



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Equalities and Human Rights Committee

**Thursday 28 September 2017**

**Session 5**



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**EQUALITIES AND HUMAN RIGHTS COMMITTEE**

**22<sup>nd</sup> Meeting 2017, Session 5**

**CONVENER**

\*Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP)

**DEPUTY CONVENER**

\*Alex Cole-Hamilton (Edinburgh Western) (LD)

**COMMITTEE MEMBERS**

\*Mary Fee (West Scotland) (Lab)

\*Jamie Greene (West Scotland) (Con)

\*Gail Ross (Caithness, Sutherland and Ross) (SNP)

David Torrance (Kirkcaldy) (SNP)

\*Annie Wells (Glasgow) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Andrea Bradley (Educational Institute of Scotland)

Professor James McGoldrick (Scottish Social Services Council)

Stephanie Millar (Equality Challenge Unit)

Ken Milroy (Colleges Scotland)

Fiona Moss (Glasgow City Integration Joint Board)

Liz Scott (Highlands and Islands Enterprise)

Mary Senior (University and College Union Scotland)

Sheena Stewart (Universities Scotland)

Melanie Stronach (Commissioner for Ethical Standards in Public Life in Scotland)

Bill Thomson (Commissioner for Ethical Standards in Public Life in Scotland)

Lynn Welsh (Equality and Human Rights Commission)

**CLERK TO THE COMMITTEE**

Claire Menzies

**LOCATION**

The Adam Smith Room (CR5)



# Scottish Parliament

## Equalities and Human Rights Committee

Thursday 28 September 2017

*[The Convener opened the meeting at 09:31]*

### Gender Representation on Public Boards (Scotland) Bill: Stage 1

**The Convener (Christina McKelvie):** Good morning and welcome to the 22nd meeting in 2017 of the Equalities and Human Rights Committee. I remind everyone to switch off their mobile phones or put them on silent and ask members to keep their phones off their desks. We have received apologies from our colleague David Torrance.

We have two panels of witnesses this morning, and I am minded to give about 45 minutes to each. Members have already been warned to keep their questions brief, and it would be helpful if we could get succinct answers.

Continuing with our stage 1 scrutiny of the Gender Representation on Public Boards (Scotland) Bill, I welcome to the meeting Bill Thomson, the Commissioner for Ethical Standards in Public Life in Scotland; Melanie Stronach, public appointments officer, Commissioner for Ethical Standards in Public Life in Scotland; Lynn Welsh, head of legal in Scotland, Equality and Human Rights Commission; Liz Scott, equality manager, Highlands and Islands Enterprise; Professor James McGoldrick, convener, Scottish Social Services Council; and Fiona Moss, head of health improvement and inequalities, Glasgow city integration joint board.

Thank you all for your very helpful written evidence. I ask each member of the panel to give us a quick understanding of who they are, what they do and their thoughts on the bill.

**Liz Scott (Highlands and Islands Enterprise):** Thank you for inviting Highlands and Islands Enterprise to give evidence. Highlands and Islands Enterprise is an economic and community development agency for the north and west of Scotland, and we are keen to promote the business and economic case for diversity on boards, both across the public sector and in the private sector.

We welcome the bill, and I think that there are opportunities to increase the number of skilled and capable women who are able to come into positions of decision making and governance on boards. Over the past few years, we have worked

quite closely with the Scottish Government, as a result of which we have increased the diversity on our own board quite significantly and have worked on some interesting initiatives both to help increase the talent pipeline coming through and to develop our own board membership.

**Professor James McGoldrick (Scottish Social Services Council):** I am convener of the Scottish Social Services Council, which regulates the social services workforce. About 100,000 people are currently on our register, so it is a big workforce; however, we are a relatively small board, and part of my contribution today will be about some of the issues around achieving diversity on a board of 10 people. After all, a small number can mean big percentages when there is a 50:50 target. We are also the sector skills council for the social services workforce in Scotland.

**Fiona Moss (Glasgow City Integration Joint Board):** I head health improvement and equalities in Glasgow health and social care partnership. We, along with the other integration joint boards in Scotland, were created through the Public Bodies (Joint Working) (Scotland) Act 2014, and we are the largest such board in Scotland. We made a submission because we were surprised to find that, even though we have about 9,000 staff and over £1 billion of spend and provide health and social care for all age groups in Glasgow city, we have not been listed in the bill. We support gender parity on boards, including our integration joint board.

**Bill Thomson (Commissioner for Ethical Standards in Public Life in Scotland):** I will not repeat my title as it will take up too much time. My interest in public appointments is limited to regulated appointments, which are specified in statute, but I support the gender representation objective in section 1 of the bill.

It might be helpful to clarify what I understand to be the current position in respect of women appointed to public boards in Scotland. I will limit my comments to regulated appointments, which amount to 640 posts spread across 94 public boards. That is slightly smaller than the total number of boards covered by the bill.

The committee has been given various figures for the number of women appointed to such boards, including 36 per cent, which was the position in 2014. In 2015-16, as the Scottish Parliament information centre briefing notes, 42 per cent of regulated posts were held by women. In 2016-17, that figure increased to 45.1 per cent; I am sorry for being so precise, but the 0.1 is a whole person.

As of September 2017, the percentage of women in regulated posts is 45.8 per cent of the

total. If you break that down to the level of chairs, where there are far fewer women, women represent 25 per cent of the total. However, excluding chairs, the percentage of board members who are women is 48.9 per cent.

In 2014, 45.6 per cent of ministerial appointees were women; in 2015, that figure increased to 53.6 per cent and in 2016 to 58.6 per cent. In other words, for the past two years, more women than men have been appointed by ministers to regulated posts.

I hope that that has been helpful.

**The Convener:** We will come back to that.

**Melanie Stronach (Commissioner for Ethical Standards in Public Life in Scotland):** As public appointments officer in Bill Thomson's office, I am here because I am a specialist in the area of public appointments.

**Lynn Welsh (Equality and Human Rights Commission):** I am head of legal at the Equality and Human Rights Commission. Our job is to promote and protect equality across Great Britain, and we share our human rights mandate with our sister organisation, the Scottish Human Rights Commission. We have a direct interest in the bill and its interaction with the public sector duties in the Equality Act 2010, in which we have a particular role as a regulator.

**The Convener:** Thank you for giving us an overview of who you are and where your influence lies. We will go straight to questions.

**Mary Fee (West Scotland) (Lab):** Good morning, panel. Thank you for providing us with your very helpful written evidence.

I have a specific question about the definition of gender in the bill. Although I understand and support the principle, some of our witnesses have raised concerns that the bill is not inclusive of trans women and has a binary definition of gender, which means that there is no way to include people who identify as non-binary. I would be interested in hearing the panel's views on that. There is legislation across European Union states that has a similar aim but which uses a different definition of gender. What are the panel's views on what could be done to achieve inclusion?

**Lynn Welsh:** As you are probably aware, the Scottish Government is restricted in how it can legislate in this area by the devolved competence that it was given under the Scotland Act 2016, which requires the legislation to fit with the protected characteristics set out in the Equality Act 2010. To an extent, that is a restraint on what the Scottish Government can do. However, I know that the Equality Network has suggested an amendment to the bill that would extend it to cover trans women, too. As long as it fits with the

protected characteristics definitions in the 2010 act, I see no reason why that cannot be possible.

**Bill Thomson:** My interest is in diversity in its broadest sense. I accept entirely what Lynn Welsh said about the statutory limits on the Government's ability to operate in this area, but I think that the Government is also interested in diversity in its broadest sense. I have no problem with what Mary Fee is suggesting, but I can see that, legally, there might be a difficulty.

**Mary Fee:** In what way?

**Bill Thomson:** As I understand it, the bill addresses protected characteristics, which are what the Scottish Government has the power to deal with under the Scotland Act 2016. However, as you are probably well aware, there is an exception in section 4(4) that allows, certainly in terms of ministerial appointments, reference to other characteristics or circumstances. I would have thought that that was broad enough to cover the issue that you are raising.

**Fiona Moss:** I am not an expert on the legal side, but we gave some thought to how we as an integration joint board would deal with the gender issue. It was suggested that we look for a way in which the gender that someone wanted to be known by was recognised in their membership on a board, but obviously that would have to be within legal constraints. I do not see the bill necessarily making that particularly difficult.

**Mary Fee:** It would, of course, make it difficult if someone identified as non-binary.

**Fiona Moss:** The issue for us is that in most cases people identify with a particular gender; it might not be the gender that they were born with, but a gender that they identify with. We would look to recognise that, within legal confines, but I do not know about the legalities of that.

**Professor McGoldrick:** For us, one of the big challenges relates to the other protected characteristics. Our board has tended to have a pretty balanced gender profile over the years, but I might say a bit more about that if the issue comes up later.

**Liz Scott:** Some colleagues here are probably more au fait with the legal definitions, but to ensure that we were covering all the protected characteristics, it would be good to be able to cover the non-binary issues. Where things become more difficult is requiring people or organisations to report on proportions of board members at individual board level, because that is where the small numbers come in. It would be right to cut across all the protected characteristics at an aggregated level for the whole public sector and the different sectors within it: health, transport and so on. The principle is good, but the

practicalities of the small numbers will create an issue.

**The Convener:** We will hear from the Scottish Trans Alliance next week, when I hope that we will be able to interrogate that issue a bit more. However, if you have any other comments on the matter, we are happy to hear them.

**Jamie Greene (West Scotland) (Con):** Does anyone on the panel have any thoughts on the bill's financial implications for the various organisations that will be subject to the bill's requirements and how they will deal with them? A wide variety of matters could affect them, including additional recruitment costs and management of the reporting mechanisms. At Government level, the monitoring, reporting and management of the entire process will affect a substantial number of public bodies. Does anyone have any views on the bill's financial implications? I am keen to hear them.

**Professor McGoldrick:** We looked at that aspect, particularly with regard to reporting. If we have to have a different set of reporting arrangements other than the ways in which we naturally report our activities, that might have a financial implication for us. Otherwise, we think that if we can report by having a section in our annual report that covers gender equality, there will not be a big implication, as things stand.

09:45

**Fiona Moss:** For organisations that are close to or have achieved gender parity, the costs will not be substantial but for those organisations that are quite far away from that parity, they will be. I had a look on Google, as you do, at the gender representation in some of the organisations that are listed in the bill; some are already there while some are quite far away.

If women made up only a third or less of an organisation's board, it would involve quite a lot of work. A lot of effort would need to be put in to bring forward women to apply, to support them, and to make sure that they are coming through the organisation in different professional roles, if that is what you have on your board. The cost depends on the business of that organisation. Some organisations, such as ours, have gender parity now, so we will not have that cost. For other organisations, that cost would be significant.

**Jamie Greene:** Where do you think the money should come from? Given that these are primarily publicly funded bodies with finite budgets, if an organisation is so far away from where they need to be, at 50 per cent representation—say there are two or three women on a board of 10 people, for example—and there will be a fairly substantial cost to get them up to that level, should those

organisations pay for that or should additional funds be made available to them to help them to meet that commitment?

**Fiona Moss:** What a horrible question to ask me. [*Laughter.*]

**Jamie Greene:** Sorry—there is no right or wrong answer.

**Fiona Moss:** I would always say that a public organisation needs additional funding. The reality is that it is probably about a blend of the two. It will depend on how quickly we want gender parity to happen and how far away the organisations are from where they need to be. If you need it to happen more quickly and you are quite far away from 50 per cent representation, you will probably need to give something to enable it to happen or to support particular developments. One area that we are interested in is mentoring schemes that bring more women on in certain areas. You might want to support that kind of activity for the range of organisations that are further away.

**Lynn Welsh:** I would not want the potential cost to be overstated. Substantial support and information are available and there are organisations that can assist with how that work should be done. An organisation could partner up with a board that is already excellent in that area.

I do not think that the monetary cost would be that substantial and, when you weigh it against equality and the huge benefits of having women on the board, it would be reasonable.

**Jamie Greene:** There is no denying that equality has no price, in that respect, but it is important to recognise that boards have budgets to manage and any additional costs will need to come either from existing budgets, which are already spent, or from additional funding from the Government. I think that that is a fair observation.

**Lynn Welsh:** I assume that such organisations, as public bodies, will have been covered by the public sector equality duty, apart from any other legislation, for a number of years, so arguably they should have been building their work in this area for quite a while and therefore will not be hit by a sudden requirement under the proposed legislation. It would be good if the organisations would now take responsibility for doing some of that work.

**Professor McGoldrick:** Fiona Moss made points about boards that are far away from the target, and it is important to be aware of other resources that could support them. I do not know whether this came up in the evidence from the Institute of Directors but there is a Scottish Government and IOD partnership on developing board potential, particularly around gender representation, so that resource is already there. I

suppose that it is about being aware of it and being able to tap into it as opposed to there being an additional cost to a specific board.

**The Convener:** Bill Thomson, I know that your office has been doing some work with the Scottish Government public appointments team. Could you give us some insight into the work that you have done on advancing some of the public organisations?

**Bill Thomson:** Yes. Our experience is that a combination of things is required to improve diversity on boards and most of them have been mentioned by other witnesses. Part of it is about working on the profile of the board so that people know that it is there. Part of it is about making sure that that profile makes it interesting so that people want to participate. I am talking about diversity in the broader sense.

Gender diversity is very important and there is already a momentum towards that, at least in terms of regulated appointments. It will not cost very much more for that momentum to carry forward. However, there will be other underrepresented groups that are more difficult to reach or to interest and which might have greater needs with regard to being board ready. You have heard about mentoring; quite a few mentoring schemes are under way and they are very effective.

If you want to keep the process open to avoid cronyism—that is the whole point of having regulated appointments—you have to be careful to keep the pipeline sufficiently open so that it is not just a particular cohort that is taken through a pipeline, comes out at the end and is appointed. Work and effort is involved in that and, for ministerial appointments, it requires the minister or those who are advising the minister to think carefully about what they are looking for. It is terribly obvious but, if you ask the same questions, you will get the same answers. One of the things that has changed is that ministers are setting out the specifications of roles differently so, in effect, they are asking different questions and getting different answers. I am not in a position to say how much that costs.

**Alex Cole-Hamilton (Edinburgh Western) (LD):** I thank the panel for coming to see us today. I whole-heartedly support the principles behind the bill, but I am concerned that we will not put sufficient teeth in the legislation, particularly with regard to the equalities agenda, in which we come dangerously close to virtue signalling. Legislation for legislation's sake, when it is not backed up by sanctions or a way to implement the will of the bill, is pretty pointless. I am not alone among colleagues on the committee in having concerns that there is a profound absence of sanctions or teeth in the bill to compel or induce boards that are

dragging their heels to bring their standards up to what we would hope them to be.

Will the panel reflect on how we can strengthen the bill beyond the reporting duty, which is the only measure that puts pressure on boards to up their game? In which sections of the bill can that strengthening take place?

**The Convener:** Does Lynn Welsh have something to say about that in her role as a guarantor?

**Lynn Welsh:** There is a fine line to be walked. We have to keep on the side of positive action and not positive discrimination, and we are constrained by EU law in that regard. One issue that has come through in various cases at the EU level is that, if sanctions are too severe—if there are sanctions at all—they might breach the idea of positive action and encourage boards to take positive discrimination measures, which will mean that they are unlawful. There is a balance to be struck and it depends how much you want to push or pull.

I can see that some form of regulation or sanction might get boards that have not taken the issue seriously to date to take it more seriously. What that would look like is open to discussion. As the bodies are public authorities, I guess that you would not want them to face substantial fines, which might be counterproductive, so the regulation or sanction would be something that got the required work done in order to meet the will of the bill. For example, under the public sector equality duty, as a regulator, we can issue compliance notices, which are a sort of action plan, or get the body to state what action it will take and then hold it to that, legally. We can enforce that through the courts. The sanction is for the body to take the action that it failed to take; it achieves something, rather than simply being punitive.

**Professor McGoldrick:** As a board chair, it is a question that I have tussled with a bit. On the idea of sanctions for non-compliance, I worry about the law of unintended consequences. Boards might appoint to meet the compliance requirement rather than the broader aim that the organisation is trying to achieve. The sanction of naming and shaming non-compliant boards is probably available already. I take the point about fines and other things, but they would potentially disrupt the board's work.

**The Convener:** Bill Thomson has provided some guidance in the past on how boards should operate, so he may want to comment.

**Bill Thomson:** My guidance, which is really for ministers, is on the appointment process. That takes me to my main point in answering the question, which is that regulated appointments are made by ministers and not by public bodies. The

public bodies have a role, and the better they play that role—provided that the minister is aware of what is going on, as I am sure they will be—the better the contribution will be. Bodies have two requirements under the bill to promote gender equality. However, it would be very difficult sensibly to apply any penalty to a board, given that the appointments are made by somebody else.

The teeth, as Alex Cole-Hamilton put it, need to be looked for in slightly more subtle ways. The committee and the Parliament can and do hold ministers to account. As I understand it, ministers have a sponsorship arrangement with the bodies that they support. You will need to ask somebody else for the detail of this, but I believe that those sponsorship arrangements are changing so that there is greater emphasis on diversity and what a board does if it has a diversity issue. Obviously, that process will not be public, but the minister would certainly be able to answer questions on it.

Actually, naming and shaming and public reporting are more powerful than they might sound. Of late, a number of boards have been in the public eye in an uncomfortable way. Nobody in their right mind wants to be in that situation. If public opinion is strongly enough behind gender diversity or diversity more broadly and a board falls foul of that, it would be in an extremely uncomfortable place, and I do not think that anybody would sit there for very long.

**Fiona Moss:** I add that the membership of the integration joint boards is set out in legislation. We have an equal split between elected members and non-executive members of national health service boards. In reality, our board membership is on the whole determined by bodies that we do not control. That is an example of Bill Thomson's point.

I also agree that all public bodies want to do the best job that they can. We do not want to be singled out for poor performance or for not achieving—we want to work to be good on the issue.

**Professor McGoldrick:** Building on that point, I note that our board has 10 people, one of whom is the chair of the Care Inspectorate, so the gender of that person is determined by another organisation—well, it is determined by nature but, in terms of their appointment, it is determined by another organisation. Our terms of reference say that we need to have two people who are registered with the SSSC and two people who have experience as carers or users of services so, for about half of our board, we almost have no control over who the people are. That is a complicating factor for us.

**Alex Cole-Hamilton:** I am grateful for those very full answers. Bill Thomson made a good point

about public reporting and how strong naming and shaming can be. There is a reporting duty in the bill, but it is only a duty on public bodies to report to ministers. I will seek to amend the bill to place a duty on ministers to report to Parliament on that process, so that a more public airing is given to how we are doing on the issue.

On my question about strengthening the bill, Professor McGoldrick talked about some of the provisions. To me, the bill gives a significant degree of subjectivity and wiggle room. For example, under section 5, which is on encouragement of applications by women,

“An appointing person for a public board must take such steps as it considers appropriate to encourage women to apply”.

The phrase “as it considers appropriate” is very subjective and there is no test of it or threshold for it.

Section 4 is on consideration of candidates. Section 4(4) says:

“The appointing person—

(a) must consider whether the appointment of a candidate identified under subsection (2) who is not a woman is justified on the basis of a characteristic or situation particular to that candidate, and

(b) if so, may give preference to that candidate.”

Again, that is very subjective. Anyone could give a reasonably coherent narrative as to why they picked a particular man over a particular woman in a particular circumstance. Is that section strong enough? How might we tighten it?

10:00

**Bill Thomson:** Ministers are required to disclose the reasons for appointments, and those reasons have to be credible. If they are not, anybody who is disappointed by the outcome has a right of complaint and ultimately—although this is extreme and it would probably never happen—could take the minister to the court for judicial review. That has happened at a United Kingdom level, fairly spectacularly. It is not as free and easy as it might sound.

**Alex Cole-Hamilton:** We are talking not just about ministers but about people who are appointing boards at lower levels in public authorities.

**Bill Thomson:** The bulk are regulated appointments that are made by ministers, and ministers publish statistics on them, whether directly or not. I did not come here to blow my own trumpet, but my annual report contains a lot of statistics, which are figures that are provided by the Government and checked over annually. A lot of the information is out there already. In a broad

sense, people just have not taken enough interest in it.

I think that the bill is trying, given that there is momentum towards gender diversity, to ensure that there is no backsliding and we do not lose the gains that have been made. At the moment, the gender diversity margin is quite small, so we should not get too worried about the discretions that are in the bill. It will not always be appropriate for women to be appointed.

**Alex Cole-Hamilton:** I get all that. You have illuminated us with the statistics on how things are improving organically, which is great news. However, you are right that the point of the bill is to stop backsliding, so that if in the future we have a less progressive Administration that is not interested in diversity it will be held by the strictures in the bill. My concern is that the bill does not have many strictures and there are a lot of get-outs and wriggle room, such as the idea that a board must take only

“such steps as it considers appropriate”.

**Lynn Welsh:** I agree that that is not the strongest wording that the bill could have. “Reasonable steps” would perhaps be better, as that has a definition that can be looked at objectively.

The bill will change the acceptable reasons why appointers would be able not to appoint a woman in a tie-break situation. The wording that is currently used is, I think, “exceptional circumstances” and it will become

“the basis of a characteristic”.

I like that, because it makes it clear that other diversity characteristics that the man may hold could be important to the board’s diversity. The man might be from the black and minority ethnic community or disabled. Those issues should be looked at and they could amount to exceptional circumstances.

I think that

“situation particular to that candidate”

is certainly weaker, so perhaps there needs to be some kind of middle ground.

You are probably aware that an awful lot of organisations listed in the bill already have a reporting duty in the public sector equality duty, specifically in relation to diversity on boards. It came into force last year and the first reporting should have been done this year, but it has been delayed for various reasons. The reporting must not only say how many men and women a board has, but set out actions that a board has taken and intends to take to improve its diversity. It is very explicit and we expect boards to publish what they

have done, what they are going to do and where they are at. That reporting is public.

The requirement for that reporting will not cover all the bodies that are listed in the bill. I do not know whether there is a way of bringing those bodies into that reporting regime; I guess that the reporting bit is being left to regulations so that how those two pieces will fit together can be worked out. That reporting duty is relatively strong.

**Liz Scott:** The question of what public sector bodies are required to report is quite interesting. It is really important that public bodies report what they intend to do, what they have done and how that has improved the overall proportion of women or people with other characteristics on their boards. It is probably quite important to keep the specific requirements around the progress that has been made rather than around individual numbers; otherwise, it would get quite difficult for very small boards to report. It is important to focus reporting on the actions that are taken and the progress that is made as a result of those actions.

**The Convener:** Bill Thomson gave us some incredibly interesting figures at the start about the proportion of women in regulated posts rising from 36 per cent all the way up to 45.8 per cent in only about two and a half years. Were any particular actions key to that progress being made?

**Bill Thomson:** My view is that political will has changed the climate and the whole agenda. This is of course a time of wider interest in gender equality across society. This issue is not seen just in terms of private sector financial performance; it is on the agenda in a different way. If I have a concern about the bill, it is simply that it focuses on gender equality, where significant progress is being made, and there is a risk—albeit a small one—that other areas of diversity where improvement is required will have to play second fiddle.

**The Convener:** Okay, we hear that. Annie Wells wants to come in on the tie-break question—that is a really good segue—and then I will bring in Gail Ross. We have only a short time left.

**Annie Wells (Glasgow) (Con):** Good morning, panel. Lynn Welsh touched on the tie-break issue, which the committee came up against last week, too. There is no actual statement in the bill that, “We must achieve 50:50.” We know that anonymous applications and anonymous sifting happen. What would happen if we needed a woman on a board to get gender balance, but two men came out of the sifting process? There have been references to putting consideration in place and to reasonable structures, but if we are trying to achieve 50:50, we must actually have something in place. As far as I can see, merit sits

at the heart of the bill. Encouragement is absolutely brilliant—I would encourage anyone to apply for a role in any aspect of life to get more women involved—but I do not see how the bill will get us completely to 50:50.

**Bill Thomson:** This is not the answer you are looking for—I am sorry—but I think that you have to have faith in the ability of women.

**Annie Wells:** I absolutely do.

**Bill Thomson:** I am sure that you do. If you have faith in the ability of women, if the process is truly open and if appointment is made on merit, it follows logically that at least 50 per cent of appointees will be women.

**Annie Wells:** May I come back in on that point? I encourage women whole-heartedly. However, we need to have something in place in case two men come out of the anonymous sift as the initial candidates, for example. We know from past experience that women undersell themselves. If there are eight items on a job list, men will say, “I can do seven or eight of them,” but women naturally undersell themselves. That has been proven.

I would love to see gender diversity on boards, but the tie-break situation excludes other characteristics. Are we taking gender equality over BME equality, disability equality, and lesbian, gay, bisexual and transgender equality? There is nothing in the bill to ensure that a board that needs two female members will get two women. I do not see that completely.

**Bill Thomson:** If a man is the best candidate, he should be appointed—merit is the key to this. However, the process has been opened up. You are entirely correct that women have a different attitude. People like me are more willing to have a go and put our names forward. Speaking in generalities, women do not feel the same way about it.

Adjustments have been made to the process and the way that the criteria have been set. Although the political will has been critical to that, that political will allows people to put effort into doing that in a way that allows women to put themselves forward. Lynn Welsh made the point that the best candidate might be a man who is also disabled. He may be young, in the sense that the bar is set at 49. A lot of us would not think that 49 is particularly young, but we are struggling overall to get people under 49 on board. If you have a 45-year-old man, why not?

**Liz Scott:** It stresses the importance of building the talent pipeline. There are lots of initiatives around—for example Changing the Chemistry—that are really trying to build the capability of good women who have got the potential to contribute to

boards. When it comes to your selection, if we have done a lot of work in those areas, many more women will have come through who have got the level of ability they need to get the appointment on merit.

**Lynn Welsh:** It depends how you define merit, and what you are actually looking for. As importantly, there has been the right to take positive action for a number of years, which not only includes encouraging people to apply. You do not have to do all your sifting anonymously, although it is good practice in lots of areas. There have been some great suggestions for how you can ensure that women are being interviewed, if that is your concern. However, at the end of the day selection must be based on merit; otherwise, you are discriminating. The issue is how you get people to the point at which you are making that final decision. Lots of lawful positive action is available that you could take to ensure that women get to the interview stage.

**Annie Wells:** I absolutely agree that we need to encourage women and get that pipeline going. Mentoring is a fantastic thing. I would still be quite concerned about the anonymity of applications—I know that that is what happens now on public boards.

**Bill Thomson:** It is not a requirement.

**The Convener:** There is lots to think about there.

**Gail Ross (Caithness, Sutherland and Ross) (SNP):** Good morning, panel. I have a round-up question. We have heard that, as a result of voluntary measures, the figures for gender balance are quite good at the moment. A lot of good work is being done to encourage women, and to inform them what their role would be on a board and how they can use their experience and knowledge to influence decision making. I refer to the Highlands and Islands Enterprise paper on occupational segregation—a lot of good work is being done in that important area.

If all the good work is being done through voluntary measures, is the bill necessary?

**Lynn Welsh:** Yes.

**Gail Ross:** Why?

**Lynn Welsh:** There is very good practice in a number of organisations and none in some, and a way has to be found to lift those perhaps more recalcitrant bodies to the correct level. It also sends out an excellent signal in relation to equality altogether. This will not just be about boards—it will start to trickle down into other areas that those boards will be in contact with.

**Professor McGoldrick:** I fully endorse that comment. The workforce that I mentioned at the

start of the session is largely a female workforce. Gender representation is very meaningful in that context.

**Fiona Moss:** I would say yes, too. As a public organisation, it is not often that we ask for more legislation. However, the reality is that legislation in this area is good for us as a society and good for us as an organisation, so we fully support the bill.

**Liz Scott:** It is also an important way of raising awareness, not just in public bodies but across Scottish society, about the place that women, in this case, can take on public boards. However, it is important that that is reflected across the other characteristics.

**The Convener:** Bill Thomson mentioned that we needed the legislation in order not to have a roll-back, and said that one of the drivers for change was political will. If there were to be a change in the political will, and if we were not to have the legislation, do you perceive that there would be a roll-back?

**Bill Thomson:** I agree that there would be a risk of that.

10:15

**The Convener:** One of the issues that arose from our two panels last week was about organisations looking for guidance. The bill does not provide for guidance for public bodies. What is your opinion on having a set of guidance that would go along with the bill? Would that help? I know that you have been involved in writing guidance.

**Bill Thomson:** There is guidance on ministerial public appointments. As others have mentioned, quite a lot of guidance is available already. The Government produces an online document called "On Board", which has a certain amount of guidance and which would be relatively easy to expand if it were felt that things were missing.

**Lynn Welsh:** We also have quite a lot of guidance on positive action more generally, which might be at least a good basis for more specific guidance for the legislation if that were thought to be needed.

**The Convener:** Good. We like to be pointed in the right direction. Thank you very much.

Are there any other comments this morning? You have all been very disciplined—well done.

**Jamie Greene:** I appreciate that we have done a quick round on whether panel members feel that legislation is required. I did not quite get to a conclusion on whether they think that further enforcement or sanctions should be included. Could we have a quick yes or no on that?

**The Convener:** I suppose that that would depend on what the sanctions are, which was what the earlier conversation was about.

**Jamie Greene:** That is true, but I had the impression that there were quite mixed feelings on that.

**Professor McGoldrick:** I do not think that a sanction would be appropriate, other than through the reporting and the naming and shaming means that we already have available.

**Jamie Greene:** Thank you.

**Lynn Welsh:** I think that a sanction such as a compliance notice might well be appropriate.

**The Convener:** That is very interesting.

**Fiona Moss:** I agree with James McGoldrick's comment. I do not think that that is necessarily the way to go; there are other ways of holding us to account.

**Liz Scott:** I think that a reporting requirement has its place.

**Jamie Greene:** Does Bill Thomson have a view on that?

**Bill Thomson:** I have expressed my views. I have nothing to add.

**The Convener:** I thank our panel members very much. I add my usual proviso, which is that if you go away and think that you should have said or offered something else, please do so. We have a bit of a journey to go on with the bill and we would be keen to hear from you. We are very grateful for your written submissions and oral evidence.

I suspend the meeting to allow for a change of panel.

10:17

*Meeting suspended.*

10:24

*On resuming—*

**The Convener:** We continue with agenda item 1, which is our continued scrutiny of the Gender Representation on Public Boards (Scotland) Bill. I welcome our second panel: Ken Milroy, chair, Colleges Scotland; Sheena Stewart, university secretary, University of Abertay Dundee, and convener of the secretaries group, Universities Scotland; Stephanie Millar, senior policy adviser, Equality Challenge Unit; Mary Senior, Scotland official, University and College Union Scotland; and Andrea Bradley, assistant secretary for education and equality, Educational Institute of Scotland.

Thank you for coming to the meeting—we are keen to hear from you. I also thank you for your written evidence. You have given us lots to read, for which we are grateful, as it will help to inform our questions. As I did with the previous panel, I ask you first to give us a wee oversight of who you are, what you do and why you think the bill is or is not important.

**Andrea Bradley (Educational Institute of Scotland):** As you said, convener, I am an assistant secretary at the Educational Institute of Scotland, which is the biggest teacher trade union in Scotland. We have an interest in the bill because of the college boards and the university governing bodies dimensions. In addition, we are part of the wider trade union movement. The women's committee of the Scottish Trades Union Congress in particular has been a long-standing advocate of 50:50 representation on public boards.

In my remit as assistant secretary with responsibility for education and equality, the issue cuts right across significant parts of my work. The EIS has made several contributions in the legislative process in the area and in other for a that are related to this campaigning issue. The issue is an on-going and long-standing area of interest for us.

**Ken Milroy (Colleges Scotland):** Good morning, convener and committee members. Colleges Scotland welcomes the opportunity to give evidence to the committee.

Colleges Scotland is the membership body for all of Scotland's 26 colleges across our 13 regions. The colleges provide training and education to 227,000 students and employ 11,000 staff, 61 per cent of whom are female and 39 per cent of whom are male.

Governance has been critical to the sector over the past few years, since the regionalisation of the college sector. We have supported that through the establishment of the good governance steering group, which has produced a code of good governance. That code was published in 2014 and updated in 2016. Diversity issues have therefore been part of our considerations of our overall governance position.

A recent snapshot of where we have got to with our boards showed that gender equality has slightly improved from the position in the submission: the figures are now 59 per cent male and 41 per cent female. Probably around a third of members of our boards across the country are appointed externally, so around two thirds of them are appointed by the boards.

**Stephanie Millar (Equality Challenge Unit):** Good morning. I work for the Equality Challenge Unit, which is a United Kingdom-wide organisation

that supports universities across the UK and colleges in Scotland to implement their equality responsibilities as effectively as possible. We work across governance, staff and students in Scotland, and currently a significant part of our work is supporting college governance.

In 2014, we produced a research report entitled "Governing bodies, equality and diversity in Scottish higher education institutions", which unpicked some of the issues around diversity for the boards and their knowledge of diversity. We have also produced guidance for college board members and university governors on their roles and responsibilities in relation to governance.

**Mary Senior (University and College Union Scotland):** Hello. I am from the University and College Union, which represents academic and academic-related staff in Scotland's universities, and we are the largest union in the higher education sector. Our interest is primarily in university governing bodies, which are often known as courts.

Over the past couple of years, there has been real progress on gender balance in university governing bodies. That is, no doubt, due to the scrutiny that has been applied to the university sector, particularly around governance. In the past, there has been criticism about a lack of diversity. That focus and the spotlight that has been on the sector have encouraged the sector to make changes, which we very much welcome. Nevertheless, our message today is that the university sector should not take its foot off the gas but should cement the good progress that has been made. That is why we are supportive of the bill.

10:30

**Sheena Stewart (Universities Scotland):** I am the convener of the Universities Scotland secretaries group. Universities Scotland is the representative body of the 19 higher education institutions in Scotland, and the secretaries group is responsible for corporate governance and for managing the appointment of governors. Gender representation is, therefore, very close to our hearts.

The sector is very supportive of the aims that are set out in the bill regarding gender and the requirement to appoint the best-qualified candidate. As Mary Senior said, we have worked hard—successfully—over the past few years to have more balanced gender representation on our governing bodies. However, we have an issue with our being included in the bill. We are not public bodies and do not have public boards; we are autonomous, not-for-profit charitable institutions. That is not to say that we are resistant to the bill's

aim or the practices that it sets out, which we think are standard practice for our institutions.

We have a code, which was produced in 2013, of which equality, diversity and the setting of targets are a core part. We are about to publish an update to the code with a further emphasis on equality and diversity in the leadership of governing bodies. Currently, 47 per cent of positions that are appointed by governing bodies are held by women. That excludes those who are elected, who are excluded from the bill. Ten of the 19 institutions currently exceed the bill's aim—in fact, five have more women than men in those positions.

A huge amount of work has gone on, not just because of the pressure to change, which has been mentioned, but because, internally, we have changed as a community. A lot of work has been done with the Equality Challenge Unit and organisations such as the Leadership Foundation for Higher Education to establish boards that are more diverse in many respects, including gender.

**The Convener:** Thank you. That was a nice summary of what you do. We will go straight to questions.

**Mary Fee:** Good morning, panel. Thank you for providing us with your written evidence.

I will pose the same question that I posed to the previous panel. It is about the concern that has been raised that the bill is not inclusive of trans women but uses a binary definition of gender, meaning that people who identify as non-binary are not included. Should some change be made to the bill? In addition, what do the organisations that you represent do to ensure that they are inclusive of trans women and non-binary individuals?

**Sheena Stewart:** We address that point in our written submission. We have a lot of internal dialogue regarding trans matters, as the subject is close to our students' hearts. We feel that what you outline is an issue and that, if we are going to have a bill, it should be inclusive. I will leave it at that and allow others to answer.

**Mary Senior:** In our written submission, we point out the need for boards to be at least 50 per cent women as opposed to having a 50:50 gender balance. Most trade unions and organisations that have set quotas have gone for the "at least" approach because it can be more inclusive in the way that you suggest.

The UCU has worked to encourage trans participation within the organisation. At UK level, we have sent an open and inclusive message and we recently had a seminar on trans and other LGBT issues, but I accept that all organisations can do more on that agenda.

**Stephanie Millar:** For us, there is a wider point. I fully accept that the definitions in the bill may not be broad enough to include anything outside the binary question, but we would like the bill to go further. Focusing on gender alone is taking us down a route that forces people to overemphasise one protected characteristic over another. To get back to your original question, the ECU recently produced guidance on supporting trans staff and students in colleges and universities, which might be useful. There is nothing in that guidance that could not be extended to governance.

**Mary Fee:** You say that the bill should go further. Can you be more specific about what you would like?

**Stephanie Millar:** Focusing on gender is important but, as Ken Milroy said, the difference between the number of men and women on boards may not be as big as in other places. All colleges and universities are legally required under the Equality Act 2010 to report on all protected characteristics and, under regulation 6A of the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, to plan in advance for board succession in terms of all protected characteristics. Our concern is that having a focus on gender may take away from the current legal requirements, because they are only in regulations.

**Mary Fee:** That is helpful.

**Ken Milroy:** We noted that area of concern in our submission, but the issue is not specifically reflected in the processes that we have in place just now. If we were minded to be more inclusive, we would need to give that further consideration. Perhaps there is a need for further guidance on how that might be achieved, but it is not an area that we have actively looked at through the good governance group.

**Andrea Bradley:** We referred to the issue in our written submission, too, suggesting that there is potential for the bill to be more inclusive of transgender women in particular. The EIS has done work around that and we have an LGBT informal network, which contributes significantly to policy development in our organisation. Events are organised by and for that network of LGBT members, and it has been particularly active in the past couple of years. There is gathering momentum on that area in terms of the interest of our members and their confidence to identify around those characteristics and to be active.

The STUC recently produced guidance on transgender workers, which may be of interest to the committee. We have recommended that guidance to our members, and in the past few years we have updated guidance for our members on LGBT matters that is applicable not only to

teachers and lecturers but to children and young people who may identify as lesbian, gay, bi, trans or some other gender identity. We have done quite a lot of work on that in recent years.

**Jamie Greene:** I am going to deviate slightly from my previous line of questioning, since we have a different panel. I have a specific question for the EIS, which I can widen out to the rest of the panel. The EIS submission says that you welcome the decision to legislate in this area because

“Voluntary initiatives have not been sufficient to achieve equal representation.”

I do not know whether you were here to listen to the previous panel, but we have just heard from the Commissioner for Ethical Standards in Public Life in Scotland that we are currently sitting at 45.8 per cent. To me, that sounds like quite good progress, so can you justify your position on that?

**Andrea Bradley:** The figure of 45.8 per cent still falls short of 50:50, and progress towards that percentage has been relatively slow. In recent years, there has certainly been a gathering of momentum on the issue, and a lot of that progress has been relatively recent. We were maybe working with different statistics from you. We had stats that were gathered in 2015 that suggested that women’s representation on public boards was at about 35 to 36 per cent, so there was still a significant deficit. You maybe have a different set of statistics from the ones that we had when we wrote our submission.

We would say that legislation is necessary because voluntarism clearly has not delivered the 50:50 balance—or the at least 50 per cent female representation—that we are looking for. We suggest that the legislation could add further propulsion towards the realisation of that ambition. Obviously, legislation on its own will not achieve that, as other cultural changes need to occur, but we think that the legislation could further precipitate the move towards that aspiration.

**Jamie Greene:** Will the bill actually do that in its current form? Some members feel that it perhaps does not go far enough to do anything. It just states that the appointing person should consider candidates upon merit first and foremost and that, if there is a situation in which there are two candidates of equal merit—one male and one female—preference should be given to the female candidate, and if they do not do that, all they have to do is report that they did not. Does the bill achieve what you want it to achieve?

**Andrea Bradley:** We are not suggesting that the bill is perfect and will be a panacea, but it is certainly a step in the right direction. Over time there might have to be amendments to the legislation if it is found not to deliver the ambitions that it sets out. Our position, not only in relation to

this area of work, is that ambition on its own does not deliver on aspirations. Other support has to be provided to organisations so that they can maybe shift mindsets and change people’s perceptions in order to ensure that everybody is working together towards the aspiration. Thus far, not enough has been done to balance the representation of women not only on boards but in employment structures, promotion structures and so on. This is only one part of a bigger piece of work that has to be undertaken over a longer period, but we have to start somewhere and the bill is a start.

**Jamie Greene:** I open out the question to the rest of the panel.

**Sheena Stewart:** For your information, we already have quite a transparent regulatory regime in this respect. For example, our code of practice is accepted by the Scottish Further and Higher Education Funding Council as good practice. It requires us to set targets in the area and to report on them, so there is also a reporting regime. In addition, we submit our statistics—including information on the diversity of our governing boards—to the Higher Education Statistics Agency. In addition to the requirement to meet the code of practice, it is also a condition of grant that we address those issues, so that regime is already in place in higher education institutions in Scotland.

**Jamie Greene:** That point slightly conflicts with your opening statement. You said that higher education institutions want to be exempt from the bill because they are autonomous non-public bodies, but you have just referenced the Scottish funding council, which is a public funding body.

**Sheena Stewart:** Absolutely.

**Jamie Greene:** How do you square that circle?

**Sheena Stewart:** We do not see our position as contradictory at all. The relationship is that a certain proportion of our funding comes from the Scottish Government, the UK Government and other sources. For that part of our funding for which we are given grant, it is quite right that we have a responsibility to report on the use of the grant, so for those aspects we are comfortable with the code of practice and the comply-or-explain approach that applies through that link on public funding. There are other authorities across the UK to which we have to respond.

**Jamie Greene:** Does that mean that the gender balance is applicable only on the public element of the funding? I am really confused.

**Sheena Stewart:** Not at all—we cannot divide it up in that way. We recognise that we are autonomous institutions but that we have responsibility to those who grant us funding. In some cases that will be the Scottish funding

council and in other cases it will be, for example, research councils, because when we undertake research we are also required to demonstrate equality of opportunity and so on.

As autonomous institutions, in responding to authorities such as OSCR—the Office of the Scottish Charity Regulator—the Scottish funding council or the research councils, we have embedded and mainstreamed equality and diversity. That is right and good, but it is different from seeing us as having public boards, which we do not. That has been acknowledged by Audit Scotland and some of the Government's own papers on the bill also recognise that we are autonomous institutions.

10:45

**Mary Senior:** Sheena Stewart is right that universities are autonomous bodies, but they receive £1.5 billion of Scottish Government money to carry out education, research, teaching and so on. That is why it is important that they are accountable and why they should be included in the bill. Over the past few years, universities have made real strides forward on gender balance, but that is because there has been a lot of scrutiny: universities have been under the spotlight and politicians and Scottish Government ministers have been asking questions.

Sheena Stewart made a point about the number of women on boards in universities. Boards only appoint a proportion of their members directly; there are other categories of members, such as those from staff, senate, alumni and sometimes local authorities. We think that incorporating all those members within the ambit of the bill would be a positive step. That would place an onus on other bodies, such as local authorities, student associations and trade unions, to take gender balance into account when presenting nominations to the governing bodies. That is very important.

As the bill stands, it would not include board members from the local authority or alumni. The bill should include all members of the university body, because they all contribute and because there is a knock-on effect on other areas of society that should be taking diversity and gender balance into account.

**Jamie Greene:** That is interesting.

**Alex Cole-Hamilton:** Thank you for coming to see us today. In the previous evidence session, we heard about organic growth and the differential in the statistics that you identified between 2016 and the current position. It represents a significant improvement, although Bill Thomson made the point that the bill is intended to prevent backsliding so that, should we find ourselves in less enlightened times in which that organic growth

might be reversed, legislation would be in place to ensure that that could not happen.

However, as I said to the previous panel, without meaningful teeth or justiciability—if there is wriggle room and there are no sufficient sanctions—the bill is largely meaningless. All we have is a reporting duty. The previous panel seemed to think that that was sufficient and that naming and shaming institutions that are not meeting the act's aspirations will be enough. What is your view? Do we need anything else in the bill?

**Stephanie Millar:** I would like to address two aspects of that question. I agree with Bill Thomson on the first point. There has been quite significant progress in the college and university sector over the past few years, and the numbers are increasing. However, they are not going far enough and there is a risk that, without some legislative underpinning, there could be the kind of backsliding that you have mentioned not only on the national agenda, but from a local perspective. If there is a change on a board, and the new board members do not take the issue quite as seriously, there is a risk that the situation could go backwards. From that point of view, the bill is necessary.

With regard to sanctions, you need to understand that there are lots of reasons why the membership of boards fluctuates and, indeed, that it is difficult to get board members at all, let alone the type of board member that you are specifically looking for. As for measures to address that, given that colleges and universities currently have to comply with the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 and report on equality progress every four years with updates every two years, we suggest that something could feed into or mirror that, partly to reduce the onerous workload on institutions that have to do many other things but also to smooth the process. Sanctions, particularly punitive ones, could have a detrimental effect on people's approach to the issue. Ultimately, the use of sanctions could lead to a lack of meritocracy, as a sanction would mean their having to appoint women instead of appointing women of merit.

**Ken Milroy:** I have mentioned the number of members that we have across our boards in the college sector; the majority are volunteers, and they come from communities across Scotland. Given that the majority of our boards are charitable organisations, I would be concerned about the unintended consequences of sanctions and about people being put off from giving their time to the college sector or other public services. We need to think carefully about the sanctions issue. Reporting, monitoring and visibility are important, and we would welcome it if the bill

reinforced those things. However, I would urge caution about sanctions.

**Sheena Stewart:** I agree with Ken Milroy. We have volunteers from all parts of the community on our boards, and we already have the reporting that Stephanie Millar talked about. We also have transparency on such aspects in our annual accounts. In addition, an aim of the committee of Scottish chairs is to achieve proportions of 40:40:20 to allow for the flexibility that we need at some points. Periods of office can last two or three years, but people sometimes step down early and the balance might change temporarily for a period of time. Having wriggle room in that regard is very helpful. For someone like me, who is managing the process and trying to find good applicants, having that kind of scope is helpful.

**Alex Cole-Hamilton:** With regard to the wriggle room that Sheena Stewart mentioned, I am not alone on the committee in believing that there is a substantial amount of wriggle room in the bill, particularly in the sections on the justification principle in terms of a decision to appoint a man over a woman. Section 5, which relates to encouraging applications by women, states:

“An appointing person ... must take such steps as it considers appropriate”.

As we understand it, no statutory guidance will underpin the bill. In the absence of such guidance, how can we strengthen the appointing process to ensure that it is not entirely subjective and that people do not just tick boxes and say “Well, I did everything I could and we just have to appoint the guy”? I am keen to hear how the panel thinks we can strengthen the bill in that regard. Do we need statutory guidance to define what is meant by “appropriate” steps?

**Stephanie Millar:** I fully endorse the bill's underpinning by statutory guidance, partly because things would become unbalanced if sanctions were considered and boards were not given adequate support and a framework to work within. That is particularly the case with regard to section 4, which relates to choosing between two suitably qualified candidates. It might be argued that, if we do not have underpinning guidance, we are setting boards up to fail.

**Andrea Bradley:** As we have said in our written submission, there should be further consideration of the application of sanctions, because voluntarism thus far has not delivered the ambitions that we have talked about. That said, we have suggested that there be no heavy-handed, blanket approach to sanctions. There would have to be monitoring and perhaps interrogation of why a public body had not met the requirement to achieve gender balance on its boards, and any sanctions would be appropriate to the reasons

why the body was unable to deliver on that. There could be a mechanism that would allow not only dialogue to take place but a penalty to be applied.

The other way of thinking about the issue would be to provide incentives to encourage public bodies to accelerate progress towards achieving gender balance on boards. Indeed, we have seen that approach in other aspects of public policy. However, our submission suggests further consideration of sanctions to give the legislation more teeth, as Alex Cole-Hamilton has suggested.

**Annie Wells:** My question, which I asked in the previous evidence session, is about the tie-break situation, but I think that it has been covered a bit in the responses to Alex Cole-Hamilton's question. If a board is looking for one member to take the balance to 50:50, how might that be done at the moment in universities? If merit lies at the heart of this bill, how can we guarantee 50:50 representation on public boards from the kick-off?

**Sheena Stewart:** In seeking applicants, taking decisions and making appointments, universities usually draw up skills and gender matrices. When a vacancy arises or is about to arise, we first identify what skills the board will need, some of which will come from our governing orders or the statutory instruments that apply. Secondly, we look at all aspects of diversity, including age, gender and disability. That can help with advertising. The members of our nominations committees, all of which, I think, involve staff and student governors, will usually have had training on things such as unconscious bias. There will be an awareness of, first, the skills that have been identified and, secondly, the matrix and the gender and diversity breakdown on the board, and the members will go into the interviews and nominations committee meetings with that information to hand.

I can expand on that if you like, but I hope that that is sufficient to give you an idea.

**Annie Wells:** In using that gender and skills matrix, are you excluding anyone from being a member of the board because of their gender or other characteristics?

**Sheena Stewart:** We try to apply it across the protected characteristics. As you have probably heard from other witnesses, there has been a difficulty in attracting women to apply, and the same goes for people with disability and from ethnic backgrounds. We have worked closely with the Equality Challenge Unit to try to reach out in various ways. Some higher education institutions have invited people to be co-opted on to committees of their governing body, so that they can get insight into the workings of the board and determine for themselves whether they are interested in applying. That has been a helpful

way of broadening out boards that have traditionally been seen as very monotone.

The main thing for us is the skills, as we are talking about multimillion pound organisations. However, those skills can be varied. For example, one aspect of the skills that we are looking for might be having a stakeholder's view, which could mean having alumni who know what it is like to be a student at the university. The skills that we are looking for are not necessarily technical; they could be about having that sort of insight. We try to look at everything across the piece, but the main focus has to be skills.

**Gail Ross:** Good morning. I have a quick question about how things are done at the moment. Are your interview panels gender balanced?

**Sheena Stewart:** I can speak only for my institution on that. For those panels, we draw on the governance and nominations committee, which includes lay or independent governors, staff governors and student governors. They are given training on key points so that they have the support that they need in the interview process. We cannot guarantee a gender balance every time, because it can depend on availability, but that is what we strive for.

**Gail Ross:** What about the rest of the panel?

**The Convener:** I think that Stephanie Millar wants to come back in.

**Stephanie Millar:** I do, but I also want to come back to the original point about positive action and meritocracy.

**The Convener:** Please cover both points, and then we can go to the other panel members.

**Stephanie Millar:** Okay. On positive action, our research in 2014 with HEI governors showed that they were not quite sure what positive action was and that they misunderstood the legality of it. We currently run two Scotland-wide projects that look at positive action with regard to student recruitment and promotion within staff, and what we are finding is that there is a drift towards positive action, but there is a spectrum in that respect. People are much more comfortable with advertising in different types of press and having gender-balanced interviews than they are with looking at, for example, choosing between two equal candidates based on a protected characteristic. They are not sure about the legality of that. Any measure on positive action such as choosing between two candidates based on a protected characteristic will need to be underpinned by a fair amount of guidance and support, because, at the moment, the sector does not feel that it has the knowledge to be able to do so fairly and successfully.

11:00

Whether that leads to diversity and merit across the board comes back to how we define merit on the board. Perhaps we need to rethink some of the things that we are looking for in board members and to build diversity in that respect instead of trying to achieve diversity in the current system.

**The Convener:** Do other panel members wish to respond to Gail Ross's question about gender-balanced interview panels?

**Ken Milroy:** My most recent appointment experience was the appointment of the principal of North East Scotland College. There was gender balance on the short-list and long-list panels, so it was very visible there.

**Andrea Bradley:** When we appoint members of staff on to the leadership team, they are appointed by a panel of lay members on which there is gender balance.

**Mary Senior:** We appoint internally, but, as far as the question applies to public bodies, I do not know. As Sheena Stewart has said, there has been real improvement, and institutions are very mindful of the issue. As the legislation would do more to cement that, covering the issue in statutory guidance could be really helpful.

**The Convener:** Did you want to come back to your substantive point, Annie?

**Annie Wells:** No, I think that I have the answer that I need, convener. Gail Ross probably has a follow-up question.

**The Convener:** Gail, do you want to ask anything else?

**Gail Ross:** I have my usual wrap-up question, convener. We have probably got quite a good flavour of this, but, just to get it on the record, I want to ask the panel members directly whether they believe that the legislation is necessary.

**Sheena Stewart:** I reiterate that we do not believe that it is necessary for higher education institutions. We already have a regulatory regime and a code of good practice, and more than half of our institutions exceed the current goal.

**Mary Senior:** We believe that the legislation is necessary. Universities have made good progress, particularly on members who are directly appointed by the board, but the balance is by no means 50:50. The legislation will help move that process forward, and we certainly think that universities should be included.

**Stephanie Millar:** We also agree that the legislation is necessary. While recognising the huge progress that has recently been made, we believe that legislation would show a clear direction and not only provide national leadership

but enable local leadership. There are caveats to that, however. For example, we would like broader diversity to be considered within the legislation and guidance to be added underneath it.

**Ken Milroy:** The college sector welcomes the legislation. It reflects what we have already been doing on a voluntary basis and reaffirms what has been achieved over quite a short period of time.

**Andrea Bradley:** I concur with Stephanie Millar. The legislation is a really strong starting point; it is completely consistent with what we are doing in the trade union movement to achieve more equality and diversity, and it sits very well with other parts of the Scottish Government's ambition. We would say that it is necessary.

**Jamie Greene:** I just want to clarify Sheena Stewart's answer. The question was whether you thought that the legislation was necessary. I appreciate that you were giving the position of the groups that you represent—and I respect that—but even if you do not want to be part of it, do you think that the legislation should apply to everybody else?

**Sheena Stewart:** We have seen what codes of practice can do. The groundswell is coming not just from the Government and others but from the population at large. I do not want to comment on what public authorities in Scotland would want to do, but we have shown what can be done. We have had very good results from acting voluntarily, albeit within a code of practice.

**The Convener:** What with Jamie Greene exercising his right to independence this morning and asking a different question from planned, we have one question outstanding.

**Jamie Greene:** I can ask that one, too, if you want, convener. That is fine. [*Laughter.*]

**The Convener:** From this morning's evidence, you will understand where we are coming from with regard to the potential financial impact on organisations. The earlier panel said that, if organisations already have monitoring officers and are putting all the checks and balances in place, there should be no impact. However, if they are far away from where they should be in that regard, there might be a financial impact because incentives, staff training and the other things that come along with this will have to be put in place. What are your thoughts, feelings or insights on the financial impact?

**Andrea Bradley:** We have stressed that there is room for further training on all pertinent aspects of equality and diversity for the staff who work for public bodies and for current and prospective board members. We also need to consider that one of the bill's aims is to make public bodies more effective. Although there might be a short-

term financial cost to achieving the gender balance, it is in pursuit of greater effectiveness and productivity and more effective outputs, and that is in the longer-term interests of the public. It is surely an investment that is not only worth making but necessary to ensure that our public bodies truly serve the whole diversity of the Scottish public.

**Ken Milroy:** The college sector's code of good governance is supported through the college development network with training for our board members, so we already have things in place. Given that we can set priorities in that training programme, which is funded by the public purse through the funding council, we have an opportunity to influence and shape things from a policy perspective and ensure that learning is embedded in the practice. Something that we are beginning to see and which I welcome is our learning some of the good practice that has been going on for many years in not just our sector but different bits of the public sector.

**The Convener:** Stephanie, given that your organisation is involved in helping other organisations make progress, you might have an insight into the cost benefit of this kind of work.

**Stephanie Millar:** I cannot necessarily talk about the financial implications. Some boards will have to reconsider their skills matrix and their recruitment process, and there could be costs attached to that, especially if staff resources are needed, too.

I echo Andrea Bradley's point. Ultimately, fairly solid research shows that, as far as finance and effectiveness are concerned, a diverse board is massively advantageous to an organisation as a whole, and that very strongly counterbalances any initial financial outlay that might be necessary.

**Mary Senior:** To follow up on the points made by Stephanie Millar and Andrea Bradley, I think that a more diverse board responds more effectively to its stakeholders, who in the case of universities are the staff and students. A board might address issues such as the gender pay gap, occupational segregation or how to make a university more responsive to the needs of all students in the broader community. If there is an additional cost, such investment is well worth it in terms of the outcomes that the board and the organisation achieve.

**Sheena Stewart:** We are already investing in our boards and our staff who support them. For example, two weeks ago, our student president, one of our lay governors and I attended a Equality Challenge Unit event on diversity in governance. We have put training in place, and that will continue, as what we are talking about is a process of continuous improvement. There will be

no big increase in costs, as we have already invested quite a bit, but there will be some costs for on-going maintenance and improvement. As has been said, reporting is already in place for higher education institutions.

**The Convener:** Jamie, did you wish to comment?

**Jamie Greene:** The previous panel asked who should pay for any additional funding that might be required. Should it come out of your budgets or should the Scottish Government make more money available to public institutions?

**The Convener:** We can guess the answer to that.

**Jamie Greene:** After all, the bill makes very little reference to additional funds being made available to implement it.

**Mary Senior:** Public bodies should already be doing a lot of these things. For example, if a female board member needs expenses for childcare costs or travel, a public body should be providing that. The previous panel indicated that most public bodies require more funding; we are happy to make the case for increased revenue for universities, but I am not sure that that will necessarily be spent on boards.

**Alex Cole-Hamilton:** It has just struck me that, without any statutory guidance, the amount of additional funding will be unquantifiable. We can ask appointing persons to take such steps as they deem necessary, but if there is no guidance to say what the standard is, we will not know whether that will cost any more money. It is a catch-22 situation.

**The Convener:** Is there anything that we have missed and which panel members have been itching to tell us? I see you shaking your heads—we have exhausted you and ourselves this morning.

We are very grateful for your attendance and your written evidence. If you go away and remember something that you should have said, please let us know as we still have a way to go with the bill and we want to be as informed as possible.

We now move into private session.

11:10

*Meeting continued in private until 11:36.*

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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