



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EQUAL OPPORTUNITIES COMMITTEE

Tuesday 7 February 2012

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EQUAL OPPORTUNITIES COMMITTEE

2nd Meeting 2012, Session 4

CONVENER

*Mary Fee (West Scotland) (Lab)

DEPUTY CONVENER

*Stuart McMillan (West Scotland) (SNP)

COMMITTEE MEMBERS

*Clare Adamson (Central Scotland) (SNP)

*John Finnie (Highlands and Islands) (SNP)

*Annabel Goldie (West Scotland) (Con)

*Siobhan McMahon (Central Scotland) (Lab)

*Dennis Robertson (Aberdeenshire West) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Nicki Georgiou (Scottish Parliament)

CLERK TO THE COMMITTEE

Douglas Thornton

LOCATION

Committee Room 4

Scottish Parliament

Equal Opportunities Committee

Tuesday 7 February 2012

[The Convener *opened the meeting at 14:02*]

Decision on Taking Business in Private

The Convener (Mary Fee): Good afternoon and welcome to the second meeting in 2012 of the Equal Opportunities Committee. I remind members that mobile phones, BlackBerrys and so on should be turned off completely as otherwise they interfere with the sound system.

I start by introducing everyone. To my left, we have the clerking and research team, together with official reporters. Across the room we are joined by staff from broadcasting services and the security office. My name is Mary Fee. I invite committee members to introduce themselves.

Stuart McMillan (West Scotland) (SNP): I am a West Scotland MSP.

Dennis Robertson (Aberdeenshire West) (SNP): I am the MSP for Aberdeenshire West.

John Finnie (Highlands and Islands) (SNP): Good afternoon. I am a Highlands and Islands MSP.

Siobhan McMahon (Central Scotland) (Lab): I am a Central Scotland MSP.

Clare Adamson (Central Scotland) (SNP): I, too, am a Central Scotland MSP.

Annabel Goldie (West Scotland) (Con): I am a West Scotland MSP.

The Convener: Thank you.

Our first item of business is to decide whether to take in private item 4, on our work programme, in line with usual practice. Are we agreed to take that item in private?

Members *indicated agreement.*

Inclusive Play

14:04

The Convener: Item 2 is consideration of written evidence that we have received from local authorities on inclusive play park provision. Members have received a paper from the Scottish Parliament information centre and the clerks, which summarises the written evidence. Do members have any comments on the paper?

Stuart McMillan: As colleagues will remember, I raised the issue at our planning day last summer. I am delighted that a questionnaire was sent out, to which we have received responses. I have a few questions on the information that we have received.

First, we received responses from 25 of the 32 local authorities. I was disappointed that not all 32 authorities responded. I would like to have a list of the local authorities that did not respond, because that is not fully clear from the paper; I would be keen to go back to them to ask them once again for information.

Secondly, it would be useful if the local authorities would tell us their definition of an inclusive play area. Although East Renfrewshire Council stated that all its play areas are fully inclusive, facilities in some other local authorities may be fully inclusive but are not defined as such. Before we take anything forward, should we decide to do so, it would be useful to establish an exact definition.

John Finnie: I found the paper extremely interesting. Like Stuart McMillan, I was concerned that not all the councils responded. That might indicate that they do not have any good news to tell us, so perhaps those that did not respond are the ones that we should focus on.

Could we consider what happens before play areas are put in place? In some respects, this is a planning issue and it presupposes that the necessary area has been set aside for play and recreation. There are various ways in which we can do that. We can have play streets, although I do not know how friendly they would be to people with a disability. We need to build inclusive play into local plans and make such areas an integral part of housing developments, not least because—I will try, and fail, to be diplomatic—there is ample evidence that it is the unfortunate, low-lying, boggy bits of ground that are prone to flooding that are set aside. It is about the big sell by the developer in relation to play areas. Identifying areas in the local plan should be part of planning procedures.

I can see the attraction of having designated play areas for disabled children, but I think that we would want to be inclusive. I am taken by the bits of equipment that are for all abilities. Clearly, there are people who need to be specifically catered for, but I hope that such provision would take place alongside provision for able-bodied children.

The planning—getting it right at the outset—is very important.

Clare Adamson: The first thing that struck me about the information that we received was that there was no way of benchmarking the quality of the provision. For example, the paper mentions the fantastic play area at Palacerigg country park in Coatbridge. However, I know lots of areas in North Lanarkshire where that kind of play area is not provided. It would be useful to know whether councils have gone out and classed—or given some sort of award to—play areas in their control that we would consider to be of standard and inclusive.

The impression that I get while driving around is that South Lanarkshire has upgraded lots of its play areas whereas North Lanarkshire has some way to go. The information that we have at the moment does not give us an impression of benchmarking.

John Finnie mentioned developers. I do not know how it works throughout the country, but my understanding is that when small play areas are included in estates, the developers walk away and the local authorities do not adopt those play areas. Play areas in private sale areas quite often fall into disrepair and are not upgraded. Perhaps we could look at the picture throughout the country.

Annabel Goldie: I endorse what Stuart McMillan said. I, too, was surprised that seven local authorities did not respond. I am doing some arithmetic to get a vague idea of which local authorities did not respond. I thought that if a local authority received a communication from the Equal Opportunities Committee, some sort of reply would be given. It is not only disappointing, but slightly troubling. I think that at your direction, convener, the clerk should be asked to frame a letter to the non-responsive authorities to ask when they are going to get their act together and respond. There is an important point of principle involved.

The second matter is much more technical; I do not know whether Douglas Thornton can assist us on this. Nine local authorities stated that in designing new play areas they considered the requirements of the Disability Discrimination Act 1995. That act was repealed and succeeded by the Equality Act 2010. I am curious about who is doing what now, and whether they are following policy under the 2010 act. Has there been a

change in policy? Is there a difference in the direction that is given under the more recent act?

The Convener: I do not know the answer to that question.

Annabel Goldie: I am just curious. I think that we would want some reassurance that whatever the councils are doing, they are bearing in mind the 2010 act.

Siobhan McMahon: I echo Annabel Goldie's point: it is curious that nine councils thought to mention that while the others did not. Why did those nine councils think that they had to refer to it, given that some of them have said that they have signed up to all the policies?

I do not know how the committee will proceed on the matter, but two examples stand out. Dundee City Council said that it considered not just ability and disability, but socioeconomic differences too. That is an interesting example of what it is doing with play areas.

The other example is South Ayrshire Council. I have spoken in other committees about how disability is defined and how badges are put on it. South Ayrshire's approach was interesting, as it does not like to use badges to state that a play area is only for disabled children, and therefore all the play equipment is for every child. We could get more information on that approach—for example, on how expensive it is. The council says that it "strives to" include all children, but what does that mean? Can other councils use that as best practice if we are to go forward on the issue?

The Convener: Before I bring in Dennis Robertson, I want to respond to Annabel Goldie's query. There has been no change in policy: the DDA is replicated in the 2010 act, so councils will be complying with it and will know what it is.

Dennis Robertson: Thank you, convener—that was my point.

The Convener: Sorry.

Dennis Robertson: That is quite okay. Staying with that issue, does it fit into the general duties or the specific duties that councils need to take up? With regard to Clare Adamson's point about benchmarking, it is probably better to have national rather than local authority benchmarking. I am not quite sure who would do that; perhaps it would be the Equality and Human Rights Commission or a similar body. The last thing that I think we would want is a situation in which good practice is not being replicated in a particular area but the local authority has benchmarked it to be adequate. We need to be careful there.

The Convener: Thank you for that. I found the paper really interesting, and I am glad that it has come before the committee. However, I found

some elements of the evidence almost evasive. The councils gave us information, but not an awful lot. I was disappointed that not all the local authorities responded.

The point about benchmarking is really good. If we leave it up to local authorities to benchmark, we could have 32 different benchmarks. We would really need to have one generic benchmark that could be adapted for each authority.

I wondered what communication local authorities have had with local groups or people who would want to use the facilities. Did the councils talk to local groups and ask children with whatever type of disability what equipment they needed, and how councils could adapt existing equipment so that a play area would become inclusive and children with disabilities could use it? That certainly did not come across in reading the paper. We can reply to the local authorities or write to the local authorities that did not contact us and ask what they are doing, but I wondered whether it would be possible to write to groups and ask them what they would want to have in a benchmark play area that would include everyone.

14:15

Stuart McMillan: The Convention of Scottish Local Authorities might have a locus in the matter regarding all 32 local authorities, so it may be worth writing to it in addition to the other bodies.

The Convener: That is a good suggestion.

John Finnie: Should we establish whether there is a statutory requirement to provide play facilities? Perhaps I should know whether there is. Often if there is no statutory requirement for something, it is one of the first things to be dropped from consideration.

Nicki Georghiou (Scottish Parliament): As far as I am aware, there is no statutory requirement to provide inclusive play parks.

John Finnie: Is there a statutory requirement to provide play parks full stop, I wonder?

Nicki Georghiou: In the early years framework, there is a vision to improve children's quality of life through play. That is all that I am aware of.

John Finnie: Those are fine words, but they are not statute. That vision should form part of the single outcome agreements and, as the convener said, others contribute towards it. In my area, the matter has recently been put out to an arm's-length organisation. Similarly, community groups are increasingly involved because it is challenging for local authorities. It is expensive to replace equipment and there are financial advantages to some community groups being involved, so local authority money will often be used for that.

We need to be clear what requirement exists. Like Siobhan McMahon, I was impressed with the situation in Dundee, where much thought seems to have gone into where replacements and money are directed.

The Convener: The point about the statutory requirement is interesting. In my local authority area, if a mix of private and social rented housing is being built, an agreement is reached that a play area must be included as part of that development. However, although one of the conditions for planning permission for another, wholly private, housing development in my council ward was that the developer build a play area, the facility has fallen into disrepair and the council has no authority to tell the developer that they must replace it.

Recently, residents from the development came to me, told me that the play area was run down and asked what could be done. The local authority cannot force the developer to rebuild it and the developer has said that, if the residents want another play area, they will have to pay for it themselves.

There is an agreement when the developer gets planning permission, but there seems to be no continuing statutory requirement.

John Finnie: There is evidence from around the country of factoring difficulties associated with not only play areas but the maintenance of grounds. The local authorities will, on occasion, take on the developers, but that presupposes that there is a benchmark of what is acceptable. I can think of one area in my council ward where the play equipment is extremely modest. It is a stony football pitch and a couple of wee bits of play equipment. It is not of the standard that the local authority would have installed, that is for sure.

Annabel Goldie: Convener, the point that you raise is interesting. My understanding was that the grant of planning permission for residential development can, as we are all aware, be couched in numerous conditions that bind the developer or builder to comply with them before the sale of the houses. However, unless there is a specific agreement that the local authority will adopt a road, footpath or play area, such a facility normally simply ends up in the shared ownership of all the house owners with the resultant liability for them to contribute to the cost of its renewal.

If there is concern about the matter—I can well understand why there might be, from the example that we heard—is the answer for the local authority to deal with the issue at the development stage? At that point, the authority has a hold and can say to the developer that they will not get planning permission or be allowed to do anything unless they create a play area to a certain

standard, in which case the local authority will take it over. The crunch point exists—it is the grant of planning permission.

The Convener: Yes, the crunch point comes at the beginning of the process. If the committee agrees, we could write to the Government to ask, if the provision of play areas by developers is not a statutory requirement, whether it will consider making it a statutory requirement, given the Government's work on early years and early intervention and its focus on play and health.

Dennis Robertson: We cannot act retrospectively, but we can ensure that a new statute is inclusive. That is the whole point of the discussion. It is about not just building in play areas but making them inclusive. I wonder whether there is a duty on local authorities to make play areas inclusive, regardless of what is in statute.

The Convener: That is a good point.

John Finnie: There might be an opportunity to do something short of legislation. Planning advice is issued centrally and can be robust. My local authority has had difficulties when companies that had maintenance contracts have not performed or have gone out of business. The issue is where the sanctions lie. Annabel Goldie was right to say that the issue needs to be dealt with at the beginning of the process. That could be done through planning advice. There is advice on play areas and play streets, but it could be made more robust.

The Convener: Are members happy for us to write to COSLA and the Scottish Government to ask whether there is a statutory requirement to provide inclusive play areas and, if there is no such requirement, whether consideration should be given to the issue? We will also write to the local authorities that did not respond to the survey, to ask about their provision.

John Finnie: I mentioned the option short of a statutory requirement because it could be put into effect much more quickly. Advice could be issued quickly. Perhaps the two options can be considered in combination.

The Convener: We can put that in our letter.

I suggested that we contact groups that might use inclusive play areas, to ask what equipment they need, what is best for them and what they think about their local play provision. Do members want to do that?

Stuart McMillan: That would be useful.

Dennis Robertson: There is also the issue to do with the definition. What constitutes an inclusive play area?

The Convener: We can deal with that in the letter to the Government.

Stuart McMillan: Would it be worth asking local authorities or COSLA about the definition?

Douglas Thornton (Clerk): We could perhaps ask local authorities what definition they are using and ask the Government what definition they should be using.

Annabel Goldie: Where did the definition come from that the committee used when it wrote to local authorities?

The Convener: It came from a discussion during the business planning day—I was not there. You would not have been there, either.

Annabel Goldie: No, I was not there. Okay.

Siobhan McMahon: Some councils mentioned the Disability Discrimination Act 1995. I want to know why the equality duties are considered by some councils and not others. If there is a requirement on us to provide disabled access to everything, I cannot believe that play parks are not included. Councils are using different definitions and we will get clarification on that from the Government, but why did councils mention the DDA?

The Convener: Yes, now that the DDA has been succeeded by the Equality Act 2010.

Stuart McMillan: To be fair to local authorities, in the grand scheme of things play parks are probably not that high on the agenda. The information that we have received shows that there is massive disparity between local authorities on this service provision and differences in understanding of the legislation that is being used. I am sure that the committee shares my view that this is not about trying to get the boot stuck in to local authorities. There is obviously an issue across the country. From the committee's point of view, it would be useful to try to add to the clarity and the service provision across the country.

The Convener: Thanks for that. Before we move to item 3, I welcome our observer in the public gallery.

Petition

Access to Justice (Environment) (PE1372)

14:26

The Convener: Item 3 is consideration of petition PE1372, which was submitted by Duncan McLaren on behalf of Friends of the Earth Scotland, on whether access to the Scottish courts is compliant with the Aarhus convention on access to justice in environmental matters. The committee considered the petition on 10 January, and we have received a further submission that outlines aspects of the petition that Friends of the Earth believes not to be covered by the Scottish Government's consultation on the Aarhus convention.

We must decide on a course of action: we can write to the Scottish Government about the issues that are raised in the supplementary submission; instead of or in addition to that, we can write to the Law Society of Scotland asking for its views on the petitioners' arguments; or we can agree an alternative, including taking no action. I open the matter for discussion.

Annabel Goldie: I suspect that I was not alone in finding the supplementary submission quite mind-bogglingly technical and difficult to get a complete grasp of. It seems to me that it would be helpful to the committee to allow the Scottish Government to give a response to the very technical points that the petitioners have raised. I think that the committee needs that information from the Scottish Government.

It would be helpful to write to the Law Society of Scotland on the issue, because it would give an independent perspective on what we may be told. My feeling is that it will be impossible for the committee to make sense of the issue without further information, because it is very technical.

The Convener: I agree.

Dennis Robertson: Is my understanding correct that Annabel has suggested that we write to both the Government and the Law Society?

Annabel Goldie: That is correct. The briefing paper on the petition gave the option of writing to the Scottish Government and/or the Law Society, or of taking an alternative course of action. Members may have a view on an alternative course of action, but I feel that the committee will find it difficult to make progress unless we deploy the first two options to help us understand what is involved in the petition.

The Convener: I agree. Without having further information, it will be difficult for us to understand the issues clearly. Writing to the Government and

the Law Society might help us in that regard. We would at least then have a bit more information for the consultation.

John Finnie: Your predecessor, convener, had a real interest in this petition and has followed it. I, too, have an interest in it. I think that the course of action that Annabel Goldie suggests is correct. It is important to have some balance, because life never gives us what we want and the reality is that budgets are finite. However, I am deeply concerned when I see the word "injustice", which appears in the final paragraph of the supplementary submission, whether it is prefixed by the word "environmental" or any other. No one wants injustice.

I like to think that I am environmentally conscious, but it is important that we temper expectations. There should not be an unlimited, or even a limited, public purse for legal challenges when such resources may be required for a greater common good. I support the suggested course of action on the petition, but it must be tempered with a realisation that resources are finite. If they are to be expended on what the petition seeks, they will not be expended on something else, which is likely to be criminal or civil legal aid.

The Convener: Is the committee agreed that we will write to the Scottish Government asking it to comment on the supplementary submission and write to the Law Society for its view?

Members indicated agreement.

The Convener: Excellent. We agreed to consider item 4 in private, so I ask observers to leave.

14:30

Meeting continued in private until 15:29.

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