



OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities, Human Rights and Civil Justice Committee

Tuesday 3 September 2024

Session 6



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**EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE
17th Meeting 2024, Session 6**

CONVENER

*Karen Adam (Banffshire and Buchan Coast) (SNP)

DEPUTY CONVENER

*Maggie Chapman (North East Scotland) (Green)

COMMITTEE MEMBERS

*Meghan Gallacher (Central Scotland) (Con)

*Marie McNair (Clydebank and Milngavie) (SNP)

*Paul O’Kane (West Scotland) (Lab)

*Evelyn Tweed (Stirling) (SNP)

*Annie Wells (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Kaukab Stewart (Minister for Equalities)

CLERK TO THE COMMITTEE

Katrina Venters

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Equalities, Human Rights and Civil Justice Committee

Tuesday 3 September 2024

[The Convener opened the meeting at 10:00]

Disability Commissioner (Scotland) Bill: Stage 1

The Convener (Karen Adam): Good morning, and welcome to the 17th meeting in 2024, in session 6, of the Equalities, Human Rights and Civil Justice Committee. This morning, we continue to take evidence on the Disability Commissioner (Scotland) Bill. I refer members to papers 1 and 2.

I warmly welcome Kaukab Stewart, the Minister for Equalities, who joins us with Government officials Amanda Gordon, who is the strategic lead on anti-racism and disability equality policy; Michelle Harrity, who is a senior policy manager on disability equality policy; and Jennifer Singerman, who is a solicitor in the legal directorate. Good morning to you all, and thank you for coming.

Before we move on to questions from the committee, I invite the minister to give an opening statement.

The Minister for Equalities (Kaukab Stewart): Good morning, convener, and thank you for your invitation to contribute to the evidence session on this member's bill. It would be remiss of me not to note that sitting on this side of the table is an interesting viewpoint, having been on the other side of it at one point.

I start by recognising and thanking Jeremy Balfour for the attention that he has drawn to disabled people's equality through the bill. We are acutely aware of the exceptionally challenging times that disabled people in Scotland are living through. Disabled people continue to be impacted by the cost of living crisis that is gripping the United Kingdom and, alongside facing higher costs of living, a great many are being pushed into deepening poverty. I take the opportunity to recognise the unstinting work of disabled people's organisations and communities across Scotland in tackling those challenges.

I share Jeremy Balfour's intentions in introducing the bill. Improving the lives of disabled people and furthering disability equality are priorities for this Government, committed as we are to delivering a fairer Scotland for all.

As the Minister for Equalities, I have a key role in considering the possible implications of legislative proposals that fall within my portfolio. I am happy to share my learning and understanding in order to support the committee's scrutiny of the bill.

Tackling the challenges that disabled people face is a collective responsibility and it requires a shared commitment across the public, private and third sectors. To secure real change, we must focus resource and opportunity where they are needed most.

We have concerns about a few of the bill's provisions, which are currently being scrutinised, and we are considering very carefully the establishment of a disability commissioner and whether that is the right vehicle through which to achieve the change. The most significant concern that the Scottish Government has is the potential for the bill to simply duplicate functions that are already undertaken by existing bodies. As well as possibly being inefficient use of public money, that risks causing a lack of legal certainty and making it less clear to disabled people whom they can turn to for help.

Although the commissioner would have a single focus on disabled people's rights, there are a few commissions that protect the rights of disabled people, including the Scottish Human Rights Commission and the Equality and Human Rights Commission. It is notable that the Scottish Human Rights Commission has raised concerns about the potential weakening of its mandate that could be caused by the proliferation of commissioners.

That links closely to another key concern—the content and timing of the bill. There is already, in Scotland, a complex commissioner landscape which, as the committee knows, is currently the subject of an inquiry by the Finance and Public Administration Committee. Part of the inquiry's remit is to consider whether a more strategic approach is needed to the creation of commissioners in Scotland. Whatever that committee's recommendations will be, its report will surely require significant consideration by the Parliament and further dialogue with Government and other stakeholders. Given that context, it seems to be inadvisable to bring a new commissioner into an already complex environment at this time.

To add further context to our position, the Scottish Government is preparing to publish the first phase of a disability equality plan that is aimed at tackling the systemic barriers that affect the daily lives of disabled people and impact on disability poverty. The plan, which has been developed in partnership with disabled people's organisations, will bring about significant progress in advancing disability equality. Setting up a

disability commissioner could divert resources from that valuable work without there being an evidence base to suggest that it would be an effective way of achieving change.

Although we have concerns about the bill, our commitment to furthering equality means that I remain open to hearing alternative views. I reiterate our commitment to greatly improving the position of disabled people in Scottish society, and I extend an invitation to Mr Balfour to discuss those shared aims.

I look forward to answering the committee's questions.

The Convener: You have indicated that the Government is neutral on the bill. You previously said that it

“does not meet the Scottish Government's required threshold to warrant the creation of a new body.”

Has that changed in any way since the bill's introduction and during our stage 1 inquiry?

Kaukab Stewart: As I said, the Scottish Government absolutely supports the aims of the bill in relation to improving the lives of disabled people and is absolutely committed to furthering disability equality. However, it is only reasonable that we would have legitimate concerns about the content of the bill and whether establishing a disability commissioner is the most feasible and effective way to achieve that necessary change.

I am carefully looking at the potential for duplication of functions. There are existing bodies: there is already a complex commissioner landscape and there could be limitations in respect of how far the approach provides value for money and efficiency. Mr Balfour's bill also refers to the Equality Act 2010 definition of “disability” and “disabled person”, so there are potential issues around the Parliament's legislative competence in the area, as well.

However, we are absolutely open to exploring whether there is a need for a commissioner. It is up to the Scottish Parliament to do that and that is what we are doing.

The Convener: There has been strong support from disabled people for the establishment of a disability commissioner. What is your response to that?

Kaukab Stewart: I can understand that. Disabled people have multiple barriers. I communicate regularly with our disabled people's organisations and hear directly not only from them but from those with lived experience. Last week, the First Minister and I met the disabled people's organisations to hear from them directly.

I recognise the reality of the multiple barriers that disabled people face. The issue is systemic

and has been historically. Although the Scottish Government has been taking action on benefits and on the independent living fund, for instance, I cannot help but refer to the cost of living crisis and the impact of austerity. Although we are trying to help as much as possible, we have, in certain ways, a hand tied behind our back. The effects of the supports and policies that we can put in place are diluted by the erosion of the financial landscape due to austerity.

Therefore, I can absolutely understand why there would be support for a commissioner. As I said, we have already taken action to address that poverty in a wider context, because we cannot forget that the issues are also intersectional. For example, disabled people's lives are affected by housing, access to transport, education and employability. Therefore, it is a multifaceted picture, so I am absolutely sympathetic. Progress has been made, but I absolutely recognise that there is much more to do. There is healthy discussion and debate around whether a commissioner is the vehicle for that.

Evelyn Tweed (Stirling) (SNP): Good morning, minister, and thank you for your opening remarks. Evidence that has been taken at the committee has highlighted anxieties that a new disability commissioner would add to a cluttered landscape and, as you mentioned earlier, that there would be duplication. However, that might be overcome through joint working or a memorandum of understanding. What are your views on that?

Kaukab Stewart: Thank you for recognising that the commissioner landscape is already complex. As I said, the Finance and Public Administration Committee is considering whether a more coherent and strategic approach is needed to the creation of commissioners in Scotland. Under the current financial climate in particular, we need to be extra considerate of the financial sustainability of a growing commissioner landscape while ensuring that the people of Scotland are also well served. If there are too many commissioners, disabled people might not know where they can go for help. The accessibility of that help is equally important.

That issue was raised in the consultation on the bill, notably by both the Equality and Human Rights Commission and the Law Society of Scotland. There are issues on which the bill has the potential to overlap with the Equality and Human Rights Commission's existing functions. There are also several provisions in the bill that correspond broadly to the provisions in the Equality Act 2006. Under the Equality Act 2010, the Equality and Human Rights Commission has powers that relate to all those with protected characteristics, including disabled people. Therefore, there is a possibility that there could be

a weakening of the duties that, for instance, the Scottish Human Rights Commission already has, and it has expressed that concern.

In one of the committee's evidence sessions, Nick Hobbs of the Children and Young People's Commissioner Scotland also voiced concerns about a new commissioner making it more difficult for existing stakeholders to undertake work. I will stop there.

Evelyn Tweed: The committee has also heard in evidence from various organisations that there are several statutory organisations that promote and protect the rights of disabled people, but that inequalities persist. What are your views on that?

Kaukab Stewart: I have a personal view on that. Although I mentioned some of the initiatives, policies, funding, support and funds, the situation is multifaceted and complex. I have touched on the fact that this comes under the remit of equalities but that, actually, we cannot get away from the fact that mainstreaming—I think—is the way forward. I am thinking about whose responsibility it is, and that is my concern about a commissioner. Intersectional barriers make it more complex to address issues. In my position, for instance, as a woman of colour, would I access services for women, services for ethnic minorities or services for disabled people? Where would you go for that support?

The observation that I would make with regard to the historical limited progress that has been made on the impact on disabled people's lives is this: who takes responsibility for it? You are almost having to choose your own hierarchy. Is the issue your disabledness? Is it your curtailed employability? Is it your accessible housing? People should not have to choose.

10:15

This is all about looking at the whole person. Part of my role, then, as Minister for Equalities is to work cross-portfolio and to ensure that every portfolio is meeting its responsibility to mainstream disabled people's rights. They have done so, but those rights need to be taken up if they are to have that impact.

I absolutely have sympathy on the matter. It is complex, but we all need to do it. I suppose that the disability commissioner would have a role in making sure that that happened, but I also highlight the public sector equality duty, in that respect. There are bodies out there, and there might be options where we can beef up that aspect. I know that disabled people's organisations, for instance, are very conscious that any such commissioner would have to have teeth, so we would need to look at issues such as enforcement. The fact, though, is that we already

have bodies that deal with statutory rights, and there is more work to be done to ensure that those statutory rights are executed properly and that they have that impact.

Evelyn Tweed: Thank you.

The Convener: We will move on to questions from Maggie Chapman.

Maggie Chapman (North East Scotland) (Green): Good morning, minister. In many ways, my questions follow on from those that were put to you by Evelyn Tweed.

You have talked about the potential to give existing bodies—or existing structures—more teeth if we do not go down the line of having a disability commissioner. Given our persistent failure to deal with the stark inequalities that are faced by disabled people, which Evelyn outlined, is there any value in having such a role, whether it be that of a disability commissioner, specifically, or something with a stronger mandate to tackle these matters? In earlier responses, you talked about having a balance across all organisations and mentioned the SHRC's concern that this commissioner, as outlined, would be more powerful than it was. Given the failures to address disability inequality, do you think that we need more clout specifically in this area?

Kaukab Stewart: Yes, I would say that we absolutely need clout. Indeed, I think that I said as much in my previous remarks. I suppose, though, that what we are considering is whether the establishment of a commissioner is the way to go about doing that. All I can go on is what is in the bill, and the bill does not contain any enforcement powers. I will therefore be very interested to see what you recommend after you have done all your work and scrutiny, and I look forward to reading your report and its recommendations.

As I have said, there is a piece of work to be done on our current bodies and why they are not executing their statutory powers, and we also need a little bit more detail on the public sector equality duty. After all, these bodies have a duty to report. I am currently looking at what mechanisms short of legislation I can use. Legislation is important, because it sets the baseline, but there is another thing that I have not yet mentioned—the cultural change that is required and which is becoming quite apparent to me as I get more and more into my equalities role. We might have the bodies, the agencies, the plans and the strategies, but the issue is the will of people to meet the obligations that they should be meeting. What are the barriers that we are facing? We need the research, the data and the evidence, but we also need the tools. In that respect, there is a carrot-and-stick aspect to making sure that we deal with the issue.

When it comes to addressing poverty more widely, we have taken action on that through our social security powers, but there are limits to what we can do in that regard with our devolved settlement and budget. A different social security system has been set up that disabled people's organisations have told me is much more compassionate and much more accessible. Obviously, we can improve things, and we will listen very carefully to feedback from those organisations and improve as we go.

Child poverty fits into that. There are many children who live in households where someone has a disability. That brings me back to the issue of intersectionality, which is a challenge. To come back to your initial question, would a commissioner pull all that together? It is possible that they would, but whether they would have the statutory function and the enforcement powers to do that is an issue that we are debating.

Maggie Chapman: I want to take you back to your comments about the review of the public sector equality duty and where we go next. We will have to wait until tomorrow to find out exactly what is in the programme for government, but it is clear from what you have outlined that there are gaps in the powers that existing bodies have, whether through the PSED or through the mandate of the Scottish Human Rights Commission. I am curious to understand where you think more powers are needed and what those powers should be, if we are to ensure that we tackle the issues that are raised by the bill.

Kaukab Stewart: The demand that I have heard disabled people make is for stronger accountability and greater transparency, and I think that we can beef things up a wee bit to make sure that there is clear accountability. The Scottish Human Rights Commission and the Equality and Human Rights Commission have the remit of ensuring that the rights of a wide range of people are protected, although they focus on specific groups from time to time. The Scottish Human Rights Commission has previously expressed concern about the weakening of its mandate through the proliferation of commissioners. That is my concern. I go back to what I said at the beginning—I think that there is a danger of everybody passing the buck, with the result that it is a case of who does what.

It is the role of Government to scrutinise the situation and to make sure that we hold all the various bodies to account, and that the Scottish Parliament holds them to account, but it is a difficult balancing act. I hold on to the fact that it is everybody's business to make sure that the needs of disabled people are taken account of. Mainstreaming is hard. If it were not hard, we would have done it by now, but we have not.

Maggie Chapman: Following on from that and your points about intersectionality, which you have highlighted as being extremely important, there are concerns about how we manage to take a mainstreaming approach while recognising that disability covers a range of disabilities and a range of very different needs, which, if not conflicting, are at least in tension with one another, given the breadth of what a pan-disability approach could look like. How do you see that balancing act, which involves the integration of genuinely intersectional approaches, being done, given the complexity that exists within disability, even before we start looking at the other issues that you have highlighted to do with things such as ethnic minority status and gender?

Kaukab Stewart: There is a lot in what you have said and those are important points. My broad reflection on that is that we need to take a holistic approach and see people with disabilities as people first and foremost, who have a range of needs, which could be in health and social care, in housing or in education—it could be that one of those things comes to the fore at a particular time and others at other times. The valuable contributions and information that disabled people's organisations have given me show that they find it difficult to navigate who is giving them the support that they need. There is already a lot of crossover, so we also need to look at streamlining as well as mainstreaming to make it easier for disabled people to navigate that. On the one hand, I can see that there could be a commissioner, but I have also seen other models, such as champions and rapporteurs, working alongside the enforcement of the powers of the current commissions.

We cannot get away from the fact that it is a challenge and it always will be. Part of my role is to poke everybody into that space of working together to take a holistic approach. For example, I am attending a meeting that Alasdair Allan is having with energy providers to look at the social tariff. I am scrutinising carefully wherever equalities issues come up. This case particularly pertains to disabled people, because they are also very concerned about the cut in the winter fuel payment. I am now reaching out and working alongside my colleagues to make sure that they consider equality duties right from the beginning as opposed to somewhere along the line. I think that everyone is committed—I have assurances that they are—but it is just that the cultural change needs a little bit more shoring up, shall we say.

Maggie Chapman: Thanks very much.

Paul O'Kane (West Scotland) (Lab): Good morning, minister. On that broad theme, I have some specific questions on the proposed learning disabilities, autism and neurodivergence bill and

its interaction with this bill. Is the Government still minded to include within the LDAN bill a commissioner who would look at specific issues for people who have learning disabilities and autism and are neurodivergent?

Kaukab Stewart: As I have already mentioned, there are issues with having another commissioner that would add to the proliferation of public bodies that we have when, as part of the public service equality duty reform, we want to make sure that whatever we do is sustainable in the long run. We need to make sure that resources are used economically, efficiently and effectively.

Very little research has been published in Scotland and the UK on commissions and commissioners. There has also been little evaluation of the pros and cons of different approaches and powers of working. In that context, therefore, there is a limit to what I can say. The programme for government and the financial statement are still to come, so please forgive me if I am speaking in very general terms. I know that we do not need reminding, but the Finance and Public Administration Committee is also doing an inquiry into that and I will be keen to hear what it says.

Paul O’Kane: I appreciate everything that the minister says and I know that more detail will be forthcoming this afternoon and tomorrow. I am trying to understand whether the Government is generally now less predisposed to having commissioners than it was. We have two pieces of legislation—a member’s bill and a Government bill. Are we saying that there should be a commissioner for one and not the other? Will there be a broader discussion about this? When many disabled people look at this, I think that some will support one but not the other and some will support both. I am just trying to understand the broader picture.

10:30

Kaukab Stewart: That is a really good question. There are advantages and disadvantages to having both a disability commissioner and an LDAN commissioner, but I would also note that there is no shared viewpoint on the disability commissioner bill among disabled people—that is, in the focus groups that we have spoken to. I am very conscious that there are different views on the matter.

I know that some autism and learning disability groups have concerns about the disability commissioner bill, because they see it as potentially diluting the focus on their concerns, which they believe have been marginalised. Should two separate commissioners be

established, there is likely to be some overlap as well as greater potential with regard to functions. We have also had representations that not all people with learning disabilities, autism, neurodivergence and so on believe that they have a disability. They would not put that label on themselves, and that has to be respected, too.

We are in that space of carefully considering the matter, but my short answer is that I am maintaining my neutral position. What I am doing—indeed, what we are all doing—is scrutinising very carefully the commissioner route, whether it be the Government’s proposal for a commissioner or the proposal in the member’s bill. The more important question is who the proposal is trying to help and whether it will have the effect that is wanted. That is the space that I am in.

Paul O’Kane: We have debated the variance of views on the commissioners and whether they are the right avenue, but does all this come from disabled people across the board feeling that there is a lack of avenues for them or that there has been a failure on the part of other agencies, other organisations and indeed Government to meet many of the duties that have been placed collectively on Government and Parliament? Do you feel that those views are very often born out of people’s frustration?

Kaukab Stewart: I absolutely understand that frustration. I will not go over what I have already said about the complexities and challenges of truly mainstreaming these issues and getting all the policy areas to work together, but it is a challenge. Indeed, we as a Parliament often find these matters difficult, because there are many views, and they are strongly held.

However, we also know the challenges that disabled people face, and we cannot get away from the fact that their plight is getting worse, with austerity continuing on top of everything. As I have mentioned, the cuts to the winter fuel payment are going to have a huge impact. I have heard from people that their costs are going to be higher; after all, they have to pay for very expensive equipment, and their energy bills are much higher. This has brought the issue into acute focus.

The LDAN bill focuses on a range of actions that are specifically for people with learning disabilities, whereas Jeremy Balfour’s bill is broader in scope. I maintain my position: I am open to it, and I understand the frustrations.

We have the disabled people’s equality plan, which has been made in collaboration with disabled people’s organisations. That sets out clear pathways and expectations, so I hope that that will help. I use the word “hope” because I have been in the job for a small amount of time

and that piece of work was started long before I came into the job.

However, the Government is continuing to put money into benefits expenditure. With regard to what the Scottish Government is doing on social security, £300 million is going on adult disability payments, the Scottish child payment has increased and we reopened the independent living fund. Given all those things, you are right to ask why there is still that frustration and whether we are having the impact that we should be having. Those are valid questions, and I am listening very carefully to our disabled people's organisations on how they think that we can improve. I have to give a heavy caveat on that because of the very difficult financial landscape. However, we will get more information on that with the programme for government and the financial statement.

Paul O'Kane: We certainly will.

Marie McNair (Clydebank and Milngavie) (SNP): Good morning to you and your officials, minister. I want to know your thoughts on the financial and resource estimates in the financial memorandum. Do you think that they are an underestimate of the set-up cost?

Kaukab Stewart: I am aware that the issue of costs has been spoken about in previous evidence sessions and that, for instance, at the evidence session on 18 June, when asked whether the proposed costs were an underestimate, Amy Dalrymple from Marie Curie Scotland said:

"The costs of ensuring that disabled people can access services ... are often underestimated".—[*Official Report, Equalities, Human Rights and Civil Justice Committee*, 18 June 2023; c 18.]

I do not think that the establishment of a commissioner can be done cheaply. I welcome Jeremy Balfour's willingness to look at how administrative aspects could be shared and at how to make the role more affordable. However, you would expect me to be very cautious about that. I have looked at a comparison of similar commissioner roles across the UK. They usually have between 15 and 20 staff. The Commissioner for Older People for Northern Ireland has approximately 18 staff and the Older People's Commissioner for Wales has approximately 16 staff. Therefore, you have to be very cautious—well, I have to be. I am scrutinising the money that goes into that.

As I said, my mind is open. If there is clear evidence that the best use of the money would be to have a commissioner who could possibly have an administrative team of between 15 and 20 staff, that will be looked at very seriously. However, the disabled people's organisations want to ensure that the commissioner has teeth, and they can have teeth only if they have a full team of people

who are able to execute that work. Therefore, I would worry that if, for example, we thought that we could cut down on the staff and have five or 10 people, the commissioner would not have the reach that was expected. Therefore, we need to be very mindful of that. However, I look forward to getting more facts and figures and evidence and analysis of that.

Marie McNair: Concerns were raised in the two evidence sessions by several stakeholders that the funding required for the disability commissioner could divert funding away from other policies that are aimed at disabled people. You also touched on that in your opening speech. It seems that you think that that is likely to be the case, so can you say more about that?

Kaukab Stewart: I can try. I think that I have covered most of that already. My concern around the finances is duplication. That is the bit that I am worried about. Would it be an effective use of the money? I refer to the money that it would cost not only to set up the office but to sustain it. We want it to be sustainable. It has to be. We would not want to set an expectation that was not delivered.

I would not want anyone to think that one set of money is taking away from another. That is not how it works. We have to discuss the bill on its own merits. I am not going to get into that question.

Marie McNair: It is just about giving people reassurances, though. That is their concern, so we need to reassure them. Time will tell.

Kaukab Stewart: As I said, the programme for government and the financial statement are yet to come. However, if there is anything wider to say to the committee, I am more than happy to provide further information drilling down into the numbers once we all have it over the next few days. I am happy to write to you with more detailed information, Ms McNair.

Marie McNair: That would be helpful to the committee. Thank you.

Annie Wells (Glasgow) (Con): Good morning, minister. The bill includes a provision for inclusive communication. What are your thoughts on that? Also, the Scottish Government said that it would introduce a public sector duty on inclusive communication. Can you provide an update on that?

Kaukab Stewart: There has been a lot of discussion of inclusive communication. My initial delving into it indicates that there is no consistency. There are councils and public sector providers that are doing a really good job on inclusive communication but it is not consistent. I hope that we can address that through the bill and by spreading good practice.

Again, intersectionality comes into it as well. There are different layers of communication. We are not just talking about British Sign Language, for instance, but inclusive communication in everything for the hard of hearing—I am not going to list all the groups, because you always forget something, so please forgive me.

The general principle of it is that there are amazing good practices, but people use that term “postcode lottery”, which means that, depending on where you live, you do or do not get something. We cannot have that.

The principle of inclusive communication is important because it goes to the heart of the dignity and agency of those who have communication barriers. Perhaps they do not have the barriers; perhaps it is us who are creating those barriers, so it is on us to deal with them.

We need to ensure that provision is consistent. The public service equity duty is a big part of that. Again, it is about using the carrot and the stick. Currently, I am looking at whether there is a place for legislation. However, remember that we work in partnership with local authorities through the Convention of Scottish Local Authorities. We have to respect that relationship, so we need to consider whether the best way is for the Scottish Government to legislate or whether we need to provide the tools and the frameworks.

Also, ministers have additional powers to strongly suggest—well, more than suggest; I cannot remember the phrase that is in the powers—something. I am considering those at the moment. What powers do we have to enforce that everybody is honouring their duties with regard to inclusive communications?

Annie Wells: The bill includes a provision to involve disabled people in the commissioner’s work. What is your view on that provision? What would the benefits of that be and what might be some of the challenges that it might bring?

10:45

Kaukab Stewart: I think that the benefits are obvious. The motto is “Nothing about us without us.”

Disabled people’s organisations are excellent representatives. They would be the first ones to say that hearing directly from those with lived experience and those with learned experience is so important because, with the best will in the world, no matter how much we think that we know best, we do not. It works both ways: some of the things that I perceive would be difficult for people are not a big deal for them, but there are other things that we do not see.

The practical reality is that it will be a challenge to ensure that the bill and the commissioner are truly inclusive. We need to consider how the consultation will take place—will it be done online? That will have various implications relating to travel, health and social care, and carers, for example. All of those things will come into it.

That feeds back into the financial area. We need to consider whether those things have been taken into account in order to make the bill truly meaningful. I would look for transparency regarding the additional costs that would arise from those things and at where those costs would be accounted for, to ensure that those things happen. Does that answer your question?

Annie Wells: Yes. Thank you, minister.

Meghan Gallacher (Central Scotland) (Con): Thank you, convener, and good morning, minister.

You mentioned pathways and expectations to improve and support the lives of people with disabilities, which we can collectively agree on. However, that is completely different from advocacy, which is important when we look at commissioners. A concern has been brought up in the conversation this morning about what a broad disability commissioner would advocate for with regard to people with various different types of disabilities. Is bolting on disability to the role of the human rights commissioner diluting the voice of disabled people? I think that that is the primary reason that we are discussing a disability commissioner.

Kaukab Stewart: You make an important point. We talked about mainstreaming and the current duty bearers and those who have enforcement powers. There is a requirement for a champion and for someone who is solely focused on advancing rights, especially for disabled people, because that is what we are discussing today. I have a great deal of sympathy for that.

The bit that I am drilling down into is the question of how that role would sit with the Scottish Human Rights Commission, for instance. Would the bill have two areas where there is a lack of teeth rather than having one area that could be enhanced further? In its current form, the bill does not have any enforcement powers, which I find interesting.

You are right to mention advocacy. Could that role be done through other means? I suggested that champions would do that. Again, there are questions around how that would work. Would it be effective for each of the 32 local authorities to have a disability champion that could undertake the work that is in the bill? I am grappling with all of those questions, because as I said, I am genuinely in a neutral space where I am weighing

up all the options and considering what would be the most effective way of doing this.

The rapporteur model is a model that is often used. Rapporteurs are often quoted in chamber debates. They make a mark, as they are able to have research done and to draw on that. They can also make international comparisons, hold bodies to account and provide evidence. There are many ways of doing it.

The advocacy role is essential—we must have that. Whether the bill provides enough in relation to the advocacy role to give the commissioner the teeth that disabled people's organisations have asked for is the question that I am asking.

Meghan Gallacher: Of course, we have the children's commissioner. Young people across Scotland have different experiences and different needs and require different levels of support, and I am sure that everyone will agree that the children's commissioner does sterling work in making sure that young people throughout the country are supported.

Therefore, when it comes to representation and advocacy, do you think that a disability commissioner would not be able to perform the same role as the children's commissioner performs? Again, it all links to rights—we cannot get away from human rights. There are commissions on human rights, there is a children's commissioner and we could potentially have a disability commissioner. All the existing bodies play an important role in supporting and advocating for the people whom they are there to help.

Kaukab Stewart: That is an issue that I have given a lot of thought to, and I know that it is one on which the committee has heard evidence. As you have mentioned, there is a crossover. I am continuing to consider the detail of the bill before us and where there are synergies and crossovers with the human rights bill and the wider human rights agenda.

There will be children with disabilities who are covered under the remit of the children's commissioner. I am trying to think where in that complex landscape a disability commissioner would fit. Would such a role add to that in a positive way? Would it make that landscape more crowded? That is the place that I am in.

Representatives expressed concerns about that during one of the committee's evidence sessions. They felt that the children's commissioner model might not be completely transferable, weighing up the issues of cost effectiveness, crossovers and who would take responsibility for what and where. That raises more questions. I am genuinely in a place where I am exploring all those issues. I will

see where we land on that once I have undertaken my scrutiny.

I do not want us to have a hierarchy of rights. I am concerned that if we start to separate out all the various protected characteristics, it is possible that there would be a call on behalf of other protected characteristics for there to be commissioners for those groups. I started off by saying that I believe passionately in mainstreaming. I would love us to have a world where we do not need to have individual commissioners because we have all the structures and support systems in place to ensure that the needs of every individual are taken account of. For me, that is the big idea, but I realise that, on that journey, there will be times when there are people who need us more and whose needs need to be highlighted.

As I said, my reservation is that I would not want there to be a hierarchy in that regard, and I know that that issue has been alluded to in some of the evidence that the committee has taken.

Meghan Gallacher: I am pleased that we have spoken about the need to avoid a hierarchy of rights, because I think that that is really important. I am glad that the Government is now moving in that direction, but is it not the case that because it encompasses everything, its approach to human rights is far too broad, which is why we face the problems that we face?

Kaukab Stewart: Well, I cannot say too much about that, because of the programme for government. Once we are over the next few days, I will be happy to write to you and the committee to give you more information on that.

Meghan Gallacher: I appreciate that. Thank you.

The Convener: Minister, you spoke about the fact that the bill does not have enforcement powers—those teeth—in it. Could I get your views on some of the general powers in the bill, which are to promote awareness and understanding, to keep law, policy and practice under review, to promote best practice, and to publish research? What are your thoughts on those?

Kaukab Stewart: That is exactly what I would want to see in the bill. Exploring that a little further, we can see that there are clear advantages. We have commissioners, so we know that having a commissioner is a possibility; what we are discussing today is whether this particular commissioner's bill will have the effect that it is intended to have. That depends partly on the powers of the commissioner, which could potentially be used to positive effect to not only focus specifically on the rights of disabled people, but hold public bodies to account and, as Meghan Gallacher said, act on behalf of disabled people.

The commissioner could also have a role in highlighting ableism in Scotland and the issues of discrimination against disabled people, so there are clear merits there.

The Convener: There was some concern that the investigation powers in the Disability Commissioner (Scotland) Bill would not be powerful enough. What do you think would make investigation powers have more impact?

Kaukab Stewart: The short answer is that, with any investigation powers, you can investigate and report, but the issue is then about the enforcement of the recommendations that come out of that report. That is the bit that I am closely considering.

The SHRC and the EHRC have an important statutory role in relation to the rights of disabled people. Their remit is to ensure the protection of the rights of a wide range of people, including people in specific groups, as I said—in this particular case, people with disabilities.

Sorry—I have lost my thread a little. You can remind me if I have lost track or you need further information.

The Convener: What could give the bill more powers in relation to investigation?

Kaukab Stewart: I would just go back to what I said—it is about the enforcement bit of it.

The Convener: Thank you so much.

That concludes our business in public this morning. I thank the minister and her officials once again for attending. We will now move into private to discuss the remaining two items on our agenda.

10:58

Meeting continued in private until 11:36.

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