

EQUAL OPPORTUNITIES COMMITTEE

Tuesday 13 September 2005

Session 2

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EQUAL OPPORTUNITIES COMMITTEE

12th Meeting 2005, Session 2

CONVENER

*Cathy Peattie (Falkirk East) (Lab)

DEPUTY CONVENER

*Nora Radcliffe (Gordon) (LD)

COMMITTEE MEMBERS

Frances Curran (West of Scotland) (SSP)

*Marlyn Glen (North East Scotland) (Lab)

*Marilyn Livingstone (Kirkcaldy) (Lab)

*Mr Jamie McGrigor (Highlands and Islands) (Con)

Elaine Smith (Coatbridge and Chryston) (Lab)

*John Swinburne (Central Scotland) (SSCUP)

*Ms Sandra White (Glasgow) (SNP)

COMMITTEE SUBSTITUTES

Jackie Baillie (Dumbarton) (Lab)

Linda Fabiani (Central Scotland) (SNP)

Patrick Harvie (Glasgow) (Green)

Carolyn Leckie (Central Scotland) (SSP)

*attended

THE FOLLOWING GAVE EVIDENCE:

David Cobb (Scottish Human Rights Centre)

Adam Gaines (Disability Rights Commission)

Tim Hopkins (Equality Network and Commission for Equality and Human Rights Steering Group)

Ali Jarvis (Commission for Racial Equality)

Vanessa Taylor (Scottish Inter Faith Council)

John Wilkes (Equal Opportunities Commission)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Zoé Tough

ASSISTANT CLERK

Roy McMahon

LOCATION

Committee Room 4

Scottish Parliament

Equal Opportunities Committee

Tuesday 13 September 2005

[THE CONVENER *opened the meeting at 10:04*]

Interests

The Convener (Cathy Peattie): Good morning and welcome to the 12th meeting in 2005 of the Equal Opportunities Committee. I remind all present that mobile phones should be turned off. I have received apologies from Elaine Smith.

Agenda item 1 is a declaration of interests by new committee members. I welcome Jamie McGrigor and John Swinburne to the committee and ask them whether they have any interests to declare.

Mr Jamie McGrigor (Highlands and Islands) (Con): Possibly. I am president of the Highland Disabled Ramblers, but, other than that, I have no interests to declare.

The Convener: That is a positive interest for the committee.

John Swinburne (Central Scotland) (SSCUP): I am a director of Motherwell Football Club, which is a non-remunerated post.

Equality Bill

The Convener: Agenda item 2 is on the Equality Bill that is currently before the United Kingdom Parliament and on which the Scottish Executive intends to lodge a Sewel motion.

We have lots of witnesses this morning—I think that there are more witnesses than committee members, so the session should be interesting. I welcome Ali Jarvis, from the Commission for Racial Equality; Adam Gaines, from the Disability Rights Commission; Tim Hopkins, from the Equality Network and the commission for equality and human rights steering group; John Wilkes, from the Equal Opportunities Commission; David Cobb, from the Scottish Human Rights Centre; and Vanessa Taylor, from the Scottish Inter Faith Council. I thank them for taking time to give us evidence.

To maximise the question time, we will go straight to questions. Are the panel members satisfied that having one commissioner for Scotland out of a possible 15 commissioners will ensure adequate representation of Scottish interests and issues in the commission for equality and human rights? In a letter to the responsible minister in 2004, the committee supported the suggestion, which we heard in evidence, that there should be a deputy commissioner for Scotland, but there seems to be no change in that respect. We are interested in your views on the issue.

Tim Hopkins (Equality Network and Commission for Equality and Human Rights Steering Group): We have felt all along that the Scotland commissioner will have a large workload. The existing three commissions each have a Scotland commissioner—those commissioners are part time but work very hard. The new commission will deal with six equality strands and human rights, which is more than the existing three commissions deal with, so we are still concerned about the matter. In the steering group, on behalf of the equalities co-ordinating group, I have said that the Scotland commissioner needs to be full time and that they will also need a lot of support from the other Scotland committee members.

We do not want the Scotland commissioner to be the only person on the 10 to 15-member commission who has any understanding of Scotland. An understanding of devolution should be a requirement for all the commissioners. We hope that, as currently happens with the Commission for Racial Equality, more than one of the 15 commissioners will be from Scotland.

Ali Jarvis (Commission for Racial Equality): Whether or not a formal deputy is the right route—that might just re-emphasise the feeling that “They are the Scottish people”—there must be a route to

allow somebody to deputise in case of sickness or absence and to take proxy roles. That might be another commissioner from the 15, or it might be a member of the Scotland committee. It is essential that we have such a mechanism, either in the bill or in management practices.

When the commission is set up, it is important that the Scotland commissioner is among the first five appointments that the bill mentions, so that, from early on, we build devolution into the principles on which the organisation works. The Scotland committee should be set up as soon as practicable after the appointment of the commissioner. However, underlying the two issues of timing and the requirement for a full-time commissioner is the fact that, if we are to avoid a devolution gap, all commissioners must have a full understanding of Great Britain and devolved issues—they should not just consider themselves to be England commissioners.

The Convener: Are you content with the provision under which the secretary of state will need the consent of the Scottish ministers on the appointment of a Scottish commissioner

“w ho know s about conditions in Scotland”,

or should further provision be made? The fear is that, unless the Scottish ministers are directly involved, it will be difficult to ensure that the commissioner has full knowledge of what is happening in Scotland.

Tim Hopkins: Our feeling was that the phrase,

“w ho know s about conditions in Scotland”,

in the job requirement for the commissioner was weak. On the other hand, the Scottish ministers need to consent to that person’s appointment, which seems quite appropriate. The Government has said that Scottish ministers will also be consulted by the commission about the appointment of the Scotland committee members. That is appropriate as well. It would not be appropriate for Scottish ministers to have a veto on the appointment of Scotland committee members, as we do not want the committee to be too much a body of the Executive. The balance is about right. The fact that Scottish ministers have to consent to the appointment of the Scottish commissioner will ensure that we get somebody appropriate and it is also appropriate that they are consulted about the appointment of the other Scotland committee members.

Ali Jarvis: Tim Hopkins has mentioned that the phrase,

“w ho know s about conditions in Scotland”,

is weak. It is important to be sure what the person’s specification for the role is. It would be impossible for someone to represent all six

equality strands, plus a human rights interest and a variety of other things. We need to be clear that the person is not an amalgam of equality and human rights strands but has various competencies around leadership, communication, political energy and motivation that, perhaps, are quite beyond simply knowing about conditions in Scotland, which might be insufficient for the role.

The Convener: If you think that the phrase,

“w ho know s about conditions in Scotland”,

is weak, how would you like it to be worded?

Ali Jarvis: We have not discussed a preferred recommendation. The wording needs to be made stronger and should have more of a focus on the need to drive the agenda. The descriptor should be much more proactive.

Tim Hopkins: I am not sure that the point that we are making requires a change to the bill; I think that the process will work in practice.

A related point is that the members of the Scotland committee should have, between them, the kind of knowledge and experience that paragraph 2(1) of schedule 1 to the bill says that the commissioners should have. It is not necessary for the Scotland committee to have representatives for each strand—that would be the wrong way to go—but they need to have experience across the strands.

Adam Gaines (Disability Rights Commission): It is important that the Scotland committee has representation from across a range of equality interests and from across Scotland. It should be reflective, rather than representative, of equality issues across Scotland, including disability interests, obviously.

The Convener: That is the difficulty about one commissioner knowing about everything in Scotland. It sounds quite incredible.

Tim Hopkins: That is why the Scotland committee is important. At the GB level, there will be the 10 to 15-member commission that will have a chair and, at the Scotland level, the Scotland commissioner will chair the Scotland committee. The Scotland committee should be thought of as being the Scottish parallel to the GB commission, which will mean that its members should have the same range of experience and skills as the members of the GB commission.

Ali Jarvis: Our view is that, even if there were two full-time commissioners, they would not be able to represent the equality interests of Scotland. The model that Tim Hopkins described has to be the way in which the process will work.

Marlyn Glen (North East Scotland) (Lab): I am impressed with your optimism about the possibility that all the commissioners will be knowledgeable

about Scotland and will understand it. Are you content that the provisions relating to the establishment of a Scotland committee are sufficient for the purpose of ensuring the effective operation of the commission in relation to Scotland? How confident are you, for example, that the Scotland committee will be adequately representative of the various equality strands and will have sufficient knowledge and expertise in relation to Scotland and its institutions?

Tim Hopkins: That is not set out in the bill. If the model that we have been discussing is followed, we would get the result that we need, which is what you have just described. The Scotland committee members will be appointed by the commission, in consultation with the Scottish Executive. That must be done correctly early in the process.

Marlyn Glen: Should that be made explicit in the bill?

Tim Hopkins: I do not think that we can legislate for everything; we will have to take some things on trust. The United Kingdom Government has already said in Parliament that the Scottish Executive will be consulted about the appointments to the Scotland committee. I am not sure that that needs to be spelled out in the legislation.

Ali Jarvis: Similarly, we cannot put job descriptions into legislation, but that is what we are starting to talk about when we think about the different types of expertise in the make-up of the committee.

The Convener: A lot of that will be in the guidance.

Tim Hopkins: It is important that the appointments to the committee should be made in line with the public appointments process. The Scotland commissioner will be a public appointment, but the committee members will not, because they will be appointed by the commission rather than by the Government. However, it is important that the process is open and that it follows equal opportunities principles as set out by the public appointments process in Scotland.

10:15

Marlyn Glen: Is the panel content with the nature of the relationship that is embodied in clause 12(2) of the bill in relation to advising and making recommendations to the devolved Government?

Tim Hopkins: Yes.

Marlyn Glen: In evidence to the committee on 15 June 2004, John Wilkes noted:

“The Scottish committee will play a crucial role, but for it to do that, it will need to have a clear set of delegated powers and responsibilities, which are not defined as yet.”—[*Official Report, Equal Opportunities Committee*, 15 June 2004; c 512.]

Paragraphs 21 and 22 of schedule 1 to the bill make specific delegations of powers to the Scotland committee under clauses 12 and 14. Are panel members content with the coverage of those delegations or are there further delegations that should, in the panel's view, be made to the Scotland committee?

John Wilkes (Equal Opportunities Commission): Broadly speaking, the principle that is being established is that the promotional powers of the commission are delegated to Scotland and Wales. All the powers around promotion are delegated except for two—we sought to amend that situation through the House of Lords. The two exceptions relate to the communities' power and grant-giving powers. There were specific reasons why those were not included in the initial tranche, but they are still outstanding. Tim Hopkins might be able to update you on where the process has reached, but we think that those two remaining powers should be specified as being within the remit of the Scotland committee, because they link with the philosophy behind the proposals.

Tim Hopkins: As it stands, the bill is rather inconsistent. As John Wilkes said, the principle is to delegate to the Scotland committee the promotional powers but not the enforcement powers. That was widely agreed. One of the promotional powers that are not delegated is the grant-giving power under clause 18. That is inconsistent, because the main promotional power in clause 14—the power to give advice and guidance, to undertake research, to provide education and training and so on—is delegated, which is good. Also delegated is the power to subcontract that work to other bodies. However, the power to give grants to do that work is not delegated, although the CEHR at GB level can give such grants. There is an inconsistency in that. We believe that the power to carry out the work by giving grants to other bodies as well as by subcontracting where appropriate should also be delegated to the Scotland committee under clause 18.

The other power that should be delegated to the Scotland committee is the clause 21 power, which supports the CEHR's duty to promote good relations between communities. Clause 21 provides a power primarily to do work around hate crime; it is about doing work to reduce crime that affects certain communities and to encourage community events. Criminal law in Scotland is devolved and hate crime law in Scotland is different from hate crime law in England.

For example, we do not know how the Executive will respond to the hate crime working group report that was published last year. If the Executive agrees to the recommendations in that report, hate crime law in Scotland will be extended to cover transphobic as well as homophobic hate crime, which is different from the situation down south.

That is an example of why it is important that the CEHR's work on crime in Scotland is done with a full understanding of the criminal law in Scotland as well as of the police and criminal justice system—all the things that are devolved in Scotland and are very different. The clause 21 power should be delegated to the Scotland committee, because the expertise in criminal law and criminal justice is here in Scotland.

Similarly, the work under clause 21 that involves organising community events will be done in partnership with bodies such as local government and Scottish voluntary bodies. Again, it would make sense for that work to be run by the Scotland committee. For consistency of delegation of promotional powers, the powers under clauses 18 and 21 of the bill should be delegated to the Scotland committee.

Marilyn Livingstone (Kirkcaldy) (Lab): Does the panel have any concerns about the operation of the disability committee in relation to the operation of the Scotland committee? Is the panel content with the extent to which the relationship is described in the bill, including the requirement to consult the Scotland committee?

Adam Gaines: That was a concern previously, but the bill takes matters much further and clarifies the situation. There is now a duty on the disability committee to consult the Scotland committee on all matters to do with disability in Scotland. In practice, the liaison between the two committees will be important. It would be helpful if a member of the Scotland committee was on the disability committee and vice versa, to ensure a good flow of information when decisions are made. The disability committee should be properly informed of issues in Scotland and the Scotland committee should be properly informed of disability issues—if the Scotland committee is discussing matters that may have a bearing on disability, the disability committee should have such information. It would also be helpful if there was an impact assessment process when key policies were being discussed by the relevant committees to ensure that the disability committee considers Scottish issues and the Scotland committee considers disability issues. The practical relationship between the two committees will be critical.

Mr McGrigor: The explanatory notes accompanying the bill state that the estimated annual budget for the CEHR is £70 million. Are the witnesses content that that will be enough money

generally and that it will allow for a suitable allocation for the Scotland committee?

John Wilkes: Broadly speaking, we have concerns about the level of resource that is indicated to be allocated to the CEHR, although it is about £20 million more than the allocation to the existing three commissions, which is around £50 million. There will be scope for some savings, as there will be one body rather than three. However, we should remember the scale and scope of the responsibilities of the new commission, which will have to deal with human rights issues and other areas of equality that the existing three commissions do not officially deal with. There will be issues to do with work that is delegated to Scotland and Wales around the whole promotion agenda and there is also the commitment to a regional agenda in England, Scotland and Wales.

The existing commissions have done some preliminary, albeit rough, costings of what we feel, with our experience, that work will cost. We believe that £70 million is a low estimate. We feel that, in order to carry out its functions effectively, as defined in the bill, the new commission will require funding of the order of £120 million. There is a bit of a gap, which is of concern. The new commission will have many competing demands and a huge agenda. To ensure that the new commission carries out all its functions and fulfils all its duties in Scotland, we are concerned that it should get the right amount of the cake, given that it will also be operating on a broader equality agenda under schedule 5 to the bill, which we may touch on later.

Mr McGrigor: Do you have a figure in mind of what the Scotland committee should get?

John Wilkes: That is more difficult to say. We have avoided saying that there should be a formulaic approach like the Barnett formula. I would guess that something in the region of £12 million to £20 million might be the sort of sum to address the commission's specific responsibilities in Scotland. However, that would be hard to say, as we have not done any specific costing work in Scotland.

Tim Hopkins: That would be for all the functions in Scotland, not just the functions that were delegated to the Scotland committee. The enforcement work in Scotland is not delegated, but it will be a major part of the commission's work in Scotland.

John Wilkes: There is also the disability work in Scotland, which will be steered by the disability committee. Although there will be an element of allocation to the work in Scotland, other parts of the commission will need to ensure that they have sufficient resources to do their work across the three countries.

Mr McGrigor: The bill provides for the commission to send a copy of its annual report, which is to include details of the commission's activities in relation to Scotland, to the Scottish Parliament. Are the witnesses content with the reporting arrangements that the bill proposes?

Tim Hopkins: In general, we are content. It is good that the report will be sent to the Scottish Parliament rather than to the Scottish Executive. Some discussion has taken place down south about whether the commission should be a body of the Parliament or of the Executive, but of course it is a UK Government body rather than a body that answers to the UK Parliament. Scotland has tended to operate the other way round: the commissioners that have been established here report to the Parliament. We quite like the idea that the report should be sent to the Scottish Parliament.

Mr McGrigor: Are panel members content that the requirements in the bill for the secretary of state to consult the Scottish ministers on codes of practice are sufficient to ensure that codes of practice that are produced in that way will be fit for purpose in Scotland? For example, would you prefer the bill to specify that the secretary of state should take account of the Scottish ministers' views or would you rather that the Scottish ministers be required to consult widely before consenting?

Ali Jarvis: There are a number of options. The key point, on which we all agree, is that codes of practice must be got right for the Scottish context. We can probably all cite examples of existing codes of practice that have been better or less good at that. We already see in the bill examples of English law slipping in as reference and cited example rather than the bill being an accurate reflection of the legal context north of the border.

In general, if done correctly, the requirement to consult the Scottish ministers is probably adequate, but people must understand what that means and ensure that liaison between officers happens alongside that, so that we do not have the sudden realisation that something that is inaccurate for Scotland is due to be published. We do not want an additional responsibility on the Scottish ministers to consult separately, but we want better procedure to ensure accuracy between GB and Scotland officers. Working effectively, the Scotland committee will play a major role in ensuring that.

John Wilkes: The responsibility to consult effectively within Britain—England, Scotland and Wales—falls to the commission.

Ms Sandra White (Glasgow) (SNP): I will follow up what Jamie McGrigor said about the report being presented to the Parliament. What would

you think of a debate in the Parliament on the commission's report? Would people welcome that?

Tim Hopkins: Yes. The Equal Opportunities Committee could have an important role in considering and commenting on that report.

Ali Jarvis: Between the three commissions, the newer equality strands and human rights, we have established a good relationship with the committee. We have fallen into a pattern of an annual state-of-the-nation update and we hope that the new CEHR would fulfil a similar relationship with the committee and the Parliament more broadly.

Ms White: My questions are about human rights. People are confused about the Executive's proposed new bill and clause 7 of the Equality Bill. Clause 7 says:

"The Commission shall not take human rights action in relation to a matter if the Scottish Parliament has legislative competence to enable a body to take action of that kind in relation to that matter."

What are your views on that distinction? Are you concerned about implementation?

David Cobb (Scottish Human Rights Centre): The difficulty is that, in parallel with what is happening in the Equality Bill, the Executive has announced that a bill to create a Scottish human rights commission will be part of its legislative programme. That process begins handicapped by the fact that the "in parallel" means that the bills will run side by side but not nose to nose, if that is an adequate analogy.

One of our concerns is that gaps will open between the two bodies. The other concern, which clause 7(1) might be intended to address, is that the two bodies will overlap. The issue is difficult, because it bears on reserved, devolved and mixed matters. It is intended that memoranda of understanding between the two commissions will govern how they work. If those memoranda are drafted properly and their spirit is adhered to, there may be no problem at all. Our concern is whether the legislation is too specific and detailed. Would a better solution simply be to step back and leave it to the commissions to sort things out, in a way that is not directly capable of scrutiny by the UK Parliament or the Scottish Parliament? That is an issue for members here. Some of the more detailed provisions may be a greater source of conflict than the fairly broad arrangements.

10:30

Tim Hopkins: Clause 7 cuts a hole in the powers of the CEHR, so that effectively it cannot work on devolved human rights issues in Scotland unless it has the permission of the Scottish human

rights commission, once that is set up. That point is important, because the whole arrangement will not work unless the two bodies function well together, whatever is in the legislation.

Because a hole is being cut in the powers of the CEHR, it is important that the Scottish human rights commission has powers across devolved human rights in Scotland that are as strong as those of the CEHR; if the powers are not that strong, they will not fill the hole. One example of where that might be in question is the grant-giving power. Will the Scottish human rights commission have power to give grants in Scotland in support of devolved human rights work? If not, the hole that is cut in the powers of the CEHR will not be filled. Another example is inquiries, which the CEHR and probably the Scottish human rights commission will be able to conduct, but the CEHR will not be able to conduct inquiries into devolved human rights matters in Scotland without the permission of the Scottish human rights commission. It is important that the Scottish human rights commission has powers that are as broad as those of the CEHR.

Our other concern relates to the fundamental importance of human rights. One thing that has become clear from my work on the CEHR steering group over the past few months is the extent to which people are beginning to realise that human rights underpin the whole equality agenda; people are starting to appreciate the increasing importance of human rights and of promoting a proper understanding of them in society. Given the various things that have happened over the past few months, there is an idea that human rights are all about being soft on criminals, whereas they are also about protecting people from criminal acts, including terrorist acts. Those aspects are not in opposition to each other, but the issue is getting that understanding across.

The human rights part of the CEHR will be crucial. For England and Wales, equality and human rights will be dealt with in the same commission. Up here, to a large extent human rights will be dealt with by the Scottish human rights commission and equality will be dealt with by the CEHR. It is crucial that the two commissions work closely together. We have discussed whether it would be appropriate for them to be collocated in the same building to promote close working together.

Adam Gaines: Tim Hopkins talks about the need for the two bodies to work closely together. That will be particularly important when giving advice and information to members of the public. With two bodies—one working on reserved issues and one on devolved issues—there should be some co-working and the information systems should be coterminous to ensure that members of

the public do not have difficulty in knowing where to go for advice and support.

David Cobb: Clause 7(4) illustrates the issue that I mentioned earlier. If the CEHR asks the Scottish human rights commission whether it can take action on a matter and is told that it cannot, it might approach the Scottish information commissioner or the Scottish commissioner for children and young people, both of which posts were set up by the Scottish Parliament. The area is one in which there is a capacity for people to cut across one another's responsibilities. That needs to be taken into account when we consider the whole question of how the two bodies will work together.

John Wilkes: I want to add to what Adam Gaines said about the need for the two bodies to work together. The memorandum of understanding will be crucial. There is a split, but the Scottish human rights commission will probably carry out most of the human rights work in Scotland. There is therefore an argument for branding the CEHR in Scotland as simply the commission for equality. That would avoid public confusion.

Ms White: Many people are concerned about the different strands and devolved issues; I am thinking of the effects on asylum seekers, education, and that sort of thing. We must have clarity. David Cobb said that the CEHR would be able to deal with devolved issues as long as it spoke to the SHRC. However, what about the involvement of Scottish ministers or the Scottish Parliament? Should the memorandum cover reporting, so that issues can be reported to the Parliament or so that ministers can be involved?

David Cobb: As I suggested earlier, a problem that members might have with a memorandum of understanding is that it would not be subject to scrutiny but would be an agreement struck between the two bodies. The memorandum might well go into the public domain but, strictly speaking, it would not be a matter for either Parliament. You would expect something along the lines of Sandra White's suggestion to be in place, so that members were formally aware of what was happening. In principle, we would probably support that suggestion.

Ms White: Should the bill contain a requirement on reporting?

David Cobb: It depends. I think that such a requirement would have to be preceded by a requirement to enter memorandums of understanding. I am not sure that that would happen. As Tim Hopkins has said, some things might have to be taken on trust. Ministers might say how they would like things to work, but nothing need appear in legislation. Memorandums of

understanding that are entered into under an act of Parliament could become the subject of legal challenge and could become sticks with which the two bodies could beat each other. It is obviously for members to decide what is appropriate but, as Tim said, some things have to be taken on trust.

Tim Hopkins: There is already a requirement for the CEHR to lay its annual report before the Scottish Parliament; I guess that there will be a similar requirement on the SHRC in the Scottish human rights commission bill. The SHRC will, I think, be a body of the Parliament rather than of the Executive, so it will be appropriate for reporting to go to the Parliament rather than to the Executive. I hope and imagine that in two or three years' time this committee will have a meeting like this one but with people from the Scottish human rights commission and people from the CEHR, and that you will ask them to justify and explain their memorandum of understanding. That would be appropriate.

The Convener: That is how I would see things going: the Scottish human rights commission will be like the other commissions in Scotland and will report to the Parliament. There are concerns, but I hope that we can sort them out.

Ali Jarvis: In answer to Sandra White's point, it would be difficult in this bill to state exactly how the MOU might look, because the Scottish human rights commission does not yet exist. There are practical limits to how much can go into the Equality Bill at Westminster.

Marlyn Glen: John Wilkes spoke about branding and his idea sounded quite good at first. However, the commission for equality and human rights will deal with reserved human rights issues in Scotland. Therefore, people might still have to go to the CEHR if the particular issue is reserved. The branding idea is therefore less clear-cut than it seemed at first.

Tim Hopkins: But that highlights the importance of having a single contact point. If someone has a human rights issue, they should be able to contact one place and then speak to people in whichever commission was appropriate.

Ms White: I have another question, although I think that either David Cobb or Tim Hopkins has already touched on it. With the establishment of the CEHR and the SHRC, what concerns do panel members have about the possible gap in dealing with human rights issues in Scotland? How will we avoid issues falling through that gap? You have already given a fairly broad answer, but I wondered whether you wanted to touch on the issue again.

Ali Jarvis: I will summarise the points on that. Tim Hopkins gave a few examples of where things might fall through. We are probably less

concerned about the Equality Bill, which will carve out a fair hole, than we are about the possibility that there will not be enough momentum in Scotland to fill that hole adequately. As a result, we might end up having stronger human rights protection on reserved issues in Scotland through the CEHR, which will have a set of pre-defined roles and responsibilities, and weaker human rights powers on devolved matters because the Scottish human rights commission will not be set up to fill adequately the gap that is left. It is difficult to talk about our concern because it relates less to what is in the existing UK bill than it does to what might be included in a subsequent bill in the Scottish Parliament, which we cannot guess at in advance.

Marilyn Livingstone: What are the panel's views of the powers that part 3 of the bill will bestow on Scottish ministers to impose duties in relation to sex discrimination on relevant Scottish authorities? In particular, what does the panel think about the consultation requirements that the imposition of such duties would involve?

John Wilkes: As the commission that is responsible for gender and sex equality, we are delighted that the bill includes provision for the imposition on public authorities throughout Britain, including those in Scotland, of a specific positive duty on gender equality that is similar to the existing duty on race and the forthcoming duty on disability. As you say, in addition to the general duty, there will be specific duties, which in Scotland will be determined by Scottish ministers. We are content with the Equality Bill's provisions on that.

Our concerns relate more to timetabling and other practicalities. It is proposed that the gender equality duty on public bodies will come into effect by December 2006. Given that the passing of the Equality Bill that will start that process off will not happen until January 2006, there are practical concerns about timetabling, especially as there will be a separate process in Scotland for the Scottish-specific regulations, which will necessitate consultation. That might be a separate matter.

In relation to the coverage of the gender equality duty, there are three issues that we are still concerned about. First, although the elimination of harassment is specified in the disability duty, it is not specified in the gender equality duty, even though there are still considerable problems with harassment, especially of women. We think that it is crucial that the elimination of harassment is included in the gender equality duty that is placed on public bodies, especially in the context of employment and the services that they provide. We understand that the Government's view is that harassment will be covered by Europe's implementation of the equal treatment amendment

directive later this year, but that directive will not allow the elimination of harassment to be included as one of the positive duties under the gender equality duty.

Secondly, we would like the gender equality duty to deal more clearly with the pay gap, which is one of the remaining big issues of sex equality. In Scotland, the pay gap between the sexes is still about 18 per cent. There is a lack of clarity about whether the Government is willing to include anything that would place an extra emphasis on public bodies sorting out their own pay gaps and about whether that could be extended through the contracts that those bodies make with other organisations to carry out public functions. We are pushing the Government down south on that.

Thirdly, the gender equality duty does not include provisions on transgender. As the commission with some responsibility for transgender issues, particularly those that relate to employment, we want the gender equality duty to be extended to cover that area and we do not think that there would be any problem in doing that. Another point is that the Sex Discrimination Act 1975 only allows for protection on transgender issues that relate to employment, not those that relate to the provision of goods, facilities and services. We want the Equality Bill to extend the coverage of transgender issues. Those are the broad areas that we are still concerned about.

Marilyn Livingstone: You have said a bit about transitional arrangements. When you gave evidence to the committee on 15 June 2004 you expressed concern regarding the transitional arrangements before the new body is established. What are your views on the transitional provisions in the bill? What are your concerns?

10:45

Tim Hopkins: The provisions in the bill relate primarily to how the three commissions merge into the CEHR.

John Wilkes: There are specific issues to address. The bill allows for one transitional commissioner from each of the three existing commissions to be part of the new commissioner group for the CEHR. That is good, as it will allow some of the experience and expertise of the current commissions to be carried through into the new commission. When the bill is passed, the process of setting up the CEHR will start, the first step of which will be to appoint the chair and then the commissioner group. It is important that the first appointments include the commissioner with responsibility for Scotland and, presumably, the commissioner with responsibility for Wales, and that the appointment of the Scotland committee happens as quickly as practicable. There will be

major defining decisions to be made in relation to how the commission operates in Scotland. Having a Scotland committee set up early on in the process will allow that to happen more effectively.

Adam Gaines: As John Wilkes said, the early appointment of the Scotland commissioner and committee is vital, given the delegated functions that the committee will have in taking forward its work. We think that it will be helpful for there to be three transitional commissioners from the three commissions as that will smooth the path to and create the transition. We have a slight concern about the fact that the transitional disability commissioner will be expected to leave office at the point at which the disability committee is put together, which will not necessarily apply to the same extent to the other two transitional commissioners. We hope that the term for the transitional disability commissioner could be the same length as the term for the other two transitional commissioners.

Vanessa Taylor (Scottish Inter Faith Council): The bill specifies the transitional arrangements for the three commissions but not for the newer strands. The Department for Trade and Industry has made available funding on the sexual orientation and religion and belief employment regulations. In this funding round we would welcome that money being made available for an 18-month period, which would allow longer-term projects to be undertaken.

The funding allows capacity building within the strands, but only within the narrow focus of the employment regulations. The criteria for funding projects have been pretty tight and have focused mainly on printed materials, training and disseminating information about the employment regulations to employers. That is valuable, but much broader capacity building within the new strands is needed. Funding is needed for advice work and good relations work and for building expertise in the strands so that we can avoid the problems with the existing hierarchy being made even worse by a lack of resources and expertise.

There is a role for the Scottish Executive in ensuring that funding is made available to further build the capacity of the new strands. It is important that the funding includes the age strand as well as those covering religion and belief and sexual orientation.

David Cobb: A final point arising from the human rights issue, which Ali Jarvis mentioned earlier, is the question of getting the memorandum of understanding. That requires the two shadow bodies on the new commissions to be talking to each other as early as possible. It would be helpful if the committee supported having the Scottish human rights commission shadow body up and running as soon as possible.

Ali Jarvis: A particularly Scottish dimension is that to some extent we are lucky enough to be a little bit ahead of the game up here in that the three commissions, the three new strands and the human rights body have worked together quite effectively and closely for some time. Our underlying point is that the transition should be swift and effective. If it is drawn out, confusion will arise not only in the minds of possible users of the services—both institutional and individual stakeholders—but among staff. There could be debates about location and so on. The Scotland dimension should be included from the start, because we have a good story to sell across GB.

Marilyn Livingstone: Reference has been made to the six strands. When giving evidence to the committee on 15 June 2004, John Wilkes spoke about how crucial it is

“that the CEHR in Scotland will not be restricted to operating merely along the six strands”.—[*Official Report, Equal Opportunities Committee*, 15 June 2004; c 499.]

In your view, to what extent does the Equality Bill as currently drafted allow the CEHR in Scotland to operate outwith the strands?

Tim Hopkins: You are right to highlight one of the major concerns that we had when the proposals were first presented. We are fairly confident that the bill allows the CEHR in Scotland to operate outwith the strands. Clause 3 of the bill, on the fundamental duty, refers to equality, which is very broad, and is not narrowed down to the six strands. Clause 8, which deals with the general duty to promote understanding of the importance of equality and diversity, defines equality and diversity very broadly. Paragraphs (b) and (c) of clause 8(1), which are about encouraging equality and promoting equality of opportunity, parallel the provisions of the Scotland Act 1998, which refers to encouragement of equality of opportunity, defined more broadly than the six strands. We are confident that the CEHR will have the power to support the encouragement of equality of opportunity that is devolved to the Scottish Executive and the Scottish Parliament, under the full 1998 act definition of equal opportunities. It will also have the power to do so more widely, because the bill refers only to equality and diversity generally.

A different question is how the work that I have described will be funded. There is a danger that, as a GB body, the commission for equality and human rights will see its work as based on the six strands to which the Westminster equality legislation refers. That argument must be made and won with the CEHR as a GB body. All the equality and diversity promotional work that the CEHR does must be based on the broadest possible definition of equality and diversity. The CEHR should start from that understanding of

what its work is about. The six strands relate only to its enforcement work. Its promotional work should be about equality and diversity in the broadest sense. If that is understood, the CEHR in Scotland should be able to support all the work that the Executive and the Parliament are doing under the 1998 act definition. It would also be positive for the Scottish Executive to support the CEHR's work in Scotland financially, where that work specifically supports the Executive's work under the powers devolved by the 1998 act to encourage equal opportunities.

Ali Jarvis: The ECG is keen to see the outcomes of the discrimination law review and the equalities review, which may shed some light on where progress is being made, where persistent discrimination continues and how effective measures such as the promotional powers that the Scottish Parliament has had in additional areas of equality have been. As we look towards the future—not just next year, but three years from now—that will help to give us a perspective on how the CEHR will operate practically in those areas. I am the Scottish representative on the reference group for the two reviews. We are keeping a close watching brief on the reviews, to ensure that the issues that I have raised are adequately represented in them.

Marilyn Livingstone: My next question was to have been about funding, but you have pre-empted it.

Do you have any comments to make on the fundamental duty that is set out in clause 3 of part 1 of the bill?

Ali Jarvis: In short, we like it. It is really positive for such a principled statement to be made on the face of the bill. We are used to seeing that in Scotland, and it is good that it is starting to come through in Westminster bills.

Marilyn Livingstone: As this committee's disability reporter, I am interested in the work of the disability committee. What are your views on the establishment of a separate committee—I know that Adam Gaines has said that joint working is crucial—and on the mandatory review after five years?

Adam Gaines: The disability committee will help to take forward the CEHR's work, specifically with regard to aspects of disability discrimination. The need for such a committee has arisen because of the requirement for reasonable adjustments and because whole parts of the Disability Discrimination Act 1995 are still coming into force. The presence of the DRC, which has been around for only five years, indicates the need for specific arrangements to take into account disability discrimination. As there is a need for the CEHR to work across common areas such as employment,

we felt that the establishment of a specific disability committee in the Equality Bill was a helpful step.

We also accept the need for a review after five years to examine the committee's nature and work—indeed, we proposed as much. That said, we have a slight question about the way in which the bill phrases the terms of any such review. The current wording would restrict the secretary of state's ability to continue the committee, if that was recommended by the independent review. That part of the bill should be looked at.

Marilyn Livingstone: That was helpful.

John Swinburne: Clause 11(4) states that, in carrying out its duties,

"the Commission shall have particular regard to the importance of exercising the powers ... in relation to communities defined by reference to race, religion or belief."

During early consultations on the establishment of the new body, people expressed concern that a hierarchy of equalities would be created. Are the witnesses concerned about the apparent prioritising of these particular communities in such a way?

Tim Hopkins: Yes. We believe that there should be no hierarchies in the law at all. Of course, there are hierarchies of all sorts in current equalities legislation; in general, the equalities legislation on race, gender and disability is stronger than it is on religion and belief and sexual orientation and that legislation is, in turn, stronger than the non-existent legislation on age. All those hierarchies should go. The discrimination law review that Ali Jarvis mentioned earlier is looking at that. I hope that its conclusions will lead to a single equality act that will do away with such hierarchies.

I have to say that clause 11(4) is not as bad as it was. As originally drafted, it said something to the effect that the CEHR had to ensure that it took all possible action on race and religion before it could act on any of the other strands. That stipulation has been watered down. Now, as you have pointed out, the CEHR simply has to "have particular regard" to work in communities on race, religion and belief.

We would rather that that wording was not in the bill. In practice, it is quite permissive, and would not stop the CEHR from doing work in communities on the other equality strands. The issue will come down to how the CEHR interprets that provision. We would want it to look at work in communities across the strands.

Ali Jarvis: The Race Relations Act 1976 refers to good race relations, which is a specific element of equality that does not exist in other legislation such as the Sex Discrimination Act 1975 and the

Disability Discrimination Act 1995. Clause 11(4) was an attempt to allay fears that that specific aspect of work might get lost. Personally, I believe that if clause 11 is applied appropriately, it will be applied according to need, so clause 11(4) is perhaps unneeded—it is a belt-and-braces approach.

11:00

John Swinburne: I must declare that I do not agree with Sewel motions at all. I cannot see how one broad brush for the whole country will do. There are problems south of the border that do not exist in Scotland; similarly, we have problems up here—for example, with sectarianism—that do not exist down there. I do not believe in decisions being made by remote control. Do you agree that the Parliament should be capable of dealing with its own problems?

Tim Hopkins: That is a broad question. On the issue of sectarianism, clause 21 contains the power that supports the clause 11 duty in relation to communities. As I said, we want the implementation of clause 21 in Scotland to be delegated to the Scotland committee, for the reason that you mentioned: we have issues up here to do with hate crime and sectarianism that are different from the issues down south.

The devolution settlement reserves equality legislation to Westminster, apart from the narrow devolution of the encouragement of equal opportunities, which is not a regulatory power. My organisation and I campaigned for a broader devolution of equal opportunities powers when the Scotland Bill was going through Parliament, but unfortunately, we did not win the argument. I cannot speak for the other panel members on that issue.

John Swinburne: If there are Sewel motions, there should be give and take. If Westminster takes powers away, it should give us some in return to enhance our powers—that is equality.

The Convener: Well, John, maybe the situation will evolve.

Mr McGrigor: Part 2 will extend the anti-discrimination provisions on grounds of religion or belief to the provision of goods, facilities and services, but the extension does not apply to anti-discrimination legislation on sexual orientation. What are the panel's views on that?

Tim Hopkins: We all welcome the extension of the anti-discrimination law on the provision of goods, facilities and services to cover religion and belief, as that is certainly an improvement. However, the measure will make the current hierarchy of legislation even more complicated, because, as you say, it will leave behind the

sexual orientation strand and the transgender identity strand, which John Wilkes mentioned. We would like the bill to be amended so that the extension of the goods, facilities and services provision also covers sexual orientation and gender reassignment, which, as John Wilkes said, is covered in the Sex Discrimination Act 1975, but only in relation to employment and vocational training.

That would put us on a much more level playing field, with the exception of the age strand, which has been left behind, in part, because the employment regulations are not in place yet for the age legislation—they will not be in place until next year. Unfortunately, Helena Scott from Age Concern Scotland could not be here this morning. As we have said, we want the legislation to be levelled so that the same protection is given throughout the strands. However, on the specific issue, we would like part 2 to be extended to include sexual orientation and gender reassignment.

Mr McGrigor: In relation to grounds of religion or belief, clause 54(4)(i) introduces an exemption for English and Welsh local authorities in exercising their power to promote well-being, but the bill does not seem to include any reference to the equivalent power in section 20 of the Local Government in Scotland Act 2003. Do you have any comments on that?

Tim Hopkins: The main point is that I have raised the matter at the CEHR steering group in London. I asked why the bill has an exemption in relation to the exercise of the English and Welsh power of well-being, but I have not had an answer yet. Nobody could tell me why that provision is in the bill. However, we do not think that the measure should apply in Scotland. We cannot see any good reason why councils should be able to discriminate on grounds of religion or belief in exercising their power to promote well-being. We do not want the measure to be extended to Scotland, pending an answer to my question about why the measure will exist in England and Wales in the first place.

Mr McGrigor: Could you give your definition of the power of well-being?

Tim Hopkins: The Local Government in Scotland Act 2003 gives a general power to councils to take action to promote the well-being of their citizens, which can mean a subsection of the citizens. The power is a broad one and has existed for longer in England and Wales, under a slightly earlier piece of legislation, than it has in Scotland.

John Swinburne: How confident is the panel that there is sufficient dialogue between Westminster and the Scottish Executive to ensure

that Scotland is adequately included in the bill's provisions?

John Wilkes: There are two parts to that, the first of which is dialogue about bill itself. There has been a reasonable amount of dialogue about the bill, in which the key concerns about what must happen in Scotland have been communicated. There have been hiccups along the way, but the general feeling is that dialogue has improved; indeed, certain issues have been sorted out. The Scotland Office has been helpful in facilitating solutions for elements of the bill, particularly those which deal with adults.

I have some general comments about relations between the Executive and the parts of Whitehall that deal with reserved matters. As Tim Hopkins pointed out, the EOC feels that there are still gaps in the understanding of London departments, such as the DTI, about the fact that they still have a role to play in rolling out elements of areas for which they are responsible—for example, employment. Westminster departments tend to leave the Executive to deal with matters. Similarly, there is a gap on the Executive side, because we feel that it sometimes seems unsure about what its role is and what Westminster's role is. There seems to be a lot of difficulty around important issues and we feel that real gaps are emerging regarding the implementation of key policies in Scotland.

Ali Jarvis: That takes us back to the broader point that we talked about. The CEHR will be a GB body and it should operate effectively at GB level. However, if certain Government departments that have responsibility for reserved legislation, whether it be the Home Office, the DTI, or the Department for Work and Pensions, take the view that they will deal only with a London or Manchester office, they will miss significant details about how implementation is different in Scotland and about the different circumstances here, to which John Wilkes referred.

Both Scotland and Westminster have a joint learning responsibility. Scottish institutions must be proactive in engaging with Westminster and Westminster institutions must be proactive in understanding their role in Scotland. Everyone tends to be a little shy of one another. Perhaps undue respect is given to the devolution settlement instead of working out what needs to be done and agreeing the best way to deliver the outcomes that we want. If the process became more outcome focused than process focused, we could perhaps move forward a little faster.

Tim Hopkins: I have been going to the CEHR steering group for a year now and there has been a big improvement over that year in how things have been working. I was a bit concerned at the beginning that, because I was the person representing Scotland, all input about Scotland

would have to come through me. Of course, that is just impossible.

A big step forward was when a number of members of the steering group came up to Scotland. We had various meetings, one of which was hosted here by Cathy Peattie. For the first time steering group members really understood how different many things were in Scotland. As Ali Jarvis said, we are somewhat advanced in Scotland in working together across the strands; perhaps the rest of Britain can learn from our experiences here.

Steering group members and officials who are working on various work streams are coming up to Scotland again in about three weeks for two days to talk to all of us about what needs to happen to ensure that the development work and the transition towards the CEHR happens here in Scotland as well as down south. There is more work to be done. On the work streams, for example, research projects are being commissioned to examine matters such as models of governance for the CEHR and regional arrangements. However, the research projects have focused only on England and have scoped out what regional arrangements already exist for equality work in England. They have not looked at the regional arrangements for equality work in Scotland, such as the Highlands and Islands equality forum. One of the points that I have been trying to make is that the kind of study work that is being done to lay the foundations needs also to be done in Scotland.

John Swinburne: I would never be happy with an occasional visit from a committee from down south to pat us on the back and tell us to get on with it. We live here and we should be able to sort out our own problems.

The Convener: My impression was that the steering group was very impressed with what we were doing and that it was listening to what was happening.

Ms White: I would like to ask a couple of questions of Tim Hopkins.

The Convener: Very quickly.

Ms White: Will the working of groups such as yours be enhanced by the CEHR? On the recruitment process, it is very important that the people on the committee know about Scotland and about initiatives such as the fresh talent initiative and so on. The UK Government does not recruit in the same way as we do by putting out a job description and that type of thing. Would it be preferable if recruitment rather than appointment was used?

Tim Hopkins: Are you talking about recruiting the commissioners?

Ms White: Yes.

Tim Hopkins: That will be done through the UK public appointments process because they are UK appointments. It will be really important to get the job description right.

To put that in context, the DTI has just recruited a director for the CEHR project; he will take the work forward from now for the next year or two. His name is Patrick Boyle. As the Scottish representative on the steering group, one of the points that I made was about the importance of an understanding of devolution being written into that job description. Patrick Boyle is from Northern Ireland and has a good understanding of devolution. He has only just started work; I am due to meet him within the next couple of weeks to discuss Scotland issues. That meeting will be in London, but I hope that the next meeting will involve his coming up here to talk to us. The key point is the one that I made earlier; an understanding of devolution in Britain needs to be written into the job descriptions for all the commissioners.

Ali Jarvis: The ECG is also being quite proactive by starting and fostering debate and dialogue on the role, who might be the sort of person who would be interested in the role and in creating a sufficient pull mechanism in Scotland. We have plans to hold a couple of events in the next couple of months to generate that level of understanding, because in some Scottish communities it is not high.

Tim Hopkins: Sandra, were you asking what would be the impact of the establishment of the CEHR on the steering group?

Ms White: No. When the CEHR is established, will it strengthen the roles that are played by groups such as yours? Everyone is very positive about the commission, but John Swinburne is quite right that we have to ask this type of question at times.

Tim Hopkins: It is a very good question and it is one that the Equality Network has considered. I am sure that Vanessa Taylor's organisation, for example, has considered it, too.

We are in a different position to the three commissions that are to be merged into the CEHR. As a voluntary sector body, the Equality Network is in a different position to the existing commissions and to the CEHR. It is fair to say that we are in more contact with—in our case—grass-roots people and organisations across the lesbian, gay, bisexual and transgender communities. We will certainly have a really important continuing role after the CEHR has been established, just as there are other bodies that work within the three existing strands that will have really important roles. In disability, for example, there are bodies

such as Inclusion Scotland, whose role is distinct from that of the DRC, while the Black and Ethnic Minority Infrastructure in Scotland and the Council of Ethnic Minority Voluntary Sector Organisations have a role in matters of race and Engender has a role in matters of gender.

After 2007, when the CEHR has been established, part of our role will be to monitor the CEHR. With the large amount of consultation that we do with grass-roots LGBT people across Scotland, we hope that we can keep an eye on the CEHR and be a prompt for it.

11:15

John Wilkes: I would like to respond with a commission perspective, although I can give only that of my own commission. Many of the requirements of the bill will really help with translating our current agenda into the work of the new commission. Our commission has certainly tried to adapt to the new circumstances of devolution since 1999, and we are 30 years old this year. The commission has shown a lot of goodwill and good intent, but it is still a single corporate body.

There are still issues to be resolved about how we reflect adequately the need to identify separate agendas in Scotland. The Scotland committee, the delegated powers and the duty to consult stakeholders—which none of the existing commissions have—will bring to the new body a new emphasis on involving stakeholders in Scotland to a much greater degree, especially as it will have the broader experience of a Scotland committee to direct key chunks of the work. We are quite hopeful that the new arrangements will improve the ability to determine more appropriate agendas for Scotland while—importantly, because key matters remain reserved—enabling us to input to the development of British agendas with the appropriate Scottish voice. However, as other people have said, much of this is built on trust.

Vanessa Taylor: I echo what Tim Hopkins said; my organisation is in a similar position. In the run-up to establishment of the new commission, we have been very aware of the capacity gap that we are only ever able to fill partially. We do not come to the table with anything like the experience, the resources or the staff of the commissions. Our role will change and we will adapt when the new commission comes into being, and we hope to work closely with it. We welcome the establishment of the commission and we are excited by the improvements that it will make to the lives of people for whom religion, or belief, is an important aspect of life.

Adam Gaines: We believe that the new commission has considerable potential; however,

as was indicated earlier, we have concerns about how disability will be part of it, which is why we feel that the establishment of a disability committee would be helpful. The big issue is how the body is properly structured to take such matters into account and how it can work effectively in Scotland. The issue is both the structure and—crucially—how the resources will enable the body to move forward and be effective.

The Convener: Thank you for your evidence. There are a few minutes left. If there are any matters that you think have not been covered in the questioning, you have the opportunity to raise those issues now.

John Wilkes: I would like to add the Equal Opportunities Commission's voice to the idea that the proposals concerning the provision of goods, facilities and services should be extended to cover sexual orientation and transgender issues. We think that there is no real barrier to, or difficulty in, doing that now because it has been done for religion and belief.

Ali Jarvis: In summary, the aim for the CRE would be to hold on to the principles that underpin the bill. It is easy for us all to go into the detail of how it will operate and what the mechanisms are going to be. All of that is important, but we have talked a lot about some of the issues about trust. As we move forward, we are essentially creating something new. If the new commission is to be merely an amalgam of what exists, it will fall far short of what it should be. We must have the bravery, the confidence and the trust to create something that will go far beyond where we are currently. There are risks involved, and we have to be prepared to take those on. Holding on to the principles is really important, which is why everyone on the ECG has tried to work so closely together, although acknowledging that each of the bodies that are represented around the ECG table has a slightly different position on certain things. We must start moving forward in a different way if we are to find different solutions.

The Convener: Thank you for your evidence this morning. It has been very helpful. When we first met to discuss the single equality body, concern was expressed that there would not be an equality bill. It is good that we are now discussing such a bill that can take matters forward in a much more positive fashion.

I suspend the meeting for five minutes.

11:19

Meeting suspended.

11:27

On resuming—

The Convener: Following on from the evidence that we have heard, I have a list of issues that have been raised. We have to decide how we will deal with some of them and what action we will take in relation to the Sewel motion. I will run through some of the issues that have been raised.

It was said that the Scotland committee needs to have knowledge across the equality strands and that all CEHR commissioners should have knowledge and understanding of the devolved settlement and Scottish issues. On additional delegated powers, clause 18—on grant-giving powers—and clause 21, on promotion of good relations in communities, were mentioned. It is also felt that it is essential that a member of the Scotland committee sit on the disability committee.

Concerns were expressed about the overall budget and the implications for the Scotland committee. It was suggested that the Scotland committee should be closely involved in developing codes of practice.

The witnesses were content with the arrangements for the annual report and suggested that it be debated in Parliament and that it should certainly be submitted to Parliament—we hope through this committee—rather than to the Executive.

It was said that the SHRC should have the same level of devolved power in relation to human rights as the CEHR will have in relation to human rights elsewhere in the UK. The importance of the need for the SHRC and the CEHR to work together was stressed and, in that regard, we heard concerns about possible gaps. It was suggested that we need to explore mechanisms by which the CEHR can report on devolved human rights issues with which it is dealing with the consent of the SHRC. How will that joint working develop?

On gender equality, there is concern that the proposals in the bill do not cover harassment or the pay gap and also that transgender issues are not included. In particular, the issue of extending the proposals that relate to the provision of goods and services to cover sexual orientation and transgender issues was raised.

On the transition arrangements, it was suggested that it is essential that the Scottish commissioner and the Scotland committee be appointed as soon as possible, that there is effective capacity building in relation to new strands, perhaps through Executive funding, and that the SHRC shadow body be up and running as soon as possible.

With regard to the Scotland Act 1998, concern was expressed that it might be difficult to secure

funding for work in Scotland outwith the equality strands. On the disability committee, concern was expressed about the wording in the bill about the review that is to take place after five years and there is some concern about there being any implication in the bill that there is a hierarchy of equalities.

It was stated, of course, that promotion of well-being should not be included in the bill in relation to Scotland. Finally, it was said that it is essential that the Executive be proactive in ensuring that Scottish interests are covered and that there is awareness in Whitehall of the Scottish dimension.

That was a very good session and, obviously, we are now up to date on all of the issues.

11:30

Mr McGrigor: In response to question 10, Ali Jarvis said that the code of practice must reflect Scottish law. That is an important point. Also, neither she nor, I think, Tim Hopkins, feels that it is important for ministers to consult widely before consenting to the choice of Scotland commissioner.

The Convener: Yes.

Marlyn Glen: On the separate disability committee, you said that the witnesses were concerned about the wording in the bill about the review that is to take place after five years. However, I think that their concern related to how the committee would continue after that point. At present, the suggestion is that there will be a period of five years followed by a review; nothing is said about how the committee would carry on.

The Convener: Yes, we can read that in the *Official Report*.

Marlyn Glen: An idea was raised about the two bodies being located in the same building.

The Convener: Yes—we should note that as well.

Ms White: The witnesses did not feel that the bill should include a requirement for the CEHR to report to the Scottish Executive on devolved matters that it had dealt with on behalf of the SHRC. They felt that that should be included in the memorandum, however.

The Convener: That was covered in the part about looking at the mechanism to ensure—

Ms White: So, it was covered. I would like us to mention that we are concerned about the need for the public to be educated about how the CEHR and the SHRC will work. That has to be highlighted.

The Convener: That is particularly the case as we are talking about bodies that do not yet exist.

Ms White: I know that it is difficult, but it is important to think about that before they are set up rather than after. We have had difficulties with people's understanding of the different responsibilities of Westminster and the Scottish Parliament and I think that the situation will be even worse with regard to the CEHR and the SHRC.

John Swinburne: I think that the whole thing is an easy option. Things can just be off-loaded onto Westminster and the Executive can relax—

The Convener: That is not how this is working. This is actually a really good step forward for equalities. Whether we agree with having a single equality body, the fact is that we are dealing with an Equality Bill.

John Swinburne: There is no policy being discussed here that could not be implemented in Scotland off our own bat. There is nothing in the bill that would be detrimental to the working of this Parliament.

The Convener: You have a particular belief and that is fine. However, we have to deal with this in terms of the Scotland Act 1998. We have been proactive in our attempts to make the legislation better and to ensure that Scottish voices are heard in relation to equalities. That is our job. We need to be able to comment, but we have a duty to listen to the people who gave us excellent evidence this morning.

John Swinburne: Do not get me wrong. The word "Unity" in the Scottish Senior Citizen's Unity Party's title means that we are quite content to be part of the union. At the same time, however, I feel that people in this Parliament are like turkeys voting for Christmas. They are getting rid of their powers left, right and centre. We should be able to do what is proposed in the Equality Bill. If we cannot handle a simple thing like an Equality Bill, it is a sad day. The Equal Opportunities Committee should express that view to the Executive quite forcefully.

The Convener: We are working within the terms of the Scotland Act 1998. The Equality Bill is UK legislation. I understand that you think that the Executive should be handling the proposals in the bill itself, but some equalities issues are reserved as a result of UK and European legislation. A debate on whether that should be the case is not for this committee. Our job this morning is to consider the evidence that we have received in relation to the Equality Bill, which this committee told the minister in writing was necessary.

We need to make our views on the Sewel motion known to Westminster and the Executive. People have reservations about Sewel motions but, on several occasions, the committee has taken evidence on Sewel motions to ensure that

they are not simply nodded through Parliament without discussion. We have taken evidence on the issue and discussed it in order to ensure that the Scottish organisations that are involved in equalities have been able to have their views taken forward. They have been actively involved in the discussions and have been able to air their views this morning.

Marilyn Livingstone: Sometimes, we get engrossed in technicalities, but disabled people or people who are suffering from discrimination just want the Scottish Parliament to act and to sort out the situation in the best possible way. That is what we have done this morning. We can get wrapped up in our procedures and forget that we are supposed to be making people's lives better.

The Convener: Yes. This bill will give disabled people stronger rights and rights that they have never had before. Whether that is done in the Scottish Parliament or in Westminster, it is important that it be done.

Are members happy with what we have said about the points that were raised this morning? Obviously, members can read in detail in the *Official Report* what was said.

Members indicated agreement.

The Convener: I suggest that we write to the minister about what we heard this morning, and to the UK minister; it is important that those issues be considered as part of the Equality Bill. Parliament will decide whether it agrees or disagrees to the Sewel motion, but it is important that we take appropriate action in any case. Are members happy with that proposal?

Members indicated agreement.

John Swinburne: Should we mention something about the old people's commissioner?

The Convener: Not at this stage. That is on the agenda, though.

Meeting closed at 11:38.

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