies with ensuring that there is a recognition of the trafficking status. That is why the training that we have done during the summer was important to proselytise those within the service and the police to recognise that someone who might be reported for stealing a Mars bar from a

shop might be involved in trafficking, what factors can be used to identify those individuals, and how to acknowledge that in a report that is utterly unrelated to trafficking. Increased knowledge might allow the referral mechanisms to ensure that that person can be protected and that action can be taken against those who are engaged in the trafficking.

It is important that there is a general understanding that trafficking is not just confined to sexual offending; it might manifest itself in other areas of criminality. That is what we have been doing as part of the training, and we have based that training on the guidance that has been published.

**Malcolm Chisholm:** Is there any information about the extent to which victims of trafficking have been prosecuted for other offences, or does the uncertainty around identification of that mean that such information is not available?

**The Lord Advocate:** Historically, there has been no research, particularly in Scotland, about the extent of that. It would be extraordinarily difficult to determine that, even from a database. Inevitably the information would be anecdotal and come from the experience of prosecutors.

I suppose that I could describe myself as a veteran prosecutor, having been one for 27 years. Even in cases in which I prosecuted those who were involved in soliciting, as it was then, at the district court in Glasgow, we rarely saw an able and whole individual dressed in furs. We often saw people who were significantly troubled by difficulties with health, mental health and drug addiction, or people whose background disclosed that they themselves had been victims of abuse or sexual abuse.

At that stage—27 years ago—and up to about 15 years ago, not many people from outwith the UK appeared in court. Most of them were from Glasgow and local to Glasgow. That has changed, and many of the people that we now see exhibit the same vulnerability, but they also come from other parts of the world and are thus even more vulnerable. They are isolated from family and other support mechanisms, they have cultural difficulties with authority, and they have a fear of being returned. Many of them came here because they thought that it would be an opportunity to get away from poverty or other problems that they might have faced at home.

**Hugh O'Donnell (Central Scotland) (LD):** Following on from Malcolm Chisholm's observations, I will look at the specifics of prosecution in relation to operation pentameter 2. From the information that we have received, I note that 18 individuals were initially identified as victims. In light of your comments about

guidelines, I am particularly interested to know how many of those who were prosecuted as a result of that operation were subsequently identified as victims of trafficking.

**The Lord Advocate:** None. Two were identified by the police in operation pentameter 2 but were not referred to the prosecutor. We have not prosecuted any victims knowingly on that basis.

The committee requested information on the outcomes of prosecutions. We have collated that information. There have been 17 prosecutions. I do not want to keep members here while I narrate the outcomes, but I am happy to provide the committee with that information for its report in writing.

**The Convener:** That would be welcome.

**The Lord Advocate:** I note that the penalties for brothel keeping and immoral earnings are to increase to seven years on indictment, which will be helpful.

It is important not to compartmentalise matters into the two specific offences in section 4 and section 22. Those are important, but much of the facilitation of what is happening is taking place in other parts of the world. Often the gap between receiving and arrest of individuals is significant by the time that the police go in, so evidence of air tickets and credit card payments that have been made to facilitate someone's arrival may not be readily available. That is why it is just as important to look at other offences, to ensure that they are as robust as possible and that we tackle the manifestation—the product—of trafficking.

The imposition of minor fines may be explained partly by a lack of appreciation of what is taking place in contemporary Scotland as a background to trafficking. It is important that the Parliament understands that and has the ability to look at the penalties that are available to deal with the product of trafficking as well as with trafficking offences. We know that there is creativity and innovation in organised crime. Some members of the community in Scotland think of organised crime as consisting of cocaine dealers—people who import drugs or firearms into the country—but that is only part of the problem. Criminals do not always specialise—they are flexible and innovative and are involved in a number of activities. They are not divided—often those who engage in trafficking are also involved in the drugs trade.

People may take a particular moral approach to prostitution, but they need to know about the background to the issue when they make decisions about it. People who snort cocaine may think that that is a fairly acceptable activity, but if they were aware of the background to the activity—which affects issues that they are extremely concerned about, such as the

environment and ecology, and is associated with acts of brutality—they would not engage in it. They would be utterly horrified if they were acutely aware of what is taking place in the source countries.

Similarly, people would be horrified if they were aware of the awful exploitation of humanity that is taking place as a result of human trafficking—the violence, the rape and the servitude that is created by bonded travel. Individuals may come to this country not against their will but of their own volition, with the intention of having a career or new life here, but thereafter they may have to pay the debt for their travel, which bonds them into prostitution. We are talking about debts of £60,000 for young girls who are in their late teens or 20s. That is a formidable problem for individuals.

It is important not to look at the issue in silos but to ensure that the law in Scotland deals with each aspect of it effectively—through confiscation, the activities of HM Revenue and Customs, health and safety offences and environmental offences, as well as the central offences of which we hope we will have more reports in the future.

**Hugh O'Donnell:** Those comments are helpful. I have a couple of other questions.

**The Convener:** I am conscious of the Lord Advocate's time.

**Hugh O'Donnell:** I will make my questions brief.

I guess that you work very closely with the various police authorities. Are joint training programmes in place?

**The Lord Advocate:** Yes.

**Hugh O'Donnell:** We have received evidence on the role of the Gangmasters Licensing Authority and its ability to take forward prosecutions in Scotland. Have you encountered any difficulties in that area?

10:00

**The Lord Advocate:** In Scotland, we had the first prosecution in the UK under the gangmasters legislation. It might not have come to the attention of the Parliament that we were the first to prosecute using that legislation. So we are well aware of it—particularly procurators fiscal in rural areas. We are also aware of other reasons for which persons are trafficked. For instance, in the drugs industry, persons are trafficked for the purposes of drugs production. The issues that do not relate specifically to sexual exploitation are dealt with by the High Court units in the Crown Office. The issues are specifically considered to ensure that the evidential challenges in what are

relatively new areas of activity for prosecution are clearly understood and appropriately applied.

You asked about training with the police, which is an important aspect. We have emphasised joint training with the police on all matters, not simply trafficking, to promote better understanding from the beginning of the evidential challenges in proving any case in a Scottish context. At the sexual offences conference on Friday, which I addressed, we had a session on human trafficking that was presented by Detective Sergeant Sandra Jamieson of the Scottish Crime and Drug Enforcement Agency. Prosecutors, forensic scientists and doctors were present at that. People from across the disciplines were present while we discussed the increasing challenge of human trafficking that is presented to us. That is very much the way forward for the future.

**The Convener:** In evidence, we were told that domestic servitude was more of a problem or, at least, there is more of it, than sexual exploitation, but that tends to get more headlines. Is it more difficult to pin down domestic servitude?

On the sharing of information, you mentioned talking to various prosecutors in other countries. What information can you get from them to help us identify people way before they ever start getting a foothold in Scotland?

**The Lord Advocate:** Prosecution tends to be reactive. We assist the police in an investigation by providing warrants, but mainly we react to what is reported to us by the police and other agencies. The criminal justice system reacts when the evidence is produced. Before that, it is important to be able to exploit the intelligence base. Prevention is absolutely crucial. I know that European prosecutors, particularly in eastern European countries, are engaged in education in schools. They go into schools and colleges to warn girls. They have video presentations. The Council of Europe is doing a great deal of work to ensure that young girls and boys throughout Europe who might think that they were coming here for an interesting life away from the problems that they face are aware of the dangers. It is as important for prosecutors to engage in that education exercise, along with our colleagues in the justice system, as it is for us to do the actual prosecution. If we can inoculate people initially by education, we prevent them from becoming so vulnerable to becoming victims in the future.

**Tricia Marwick:** You mentioned evidential challenges in pursuing cases under section 4 and section 22. Of those who have been charged and convicted of lesser offences, which we welcome, is it possible to say how many could have been prosecuted under section 4 and section 22 if the need for additional corroboration under Scots law had not been there?

**The Lord Advocate:** It would be extremely difficult to disaggregate that. One main obstacle is that victims of human trafficking do not always perceive themselves as victims. There is a delicate debate about free will and exploitation of the vulnerable. There are cultural difficulties. The absence of corroboration might be because someone is not willing to give evidence. In their subjective view, that is for good reasons—they do not want to die or their family to be murdered or injured, or they might have developed what is known loosely as Stockholm syndrome. They have strong emotional bonds with those who have trafficked them. As members will know, romance is often used as a way of trafficking. A good-looking young man might engage a girl and become involved in a relationship with her, but thereafter she might be trafficked by him. That is not uncommon in Europe.

Those psychological mechanisms for seducing people can have a powerful effect when it comes to asking them to give evidence. People think that they will be deported and do not want to be. They might be earning more money than they have seen in their lifetime, so there are economic factors. They might be given some liberty and have a degree of independence after they have been groomed. In a sense, trafficking is not very different from what happens with young children. That psychological bond is difficult to overcome. It is not dissimilar to the type of situation with domestic violence in which a partner—a man or a woman—who is the victim of chronic domestic abuse for 25 or 30 years does not take any steps against it, because of the economic and emotional situation and because of the strong tie that they have with the abuser.

**The Convener:** That completes our questioning. I thank the Lord Advocate for coming at such short notice. We became conscious as our inquiry progressed that there was a gap in our evidence. We very much appreciate your coming to fill it with such worthwhile information. We look forward to receiving the additional information that you promised the committee.

## Decision on Taking Business in Private

10:06

**The Convener:** Agenda item 2 is a decision on whether to consider our draft report on our inquiry into migration and trafficking in private at future meetings. Do members agree to consider that report in private?

**Members** *indicated agreement.*

## Migration and Trafficking Inquiry

10:06

**The Convener:** Agenda item 3 is a decision on whether to seek approval for a parliamentary debate on our report into migration and trafficking. Are members content that we pursue that?

**Members** *indicated agreement.*

**The Convener:** We are looking to apply for the maximum time available for the debate. Do members agree that we should seek to have the maximum time?

**Members** *indicated agreement.*

**The Convener:** I suspend the meeting to allow the next panel of witnesses to take their seats.

10:07

*Meeting suspended.*

10:09

*On resuming—*

## **Disability, Race and Gender Equality Duties**

**The Convener:** The final item on the agenda is an evidence session on progress by the Scottish Government in its gender, disability and race equality duties. It is my pleasure to welcome to the meeting Alex Neil MSP, the Minister for Housing and Communities; Yvonne Strachan, the head of the Scottish Government's equality unit; and Hilary Third, the team leader of the equality policy and communities branch. Do you want to make an opening statement, minister?

**The Minister for Housing and Communities (Alex Neil):** I will make just a short statement, convener, if that is okay.

I welcome the opportunity to discuss the developments that have been made on the equality agenda and to answer the committee's questions on progress. I know that the committee is particularly interested in the Equality Act 2010, the public sector duties and the progress that is being made on race, gender and disability. I will say a little about each of those, by way of introduction.

We welcome the Equality Act 2010 and the introduction of a new single equality duty. We are keen to develop a suite of specific duties that are strong and effective while being flexible, proportionate and focused on outcomes. Last year, the Scottish ministers consulted on the scope of the specific duties and we are now consulting on proposals and draft regulations. The consultation was launched on 13 September and will run until 26 November. We plan to lay regulations at the end of January with a view to their coming into force in April.

The Scottish Government has identified two ministerial priorities in advancing gender equality: tackling violence against women and addressing occupational segregation. We published reports on progress and evidence in July. Violence against women continues to blight the lives of individuals and communities and is unacceptable in the 21<sup>st</sup> century. The Scottish Government continues to regard it as a priority area for work and is providing financial support and working in partnership with women's organisations, public authorities and a wide range of stakeholders and interests.

Last year, jointly with the Convention of Scottish Local Authorities, we published "Safer Lives: Changed Lives: A Shared Approach to Tackling Violence Against Women in Scotland", which provides a strategic framework for that work. The

reports on violence against women that were published in July showed considerable progress and activity throughout the public sector, but there is still much to do.

Gender stereotyping remains a key issue, and we have identified addressing occupational segregation as a ministerial priority. The reports identify that work is on-going throughout the public sector but that, again, more requires to be done. Building on the work that was undertaken by the occupational segregation working group, we are supporting the close the gap partnership in its work to engage the finance and construction industries on the issue.

On disability equality, we want a fair and equal Scotland in which disabled people have choices, control, the opportunity to succeed and the opportunity to be all that they can be. Independent living is a key priority for the Government and we are working in co-operation with disabled people to advance that. We are seeking to improve opportunities for disabled people in the labour market, particularly with regard to access to employment and moving disabled people towards sustained mainstream employment. That is why, in February, together with COSLA, we published a supported employment framework for disabled people.

On race equality, the Scottish Government continues to make progress in the priority areas that were identified in the race equality statement. As you know, we have provided significant amounts of funding to partners working in the voluntary sector to tackle discrimination and to achieve greater race equality. We recognise the specific issues for Gypsies/Travellers, and the Scottish Government remains committed to working with stakeholders in addressing those issues.

I look forward to discussing those issues and, no doubt, others with the committee this morning.

**The Convener:** Thank you very much for that comprehensive opening statement, minister. Can you elaborate on the gender equality objectives, in particular the key objectives of addressing poverty, the gender pay gap, transgender equality, and child care, caring and flexible working?

**Alex Neil:** I will take the four objectives together. The overriding one, in many respects, is the first one, which is on poverty. There is no doubt that the recession and the credit crunch have—as we see from the figures that were published yesterday and in the Joseph Rowntree Foundation report last week—had an adverse impact on poverty levels throughout Scotland and the UK. We remain absolutely committed to tackling poverty, particularly as it affects children. That is a high priority for the Government.

On the pay gap between men and women, as I mentioned in my opening statement, we are supportive of close the gap. That partnership is making significant progress already, particularly in the financial services sector and the construction sector, both of which are areas of potential medium-term growth in the Scottish economy. We believe that we have a realistic chance of making significant progress in closing the pay gap between men and women in those sectors.

As you know, our early years framework governs our approach to child care. That is another area in which we believe that we have made substantial progress, even if—as with all the areas under consideration—more remains to be done.

On the transgender agenda, I am glad to say that Hilary Third is just back from a conference in Sweden on transgender issues, on which she will be able to give you more detail. She tells me that at that conference Scotland was congratulated on being the most advanced country in Europe in how we deal with transgender issues. In particular, we were congratulated on our support for the Scottish Transgender Alliance, as we were the first Government in the whole of Europe to provide funding to a transgender organisation. That is something of which we should be proud.

10:15

**The Convener:** Is there anything you would like to add, Hilary?

**Hilary Third (Scottish Government Equalities and Sport Directorate):** I echo the minister's words. I spoke on behalf of the Scottish Government about our commitment to transgender equality. The fact that we were the first Government to fund a transgender organisation—it has been a long-term package of funding that is now in its fourth year—is still particularly remarkable in Europe. The fact that we work based on an inclusive definition of “transgender” is also unusual. Many European countries provide some protection and rights to transsexual people who fully transition to the gender that they identify with, but in Scotland we are working on a broader definition that includes people who have not gone through gender reassignment, intersex people, cross-dressers and so on. That is seen as another example of very good practice.

**The Convener:** Thank you for that.

How is progress on action to meet the key gender equality objectives being monitored and how will it be monitored in the future?

**Alex Neil:** That will be done in a variety of ways. Under the Equality Act 2010, we will report on progress on the pay gap—which I believe will not

be done south of the border—and we will ask public authorities, which are covered by the act, to do the same. Many of the statistics, particularly on pay, tend to be produced by UK organisations or to be the result of continuing surveys of household income. Undoubtedly, we are making some progress. For example, local authorities have made progress on single status in recent years. Although there are still some local authorities that have not fully implemented it, by and large it is an example of an area in which we have made significant progress.

One of our main indices of poverty in Scotland is the Scottish index of multiple deprivation, but we also produce other publications and research on specific issues. I thought that the Rowntree report that was published last week was extremely helpful in indicating some of the poverty issues that we are addressing in Scotland. It was well received, albeit that aspects of it—on parts of the UK other than Scotland—made for depressing reading.

Progress on transgender issues is more about interaction with the transgender community and assessing their changing perceptions of whether things are improving. That is extremely difficult to measure from a statistical or quantitative point of view. Evidence of improvement in attitudes and provision tends to more qualitative and—to be quite honest—to some extent, anecdotal.

On child care, as you know, my colleague the Cabinet Secretary for Education and Lifelong Learning publishes regular reports on coverage throughout Scotland.

**The Convener:** Thank you for that.

You mentioned the progress reports on the ministerial priorities on gender equality, particularly occupational segregation and tackling violence against women. Could you comment on the variation that seems to exist in public bodies and others in the extent to which people understand those two issues and how they tackle them?

**Alex Neil:** In answering that question, I will take the two issues separately because how they are understood may vary.

First, on violence against women, the role of the national group that I chair is fundamental, although not because I chair it—

**The Convener:** You are too modest, minister.

**Alex Neil:** Absolutely.

The role of the national group is fundamental because we bring together round the table a wide range of organisations. The Association of Chief Police Officers in Scotland, Scottish Women's Aid, Rape Crisis Scotland, local authorities and a range of other organisations are represented on it. The

group engages with other organisations. For example, we are supporting 73 different projects on violence against women, and we are getting a degree of participation in and recognition of the subject area.

A good example is the work that Strathclyde Police does around old firm games, which I have referred to before when giving evidence to the committee. Strathclyde Police's work in the run-up to, during and in the immediate aftermath of old firm games has made a dramatic difference to the incidence of domestic violence, to dealing with those who are guilty of it despite the police's efforts to prevent it, and in engaging and highlighting it as an issue for all those involved—the police, the local authorities, football fans in this case, and others.

Tackling violence against women is an on-going process. It is not something on which we will one day be able to say, "We've made everybody aware of it." Indeed, the latest figures show an increase last year in the reported incidence of violence against women, with the figure now 57,000 or 58,000 incidents, so we still have a lot of work to do. I am particularly keen on the perpetrator programmes, which are a key part of breaking the cycle of violence against women. The perpetrator programme—we call it the Caledonian programme—is an important element, and it raises the profile of the issue where it matters.

The work on occupational segregation that the Government has done with our colleagues in COSLA and elsewhere has raised the profile of the issue. Again, unlike south of the border, as I understand it, we are specifically asking public authorities to report on progress henceforth in removing occupational segregation. That is an advance because it will give us more detailed information and enable us to identify the organisations in the public sector that are not making the advances that they should be making to eliminate occupational segregation—and it is right that we talk about eliminating it.

**The Convener:** Will you give us some examples of the work that has been done with COSLA specifically on occupational segregation?

**Alex Neil:** As I said, there is the close the gap partnership, and I will again mention the finance and construction industries. A lot of work is being done through specific groups that include representatives of those sectors. They are looking at the issue in their sectors and are putting together suggestions and recommendations on what can be done. That involves COSLA, but it particularly involves representatives from the industries.

Construction has a reputation for being a very macho industry. The gender profile of participants

in the construction of the industry in the UK is different from the profile in other parts of Europe, particularly in Russia. It is not at all uncommon to see many more women on a construction site in other countries than in this country. The work that we are doing with the construction industry through the group, which with representation is pulling everything together, is a good example of how we can get into an industry to work with it—and construction is probably one of the most macho industries, if I can put it that way.

The construction industry is entirely different from financial services. Financial services is clearly dominated by a relatively small number of large companies, and we are encouraging many of them to give a stated commitment to ending occupational segregation. The construction industry is more difficult because of its structure: it is much more diffuse, with many small one-person businesses. However, both groups are working hard and I expect to see results in the next year or two, which will, I hope, make a significant contribution.

**The Convener:** How does COSLA fit into that equation?

**Alex Neil:** COSLA is involved in the working parties with us. It represents 32 local authorities. Local government is of course one of the biggest employers in Scotland, and in all its guises—education, central services, social work and so on—it has a major role to play in leading by best practice, as the Government is doing, to ensure that there is no occupational segregation in any local authority in Scotland.

**The Convener:** Are there any specific examples? You referred to the work that has been done with COSLA, and you highlighted the close the gap partnership's work in relation to the construction industry.

**Alex Neil:** Yes. If you speak to the finance and construction working groups they can give you more specific details of the type of work that they plan to do. The key point is that the issue is viewed not just as a public sector duty, but as something that we need to get the private sector to accept so that it will work with us to end occupational segregation in Scotland.

**The Convener:** With regard to engineering and the role of colleges and universities, has any work been done to tee up at that level?

**Alex Neil:** Absolutely. I think I am right in saying that the working groups that have been set up have input—and even representation in the working group on construction—from the college and university sector. It is clear that colleges have a key role to play, not only by working with the private sector but in relation to the type of training

that they provide, and that is particularly the case with regard to construction.

Colleges are potentially important outlets for informing people and making them more aware of the need to end occupational segregation. Just as they teach people different aspects of construction, I would hope that they would also teach them that occupational segregation in this day and age is a no-no.

**The Convener:** Are there any other practical examples of things that might create occupational segregation, such as the facilities that are available for women in what is perceived as a male-dominated environment?

**Alex Neil:** It is clear from looking at the facilities on any construction site that they are very much geared to male employees. In my role as housing minister—

**The Convener:** You are aware that that is a problem, but how is it addressed?

**Alex Neil:** We want to identify where we can provide better changing facilities on site for women employees, for example, to ensure that they have access to the particular facilities that they need.

As housing minister I go round housing sites weekly—I am glad to say that I am merely opening housing developments at the moment—and I am struck by the fact that it is usually a group of men, and very seldom women, who meet me on site. The facilities that are currently available are very much geared to the needs of men rather than women.

**The Convener:** Is it just about facilities, or is there an attempt to consider diversity and the positives of employing females rather than males in some situations?

**Alex Neil:** Those are exactly the issues that the two working groups—

**The Convener:** I presume that you have to win hearts and minds.

**Alex Neil:** Absolutely. The working parties are looking at those issues in the two sectors, but there is no silver bullet. An all-embracing approach is needed: as you say, it is not just about facilities but about attitudes, recruitment procedures and the need to ensure that there is no inbuilt bias towards employing males rather than females in those particular sectors. A host of issues need to be addressed.

10:30

**Marlyn Glen:** I heard just last week about a college that lacks ladies' toilets. The provision of facilities is essential at all levels.

Will you comment on the idea of even earlier intervention? We are not just talking about college entry, because it is almost too late by the time young people get to college. If we want to make a difference to the occupations that people freely choose, we should consider intervention at school and even nursery school.

**Alex Neil:** Absolutely. My understanding is that in curriculum for excellence the wider equality issues—which incorporate gender issues and occupational segregation—are addressed as part and parcel of trying to make young people much more aware of the world around them and the need to live up to the obligations that we are discussing.

**Marlyn Glen:** That is quite a challenge.

I also have a question about men's violence against women. Strathclyde Police is building up excellent practice, but is that good practice spreading across Scotland or are there places that are lagging behind?

**Alex Neil:** There is variation, but it is important to stress that ACPOS is a very active member of the national group on violence against women, not only in that it turns up to the meetings, but in that it carries out follow-up action. It is very much a key partner and, of course, represents all the police forces in Scotland.

I singled out Strathclyde Police as an example because their work around old firm games is innovative, but that is not the only thing that the force is doing. For example, work that it has done in North Lanarkshire in co-operation with Coatbridge College has also been extremely important.

However, there are also good examples of work in other force areas. Lothian and Borders Police undertake various types of initiatives, as do other forces throughout the country. Although I mentioned Strathclyde Police, I do not want to give the impression that it is the only force in Scotland that is committed to tackling violence against women. There is a real commitment from all eight police forces in Scotland through ACPOS's active participation on the national group on violence against women.

**Bill Kidd:** I am the disability reporter on the Equal Opportunities Committee and, although it took place before my time on the committee, I am proud of the disability inquiry that the committee undertook. The report was published in 2006 and made 156 recommendations that covered the full range of issues. Before we approach any wider issues, I will ask you about a couple of points that are relevant to all disabled people.

A huge proportion of disabled people are stuck in the poverty trap because of lack of access to

employment or other barriers that cause them to not apply for jobs because they do not think they would have any chance of getting them, even though they would be fully qualified for them.

The 10<sup>th</sup> ability fest takes place in a fortnight's time. I have spoken at some of the previous events. They are important because they encourage people who have a disability to consider a wider range of opportunities, and they encourage employers to regard disabled people as potential employees.

The public-social partnerships project that promotes the design and delivery of public services through the third sector has explored ways of expanding current levels of employment for disabled people. Is it possible, or has it already been proposed, that the Scottish Parliament might follow the model of the European Parliament's paid traineeships for people with disabilities? Those have facilitated the integration of disabled people in the workplace by removing barriers to their future employment. Does the Scottish Government have a proposal to follow that?

**Alex Neil:** Before I answer that question—and I will answer it specifically—I emphasise the importance of the role of employment for disabled people. Based on the latest figures, the employment level in Scotland for disabled people is 47.4 per cent. The overall level of employment in Scotland is 73.9 per cent. The level of employment for non-disabled people is slightly more than 80 per cent, the level for people with depression and related conditions is 31 per cent and the level for disabled people with learning difficulties is 30 per cent. We have a long way to go in improving the employment prospects for disabled people. We need to try every means possible to do that.

We are already considering the suggestion about trainees. I cannot answer for the Scottish Parliament; I can answer only for the Scottish Government. Tricia Marwick is on the Scottish Parliamentary Corporate Body, so she is the right person to take that up for the Parliament. You have mentioned one suggestion, which we are considering and are keen to pursue. We all have a moral responsibility to play an active part in reducing the gap between employment levels for non-disabled people and employment levels for disabled people.

**Bill Kidd:** One of the recommendations in the committee's disability inquiry report was that the audit and inspection bodies and the former Disability Rights Commission should consider developing a framework for auditing the disability equality duty. Has that happened?

**Alex Neil:** The statutory responsibility for monitoring lies with the Equality and Human

Rights Commission, because it is an area in which the legislation is still reserved. However, we are working with the EHRC to consider how we monitor progress, not just on disability but throughout equality issues.

In particular, we are continually working with the EHRC on the ongoing further development of the equality measurement framework. As you know, the commission produces a regular report on that. It is conscious, as are we, that more needs to be done to report more information and more accurate information, and possibly even to report information more regularly. At the end of the day, though, the primary responsibility in law for measuring progress lies with the commission. That is not a hands-off approach: we are working closely with the commission and, where we can use our resources to measure progress, we do so. However, we tend to feed that into the commission, which is responsible for how often it is reported, how it is reported, the format for reporting and so on.

**Bill Kidd:** In July 2008, the Scottish Government announced its plans for promoting independent living for disabled people. The three elements of the approach are to eliminate unlawful conduct, to advance equality of opportunity and to foster good relations across all the protected characteristics. The independent living fund project was hosted by the EHRC. There is frequently a promise to encourage independent living for disabled people. Unfortunately, such promises were challenged by the Westminster Government, with its proposed changes to the ILF criteria, which would restrict new applications for disabled people who are in paid employment of 16 hours or more. Under those rules, only four disabled people in Scotland would qualify.

How will the Scottish Government be committed to supporting the ILF project beyond 2010?

**Alex Neil:** We are committed to supporting independent living right up to 2011. As you know, we cannot make any firm commitment beyond April 2011 until we see the outcome of the comprehensive spending review on 20 October but, in policy terms, we are very committed to it.

During the summer, just after the announcement of changes to the independent living fund, I met Maria Miller, the new Minister for Disabled People at the Department for Work and Pensions, and made it clear to her in no uncertain terms that I think that the reforms to the fund are very damaging and indeed the opposite of what we should be doing to advance the concept of independent living for disabled people.

We have been in regular correspondence with the UK Government not just on that particular reform, but on some of the other welfare reform

that are being mooted. I am concerned, for example, about some of the rumoured changes to disability living allowance, which could have a very adverse effect on disabled people's standard of living and employment opportunities. Indeed, I am extremely concerned that not enough thought is being given to either the consequences or the unintended consequences of some of these reforms. As I and my colleagues, particularly Nicola Sturgeon in correspondence with Iain Duncan Smith, have pointed out to the Department for Work and Pensions, we have not been consulted on any of the reforms prior to their announcement. We would certainly like to be consulted because, had we been consulted on the independent living fund reforms, we would have advised strongly against their introduction.

**Bill Kidd:** We will watch developments with interest.

With your housing hat on, can you tell us how things are advancing with regard to housing adaptations for people with disability and houses built specifically for people who might have disabilities?

**Alex Neil:** We help housing associations to fund housing adaptations to the tune of about £12 million a year. Local authorities have a similar policy in their housing revenue account and they also help people in owner-occupied accommodation.

However, my strong view, particularly given the budget cuts that are likely to be announced on 20 October and their consequences for Scotland, is that we have an opportunity to look to the future. In fact, I had a meeting on this very issue on Monday. I think that we and our partners in COSLA and the Scottish Federation of Housing Associations need to formulate a modernised strategic approach to adaptations policy in Scotland. Last week, when I met the three housing associations that specialise in housing for older people—Bield Housing Association, Trust Housing Association and Hanover (Scotland) Housing Association—I found that they hold the same view.

People need to understand the importance of adaptations in meeting people's desires. Whether we are talking about disabled people or older people who require adaptations, I think that two or three points need to be made. First, the vast majority of people want to stay in their own home for as long as possible and to live as independently as possible, and adaptations very often play a key role in that regard. Secondly, although adaptations, particularly to older properties, can be expensive, it is important that we are committed to ensuring that, where possible, those adaptations are carried out. Of course, sometimes it is physically impossible to carry out adaptations to a house, but we are very

much committed to improving the ratio of new-build houses that have wheelchair access, for example, or are fully equipped for those in our community with more extreme disabilities. Housing policy should reflect equalities policy—and vice versa—and, under very difficult financial circumstances, we are doing what we can to ensure that that happens. If, say, a local authority or a housing association spent a bit more money on adaptations, the need for additional housing to be built might be removed in some areas, because people would be able to live longer in their own homes.

I can give you the exact figure but, from memory, I am pretty sure that the Scottish budget for adaptations this year is about £12 million for housing associations, plus what local authorities invest in adaptations for their tenants and give in grants to the private sector. As you know, the Housing (Scotland) Act 2006 abolished grants for home improvements, with the exception of grants for home improvements for disabled people, who can get a grant of between 80 and 100 per cent of the cost.

10:45

**The Convener:** You talked about work that is important, especially in the context of the forthcoming spending review. If we can make the issue a priority under the equality duty and if local authorities realise that, we will have taken a major step forward.

Like you, I had the opportunity to speak to Maria Miller, who has shown interest in receiving our predecessor committee's report on disability and this committee's follow-up report. She is five months into the job, so it is encouraging that she is taking an active interest in what we are doing.

**Alex Neil:** I do not doubt her commitment, but the changes that were made to the independent living fund were premature and it would have been beneficial if they had been properly consulted on before they were announced.

**The Convener:** The issue has been awkward and problematic. How things will pan out remains to be seen.

**Marlyn Glen:** When I attended the Scottish Trades Union Congress black workers conference at the weekend, I was surprised by the amount of concern delegates expressed about discrimination in Scotland, particularly in the workplace. What progress has been made so far in tackling race inequalities in Scotland? What are your plans to report on progress in relation to the race equality statement?

**Alex Neil:** As you know, we are implementing the priorities that were set out in the race equality

statement, which we published in December 2008. We will report fairly soon—by the end of this year—on progress on each area. We are putting all that together and we will share our report with the committee.

I, too, am concerned about discrimination. I will not blame everything on the recession, but the regrettable reality is that there is a correlation between recession and an increase in instances of racism. Some people tend to look for scapegoats when they are under pressure and their jobs are under threat or whatever. I am talking about a minority of people, but what they do causes significant tension not just in the workplace but elsewhere. We have always said, and the Cabinet Secretary for Justice is on record as saying, that we must guard against that happening and nail it wherever it does happen, by following the appropriate procedures.

Very often, people who are the subject of racial discrimination do not use the law to try to get recompense, put a stop to the discrimination or whatever. The Scottish Government can try to get it across to victims of racial abuse or discrimination that they should take action through the appropriate authorities, so that the matter is investigated and properly addressed. I am happy to consider how we do more of that in relation to the workplace.

The one Scotland, many cultures campaign was extremely important. When we talked about migration at last week's meeting, we had a long discussion about the role of the media. I expressed concern that some of the debate in the media on proposals for a cap on immigration has bordered on having racial overtones. Politicians must take that on and fight it.

**Marlyn Glen:** I am sure that we very much welcome such activities to counter what might be happening. That is helpful.

How are local authorities and other key stakeholders delivering race equality? In particular, is there a shared understanding of the concept of race equality among key stakeholders? As an illustration, I will quote Rowena Arshad's comments at last year's race conference. She said:

"I was talking to a local government officer in an authority ... and when I asked what kinds of equality issues were affecting his authority ... the response was '... we do not have any race problems as there are not many ethnic minorities in the area.'"

Rowena Arshad was very concerned, and I share her concern. She suggested:

"the Scottish Government Race Equality Statement could assist by helping people to understand that race equality work needs to happen regardless of numbers. It has to be about working with all our attitudes as much as it

is about capacity building with minority ethnic individuals and communities."

**Alex Neil:** As members know, we are proposing that public authorities have to report on gender, disability and race as a public duty. One big benefit of the Equality Act 2010 is that it brings everything together and consolidates things. I think that it will make it easier for us in dealing with other public authorities to get across the message about equality, whether we are talking about race, disability, gender or orientation.

I, too, am concerned about the Rowena Arshad quote, because race relations is not a numbers game. It does not matter whether there is, one person from an ethnic minority in an area or 50, 100 or 1,000; there should be no racial discrimination, no matter what the numbers are.

Marlyn Glen asked whether there is a shared understanding of race equality. I will be honest. I cannot say that there is, because I do not know. I do not know, for example, whether there is a shared understanding of it in every one of our 32 local authorities, but I do know that a public duty covers every public authority in Scotland, including the local authority official who allegedly made the statement that was referred to.

We are determined to do as much as we can. We also rely on the Equality and Human Rights Commission and others. Obviously, we have a very good working relationship with organisations such as Black and Ethnic Minority Infrastructure in Scotland. I mentioned the question-and-answer session that I did with that organisation in Stirling last week. I intend to do more such sessions. I think that the convener suggested that we should do one in Aberdeen.

**The Convener:** I did.

**Alex Neil:** I am willing to do that. We will arrange a question-and-answer session there. That is part and parcel of my job of trying to get everybody in Scotland, not just public authorities, to have a shared understanding, as far as possible, of the importance of eliminating—not alleviating—racial prejudice in our society. All politicians must be committed to doing that. That is not just the job of the minister or ministers; it is the job of each and every one of us.

I could not honestly say that there is a totally shared understanding of race equality in all 32 local authorities, all the health boards, all the quangos and so on. They should know about and understand their duties under the Equality Act 2010 and the previous legislation that was consolidated into that act. We are implementing measures to try to ensure that all those organisations are fully aware of their obligations under the act.

**Marlyn Glen:** So can we look forward to a robust statement along those lines in the race equality statement?

**Alex Neil:** Absolutely.

**Marlyn Glen:** Thank you.

**Tricia Marwick:** You have already touched on a number of issues in the UK Equality Act 2010 and broadly welcomed the specific duty that it places on local authorities, but could you talk a bit more about what the specific impact of the act on local authorities will be? Will there be any additional financial burdens on them in implementing the act? Will the Scottish Government give additional resources to local authorities to meet their duty, if it is needed? Did the Westminster Government produce any additional money for the Scottish Government to enable it to do so?

**Alex Neil:** The answer to the last question is that no, it did not provide any additional money and I very much doubt that it will. To be fair, we do not envisage a significant additional cost or resource burden on local authorities or on any other public authority as a result of the Equality Act 2010, because it primarily consolidates the legislation on what authorities should have been doing already. Okay, the act is extended so that it covers religion and belief, maternity and pregnancy, sexual orientation and the issue of transgender. Nevertheless, on the equality duty, the act consolidates what local authorities, health boards and all the others should have been doing anyway. Therefore, in our view, there should be no net significant additional resource required resulting specifically from the implementation of the act.

**Hugh O'Donnell:** You mentioned your support, which has been much welcomed, for the agenda on violence against women. What will happen to the funding for rape crisis centres? Will they still be funded directly or will the money go to local authorities, which will make the funding decision? There is a great deal of concern in the sector. It would be helpful not only for the committee but for those in the sector to get an indication of what is likely to happen in that regard.

**Alex Neil:** As I know you understand, I will not be in a position until November or December to make a specific commitment on the amount of funding. My view is that there is great merit in continuing to fund rape crisis centres directly from the Scottish Government. Although a centre may be in Glasgow, for example, many of the people who are serviced by it will come from other parts of Scotland. To try to break this down into 32 geographical areas would be extremely difficult. I would need to discuss this with my ministerial colleagues—it is not something that we have taken a final decision on—and COSLA, but my

inclination is that it is the kind of service that is better funded directly by the Scottish Government.

**Hugh O'Donnell:** That is very kind. Thank you.

You carried out your own consultation on the changes to the equalities legislation. What do you identify as the key issues that have arisen in relation to the specific equality duties? How do you intend to address the challenges resulting from that consultation process?

**Alex Neil:** Given last week's discussion about the media, as a prelude to my answer I have to say that some of the misinformation that is being put about on the Equality Act 2010 is really quite dreadful. I read and have a great deal of time for the *Daily Express*, despite its political views, but I will read you a quote from an article on page 12 of the 4 October edition by somebody called Leo McKinstry—one of the paper's columnists. The article is headed "The Equality Act Risks Destroying British Businesses" and it is a very good example of misinformation, as it states:

"So, when it comes to recruitment, employers are told that they have a duty to discriminate against white men."

That is rubbish. It goes on to say:

"Similarly, local authorities and the NHS are required to give priority to travellers."

That is utter rubbish.

11:00

We all have a duty to set the record straight about the Equality Act 2010 and to counter such nonsense every time it is published. The claims in the article are totally misleading and untrue. Even if you are not in favour of the 2010 act, at least be accurate when you report its contents. That is extremely important when dealing with the act.

On Hugh O'Donnell's question, let me give you some examples from the consultation. We have listened to what people have said and, as we always do when we make orders and regulations, we have taken account of it. We have therefore included some things, strengthened some things and dropped some things.

One matter on which there was almost universal agreement—in fact, I think that it was universal—was the role of the impact assessment. In fact, we have probably slightly strengthened that aspect of the implementation in Scotland of the 2010 act.

Another example is mainstreaming, which was almost universally seen as being extremely important, so we will proceed with mainstreaming. We are committed to it anyway. For example, the budget statement that my colleague John Swinney will make in November will be accompanied by an equality statement.

I will pick a couple of other examples from my notes. One proposal was that we should gear the reporting to coincide with the electoral cycle. As you would expect, that is a no-no, so we have dropped it; I agree, as I do not think that it would be wise. Another important point was that we should concentrate on outcomes rather than objectives. We have taken that view on board and that is what we will do. Another suggestion was that we should keep mainstreaming as a ministerial duty and, obviously, we are doing that. Those are some examples of the results of the consultation. We are listening to what people, including the committee, have to say and we are trying to reflect their views in the way in which we implement the 2010 act.

I had a long chat with Lynne Featherstone—Hugh O'Donnell's colleague, who is the minister in the Home Office primarily responsible for the implementation of the 2010 act—and I have to say that there is still a degree of uncertainty over timetables and so on. We anticipate that the implementation of the act will, by and large, start in April next year and we will also pursue that timetable, but there is still a big question mark, in particular, over the future of the socioeconomic duty. Our understanding from our informal and formal discussions with our colleagues in London—when I say “our colleagues”, I am talking about coalition Government colleagues—is that the socioeconomic duty may not be activated by the coalition Government, but my understanding is that no final decision has been made. Once we know that decision, we have to decide what we will do up here.

**Hugh O'Donnell:** I have one small point. Unless it has slipped me by, I seem to remember that there was a race equality conference.

**Alex Neil:** Yes.

**Hugh O'Donnell:** My understanding is that it was to be a two-part affair.

**Alex Neil:** It was not originally going to be, but it ended up being a two-part affair.

**Hugh O'Donnell:** I know that we have had part 1. When are we likely to have part 2?

**Alex Neil:** I will let Yvonne Strachan update you on that.

**Yvonne Strachan (Scottish Government Equalities and Sport Directorate):** As you say, we have had part 1. With the agreement of our stakeholders among the communities and our public sector colleagues, we came to the view that, given the advance and the changes brought about by the Equality Act 2010 and the new public duties, it might be easier to have a discussion that extends across those areas than a conference that is specifically on race equality in the public

sector. We explored the matter with our ethnic minority communities and their view was that there was value in approaching it in a slightly different way, so we have not proceeded with that at this stage. We will look at how we incorporate our engagement with the public sector more broadly around the new duties and where race equality fits with that over the next period.

**Hugh O'Donnell:** Okay, thank you.

**Tricia Marwick:** Minister, you have talked about the discussions that you have had with Lynne Featherstone about the implementation of the 2010 act. I am concerned that the UK Government does not seem to have a timescale for that and that there is uncertainty over whether a socioeconomic duty will be introduced. A range of other important measures will also be held up, including the duty to make adjustments to common parts of leasehold and commonhold premises and common parts in Scotland, diversity reporting by political parties and the prohibition on age discrimination. What talks will you continue to have? Do you see the discussions that you have already had with Lynne Featherstone as the forerunner to future discussions?

**Alex Neil:** Yes. Both at official level and at ministerial level, we are involved in on-going discussions and correspondence. My own reading of the lack of clarity on some of these issues is that there are internal discussions going on within the coalition and that it is taking the UK Government longer to reach agreement internally on the way forward. I suspect that that is the main reason why we do not have clarity on a range of issues at present. I am happy to offer myself as a referee if that helps to resolve matters and get decisions made. Other than that, we will have to wait until the coalition parties make their minds up.

**The Convener:** You may recall that, when we were looking at the legislative consent memorandum report, the committee raised concerns with the Scottish Government about the proposals for the adjustment to common parts of buildings, which might not establish parity of protection for Scotland and the other parts of the UK. In Scotland, the onus would be on the disabled person to acquire the necessary funding, to secure planning consent and to carry out the adjustments, whereas in England and Wales that onus would be on the responsible person, which in most cases would be the local authority or the housing association. At that time, the Scottish Government explained that it would produce regulations on the adjustment of common parts in Scotland to ensure that disabled people in Scotland would not be put at a disadvantage in comparison with their counterparts in England and Wales. The committee was unsure about the current wording of the relevant clause, and the

Scottish Government agreed to examine the matter and discuss it with the relevant UK ministers. Has that been done? If so, what has been the outcome?

**Alex Neil:** There are three processes involved. You will remember that I came to the committee to get the LCM agreed. We needed an LCM because of the law in Scotland regarding adjustments to common parts. Let us take the example of people living in a close. If there is a factor or an agreement between all the people who live in the close about the use of the common stairwell and so on, any adjustments to cater for a disabled person—any adaptations to the close—are catered for in Scottish housing law. However, if no such agreement exists, it becomes a reserved matter. The purpose of the LCM was to give us powers to try to resolve any outstanding issues. We are in the process of preparing guidance. I will write to you next week, convener, to give you an update on when we expect to produce additional proposals.

So, there are those two processes—the internal Scottish Government one and the impact of the Equality Act 2010—and the third one is what happens with Calman. Obviously, I would have all powers transferred to the Scottish Parliament. Even if I were a devolutionist I would admit that it would make sense for all those powers—especially where there are grey areas such as in relation to the provision of disabled facilities in closes—to be cleared up and given to the Scottish Parliament. That would make life much easier for us, for local authorities, for factors, for housing associations and—what is important—for disabled people. It would ensure that disabled people had the action on adaptations that is needed to get the job done.

I will give a fuller update in writing next week, if that is agreeable.

**The Convener:** I will press you. Has the subject been discussed with the UK Parliament?

**Alex Neil:** We have had discussions not with the UK Parliament but with officials.

**The Convener:** Have you had discussions with UK ministers?

**Alex Neil:** The issue has not been raised at ministerial level, but officials have had discussions.

**The Convener:** When the committee discussed the subject on 12 January, we were under the impression that it would be raised with UK ministers, so we would appreciate an update on that.

**Malcolm Chisholm:** I am sure that we all welcome the general and specific duties. The issue is how they will be monitored and enforced.

**Alex Neil:** Enforcement is straightforward. The Equality and Human Rights Commission is responsible for that. That is the law, as you know. I have no enforcement powers other than through any influence that we can bring to bear using our budgetary powers and saying, “If you want money for this, it’s got to be part and parcel of doing that.”

Monitoring is a bit of a joint effort. In the 2010 act, the official reporting is the EHCR’s responsibility. However, as I said, we work with and feed into the commission and will continue to do that. The commission recognises—as I certainly do—the need for improvement in reporting mechanisms. Some of the data are quite difficult and can sometimes be costly to collect. In the current atmosphere, any additional collection cost will be viewed critically. The commission has an overall budget of about £70 million for the UK. I suspect that, after 20 October, that might be reduced for future years.

Another issue is capturing the qualitative measurements, which are sometimes more important. Reporting is not just about facts and figures but about qualitative issues. Marlyn Glen asked about racial discrimination. What is important is not just the number of incidents that are reported but attitudes in the workplace, for example—she referred to that. It is difficult to collect the qualitative data on attitudes that would help to inform future policy and help the commission with enforcement.

The equality measurement framework, which will continue to be developed and which will need to be expanded because of the additional remit in the 2010 act, will be the primary instrument that we will use to work with the commission to improve reporting.

**Malcolm Chisholm:** For the record, will you explain what sanctions are available to the commission in dealing with enforcement?

**Alex Neil:** As a last resort, the commission could take somebody to court. The commission tends to take a staged approach. When it finds somebody in breach, it tries to persuade them to mend their ways. If they refuse to do so, it has the power to issue a compliance order. If they refuse to comply with the order, the last resort is to go to court. The court would decide what sanction to apply to the public authority.

**Malcolm Chisholm:** Given that many public bodies have difficult budgetary decisions to make, will considering the impact of policies on equality be a particular issue? I was glad to hear that the Scottish Government would take equality into account and produce a statement, but we must consider all the local authorities, not to mention all the other public bodies. I accept that sanctions are available to the commission, but can the Scottish

Government do anything to ensure that public bodies take equality into account when they make decisions?

**Alex Neil:** I will classify public bodies in two broad categories. Some are directly responsible and answerable to ministers. Ministers use their influence and, in some cases, power—they certainly have budgetary power—to ensure that those bodies take equality into account. Local authorities form the other category. They are directly elected, so we have much less direct power in relation to them, but we want to use our influence with them.

11:15

In my view, the kind of cuts that are being talked about throughout the United Kingdom are not an excuse to bypass our obligations to disabled people or other minority groups. If anything, it is more, not less, important when money is tight to ensure that budgetary decisions are taken on a fair basis. We have a duty to do that. All ministers in the Scottish Government are conscious of the need to ensure that, when we make decisions in the next few months, we try to protect the most vulnerable groups in our society, to be absolutely fair and to apply the equality principles to which all of us have signed up.

**The Convener:** That is a fair point. There is an opportunity, rather than a threat.

**Stuart McMillan (West of Scotland) (SNP):** How did the outcomes of the Scottish Government's consultation on the single public sector equality duty inform the draft orders and regulations?

**Alex Neil:** Our decisions to retain some areas of strength and to ditch other things were a direct response to feedback from the consultation. It is extremely important that Government listens to what people are saying on such issues. Had I been a consultee, I would have opposed some of the proposals. For example, it was not a good idea to synchronise reporting with the electoral cycle. All of us, regardless of party, have signed up to the basic principles that we are discussing; synchronising of reports with the electoral cycle would send entirely the wrong message by suggesting that equality issues would become a party-political football in the run-up to elections. That is the last thing that we want to do. We must remain united on all the issues. Marlyn Glen cited the example of racial prejudice in the workplace. We must never allow that or any of the other issues that we have discussed to become a party-political football. The proposal to synchronise reporting with the electoral cycle is a very good example of an issue on which common sense prevailed.

I have given other examples, such as the importance of mainstreaming. I share the view that impact assessments are extremely important. To return to my previous answer to Malcolm Chisholm, when we take budgetary decisions over the next few months, I would like all public authorities to make substantive impact assessments of some of the key decisions that will have to be made, to ensure that disabled people, ethnic minorities and other minority groups are not unfairly discriminated against—not because someone has taken a conscious decision to do that but because it is an unintended consequence that was not thought through before a budgetary decision was taken. The impact assessment is a very useful tool for Government at every level, to ensure that decisions are taken fairly and squarely and do not have the unintended consequence of making Scotland a more unequal society.

**Stuart McMillan:** Do you think that the implementation of the 2010 act will present any problems?

**Alex Neil:** Normally there are worries about unintended consequences of, and teething problems with, legislation. The difference with the 2010 act is that it encompasses so much of what we have been doing anyway. Primarily, it consolidates previous legislation on racial discrimination, disability and so on. I accept that it extends provision to other areas, such as maternity, pregnancy, sexual orientation, religion and belief, and the transgender agenda, but the fundamentals are the same. Of all legislation, the 2010 act should give us fewest problems in terms of unforeseen challenges.

Furthermore, the act's provisions were thoroughly debated over a number of years. The previous equality act that went through the UK Parliament was the Equality Act 2006, and it was pretty soon after that act was passed that planning started for the bill that became the 2010 act. It was thoroughly consulted on and debated—not least by this committee. Assuming that we get decisions on implementation, there is no reason why the implementation process should not be fairly smooth.

**The Convener:** Flexibility, proportionality and relevance have been widely reported as being the key themes. If those are the three watchwords when the provisions are being considered, there should not be a problem.

**Malcolm Chisholm:** I noted what you said about the UK Government still making up its mind about the socioeconomic duty, although I recall that both parties in the UK Government supported the relevant provisions when they went through Parliament last year. What are the consequences for the Scottish Government? Are you able to implement the duty only if the UK Government

does, or do you want to follow its example for other reasons?

**Alex Neil:** We will not make a decision until we know what the UK Government's intentions are. We have the legal option of implementing the duty in Scotland. We are able to do that under the 2010 act, in my view. There are potential problems with that, however, and I have asked for some contingency work to be done by our legal people to explore what the challenges would be if we decided to implement the statutory socioeconomic duty but the UK Government was not going to do so in the rest of the United Kingdom.

**Malcolm Chisholm:** What would the problems be if it was to be implemented only in Scotland?

**Alex Neil:** That is what I have asked. I have been told by the lawyers that some complex issues might arise, and I am not yet clear what they are. I have asked for work to be done on that so that, if the duty is not implemented UK wide, we can make an informed decision about whether to implement it north of the border even though it is not being implemented south of the border.

**Malcolm Chisholm:** You are still minded to implement the duty in principle. Are the problems with doing so more technical in nature?

**Alex Neil:** I do not want to speculate—I have asked for a fair bit of research to be done. If the situation arises, I will come back and consult the committee before making any final decision on what we should do. At that point, I will spell out to the committee any complexities or challenges that going our own way—if I can put it like that—might present.

My view has always been that, whether or not it is in statute, we should be pursuing the socioeconomic duty effectively anyway.

**Malcolm Chisholm:** Do you have a provisional timetable for implementation?

**Alex Neil:** No, I have no timetable, because I do not know when the UK Government will make up its mind, let alone what its final decision will be.

**Malcolm Chisholm:** Assuming that the UK Government goes ahead, do you have a clear idea of which public bodies will be subject to the duty?

**Alex Neil:** Absolutely. It is the same list of bodies that are subject to the other duties in Scotland—and you have that list.

**The Convener:** That completes our questioning. Thank you very much, minister, for a comprehensive and detailed evidence session.

The next meeting of the committee will take place after the October recess, on 26 October, when we will take evidence on the independent budget review and consider our approach to the

Forced Marriage etc (Protection and Jurisdiction) (Scotland) Bill.

*Meeting closed at 11:24.*



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