



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Equalities, Human Rights and Civil Justice Committee

Tuesday 17 September 2024

Session 6



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EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE
18th 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:

Jeremy Balfour (Lothian) (Con)

CLERK TO THE COMMITTEE

Katrina Venters

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament
Equalities, Human Rights and
Civil Justice Committee

Tuesday 17 September 2024

[The Convener opened the meeting at 10:00]

Subordinate Legislation

Legal Aid and Advice and Assistance
(Miscellaneous Amendment) (Scotland)
Regulations 2024 (SSI 2024/178)

Legal Aid and Advice and Assistance
(Miscellaneous Amendment) (Scotland)
(No 2) Regulations 2024 (SSI 2024/216)

The Convener (Karen Adam): Good morning, and welcome to the 18th meeting in 2024, in session 6, of the Equalities, Human Rights and Civil Justice Committee. We have received apologies from Marie McNair.

Our first agenda item is consideration of two negative Scottish statutory instruments. I refer members to paper 1.

Are members content with the instruments?

Members *indicated agreement.*

Disability Commissioner
(Scotland) Bill: Stage 1

10:01

The Convener: Under our next agenda item, we will continue taking evidence on the Disability Commissioner (Scotland) Bill. I refer members to papers 1 and 2. I welcome to the meeting Jeremy Balfour, the member in charge of the bill, who is joined by Scottish Parliament officials: Nick Hawthorne, a senior clerk, and Liz Anderson, an assistant clerk, are from the non-Government bills unit, and Alison Fraser is a solicitor in the legal services office. I thank the witnesses for coming.

Before we move to questions from the committee, I invite Jeremy Balfour to make an opening statement.

Jeremy Balfour (Lothian) (Con): Thank you, convener. Good morning, colleagues. I thank the committee for all the work that it has done to date in considering my bill. I have been following the evidence sessions with great interest, and I welcome the views of all who have contributed. I was pleased to hear continued overwhelming support for the bill being expressed during the evidence sessions, particularly by organisations that work with and for disabled people. I think that everyone who has given evidence to the committee, including public bodies and the Minister for Equalities, accepts that the current situation that disabled people face, particularly in the aftermath of the Covid pandemic, is simply not good enough.

There was cross-party consensus that, in relation to understanding, representing and actioning the needs of disabled people in Scotland, change is needed and is needed now. Disabled people cannot wait any longer for a disability commissioner. I introduced the Disability Commissioner (Scotland) Bill in response to such concerns, with the aim of ensuring that disabled people have a champion—someone whose sole focus is on disabled people.

I acknowledge that not everyone thinks that a commissioner is the solution, but I believe that a commissioner can only have a positive impact in improving the lives of disabled people. In developing my bill, I drew inspiration from the work of the Children and Young People's Commissioner, as that role has shown the positive impact that an advocating rights-based champion can have. I also note the work of the Older People's Commissioner for Wales and the Commissioner for Older People for Northern Ireland. The commissioner model is popular for a reason—it works. A disability commissioner could play a similar high-profile role to those that I have

highlighted by advocating for disabled people at a national level.

I note that some witnesses raised concerns with the committee. For example, there was a view that there are already a number of existing commissioners and public bodies that have a remit in helping disabled people, and that the creation of a disability commissioner might lead to duplication of work and overlap of remits. I firmly disagree.

I acknowledge the important and wide-ranging work of public bodies such as the Scottish Human Rights Commission and the Equalities and Human Rights Commission, but those organisations' remits are split between multiple protected characteristics and the impact can therefore be diluted. Only a disability commissioner would be able to be laser focused on disabled people, as is urgently needed.

Moreover, I believe that the work of a disability commissioner would complement that of existing bodies. For example, currently, protecting the rights of children in Scotland falls within the remits of the Children and Young People's Commissioner Scotland, the SHRC and the EHRC, but that has not prevented those organisations from being able to carry out their roles and, as far as I can see, it has not led to any problems or duplication of work.

I note that the majority of those who have raised concerns about the establishment of a disability commissioner, particularly regarding the potential for overlap of remits and the costs involved, are in positions of authority and power, such as politicians and public bodies. Very few, if any, disabled people or third sector organisations have raised those issues as major concerns.

Yes, public bodies that help disabled people already exist at a national level, but we are being told by disabled people that they are not meeting their needs. I will quote Heather Fiskin from Inclusion Scotland:

"If the landscape is so busy, why has there been no change so far?"—[*Official Report, Equalities, Human Rights and Civil Justice Committee*, 11 June 2024; c 8.]

We must listen to what disabled people are telling us, rather than to the public bodies that are currently not having the necessary impact.

I note that the Finance and Public Administration Committee's report on the commissioner landscape was published yesterday, as the committee is probably aware. The report calls for

"a moratorium on creating any new SPCB supported bodies, or expanding the remit of existing bodies"

until a review has been undertaken. I understand the instinct to have a review—I would even encourage that to happen—but it should not take place until disabled people have been given the

same chance as other groups to benefit from a champion who speaks on their behalf at all levels of government. Pulling up the ladder on disabled people at this point would send a clear message that they are less worthy of an advocate than others. It is also worth noting that the recommended review would conclude by June 2025, which would, in effect, end any chance of further legislation on the proposal for a disability commissioner being introduced in this parliamentary session.

I note that other concerns have been raised about the potential cost of a disability commissioner. I emphasise what I said when I gave evidence to the Finance and Public Administration Committee: I consider the costs that would be incurred in establishing a disability commissioner to be relatively modest in the context of the Scottish Government's total budget of £30 billion, and those costs should be seen as an investment in disabled people that is long overdue and very much needed.

It is my firm belief that establishing a disability commissioner will ensure that disabled people have a champion who will give them the prioritisation that they need and deserve. The commissioner's overarching purpose will be to promote and safeguard the rights of disabled people. The bill sets out various functions that will help the commissioner to achieve that goal. Those include promoting awareness and understanding of the rights of disabled people and promoting best practice by service providers. That could be carried out in a multitude of ways, but it is important that the views of disabled people are central to that work.

For that reason, the bill provides that the commissioner must consult disabled people and organisations that work with and for disabled people on the work that the commission is undertaking and must publish a strategy for involving disabled people in their work. The commissioner must ensure that those who have difficulty in making their views known or in accessing information have the means to do so when engaging with the commissioner. That could be done through the provision of information in different formats, such as Braille and easy read.

The recent programme for government was yet another bitter blow for disabled people in Scotland, with the news that the Scottish Government will not be pursuing a human rights bill in this parliamentary session, as was previously planned, and that the proposed bill to create a learning disability, autism and neurodiversity commissioner has been shelved.

On top of that, many disabled people's organisations believe that the Government's disability equality plan falls short of its promised

intentions. Glasgow Disability Alliance stated that it

“lacks ambition, meaningful actions or commitments needed to improve disabled lives blighted by #Poverty #Trauma #Inequality”.

Inclusion Scotland stated that it was disappointed that the draft plan does not include the actions that it had discussed at a meeting with the First Minister. The Scottish Government’s disability equality plan is therefore not an effective or credible alternative to establishing a disability commissioner, so if a disability commissioner is not the answer, what is?

We know that disabled people need action now. They cannot wait any longer. The bill seeks to make positive changes for disabled people and is in front of the Parliament now. No viable alternative is currently on the table to ensure that disabled people have a champion who will ensure that their rights are respected and enforced. The proposed learning disability, autism and neurodiversity commissioner bill is being dangled in front of us, but, for the foreseeable future, it will remain out of reach. We are being asked to trust existing institutions to provide a voice for disabled people when they previously have not provided that voice, even though they already have that mandate. The reality is that they will never be able to prioritise disabled people because they have such broad remits. Only a disability commissioner will be able to focus their full attention on disabled people.

If the bill falls, we risk this parliamentary session ending without our having passed any meaningful legislation to improve disabled people’s rights, which would be shameful. We know that disabled people need action now. They cannot wait any longer. I therefore urge the committee and the Parliament to ensure that this opportunity is not missed and to support the bill. I am afraid that disabled people will not forgive us if we do not pass it.

I am happy, as always, to answer questions.

The Convener: Thank you very much for your opening statement. The committee has heard strong support for a disability commissioner, particularly from disabled people. Why do you think that is?

Jeremy Balfour: Interestingly, there was an argument for a disability commissioner before Covid, but, as a consequence of Covid, disabled people have been left behind by public bodies and funding organisations far more than people with any of the other protected characteristics.

When I was doing my consultation on the bill, one of my big concerns was about how to balance the commissioner’s job in relation to dealing with people in wheelchairs, people with hidden

disabilities and people with hearing loss. How would one commissioner be able to do all that? What became very clear to me—all the evidence points to this—is that the same issues relating to education, employment and benefits affect people in wheelchairs, people with hearing or sight loss and people with hidden disabilities. The commissioner would not be spending, say, 20 per cent of their time dealing with people with one type of disability and 10 per cent of their time dealing with people with another type of disability. They would be looking at issues such as education and social care provision.

Interestingly, the City of Edinburgh Council has still not introduced the care measures for the parents of disabled children that were available before Covid. In fact, based on a meeting that I had with the council a number of months ago, it has no intention of introducing those measures again. That is true not just of the City of Edinburgh Council but of many local authorities. Who is advocating for those people? Who is telling MSPs that that is happening? Who is putting the message out there? Frankly, at the moment, no one is, so local authorities and other public bodies are getting away with it. That is why disabled people need a voice and why the bill is so important.

The Convener: You told the Finance and Public Administration Committee that you were concerned about the timing of its inquiry into the commissioner landscape and how it might impact the bill. As you mentioned in your opening statement, the report calls for

“a moratorium on creating any new SPCB supported bodies”

and suggests that a review be undertaken by a dedicated parliamentary committee. What is your response to that recommendation and to the report in general?

Jeremy Balfour: Clearly, it is not ideal timing for that report to come out, but it raises an important issue that we need to explore.

In the past two and a half years, all members round the table voted for a patient commissioner and, at stage 1 of the Victims, Witnesses, and Justice Reform (Scotland) Bill, we voted for a commissioner for those who have been victims of crime. The proposal is still in that bill and I would be interested to know whether, at stage 2 or 3, we are going to say that that commissioner should go away. I suspect that the answer will be no, because the Scottish Government is very keen to see that commissioner. Within this session, the Parliament has already voted for one commissioner and has agreed in principle to another.

10:15

I fully agree that, if we were starting with a blank piece of paper, a full review would be important, but I am not sure that disabilities can wait. Even if a review sticks to the timetable of a year, that will take us to the autumn of next year, which means that, realistically, nothing will happen in this session. There will have to be a cross-party discussion on that, and legislation would have to be introduced, if we ever wanted to do it, in the next session of Parliament. That legislation may take two or three years to happen. Therefore, we would be saying that, for the next four to five years, disabled people will be left behind again. Why are we drawing the line or pulling up the ropes here?

My request, my suggestion and my plea is that we get the disability commissioner in place, have a full review and see where we go. Do we genuinely want to say to disabled people, "It's okay—everything is going to happen, but it will be seven years before anything changes for your lives"? That is a long time, particularly for those who are struggling at the moment.

The Convener: Concern has been expressed that setting up a disability commissioner could divert resources from work in other areas, such as the Scottish Government's new disability equality strategy. The FPAC has said that it believes that

"the funding for new supported bodies would be better spent on improving the delivery of public services 'on the ground', where greater impact can be made."

How do you respond to that?

Jeremy Balfour: It is safe to say that none of the members who are here was in the Parliament when the Commissioner for Children and Young People (Scotland) Bill went through but, if you go back and read the evidence on that, you will find exactly the same argument made there—that the children's commissioner would divert money away from children's activities and on-the-ground resources.

It is not an either/or—we need both, and that comes down to a political choice that we have to make about what we want to fund. The children's commissioner has shown that a voice for young people can be powerful, and the commissioners have brought about changes in this Parliament as a result of their work.

I do not see the proposal moving money away from disabled people—I think that it is a both situation and that we will continue to fund disabled charities and organisations. However, although the amount of money that it would cost to run a commissioner is a lot in my terms, in the Scottish Government's five-year plan, it really is a drop in the ocean.

There has been quite a lot of criticism of the new strategy. I am sure that the Scottish Government will respond to that, and I hope that we will listen to what the disabled groups have said. However, when Inclusion Scotland and the Glasgow Disability Alliance are saying that the strategy will not make any difference to disabled lives, we have to hear that. Actually, is it not better to invest the money in a commissioner, along with all that is being funded at the moment?

The Convener: Given the financial situation that the Scottish Government has set out, is it feasible to set up a disability commissioner at this time?

Jeremy Balfour: Absolutely. I appreciate that £1 million or £1.5 million sounds like a lot of money, but in a £30 billion budget, it is not so much. When the Scottish Government was promoting the Hate Crime and Public Order (Scotland) Act 2021, it spent £400,000 or thereabouts on that. A third of the budget for a commissioner was spent, not on introducing that act, but simply advertising it on social media and through other forms of communication. The cost for the commissioner sounds like a lot of money, but it is not in real terms, and this is something that needs to happen.

Two weeks ago, we heard that, although the Government was going to commit £10 million to Changing Places toilets—that money has been promised for the past four to five years—that has now been taken away. If that had related to another protected characteristic, there would have been outrage in the Parliament, and people would have been emailing and writing to members. However, because it has happened to disabled people and, looking at it realistically, because of all the problems that they have, there has not been much of a campaign on the issue. However, that will be a massive blow to many people with disabilities.

The commissioner is an investment in relation to what the Government, local authorities and other public bodies do. We are setting this up over the long term; it is not just a one-year budget decision. I think that it is worth funding the commissioner until that review, if it ever takes place.

The Convener: Thank you.

Evelyn Tweed (Stirling) (SNP): Good morning, Mr Balfour. Thank you for your opening remarks.

There are concerns about the duplication of work, which you mentioned in your opening statement, especially given the financial climate. The FPAC said:

"We welcome the views of supported bodies that more work can be undertaken in this area, including sharing premises and back-office functions."

What is your response to the concerns about duplication and how can they be mitigated?

Jeremy Balfour: That is an important question. A lot more needs to be done on back-office sharing among all commissioners. We do not need human resources or accountancy functions for each commissioner. There is a real argument that commissioners should be sharing those functions. We need to look at office premises. It would be good to have all the commissioners under one roof, where possible, so that they can share best practice. I would definitely agree on all those things.

With regard to the overlap, I suppose that I am getting old and cynical but, if it is so easy to do this work, why have we not done it already? The work that the various commissions have done on disability is minimal. Around 20 to 25 per cent of the population in Scotland has a disability. I am absolutely willing to guarantee that that does not represent the percentage of work that any of the commissioners has done on the issue. It is all very well to jump up now and say, "Yes, we're going to do all this," but history tells us that that has not happened.

In relation to overlap, as I mentioned in my opening statement, that already happens with the children's commissioner. People are old enough and big enough to say, "Look, I'm thinking of doing this piece of work. Is anyone else doing it?" If not, whatever commissioner it is can carry on and do that work.

It has been really interesting to me to speak to the commissioners. There is more than enough work for everyone, and the work on disabilities is simply not happening. I do not think that we will have much of an overlap. We will simply find people working together where appropriate and dividing the work up where appropriate. At the moment, the disabled voice is simply not being heard or being investigated in that way.

Evelyn Tweed: A frequent issue raised by disability organisations in response to the call for views was that, although there are several statutory organisations that promote and protect the rights of disabled people, inequalities persist. What are your views on that?

Jeremy Balfour: As I said to the convener, if you look at education, health, social services and even things such as Changing Places toilets, you see that there is mass discrimination. I will be honest. As I think that I have said previously, I was born with a disability and, before I came into the Parliament, I thought that most disabled people's experience had been my experience, which had been pretty positive. I went to a mainstream school, to mainstream further education and into

mainstream work. I thought that that was most disabled people's experience.

When I entered the Parliament and started hearing the stories about what the majority of disabled people face and what the majority of parents of disabled children face, I was horrified. I will be honest—I was naive in that regard. Until you start talking to people who have disabilities about how they struggle to get interviews for jobs, how they seem to be at the bottom of the list when it comes to social care or about how their packages are being cut, you do not realise. There is so much that disabled people or parents of disabled children can talk about.

To use a very basic example, in Edinburgh, we are very good at clearing the main roads for the buses, as they should be. However, that is no good to me on an icy day if I cannot get out of my house to the main street, and no one ever clears the side streets. Older people, people in a wheelchair or those with some form of disability that makes them more likely to slip are housebound for far longer than others. That voice has not been heard by us in the Parliament or by other bodies in Scotland.

Evelyn Tweed: Thank you.

Maggie Chapman (North East Scotland) (Green): Good morning, Mr Balfour. Thank you for your opening comments and for the time that you have previously given me to discuss your bill. It is much appreciated.

I hear clearly from you this morning and from previous evidence the concerns with the disability equality strategy and your point about how we will get action if not through a disability commissioner. How do you approach the inherent tension in what we have heard about the need for a disability commissioner to focus on disabilities and the huge range of disability issues that people face? You talked about focusing on issues such as education, employment and social care. Why is a commissioner the answer, rather than using existing structures to focus on mainstreaming or on employability for everyone?

Jeremy Balfour: Without labouring the point, the present structures simply are not doing it. I do not see any reason why, if the bill goes away and everyone goes back to normal in six months, they will not go back to doing what they have done normally. Who is going to hold them accountable for that?

That is a slightly cynical view. On a more positive note, to be absolutely honest, I would have been giving very different evidence if the programme for government had been different. If we had seen the implementation in Scots law of disabled stuff from the United Nations, we would have been in a very different place, because that

would have given disabled people a statutory right to challenge decisions. We could have made a lot of progress in regard to those with neurodivergence conditions, if a bill on that had been proposed.

Even within the past two weeks, two major things that would have helped disabled people have disappeared. That has had some comments on Twitter but, despite the impact on disabled people's lives, it has not had the same input that there would have been if something had happened to a child or a young person.

I just think that no one is going to do that work. There are some very able people, such as Mr O'Kane and others, who are very good at advocating on behalf of disabled people, but they have 500 other things to do. That is why we need that individual person who can be the advocate and who can bring together those voices and make sure that they are heard. At the moment, the disabled voice just is not being heard in the public sphere.

Maggie Chapman: Many of us in this place are pretty scunnered at the lack of a human rights bill and incorporation of UN treaties into Scots law. I get that very clear connection and the different position that we find ourselves in.

To pick up on a point about accountability and who will do this work, do you consider that your proposed disability commissioner will have the resources to do that? Given the systemic failures that you have well outlined, if the role is pan-disability, will one person be sufficient?

Jeremy Balfour: At the moment, it is the only thing on the table. I am not convinced that the model of having each disability covered by a different individual or by a sub-group works. Disability issues overlap, and there are pan-disability issues, so I think that one individual can do it. With the right person in post, they can advocate loudly. I am not concerned about having one individual. It is probably still the best model that pulls everybody together, and it can work in practice. We have seen that with the older people's commissioners in Wales and Northern Ireland, and we have certainly seen it with the children's commissioner in Scotland. I think that it can work. In the landscape at the moment, disabled people's voices are not heard at all, so we need someone to do this work.

10:30

Maggie Chapman: When we heard from the minister, she spoke about mainstreaming. We heard in other evidence—you will have picked this up as well—about some of the tensions around mainstreaming, including with regard to intersectionality. I suppose that this follows on

from my other questions. How would a disability commissioner deal with every aspect of a disabled person's life in every aspect of society? How would we get those levels of accountability in the powers of one office?

Jeremy Balfour MSP: Obviously, it is one office, but the commissioner would have support staff and having the right team behind them would be important.

Clearly, the commissioner could not do everything on day 1, and we have to be realistic about that. I hope that the first thing that whoever gets the job would do would be to go out and listen to the disability community. It is not about the community coming to them; they would go to meet the community. That means going up to the communities that Ms Karen Adam represents, and going down to the Borders. It cannot just be a central Scotland thing, however important that area is. They need to visit the breadth of Scotland.

Without prejudging it, I think that some very obvious themes would come quickly to that individual, and they would have to set out their work programme to deal with them.

The evidence is interesting. Some people are saying that the commissioner would have too much power and others are saying that they would not have enough. If the bill goes beyond stage 1, I would be really interested to work with colleagues round this table and with other people in Parliament to work that out better.

As I said to Ms Tweed, we must ensure that the commissioners are talking to each other. Before a major inquiry was carried out or something was done, I would expect the disability commissioner to go to the Children and Young People's Commissioner Scotland and the other commissioners to say, for example, "I'm thinking of doing this. Have you got any expertise on it, or are you doing anything around this? Let's work together if we need to."

It is a crowded landscape, but Scotland is a pretty small country, and we can talk to each other.

Paul O'Kane (West Scotland) (Lab): I want to pick up the issues relating to the interaction of your bill and the proposed bill on learning disabilities, autism and neurodivergence. Were I to be generous, I would say that there is a high degree of uncertainty as to the progress that the LDAN bill will make. We do not think that it will reach fruition by the end of this session of Parliament.

There was debate about whether an LDAN commissioner or commission should be included in that proposal. Is there an opportunity to pick up

some of those issues in your bill? If so, how would you deal with the diversity in that community?

Jeremy Balfour MSP: The simple answer to that question is yes, there is an opportunity to do that. Last Thursday, there was a meeting in the Parliament—I think that you attended it—that brought together some of the groups that have been involved in the proposed LDAN bill and those who have lived experience. Unfortunately, I was chairing another cross-party group at the time, so I was unable to attend, but a couple of my staff went.

It was interesting that one of them, who was shadowing me for a week and has a disability, was quite emotionally damaged by it. Some of the stories were about suicides, and some of the things that parents are facing were pretty horrific. To go back to some of the previous questions about why we need to have a voice for the disabled community, you would have heard the reasons for that had you sat in that room for any length of time.

I am very open to talking to the different groups that have been trying to push forward the LDAN bill. You are being very generous—as always—about the bill's standing, but I am very willing to talk to you, Enable Scotland, the National Autistic Society Scotland and other groups about how we could amend my bill to ensure that that area of disability is covered.

Last summer, I visited a number of Enable Scotland groups. I know that, even within the disabled community, there can be a feeling that people with certain conditions are sometimes less heard than other people, and that cannot be right. I would be very open to working with others to strengthen that area in any way possible, to make sure that that really important voice is heard.

Paul O'Kane: Would you be concerned that one commissioner would have too much to look at? Say that we had a disability commissioner who covered absolutely everything, including, I suppose, neurodiversity. I do not think that that has been fully defined yet—there is certainly disagreement on some of the definitions that were contained in the consultation on the LDAN bill. Are you concerned that that subject matter is too vast?

Also, people want a commissioner to do two things: to advocate, as you have quite rightly talked about; and to investigate. A lot of issues that came up during the LDAN bill consultation process were to do with breaches of people's human rights, not least of which were the use of seclusion and restraint in schools. Many of those issues are faced by disabled people and their families in particular. Is dealing with all that too vast a prospect for one commissioner?

Jeremy Balfour MSP: I actually think that it is really helpful for a disability commissioner not to have a definition of any condition, because that means that they can go wherever they want to in regard to that. I have been to a number of meetings about that bill over the past two years, and it always seemed to me that the hardest part would be to define who would be covered in the bill and who would not be. My bill allows everybody to be covered.

I return to my previous comments. Clearly, if a commissioner were to say, "I am going to spend X time on this disability, Y time on that disability and Z time on that disability," the role could become all-consuming and overwhelming.

Some of the issues that I have raised, from social care to education, apply across the board. If we had a disability commissioner who was able to say that an issue affects somebody with upper limb impairment, somebody with visual impairment, somebody with Down syndrome and somebody with attention deficit hyperactivity disorder—which might be in slightly different ways—and that the legislation in place is stopping them from being all that they could be, that would give that individual a much more powerful voice, because they would be able to draw on so many different experiences and voices.

I am deeply concerned about the lack of respite care that many parents are getting, whatever the disability. If a commissioner were able to pull together different examples of that from different areas of disability, that would make what they say to a local authority or to a national Government much more powerful.

Paul O'Kane: I will push you on that point. People want the commissioner to have investigatory powers, and the bill has covered that aspect. However, many people are seeking justice on some of the issues that you have just raised. How would the commissioner go about doing that?

Jeremy Balfour MSP: As big as my ego is, I do not claim that everything in my bill is perfect and that it needs to go through without amendment. We need to look at that. I repeat the offer that I made to your colleagues. At stage 2 and stage 3, I would be looking to work with others in making sure that we get that right.

Clearly, there has to be a balance. A commissioner cannot take on every case; they would be overwhelmed on day 1, but there will be a number of areas that affect disabled people that they will be seeking to investigate further. I would want to tease that out further, and the potential for amendments, at stage 2.

Paul O'Kane: I will play devil's advocate for a moment. You have listed—quite rightly—some of the challenges that we face: progress on the

LDAN bill is being stalled, there will be no human rights bill in this session of Parliament, the £10 million of changing places funding looks like it will not go ahead, and non-residential care charges will not be abolished by the end of this session. The Government has made those decisions. You, I and others who have an interest as parliamentarians have not yet been able to change those decisions, although we continue to try, as do campaign groups and a range of stakeholders.

If we, as democratic politicians elected to hold the Government to account, have not been able to change minds at this stage, how would a commissioner do that? What would a commissioner add? There have been situations in which other commissioners have been ignored by Governments of all stripes.

Jeremy Balfour MSP: Ultimately, this Parliament is sovereign; it has to make the decisions. That is the starting point, but, ultimately, as politicians, we can say yes or no to things, and that is our choice. We are then held accountable to the electorate.

I attended the Glasgow Disability Alliance hustings before the general election. It claims that nearly 30 per cent of people in Glasgow have a disability. That is a lot of people who can vote for you or against you. The commissioner could put things forward and politicians could reject them. However, ultimately, we all have to go to the ballot box every five years and seek re-election. That type of bigger campaign can be run with regard to that.

The smacking issue is interesting. Some of us voted for that legislation and some of us voted against it. I think that the then children's commissioner played quite a large role in bringing that issue back on to the agenda. It had been kicking round politics for a number of years without any legislation being introduced. The then commissioner had an active campaign involving young people, and he brought together a number of charities.

There are examples of things that have happened because a commissioner has worked on them, but, ultimately it is up to us as a Parliament to make the decisions. I hope that we make those decisions based on the best information that we have, but I am still concerned that many disabled voices are not even being heard when decisions are being made.

Annie Wells (Glasgow) (Con): Good morning, Jeremy, and good morning, officials. Just to touch on what Paul O'Kane was asking about, I would just note that, when I and my colleague Marie McNair held evidence sessions last week with the Glasgow Disability Alliance, a lot of the people there said that the commissioner did not have

enough teeth, pointed out that there were no enforcement powers and asked why no enforcement powers had been put into the bill to start with. Can you explain to them why they were not put in at the start?

Jeremy Balfour: We have to look at what powers a commissioner can choose to enforce. Many people who are better legally qualified than I am will tell you that there are restrictions in that regard, even on the powers of commissioners. However, we can probably go further and I am certainly willing to work with the Glasgow Disability Alliance, other charities and MSPs to see how far we can go and still keep on the right side of legality.

I have put forward some powers for the commissioner, and we will just need to make sure that they are legal. If they are, I am certainly happy to have discussions with you and others about that.

Annie Wells: You have talked about potential amendments at stage 2. Do you have anything in mind at the moment that we could look forward to hearing about?

Jeremy Balfour: Well, you know me, Annie—I always have a few ideas.

I think that enforcement and investigation powers are interesting issues. As far as stage 2 is concerned, I was interested in some of the comments that were made about how you define disability, so I have come up with a definition. I would probably want to pursue that definition with others to ensure that it is as inclusive as possible and that people feel that it is so. Ultimately, we will have to come to a decision on that, but I am interested to hear what other voices have to say.

The issue came up a wee bit in my initial consultation. It was probably not highlighted as much then as it has been to you since, so it would be interesting to explore that further.

Annie Wells: Thank you.

10:45

Meghan Gallacher (Central Scotland) (Con): Good morning, Jeremy. We have talked a lot about advocacy this morning, which is a really important point in relation to your bill. We have also talked about the current Scottish Human Rights Commission, the remit of which, you have stressed, is far too broad. From the communication that you have been having with various groups and organisations to piece your bill together, can you tell us how easy or difficult it is for a disabled person to contact the commission and seek that advocacy just now?

Jeremy Balfour: It is pretty hard, to be honest. I am not being rude about the commission, but it has a massive remit. One of the things that has become very clear to me, not just with the bill but through contacting disabled people, is how difficult disabled people find any form of going to officialdom. One of the real challenges for the commission would be to make sure that it was absolutely open and had lots of different ways for people to communicate with it.

A few years ago, I said to somebody, “Why are you not out campaigning on this?” Their voice came back and said, “It takes 90 per cent of my energy to get out of bed in the morning.” With respect, I think that that is different from other protected characteristics, where you do not have the same physical difficulty of simply getting out of bed and being heard.

Perhaps I can give you a personal story here. A few years after I was born, somebody came to my late father and said, “We have just had a disabled child. What one piece of advice would you give me?” He said, “Don’t take no as the first answer.” However, for many disabled people, getting that no has taken so much effort that they do not have the energy to go on. Most people are not like my father, who was a bit like a Rottweiler with a bone—he would just keep going. That allowed me access to mainstream schooling and many other mainstream things that so many other people with a disability do not get.

Please do not take this in a patronising way, but unless you have lived with, experienced or been with somebody with a disability for a long time, it is almost impossible to explain what it is like. My wife worked with disabled people before we were married, but if you were to speak to her now, she would say that, after 19 years of marriage—and, okay, we are talking about marriage to me; I accept that—her view of disability is very different, having lived with it day in, day out. Until you have that experience, it is very difficult to explain it.

Meghan Gallacher: I want to go back to the point about the human rights remit being too broad. In our various sessions, we have discussed whether the Scottish Human Rights Commission could be reformed in such a way. Is there any situation in which those reforms could bring in more representation for disabled people, or do you think that disabled people will have to continue to fight just to get their voices heard?

Jeremy Balfour: My gut feeling is that they will still remain to be heard. Again, I do not see where those reforms are coming from; there is no legislation coming down the road that will change that remit.

I genuinely welcome the statement from the Finance and Public Administration Committee that

there should be a full review. I think that that should take place, and that we should then have an open debate among ourselves about what the landscape should look like over the next five to 10 years. However, it will take time—years—for us to get to that place, and in all that time, the disabled voice will not have been heard.

I am not saying that we could not get to that place at some point. My point is that we are not there now; it is going to be a long time before we get there; and many disabled people are going to suffer in that interim period.

Meghan Gallacher: Thank you very much.

The Convener: I have a final question, if you do not mind. Something that came out of our engagement sessions and which was really clear was that disabled people were asking for no more false hope. In the light of the FPAC report and the on-going work, which includes seeking a debate on setting up another committee, do you think that it is right to go ahead with this bill as it is at the moment? Do you think that we should wait until there is more clarity around the findings from the report and the review? You said that it would probably take a few years to get to that point. I cannot say what the timings will be in that respect, but I am aware that this is such a sensitive topic, and hope is what disabled people are looking for right now. I would like your reflections and views on that.

Jeremy Balfour: That is an important point. When hope is dashed and goes, it pushes you back much further. A lot of hope has been taken away from disabled people over the last few weeks by various announcements. I understand why some of those announcements have been made, but they have pushed back hope a lot.

A disability commissioner will not answer every issue that disabled people face—it is not going to be some sudden panacea here in Scotland—but it will make a massive difference, I think. It will give people some hope and some voice.

As for what will happen to the landscape a number of years from now, it is possible that the inquiry could come back in a year and say, “Actually, this is not the ideal model, but it is the best one out there, and we are just going to keep going with it.” That would mean that, if the bill was not passed, the disabled voice would not have been heard for all that time.

I just do not think that we can wait any longer, and that is why I think that it is time to bring this forward. We do not know what the future holds—we do not know what will come up and what it will bring—but we do know that if a disabled voice is not being heard, it is going to be ignored. I am not sure that that is the legacy that we want to leave.

The Convener: Thank you very much for your time this morning.

We now move into private session to discuss the evidence that we have heard today, and I thank everyone again for coming along this morning.

10:52

Meeting continued in private until 11:25.

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Official Report
Room T2.20
Scottish Parliament
Edinburgh
EH99 1SP

Email: official.report@parliament.scot
Telephone: 0131 348 5447
Fax: 0131 348 5423

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