



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EQUAL OPPORTUNITIES COMMITTEE

Thursday 25 September 2014

Thursday 25 September 2014

CONTENTS

Col.

EQUALITY AND HUMAN RIGHTS COMMISSION	1
---	----------

EQUAL OPPORTUNITIES COMMITTEE
14th Meeting 2014, Session 4

CONVENER

*Margaret McCulloch (Central Scotland) (Lab)

DEPUTY CONVENER

*Marco Biagi (Edinburgh Central) (SNP)

COMMITTEE MEMBERS

*Christian Allard (North East Scotland) (SNP)

*John Finnie (Highlands and Islands) (Ind)

*Alex Johnstone (North East Scotland) (Con)

*John Mason (Glasgow Shettleston) (SNP)

*Siobhan McMahon (Central Scotland) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Chris Oswald (Equality and Human Rights Commission)

Alastair Pringle (Equality and Human Rights Commission)

CLERK TO THE COMMITTEE

Ruth McGill

LOCATION

Committee Room 6

Scottish Parliament

Equal Opportunities Committee

Thursday 25 September 2014

[The Convener opened the meeting at 10:00]

Equality and Human Rights Commission

The Convener (Margaret McCulloch): Welcome, everyone, to the 14th meeting in 2014 of the Equal Opportunities Committee. I ask everyone to set any electronic devices to flight mode or to the off position, please.

The only item on the agenda is evidence on the Equality and Human Rights Commission. We will start the session with introductions. At the table, we have our clerking and research team, official reporters and broadcasting services and, around the room, we are supported by security officers. I welcome, too, the observers in the public gallery.

I am the convener of the committee. I invite members and witnesses to introduce themselves in turn, starting on my right.

Marco Biagi (Edinburgh Central) (SNP): Good morning. I am the deputy convener of the committee and the MSP for Edinburgh Central.

Alex Johnstone (North East Scotland) (Con): I am a member for North East Scotland.

John Finnie (Highlands and Islands) (Ind): Madainn mhath—good morning. I am an MSP for the Highlands and Islands.

John Mason (Glasgow Shettleston) (SNP): I am the MSP for Glasgow Shettleston.

Christian Allard (North East Scotland) (SNP): Good morning. I am an MSP for North East Scotland.

Alastair Pringle (Equality and Human Rights Commission): Good morning. I am Scotland director of the Equality and Human Rights Commission.

Chris Oswald (Equality and Human Rights Commission): Good morning. I am head of policy and communications at the Equality and Human Rights Commission.

The Convener: I thank both witnesses for coming along.

I will ask the first question, which is about the Equality and Human Rights Commission's budget. We see that your budget for 2014-15 is £17 million. When the EHRC was established in 2007,

it had a budget of £70 million. How are the reduced budget and reduced staffing impacting on the EHRC's ability to fulfil its statutory obligations—for example, on the monitoring of the public sector equality duty?

Alastair Pringle: The last time we gave evidence—which I believe was in 2012—we talked in detail about the impact of the budget reductions. At the time, the key reductions were around our grants function and our helpline function, both of which were then removed. As members will be aware, the helpline function was moved to a United Kingdom provider—Sitel. On top of that, we then faced a reduction that was probably considered to be similar to the reductions faced by other non-departmental public body-type organisations.

Since those budget reductions, we have had to do a significant amount of reorganisation and to carry out a significant review of our functions. We believe that we are now in a more stable place and that we have the staff in place in Scotland and, indeed, across Great Britain to continue to deliver our statutory functions.

It is probably important that the budget cuts were based on a review of what our statutory functions were. Rather than there being an arbitrary cut to our resources, the review—which was called a core budget review at the time—looked at what was set out in statute and what that cost, and that formed the basis of our budget. That was the case for this year, and the same will be the case for next year. We are therefore on a level footing for our budget next year.

Obviously, we have to work differently. We do not have nearly the number of staff that we had in Scotland. We now have a head count of 17, which is approximately 14.75 full-time equivalent staff, with three vacancies. That is quite a difference from where we were when the EHRC opened back in 2007. Therefore, we have to work more strategically, but we still put a significant amount of investment and resource into issues such as our monitoring of the public sector equality duty. All our budget is used for delivering our core or statutory functions.

As members are probably aware, we also have access to around £8 million this year, which is discretionary programme funding from the UK Government. So far, we have managed to access in the region of £3.9 million of that to develop a series of programmes that are probably a bit more promotional or proactive on issues such as participation in sport. A piece of work has just started on lesbian, gay, bisexual and transgender hate crime reporting. Those are probably the sorts of projects that we would have undertaken in the past.

We are still able to deliver our statutory functions. We no longer deliver some of the functions that we delivered when we were first established—the grants function no longer exists, but the helpline function is delivered by the equality advisory and support service—and we work more strategically to deliver what is set out in statute.

Alex Johnstone: You spoke briefly about budgets and trends. How do they match workload? Is your workload continuous and even or is there a change in workload that follows a different pattern to budget?

Alastair Pringle: It is difficult to say whether there is a specific trend. We have noticed one thing in connection with our legal work: we have invested significantly in going out and speaking to advice givers, advice agencies and legal funds to continually remind them that we exist and that we are looking for strategic cases and referrals—that role sits alongside the equality advisory and support service's role—and that has definitely paid dividends. Two years ago, when I joined the commission, there was certainly a lower number of strategic referrals coming in. There was a mixture of reasons for that. Now, we are certainly almost at capacity on the range of strategic cases that we are dealing with in Scotland.

A new set of reporting requirements came into play last year on the public sector equality duty, which has taken up a significant amount of our staff time, but most of that can be planned for and we have a level of control over how we do that.

I do not think that, at the moment, there is a flow of work that we are unable to deal with; we are able to work fairly flexibly to respond to the strategic cases that come in and to the work on the public sector equality duty in particular.

Alex Johnstone: According to my notes, the last time we had an indication of the number of potential legal cases that were being referred to you was back in February 2013. How many referrals have you had since then and what has been the trend in referrals?

Alastair Pringle: Are you asking about referrals across all areas of work?

Alex Johnstone: I am interested in all areas of work, but I am particularly interested in any areas that show particular trends that may differ from the norm.

Alastair Pringle: Unfortunately, I do not have those figures to hand. My head of legal, who was here last time, probably would have had them to hand. However, I would be happy to try to provide a summary of that in writing for you.

Alex Johnstone: I would be grateful for that.

John Mason: Good morning. I will ask about monitoring compliance with the public sector equality duty. The EHRC found that employee monitoring was

“patchy and inconsistent across all sectors”.

Overall, performance was poor: of the 184 public authorities examined, only 27 per cent produced the full set of information on the protected characteristics of their staff. Will you comment on why performance seems to have been poor?

Alastair Pringle: I will hand over to Chris Oswald, who leads our public sector equality duty monitoring work. I will pick up on any other points.

Chris Oswald: We have done a lot of work to assess the performance of public bodies against the public sector duty and have published three reports on outcomes, particularly employee monitoring.

We are moving into what we are calling a diagnostic phase, in which we are working with the Scottish Government to try to get underneath the data. We can see the outcome, which is poor results, as you highlighted. We need to know why that is.

On employee data, we know that there are issues with disclosure. People might not feel comfortable about disclosing their sexual orientation, faith or belief. That might be one of the issues. There might also be issues with how data is collected and how it is analysed and moved around within the organisation.

Some of the protected characteristics that are to be monitored have come into play relatively recently, so adjustments are being made in public bodies to capture the data for analysis. However, the situation is not as good as we expected and we are engaged in a piece of work with the Scottish Government and other partners to get under the skin of the data, find out what the common problems across all public bodies are, identify where best practice is and translate that best practice from the good performers to those that are not succeeding.

There is a range of factors, some of which are not always under an authority's control, such as personal decisions about disclosure. Once we have got under the skin of that, we might be able to suggest better questions and messaging that can be given to assure employees that the information that they give about their personal characteristics is confidential and will be used for the proper purposes.

John Mason: You referred to sexual orientation and faith, which I presume that people might not want to disclose, but we would expect that to be the case for every employer, whereas I think that

you suggest that some employers are doing better than others. Is that the case?

Chris Oswald: Some employers have a more complete set of data but, across all organisations, there are particular deficits in recording sexual orientation, gender reassignment and pregnancy and maternity—information on that was at the lowest level of all and that was common across all organisations. We are in the process of identifying the people who are working best, finding out why they are working best and transferring that learning from the best to those that are struggling.

John Mason: Would you like to tell us who some of the best are, or is that not allowed?

Chris Oswald: We have decided not to name and shame, so the simple answer is no.

Alastair Pringle: The issue is challenging and the EHRC has been working on it for seven or eight years. I remember that, when I worked in the Scottish Government's health department, I received letters on the issue.

We are discussing with the Scottish Government what we are trying to achieve. We are trying to get to a position in which public authorities can demonstrate fair employment and recruitment practices.

The way in which the specific duties are set out requires public bodies to count beans, which involves large-scale systems. In the national health service, most health boards have their own human resources systems. There has been talk for a long time about an e-HR system or another system to solve the problem, but such systems have never been introduced.

The time is right for us to diagnose the problem properly, as Chris Oswald said, rather than just continue to write compliance letters because people are not counting numbers. Instead, we should have a more detailed discussion with public authorities about what is getting in the way and how we might resolve what feels a little like an on-going cycle.

John Mason: Are you optimistic that we are improving and that, if we are patient for a bit of time, we will get there?

Alastair Pringle: To be honest, I think that we could do something different. I do not have the answer, because the problem is difficult. As I said, I had responsibility for aspects of the issue across NHS Scotland. There is not one answer or one way of turning the situation around, because it covers staff attitudes and societal attitudes. If people live in an environment in which they fear the disclosure of their sexual orientation, they will be less likely to tell their employer that information.

There is a host of drivers. It is insufficient just to say that an employer must have 100 per cent employment monitoring in place by a certain date. It is important to look at progressive improvement, some of which we have seen. In the NHS, when investment was made in the equality and diversity information project, which did a fair bit of scrutiny and support work with health boards, some improvement took place. However, without such continual investment and support, we have not seen the gradual improvements that we hoped for. Our "Measuring Up?" work showed that clearly.

We recently had a meeting with the Scottish Government, which is leading a national programme of work to consider the range of findings from our public sector duty monitoring on employment, equality outcomes, pay-gap issues and so on. It is trying to think about the issues a bit differently, because the pay gap and equal pay have been issues for a lot longer than the past seven years, and they are not going away.

10:15

John Mason: Absolutely. You have mentioned the Government and the NHS specifically. Who are the other key players? Is the Convention of Scottish Local Authorities a player, for example?

Chris Oswald: In terms of the improvement work that we are doing?

John Mason: Yes. Who else is on board to push it?

Chris Oswald: We are currently developing a group of public bodies and particularly intermediary bodies. COSLA will be one of those, as will the NHS and other organisations.

I would like to make a point of clarification about the employment duty. The previous duty, around race, in particular, was an absolute duty—that data had to be collected. The current duty says that you have to take steps to collect that data. It is a progressive realisation duty, rather than a duty that requires data to be collected by a fixed date. We are working towards that and are trying to understand what the problems are. We are assisting organisations to improve, rather than simply battering them over the head because they are not able to deliver a full panoply of data.

Alastair Pringle: I should add that there is also non-governmental organisation engagement in this broader programme of work, which includes organisations such as Close the Gap. A range of players are already or will be involved and engaged under the national equality piece of work.

John Mason: So they would be able to go into a particular employer or sector and help them to work things out.

Alastair Pringle: Well, to go back to the question of diagnosis, I think that the idea is to understand what the problems are, see who is doing things well and who is having problems, and bring those people together to do some of the necessary information sharing.

Another example involves our equality outcomes work, on which the EHRC has taken the lead. There are different strands of the work. In relation to the public authorities that had what we classified as poor equality outcomes, we have worked with the poorest performing ones—45 in total—and have sent out invitations to work with us to perform self-assessment work with regard to areas in which we think that they need to make improvements. That approach has been very much welcomed. It is not the sort of approach that the commission might have taken in the past, which might have involved the issuing of a compliance note. Instead, we have invested quite a lot of staff time in one-to-one support for public authorities with individual members of staff and have brought them together with those who have performed well. The evaluation of that piece of work will be due in—

Chris Oswald: November.

Alastair Pringle: Yes—November or December. So far, the feedback has been really positive, and we are seeing improvements in outcomes.

The approach is right, and we are planning to take the same approach across the other strands of work.

John Mason: You mentioned that you had been working with 45 authorities. I noted that 27 authorities were subject to further review. Is that the same kind of idea?

Chris Oswald: Those cases involved situations in which there was simply no publication of outcomes or the publication of outcomes was so poor that we intervened. The 45 authorities that we are working with are a group with regard to which the outcomes were not precise enough or the performance measurements were not clear enough to allow them to say, at the end of the four-year period, whether they had made any progress or not. We want to focus on enabling those organisations to demonstrate whether there has been progress or a lack of progress.

John Mason: You have emphasised that how you are working is a little bit different from how you worked in the past, and it involves much more working with people. However, I believe that, ultimately, you have enforcement powers. Could you spell out what they are?

Alastair Pringle: I know that that was an issue the last time we were here. We have a range of

powers at our disposal. We try to focus on being as effective as possible and as strategic as possible. The endgame is always achieving positive change. Some of the interventions can be really resource intensive. I know that you will be aware of some of the work that we have done, such as our inquiries into disability harassment and human trafficking, which involve societal issues. That is one power that we can use. Although that could take a couple of years to work through and would be resource intensive, it could lead to quite significant change across a wide range of agencies.

Using our powers under section 31 of the Equality Act 2006, we can undertake assessments of how public authorities are meeting the requirements of the public sector duty. Those powers are used across the piece to look at an organisation's work; for example, we used them in 2011 to assess the Scottish Government's work on equality impact assessment, and that work led to the "Better Policy, Better Lives" report.

We can also intervene in court cases where we believe that they touch on issues relating to our work.

John Mason: When you say that you can "intervene in court cases", do you mean that you can give support through the provision of legal advice or whatever?

Alastair Pringle: That is how we would normally intervene. Such cases might include the Supreme Court ruling on equal pay in Dumfries and Galloway, in which we would offer our support and expertise in equality law. The cases would be taken forward not necessarily by us but by others and we could apply to intervene. There is a range of examples in that respect; indeed, it is an aspect that comes up frequently in our work, and other examples include the Eweida, Chaplin and Ladele cases, all of which related to freedom of thought, conscience and religion in the workplace. The Eweida case was the one that involved British Airways.

A lot of our work relates to formal agreements, which are generally confidential in nature and avoid our having to go to court. If we believe that an organisation might have behaved in a discriminatory fashion, we can, if we think that it will be amenable, engage and approach it and then enter into a confidential agreement in which it agrees an action plan. That agreement is then formalised. We prefer to take that formal agreement—or even informal agreement—approach wherever possible, because it avoids a compliance culture, avoids significant costs and generally gets us the result that we want.

That is the range of our work from our two and three-year investigations onwards. I should say

that, up to now, we have actually carried out only one investigation, which was into Glasgow City Council, but you might have seen in Monday's press that we have started a new investigation into systemic and systematic discrimination issues around race and sexual orientation, bullying, harassment and so on in the Metropolitan Police. That is the second time that we have used this particular power.

We have to balance the powers that we use. I know that there is some appeal in being seen to be taking people to court, as it would show us using our teeth. However, we use our teeth in a range of ways that we think are more proportionate and more effective in achieving what we want to achieve.

Chris Oswald: A few days ago, we launched a consultation on our approach to strategic litigation with an open invitation to the legal profession, people with an interest in equality and human rights and any other body to make an input and help shape the future strategy.

As for our legal approach, I know from many years of working on these issues in Scotland that, when we approach organisations with issues or complaints, they tend to ask, "What can we do? Where do we go now? How do we improve things?" We generally meet with a reasonably positive response, and our approach to regulation is proportionate. Where there is an opportunity to move issues along without having to take a formal legal approach, we will take it and seek to address issues in the most reasonable way. Obviously, if there is a point of law or if the organisation's behaviour is flagrant, we will take action. However, the general assumption is that we will try to resolve matters instead of getting into litigation.

John Mason: Thank you.

The Convener: Alex Johnstone wants to come in on this issue.

Alex Johnstone: I want to ask about a couple of issues that add on to this. A few moments ago, you talked at some length about equality outcomes, but I note in a letter that we received from you in May that you

"have now agreed a national improvement approach with Scottish Government and other stakeholders to improve the quality of ... equality outcomes."

Are we talking about the same thing there?

Alastair Pringle: Yes.

Alex Johnstone: The only other thing that I am interested to know is on the subject of enforcement powers. You said—as everybody always says when we raise the subject of enforcement powers—that you want to work in a partnership arrangement. Have you used the

enforcement powers and do you envisage that they will have to be used more in the future?

Alastair Pringle: I have given the examples of our undertaking inquiries, intervening in specific cases and serving compliance notices. Chris Oswald will correct me if I am wrong, but I believe that a compliance notice was sent out to get public sector bodies to reply and to fulfil their requirements under the public sector equality duty. The answer to your question is that, yes, we use a range of enforcement powers on a regular basis.

Do we foresee our using those powers more in the future? I am not entirely sure. It will depend on whether there is a significant increase in discriminatory practice by any bodies. We have to work within our resources, which is always a challenge and is why we have to work strategically. We have a fairly detailed decision-making process in place in Scotland around public sector duty practice. We have a public sector duty panel, and any complaint or issue that is raised with us goes to that panel, which will assess whether the issue is strategic, whether it will test the case law, whether it will impact on a significant number of people and whether it is truly a breach of the public sector duty before we will take action.

We also have a GB-level regulatory decision-making process, which is where we allocate our legal funds. Some of the ways in which we can intervene will incur significant cost but we might believe such intervention to be worth while. For instance, we believe that the investigation into the Met's behaviour will have ramifications for other police forces. That is part of our decision making. It is not just about whether one agency is at fault but about whether we believe that something is going to change the face of employment practice in institutions.

Siobhan McMahon (Central Scotland) (Lab): You mentioned that reports are one part of enforcement, but it seems odd to write a report as an enforcement practice unless something comes out of it that demonstrates the key action that you will take against an individual, body or sector. What enforcement action has been taken because of those reports?

Alastair Pringle: We would rarely write a report without making recommendations, and we work with whichever public bodies are named in those recommendations. Chris Oswald may be able to give some specific examples of that.

Chris Oswald: I am not sure what the question is about. Which reports are you referring to?

Siobhan McMahon: In evidence, reports have been mentioned three times as part of enforcement. I would have thought that, if you are using reports as an example of enforcement, you would be able to tell the committee how those

reports have resulted in enforcement action being taken other than an investigation. We are all familiar with reports recommending action but then going into the long grass and nothing being done. What enforcement action has been taken? The word “enforcement” keeps coming up, and you say that you are using the power of the report to enforce something. What has been enforced?

Chris Oswald: Let us take the work that we did on the outcomes as an example. We have issued three different reports assessing performance around the equality duty, which were analytical reports. From those reports, we identified 27 bodies that were not compliant and we took action at that point. We then identified a further 45 bodies that we felt needed to do further work on the outcomes. The approach is graduated in that sense.

Siobhan McMahon: That is one example—have you got another?

Alastair Pringle: Our human trafficking inquiry and our disability harassment inquiry both led to some significant changes in practice across different agencies. For instance, the human trafficking inquiry has led to much-improved multi-agency working across a range of services including the police and the Crown Office, which was one of the recommendations. I would not say that a report is enforcement action. A report might come out of an aspect of enforcement action such as an inquiry or an assessment, but it would never be considered to be enforcement action on its own.

10:30

Siobhan McMahon: Do you review those? Obviously, the human trafficking issue has been picked up in the media and people are now very aware of it. You say that work has been done and things have changed. I am sure that that is the case, but will the situation be reviewed to show what we were looking for and within what timescale and what has been achieved in that timescale?

Alastair Pringle: We are in year 3 of dedicating resource to the human trafficking inquiry work and year 4 of dedicating resource to the disability harassment inquiry work, so we do not stop after producing a report. Staff from the commission sit on the Government-led human trafficking task group. Our job there is to hold the Government to account and to ensure that it delivers what it said it would deliver. We are working with the bill team for the proposed human trafficking bill to ensure that, as far as possible, the recommendations are built into that bill. We do not produce reports and then stop our work.

Our work is challenging, because many of the issues that we are trying to address are widespread systemic aspects of discrimination. At some point, we have to stop our focus in one area and turn our attention to other more pressing issues. Human trafficking and disability harassment are examples of issues in which we have continued to invest resource because we believe that they are important areas and significant human rights and discrimination issues in which we need to continue to invest energy.

Siobhan McMahon: I understand that you have people working with the Scottish Government and various other public bodies, but will more reviews be published so that the general public can see what is going on? Obviously, they are not involved in everything that you do and they do not know about it. You have published reports—as you said, you are in year 3 of work on one issue and year 4 of work on another—but the general public will not know how the recommendations in those reports have been taken forward. Are reviews published for the general public in a fashion that they would understand?

Alastair Pringle: Yes. Our EHRC Scotland annual review tries to highlight the wide range of work that we do. I hope that members have received a copy of the latest one. The review covers our key areas of work, on issues such as transfer of expertise, human trafficking and disability harassment. The review explicitly states what we set out to do, what we did, what impact we believe we have had and the role that we have played in relation to those issues. That high-level report, which is published every year, sets out the work that we have done and have invested our resources in, as well as the work for the year ahead.

Siobhan McMahon: I understand that it will show what you have done, but I am asking about the impact on communities in relation to things that you have said have gone wrong. You talk about enforcement. A report has been produced—if that is enforcement—because something has gone badly wrong, whether in relation to human trafficking, disabilities, local authorities or whatever. People will be interested in that. Obviously, you continue to work on those issues—I am not suggesting that you would not—but your annual review focuses on what you have been able to achieve and how that has been taken forward and not necessarily on whether the recommendations have been met or not met in the given timescale. Will you, or do you, publish something like that?

Alastair Pringle: We publish a range of information. Sometimes, it is for us to do that, and other times it is not for us. As I said, quite a bit of our work is confidential, so it is not for us to

publish information on that. If we are working with other agencies, we might encourage them to let people know what they are doing. It may not be for us to do that. To be honest, it depends on the individual case that we are working on. In relation to the public sector equality duty, we produce, and will continue to produce, reports about the work that we are doing and improvements that we have seen in the work of the public sector. That is one of the reasons why we are doing an evaluation at the end of this year of that particular piece of work. Those reports are all available on our website.

The answer is that it depends on the issue. Wherever possible, we will be able to let people know what we have been doing and what impact that has had for individuals, communities and agencies.

The Convener: I want to go back to a question that might seem very basic. I assume that, if a local authority was not collecting the data and information that you require in relation to disabilities and race, you would go in and work with it. Would that local authority have timescales within which it would have to meet the criteria that you are looking for, or would you just say, “You are not achieving this—this is what we would like you to do,” and then walk away? Would a local authority be given deadlines and an action plan that it would have to carry out by the time you revisit to monitor it again?

Alastair Pringle: Yes. We would never enter into an agreement without clear timelines and expectations. It is rarely, if ever, a case of people not wanting to do the right thing. It is often that it has not been prioritised in an agency, or they do not have the skills or the resources and we can help with some of that. We would never just go in and have a friendly chat and then walk away.

The Convener: You are saying that you would leave the local authority with a development plan that you would monitor and review regularly.

Alastair Pringle: If the agreement is formal, we expect an action plan to be delivered to us within a set time. We would then review it and decide whether it is satisfactory and whether it will achieve what we feel is compliance. If the action plan is not delivered on time, we would then consider the next part of enforcement action.

The Convener: Say that the local authority decided that it did not have time to do the action plan because it is not a priority, and it kept putting you off and not achieving what is set out in the agreement—what do you have the power to do?

Alastair Pringle: Ultimately, we can take the local authority to court for a breach of law.

The Convener: But you would hope to work through the process first and reach agreement and get co-operation.

Alastair Pringle: Yes. It is not in anyone’s interests otherwise.

Siobhan McMahon: How many times have you taken someone to court for not complying with an agreement?

Alastair Pringle: Are you talking about a public authority?

Siobhan McMahon: Yes, for example. How many times have you taken a public authority to court for not complying?

Alastair Pringle: We have never taken a public authority in Scotland to court. We have never had to.

The Convener: Have they always achieved the objectives that you have agreed with them in action plans?

Alastair Pringle: To the best of my knowledge, yes, they delivered what was required of them at the time. In the work that we are doing on the public sector equality duty, we are having to invest quite a lot of time, energy and resource in seeking progressive and measurable improvement, particularly in areas such as employment monitoring.

The Convener: Do you find that that is not one of your top priorities because of the reductions in staff and funding? Are you having to reprioritise this workload because of the lack of resources?

Alastair Pringle: If we had more resources, we would do more, without a doubt. Every agency and public body across Scotland would say that. We have had to change the way we work. In part, that means that what we do now is a bit more resource intensive. There are probably other promotional and proactive things that we have done in the past that we might want to do.

We now have much more of an improvement model, so we are looking at improvement and using our regulatory powers when necessary and encouraging best practice and the development of evidence to share across public bodies. Without a doubt, we have had to change the way we work.

Our focus remains on our statutory functions, one of which is public sector performance.

Chris Oswald: A lot of work on the public sector duty is located in my role as head of policy, and collecting the data is the top priority. If resourcing meant that we had to stop working in some areas, we would always preserve that area.

The Convener: Thank you. As there are no further questions on this area, we will move on. John Finnie is next.

John Finnie: Good morning. I would like to ask questions about the business plan to which you alluded in your letter of 29 May. I have three points to ask about, if I may.

The first is about engagement with businesses across Scotland to promote employer guidance. How has that gone? How is it going? How would you tackle resistance? People might perceive that the public sector would have more of a listening ear than would private employers.

Alastair Pringle: Partly because of the reallocation of staffing resources in Scotland, we have not had much engagement with the private sector since the days of the Disability Rights Commission and others. Our Scotland committee made a conscious decision at the end of last year to work to re-engage with the sector, and we have undertaken a range of activity with Glasgow Chamber of Commerce.

We put out a contract for someone who already worked in the sphere to work with us so that we could test out different approaches. Some were successful and some were not. The area is very difficult for us. As you say, it is not as if we have a private sector duty with which we can work. Some of the more successful approaches that we have taken include our developing case studies around employment law, filming them and making them into resources—that seemed to be quite popular—and holding a range of legal, transfer-of-expertise events with, primarily, HR employees from private sector firms.

Going forward, we are particularly keen to look at how we engage with small and medium-sized enterprises, given the sheer number of those in the country and how many people they employ. We will continue to work to deliver guidance, advice and support through our transfer-of-expertise events, which run throughout the year.

The other area of focus, which has probably been more successful, has been our thematic approach. In particular, we have taken forward in Scotland a GB piece of work on the cleaning sector, which looks at vulnerable workers. I will let Chris Oswald say a little about the work that we are now doing to transfer learning from our previous meat processing work into the fishing industry. Our colleagues from the north-east might be particularly interested in that work.

There are two other large-scale pieces of work, one of which is looking at clarifying the law around religion or belief in the workplace. On the back of various cases last year, we believe that there is still a lack of certainty about what the law does and does not allow around that, so we are doing a

significant piece of work on it, engaging across GB with employers and service providers and with those who receive services who have experienced discrimination or have questions about religion or belief.

The other major piece of work is on pregnancy and maternity discrimination. It is some 10 years since the Equal Opportunities Commission undertook a large-scale survey of the scope of such discrimination, and we are following that up with detailed survey work across Britain, including in Scotland, looking at both employers' perspectives and employees' experiences around pregnancy and maternity discrimination.

Our work in the private sector is challenging, without a doubt. We have not found it easy to gain a lot of interest. However, we will continue to look at different approaches, and we are always open to new approaches and ideas about how we can tap into that sector. As I said, our thematic work is important. There are areas in which employers across both the public and private sectors have expressed concern or interest, such as religion or belief, so we expect to have more buy-in there.

I ask Chris Oswald whether he wants to say any more about our private sector work.

Chris Oswald: Alastair Pringle has described a lot of the work. Like every organisation or regulator, we have difficulty in engaging with SMEs—that is not a secret; I think that everybody has that difficulty. We are trying to find ways of getting in. We tend to get contact from SMEs at the last point, when something has gone wrong. That is when they want to engage with us. We are continually trying to turn that round and say, "These are the basics that you have to know, and this is how it works." We are happy to work with and support all sectors. However, it is always a challenge; I do not make any bones about that.

I turn specifically to the fish processing industry, which Alastair Pringle mentioned. We did a large inquiry when we had grounds for belief that there was discrimination in the meat processing industry, particularly around London and particularly in relation to the employment of migrant labour and terms and conditions. We have had some discussions with the Scottish Trades Union Congress and there is a particular interest in the fish processing industry. I stress that we do not have the same grounds for belief there that we had in relation to the work in London, but we want to have a look at that sector. Again, there is a particular concentration of migrant labour and women at the sharp end of the industry. We want to take what we have learned from the meat processing industry, which is a similar type of industry with a similar employee profile, and try to prevent problems rather than simply respond to them through litigation.

10:45

John Finnie: I presume that you will engage with trade bodies and the like. Do you also involve the trade union movement?

Chris Oswald: Things are at a very early stage. We are working with the trade union movement now and we are about to start talking to the migrant groups. Once we have got that sorted out, we will engage with the employers.

John Finnie: As an organisation you have had involvement with the Gypsy Traveller community. Can you give us some idea of the timing of your research into site provision and how you envisage that the findings may be used?

Chris Oswald: That is a long and on-going issue. I have been involved in it for 20 years, first from a race relations point of view and now from the point of view of the EHRC. We are not seeing a resolution to the situation, which is predominantly about attitudes. We can take enforcement action, although very few cases are coming through to us in that respect. An attitudinal shift needs to happen in Scotland about the provision of sites.

We have commissioned a piece of work this year, which is at the point of publication; we simply need to get the seminar set up. That work looks at how, when sites are proposed, there is continually public opposition, either through the press or through community councils and community organisations. We were interested in looking at sites where that type of heat was not generated. We identified four areas—three in Scotland and one in Carlisle, which is close and similar enough to us to be included—where preparatory work was done and a positive approach was taken to engaging the Gypsy Traveller community and the settled community. We are about to launch that work and we will want to promote it.

As the committee will be aware, the Scottish Government has convened two or three groups to look at a national strategy for Gypsy Travellers, which we whole-heartedly support, and a specific group on housing. I am involved in both of those. Like the committee, our sense is that until we resolve the site provision and accommodation issues, it will be difficult to make significant progress on education, employment and life expectancy or other forms of health. That is a major issue for us. It is a complex issue in terms of responsibilities. Strictly speaking, there is no legal responsibility on a local authority to provide a site. It has to assess need and work towards meeting that need.

In the housing group in Scotland, I am particularly keen to review where we have got to. The guidance that has been provided by Government has not resulted in new sites. That is

the fundamental issue. We need to find ways of re-presenting the issue. We need to learn from areas where there is good practice and site provision has not been contentious. What is it about the approach of the elected members and the planning authority in those areas? What have they been doing that is successful, in stark contrast to other parts of Scotland? I remember seeing the committee up on the site in Aberdeen. It would seem that we have a stalemate in the north-east. Similarly, on the west coast, around Glasgow, there is a significant lack of site provision.

We will use the research. It will feed into the Government's group and the strategy. We will promote it with local authorities. Again, one of the things that we are looking at doing is making the link between successful authorities, where planning applications are not seen as contentious, and transferring that learning to those areas of Scotland where it is contentious.

John Finnie: I have a particular personal interest in this issue and could ask you questions all morning, although I suspect that the convener would not allow that. Will the findings be shared with the committee? The committee has already been involved in two strands of inquiry involving the Gypsy Traveller community—the delivery of care and site provision. I am frustrated that a number of local authorities keep their head down. If they do nothing, they are fine, but if they do something and there are issues with it, they get stick from various quarters. Given that we are talking about an itinerant community, the needs assessment cannot stop at the boundaries of the local authority; a broader approach has to be taken. Has that issue been picked up along the way?

Chris Oswald: I completely agree with you. One example is that East Lothian Council and Midlothian Council share a site. That is absolutely fine as far as I am concerned. As long as there is provision in an accessible and appropriate place, I am not particularly bothered if one authority does not have a site in its area.

In the north-east, which is the area of particular interest to us, we need a regional approach to site provision, with a mixture of transit and permanent sites in public, private or community ownership. The backdrop is that we need a national strategy but with regional approaches sitting beneath it. We want to see far greater working between the authorities in the north-east. The Craigforth report from some years ago was extremely helpful on this issue, but we have not seen any progress from it.

John Finnie: I had two further questions, but one of them has been answered—it was on the legal aspects.

My final question relates to what you told us when you wrote to us in May about the preparation that you were making for the referendum on independence. You said:

“We will ensure that proper thought is given to equality and human rights, and effective post-referendum structures are in place during any transfer of powers to full independence or further devolution.”

I take it that you are keeping an active watching brief on implications.

Alastair Pringle: Absolutely, both as a Scotland directorate with the Scotland committee and as a GB organisation with the GB board. We held two events leading up to 18 September. One was a more academic event looking at the situation with equality and human rights in different countries—I suppose that it was really looking at what is possible. The other was a round-table event with NGOs to hear their thoughts and views.

Our starting point and key principle is that there should be no diminution of existing powers. We are planning to host a further discussion on 2 October. We will bring a range of people back together to hear their thinking and views, which will help inform our thinking, so that we can respond appropriately to any consultations on further devolution. We are keeping our eyes firmly on the shifting landscape, as it were.

John Finnie: Thank you. That is reassuring.

Marco Biagi: I take it that there is an intention to engage with the Smith commission on any further mechanisms. Two equality organisations have already made representations to me and, I think, to other MSPs that they would be interested in further devolution of equality laws. Is that a fair interpretation of what you have just said?

Alastair Pringle: I think that that is what other organisations have said. To be honest, our role would be to respond to any proposals rather than to make our own proposals. As a regulator, our role is really just to say how we think any proposal may or may not impact on the protection and promotion of equality and human rights. We want to be prepared for that and to be sure that we are clear about the views of the range of stakeholders who will have an interest. In the past few days, we have been approached by various organisations, which is really helpful.

Marco Biagi: Excellent.

The other thing that I wanted to ask about, which relates to the business plan, is work on identity-based harassment in Scottish schools. Can you provide an update on where you are with that?

Chris Oswald: I have just read the final version of the research report, which we are now preparing for publication. It is a really helpful

report. It contains a literature review of everything that we know from research and data that have been produced, particularly in Scotland but also elsewhere, and two surveys that were carried out by the contractors—one with 1,200 pupils and one with a significant number of teachers. Forgive me; I do not know the exact figure. As I said, that report is ready and is being prepared for publication, so I hope that it will come out in the next six weeks or so.

We are now moving to start to look at an intervention. Again, this is very much the improvement model that Alastair Pringle has been talking about. We will invite schools—a very small number of schools, because we have limited capacity—to take part. We would want a typical or average school rather than a school that is particularly bad or one that is particularly good at dealing with the issue. We will put a resource into the school to help it to learn from the report and to look at the recommendations that have already been made by a number of agencies, such as Stonewall and respectme. It will be a case of pulling all that information together, testing an intervention in a school from the start of January through to March, evaluating that and then making a set of recommendations to education authorities across Scotland about how we could start to improve practice.

One of the issues that has continually come up in this work is that there is no requirement on schools or local authorities to collate and publish data about identity-based harassment. That is an area that we will want to pursue with the Government, because it is a strange anomaly that we have a lot of police data that can tell us about the activities of school-aged children outside a school but we have no comparable data about what is actually happening inside that school. I would find it odd if there was not a read-across between what happens just outside the school gates and what happens inside the school gates.

That is an area that we want to pursue. It would help a lot of criminal justice agencies and a lot of the rehabilitative agencies to have data available about why, when and how identity-based harassment incidents occur. In particular, such data would help us to assess what we can do, what culture we need to put in place in schools and what procedures and reporting mechanisms we need to have in order to improve pupils' confidence and move towards reduction.

Given the way in which these things work, I expect that it is inevitable that, as we introduce the programmes, reports of harassment will go up, because people who are less confident will start to be more confident. Perversely, that is a success measure. However, over time, we would expect to see that figure go down.

Marco Biagi: The pathfinder model that you suggest for further action is very interesting. To go back to what Siobhan McMahon said about the follow-on from reports, do you envisage a substantial level of engagement beyond that, which would involve actively promoting that example to different schools and local authorities? It strikes me that, as there are almost 400 secondary schools in Scotland, such engagement would stretch any organisation's resources.

Chris Oswald: There are 17 of us. It would be wrong to think that the EHRC is the sole arbiter and the sole body responsible for the types of work that I have described. The duties that we promote and which we are bound by are shared by the whole public sector in Scotland. We can set the measure and develop the resources but, for that to be effective, we have to find a way of it being mainstreamed inside education authorities, so we will want to work with the Government on that. On the issue of statistics, it is about ensuring that local authorities are doing that and that the Government is collecting the right data.

We will work in partnership, but to a certain extent we have set the margin with the disability harassment inquiry in other areas. We have defined the issue, we have set out what good practice is and we have worked with some of the key strategic agencies, but the ball has now passed to them.

Alastair Pringle: All those pieces of work will have a to-scale model. It is very much a case of our being able to input our expertise and resource in one or two schools, testing what works, taking it to the next level, which might be 10 schools, and then moving up the way. We have had a lot of support from the leading improvement team in the Scottish Government, building on models that have been used elsewhere, such as the Scottish patient safety programme, so the approach has a wee bit of science behind it as well.

We are using the same model in working with Audit Scotland on audit and inspection activity. We are working with Audit Scotland to look at court efficiency, which is one of its areas of inspection at the moment, and to think about how to effectively build equality and human rights considerations in that area. We will look at the lessons learned and take that to the next piece of audit and inspection. That is one way of trying to respond to the current climate.

11:00

Christian Allard: I will ask about three different areas. The first is human trafficking, which we have talked about. New laws are coming in in Scotland. In your work over the next three years,

will your priority be the Scottish law or will you have a GB-wide agenda?

Alastair Pringle: We are interested in the issue at GB level. The Modern Slavery Bill is being considered in England and Wales and a human trafficking bill is being developed in Scotland. We are dedicating some Scotland resource to our human trafficking work; a lawyer and our head of parliamentary affairs are working with the anti-trafficking progress group on the development of the Scottish bill.

We have not looked into the work that we will do on that next year, to be honest; the resource that we have committed to the work runs to the end of March. We will work with our Scotland committee to look at the resource that we have available and our priorities for next year.

Our key focus at the moment is to ensure that the recommendations from our inquiry into human trafficking in Scotland and the issues that we picked up in our follow-on report are, as much as possible, built into the human trafficking bill in Scotland.

Christian Allard: Is enforcement a GB role? Does it happen at GB level, because you do not have the autonomy to be able to take a different approach here?

Alastair Pringle: We have a GB-level litigation strategy, which sets out priorities and how we work, but we have a dedicated legal team in Scotland, which has a significant level of autonomy to undertake enforcement work in Scotland, in the context of the priorities on which we decide. I would not say that the lead is GB in that regard; we have a GB legal team, in which Scotland participates, but we are working with a different legal structure and system in Scotland.

The key issue is funding for cases. If funding is required for legal cases, it comes from a GB pot—most of our funding is GB funding. Therefore, if we want to apply to intervene in cases, we need to go through the regulatory decision-making process that I described. We ask whether the intervention is strategic and whether it will test case law. Even if case law on an issue has been tested in England, there might be an argument for testing it in Scotland—we recently swayed the argument for undertaking a piece of work in Scotland on a matter that might not normally have gone through that filtering process.

Christian Allard: Work is GB led, then.

Alastair Pringle: We are a GB organisation, but we have significant autonomy to decide what work we undertake, which partly depends on funding.

Christian Allard: If you had more autonomy, would you consider enforcement differently?

Alastair Pringle: No, because the equality framework within which we work is the same framework. I am satisfied with our current approach to enforcement in Scotland, regardless.

Christian Allard: On a different matter, the modern apprenticeship programme is very much Scotland based. How do you monitor what is happening? I know that that is difficult to do—we need to get under the skin of the data, which is something that the committee has talked about. We need to measure improvement as well as the programme's accessibility to young people with disabilities and to ethnic minorities. We also need to reduce occupational segregation in all programmes. Can you tell us a bit more about that?

Alastair Pringle: There is a piece of work that initially was to be GB led but on which Scotland took the lead—one of the benefits of how we work is that we can consider different themes or areas of practice across Great Britain. We have been pleased with the work's impact, particularly on the Wood report. Chris Oswald led on that work, so I will let him talk about what we are doing to monitor progress and improvements.

Chris Oswald: Mr Allard has hit the nail on the head. The issues with the modern apprenticeship programme are access and monitoring. When we looked at it, we managed to get data about the numbers of people who are involved in the current programme by different characteristics. As you know, we found—as we expected to find—significant gender segregation but also a very low level of participation among ethnic minorities and a particularly low level of participation among disabled people.

The difficulty is that, because there is no monitoring of applications for apprenticeships in Scotland, we do not know who is coming forward and we see only the people who have been successful. One of the recommendations that we have been working on with Skills Development Scotland is about having that monitoring of applications. If young women are not applying for engineering apprenticeships in any number, that is one diagnostic thing. Equally, however, if young women are applying for engineering apprenticeships but a higher number of women than men are not getting them, we need to know that because that shows that there is something wrong in the system. We are looking for three things, the first of which is monitoring. As I said, we have discussed that with the employability team and Skills Development Scotland, and we are moving forward on that.

On targets, we think that there has been a lack of rigour or aspiration in the modern apprenticeships programme. It has been very successful in its own right, but it has not been

successful in terms of equality. We want targets—not quotas—to be set that start to focus resource and thinking on why only 0.3 per cent of apprenticeships go to disabled people. We want to be progressive. That has been recognised by the Wood commission, and we endorse the targets that it has started to set out.

Contracts are the final area that we are working on. We feel that it would be of benefit to state specifically in the contract between the funder, Skills Development Scotland and the college or other providers of apprenticeship programmes that particular targets—not quotas—must be met or worked towards.

That has led us into a significant area of work around procurement. We are now working with the Scottish Government to develop what we call a worked example of equality and human rights in action in procurement so that we do not look at modern apprenticeships in isolation but take the learning from that work across all Government and local government contracts, the NHS and Police Scotland.

There are questions that can be asked. The research that we undertook indicated clearly that improvements could be made in contracting and procurement, and we want to look closely at that area for improvement over time. It has a massive role to play in promoting equality in the private sector and in communities.

Christian Allard: Do you have a timetable for the work that you are doing with the Scottish Government?

Chris Oswald: We have the group, and I am trying to get it to meet. The past couple of months have been a very difficult time to get anybody to meet, but we hope to meet next month to commence the work. We want to look at two or three live examples of procurement so that we can influence something as it goes through. I expect that to run through to the end of the current financial year and possibly a little bit longer, and that work will be written up.

We are working within the Scottish Government's procurement journey. Therefore, instead of publishing stand-alone guidance, which may risk that guidance sitting on a shelf, we are integrating all the thinking into the mainstream procurement activity and the advice that the Government gives. That gives us immediate access to around 7,000 procurement professionals throughout Scotland.

Christian Allard: Okay. I have a final point to make. As a North East Scotland MSP, I am delighted that you and the Wood commission recognise that good things are coming out of the north-east. I worked in the fishing industry for 30 years and I am interested to know what

assessment you made in deciding that the example of the meat processing industry in London could be replicated in the fishing industry in the north-east of Scotland.

My colleague John Finnie asked about trade bodies. I would have thought that trade bodies would have been the first port of call. Did you do the same in London? Did you talk to trade bodies first? We have the Scottish Fishermen's Federation for offshore activity and Seafood Scotland for onshore activity. Trade bodies will be interested in having a strong dialogue with you. We talked about dialogue with local authorities, and we should have the same type of dialogue in the private sector.

Chris Oswald: Absolutely. It is a staged process. We are approaching it in a different way from the inquiry into the meat processing industry in England. That was a formal investigation in which we had strong grounds to believe that discrimination or difference of treatment was occurring. We do not have such evidence just now for the fishing industry, but the employee profile of the industry has similarities.

At the moment, we are doing an exploratory piece of work. We are not going into it with the assumption that the industry has discriminatory practices—we cannot do that. We want to speak to some of the employee representatives first, either through unions or through migrant organisations, to get a sense of what they are hearing and what they think might be happening in the industry. If that piece of work were to find that everything is fine in the industry, that would affect our approach.

I stress that we will take a round-table approach on the issue. We have only just started that work, so it is early days and we do not have a full plan worked out for it at this point. We will be more than happy to get back to you in writing or through attendance at other meetings to keep the committee updated on the work.

Christian Allard: I am particularly interested in the engagement that you have with the private and public sectors. You talked about your engagement with local authorities. In the private sector, people would like to have the same engagement rather than enforcement first and then a discussion.

Chris Oswald: Absolutely. We are not taking an enforcement approach. At this stage, we have no evidence of discrimination. We have had a couple of cases, but we have a couple of cases from different industries all the time—that does not mean that there is a significant issue. The profile—particularly the employee profile—of the fishing industry suggests that there may be vulnerabilities, but we are not walking into the process with any assumptions.

Alastair Pringle: It is about sharing good practice from elsewhere and seeing whether it is relevant. There may be some relevance, and we are considering whether we can alter our guidance and share it with the industry to improve practice. It is absolutely not about enforcement.

Marco Biagi: The witnesses referred earlier to the difficulty of collecting data on sexual orientation and faith. Those two strands have not really come up yet in our examination of modern apprenticeships. Does that reflect the fact that the data has not yet been collected or does it reflect something else? Are those two strands being examined with regard to modern apprenticeships and are there any early conclusions?

Chris Oswald: I struggle to remember all the tables that were produced. From memory—I will have to get back to you on this—I think that the data is being asked for across the protected characteristics. Part of the problem was that data was not being collated, in some cases because of very low numbers. Therefore, we want to examine how we can get better data on those areas, particularly for the setting and monitoring of targets.

At the moment, we have quite glaring findings about race, disability and gender, which give us enough to be getting on with. However, we want to extend that monitoring so that we get better data back on the areas that you are asking about in order to determine whether there are inequalities or imbalances in access for those other groups as well.

11:15

The Convener: You mentioned that you are working with Skills Development Scotland and that training providers will be set targets to achieve in respect of people with the various disability, religious and other characteristics. How will training providers be able to achieve those targets if it is the employers who provide the modern apprenticeships? Most of the employers tend to be small and medium-sized enterprises in the private sector. It seems to me that the EHRC must contact those organisations and raise awareness among them so that disabled people, those from ethnic backgrounds, females and others will work in the industries concerned. Training providers can provide modern apprenticeship training only to people who are employed. I am putting the ball back in your court and saying that you really need to raise awareness among employers if the training providers in Skills Development Scotland are to achieve the targets.

Chris Oswald: Absolutely. The situation is very different in other parts of the UK, where there is direct access to apprenticeships. We are aware of

that. Only 0.3 per cent of all modern apprenticeships go to disabled people and I do not think that that is representative of young disabled people's employment pattern, although I accept that it may not be 20 per cent, which is the general figure that we look at, because of age and issues about disclosure. There are a number of issues. The number of modern apprenticeships is dependent on that pipeline coming from employers, and I still do not think that the figure of 0.3 per cent in any sense reflects that employment pattern.

The Wood commission has a role in raising awareness, as we are doing across the board with employers, specifically around the issue. However, as in other areas that we have talked about, our job in this area is very much to set the pace. It is important that agencies such as Skills Development Scotland and the colleges take responsibility for addressing the issue, because that is their purpose. Our job is to influence that and ensure that the way in which they are working promotes the greatest accessibility for all people. We are working with them, we will help them and we will look at strategies, but we do not have the resource or the remit to go in and do that detailed work with every employer.

Alastair Pringle: Our conversations with Sir Ian Wood as he undertook his work were also about how we influence elsewhere—for example, in working with agencies such as Skills Development Scotland. We met Sir Ian to share our findings and worked with his team to look at what recommendations might be made, which led to 13 of the 39 recommendations in the report focusing on aspects of equality and access. That starts to tap into some of the upstream factors such as the expectations of school leavers and the pipeline issues. With limited resource, that is how we tend to target our expertise.

Siobhan McMahon: We now have a cabinet secretary with responsibility for equalities. How many times have you met Shona Robison since her appointment?

Alastair Pringle: We have met once since her appointment. I go back to Chris Oswald's point. It has been quite a busy time to engage and meet, but we have had a discussion about the Gypsy Traveller work and whether the cabinet secretary would be willing to work with us on launching that product.

Siobhan McMahon: That is useful to know.

How many times have you met Roseanna Cunningham over the past three years, given that she has responsibility for religion? She still does, even though we now have a cabinet secretary for equalities.

Alastair Pringle: We have met on a variety of platforms, in a range of discussions. I do not think that we have met directly, one to one.

Siobhan McMahon: That is helpful.

Chris Oswald: Her office is in touch with us on issues as well.

Siobhan McMahon: I imagine that issues come up. One such piece of work was the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill. Religion was a big part of that. I would have thought that a minister who has sole responsibility for religion would have been engaging one to one with the EHRC.

Alastair, you mentioned pay gap issues when you talked about matters that have come up in discussions with Scottish Government officials. How are you taking that forward? As much as discussion at that level is welcome—I am sure that the committee will welcome that—it is a case of taking that forward and getting real progress on an issue that frustrates many of us. Have you set out anything concrete that you wish to take forward with the Scottish Government?

Alastair Pringle: Chris, do you want to say anything about the national programme?

Chris Oswald: The way in which pay gaps have been identified and measured in the public sector is wildly inconsistent at the moment. One of the areas of the programme of work that we are doing with the Government is around the pay gap and pay gap calculations. As I said, public bodies are adopting a variety of ways of calculating pay gaps. Working with the Government and Close the Gap, we want to understand why there is such variety and to start to recommend particular approaches for particular sectors, so that we can get more uniformity.

We are in the process of finalising that project with the Government. We met the Government yesterday to discuss the project, as Alastair Pringle said. We hope that Close the Gap will be engaged to lead that work and to come up with a set of proposals that we can put in place from the start of next year. That will be part of the improvement work to identify the public bodies that are doing well and whose calculations we can be confident about, and to transfer that learning and knowledge to the organisations that are struggling.

It is very difficult to make any comparison across or between sectors about equal pay performance because of the variety of methods that are being employed. The commission can recommend ways of calculating pay gaps, but it is not an enforceable area. The Scotland-specific duty says that data has to be produced; it does not say how that data should be produced.

Alastair Pringle: The commission is interested in the issue across the piece, at GB level. We are looking at a fairly significant programme of work, starting specifically on the pay gap, next year. We are working out the details of that to make sure that it is aligned with the Scotland-specific duties, which are different from the specific duties in England and Wales. We expect to put more and more focus on the issue.

Siobhan McMahon: Will you keep the committee informed of the work that you do on that? It would be very interesting for all of us.

Alastair Pringle: Yes. The initial proposals are in draft but, as soon as they are available to be circulated more widely, we would welcome people's contributions and thoughts.

Siobhan McMahon: That would be great—thank you.

A phrase that has come up a lot, which was also in the business plan, is “transfer of expertise” or “transfer of knowledge”. Has the EHRC carried out a skills audit of its staff? I am sure that you do not profess to be the expert group on everything. Have you carried out a skills audit of your 17 staff? How do you transfer your knowledge to groups that wish to work with you?

Alastair Pringle: I do not think that we have done a formal skills audit. When we looked to recruit our last set of Scotland committee members, we did a bit of a skills audit across the organisation and the existing committee to identify areas in which we felt that we did not have as much expertise. We used that information to target recruitment for Scotland committee members.

The transfer-of-expertise programme is a specific piece of work. We have done one specific event with the third sector, for instance, so we have tried to target the programme at not just lawyers or advice givers but the third sector, to help it to understand the scope of the public sector duty and how it can be used to influence change, not just in courts but through a range of mechanisms. I do not think that that quite answers your question.

We try to use our intelligence. We get requests for information and requests to speak from a wide range of audiences. We assess on a quarterly basis who is asking us for information and who is asking us to speak or to contribute to working groups, to make sure that we are covering the range of protected characteristics and human rights that span our remit. If there are any gaps, we try to address them: we speak to different groups to find out whether there is anything in particular that we can do to help. We do a range of things to try to match up what we do and what we know with what people want and what they are

asking us for. That helps to inform our business planning process.

Siobhan McMahon: It would be helpful if you could undertake a formal skills audit. You have looked at independence and you are taking part in the groups that are considering what further devolution will mean. A lot of us have been on the train of more powers and further devolution, but we need to know where you are at the minute in order to establish where we want to go, so it would be helpful to the committee and others if you could look into going through a formal process.

Many voluntary organisations have raised concerns with us that they might not be included in the guidance that you publish and have suggested that, although you say that you are an open and transparent organisation, they might not be at the table when such guidance is formed. Are you looking to include voluntary organisations and those who have an interest in equalities and human rights by bringing them to the table when guidance is issued and not necessarily relying on your own organisation?

Alastair Pringle: In everything we do we look at who the appropriate stakeholders are. If we want to engage with business, the appropriate stakeholders are not necessarily voluntary sector organisations; they are probably trade bodies or others. We look at all the work that we do and work out who is best to sit round the table.

The piece of work that we are now engaging in with the Scottish Government, on which, as I said, we had a follow-up discussion yesterday, is looking at issues such as the pay gap. Close the Gap, which is an NGO, is around the table for that. We target our engagement appropriately.

We have a statutory role of developing various pieces of supporting guidance. At times it will be appropriate to get others' views and at other times it will not. To inform our approach to constitutional reform, we have had wide-reaching engagement with everyone from Inclusion Scotland to Stonewall Scotland and others. I am satisfied that our stakeholder engagement programme is robust enough. As you can see from our business plan and our annual review, we undertake a very wide range of activity. I would love to be able to do more, but we have to focus our attention and resources where we can.

Chris Oswald: It depends very much on the nature of the guidance. Things such as codes have a specific legal function and a particular purpose, but there are other areas. I am thinking about two pieces of guidance that we issued recently. One was about Sikh articles of faith. The Sikh community was completely involved in that; it would have been nonsense for it not to have been. The link between equality and procurement is a

much more abstract area and very few people in Scotland have the knowledge that is needed. Clearly, the audience for the procurement guidance is procurement professionals.

Siobhan McMahon: Would trade unions be part of that? You mentioned procurement; did you engage with trade unions or the Scottish Trades Union Congress on procurement?

Chris Oswald: I would have to go back and look at that. A member of my team did the work; I was not directly involved in it. I am happy to come back to you on that.

Alastair Pringle: Another important point is that part of our role is to ensure that public authorities, in meeting their duties, engage appropriately with organisations in their communities. That is where we can add value, in terms of different voices contributing to improving services.

The Convener: Thank you both for coming along, passing on information and answering our questions.

That concludes today's meeting. Our next meeting will take place on Thursday 2 October.

Meeting closed at 11:28.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice to SPICe.

Available in e-format only. Printed Scottish Parliament documentation is published in Edinburgh by APS Group Scotland.

All documents are available on
the Scottish Parliament website at:

www.scottish.parliament.uk

For details of documents available to
order in hard copy format, please contact:
APS Scottish Parliament Publications on 0131 629 9941.

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@scottish.parliament.uk

e-format first available
ISBN 978-1-78457-965-4

Revised e-format available
ISBN 978-1-78457-972-2