



OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities, Human Rights and Civil Justice Committee

Tuesday 11 March 2025

Session 6



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EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE
7th Meeting 2025, Session 6

CONVENER

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

DEPUTY CONVENER

*Maggie Chapman (North East Scotland) (Green)

COMMITTEE MEMBERS

*Pam Gosal (West Scotland) (Con)

*Marie McNair (Clydebank and Milngavie) (SNP)

*Paul O'Kane (West Scotland) (Lab)

*Evelyn Tweed (Stirling) (SNP)

*Tess White (North East Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Clare Gallagher (Council of Ethnic Minority Voluntary Sector Organisations Scotland)

Jatin Haria (Coalition for Racial Equality and Rights)

Lindsey Millen (Close the Gap)

Dr Pauline Nolan (Inclusion Scotland)

Rohini Sharma Joshi OBE (Age Scotland)

Vic Valentine (Equality Network)

Jill Wood (Engender)

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Equalities, Human Rights and Civil Justice Committee

Tuesday 11 March 2025

[The Convener opened the meeting at 09:30]

Decision on Taking Business in Private

The Convener (Karen Adam): Good morning, and welcome to the seventh meeting in 2025 of the Equalities, Human Rights and Civil Justice Committee. We have no apologies.

Our first item is to agree whether to take in private item 4, which is consideration of our approach to the civil legal aid inquiry. Do members agree to take item 4 in private?

Members indicated agreement.

Public Sector Equality Duty

09:31

The Convener: Item 2 is evidence on the operation of the public sector equality duty in Scotland. The PSED is a legal requirement for public authorities in Scotland. Under the duty, they must consider equality when carrying out their functions. The Scottish Government is making reforms to the duty, and the inquiry is an opportunity to explore those reforms and consider how they might improve the delivery of the duty.

We will hear from two panels of witnesses this morning. I welcome the first, which is made up of Clare Gallagher, human rights officer at the Council of Ethnic Minority Voluntary Sector Organisations Scotland; Jatin Haria, executive director at the Coalition for Racial Equality and Rights; Lindsey Millen, head of policy and development at Close the Gap, who joins us remotely; and Jill Wood, policy manager at Engender, who also joins us remotely. You are all very welcome—thank you for attending.

I refer members to papers 1 and 2. Before beginning the session, I remind all members that rule 7.5.1 of the Parliament's standing orders prevents members from referring to any matter in relation to which legal proceedings are active, except to the extent permitted by the Presiding Officer. I advise members that Sandie Peggie's employment tribunal case against NHS Fife is considered to be active for the purposes of the sub judice rule and contempt of court. I have sought and received permission from the Presiding Officer about the extent to which we can explore matters related to the case today and throughout the course of the PSED inquiry. On the basis of that permission, questions about issues connected to the case will be admissible today, but questions about the specifics of the case will not.

We will now move on to questions. I will start us off. To what extent do the witnesses think that public authorities understand the terms and aims of the PSED in Scotland? I will come to you first, Clare.

Clare Gallagher (Council of Ethnic Minority Voluntary Sector Organisations Scotland): Thank you very much for inviting me to speak to the committee today. In our work at CEMVO Scotland, we provide consultancy support to public authorities on embedding equalities and human rights, focusing specifically on anti-racism. From that work over many years, it is clear that many public authorities do not understand the terms and aims of the PSED in Scotland. It is our opinion that the listed public authorities understand the PSED process, but largely see the duty as process

focused, rather than outcome focused. There is a real lack of understanding among those who are supposed to be compliant with the PSED, and it is seen as a tick-box exercise. We can see that people understand some of the levers needed to uphold the PSED, such as mainstreaming reports, procurement processes and positive action, but they are underutilised tools. CEMVO's recommendation is that equality impact assessments should be broadened out to become the equality and human rights impact assessments that were developed by the Scottish Human Rights Commission, in order to make sure that we capture intersectionality appropriately and correctly.

I have recently done a piece of work on the procurement process, which is highlighted in one of the sections in the Equality Act 2010 but is severely underutilised. The procurement process has to give due regard to whether award criteria should include equality considerations under regulation 9 of the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012. However, public authorities do not have to state whether they have done so in their mainstreaming reports, which causes a real lack of transparency and accountability. We call for the commissioning and procurement models to follow a person-centred and human rights-based approach, and to move away from price-based competition and competitive tendering.

We have previously done some work with the Scottish Government. We worked on climate change funding and other funding options, and a percentage target was agreed within the tender process to include those with protected characteristics. I recently had a meeting with staff from Social Security Scotland, which is producing a quality assurance model for procurement processes for independent advocacy. I would encourage more thorough use of that model.

Jatin Haria (Coalition for Racial Equality and Rights): The question was about whether we think that the public sector understands the public sector equality duty, and I have a few points to make on that.

I echo a lot of what Clare Gallagher said. We must remember that the public sector equality duty applies to the three needs in the Equality Act 2010, but that the specific duties have a slightly different emphasis and are about helping people to enact the three needs in the act. There is a lot of confusion between the two things.

It was interesting that all the public sector witnesses you heard from last week said that they had a good, if not great, understanding of the duty. I have not read all the submissions from the equality groups, but I think that most of those groups would say that that is just not true, so there

is a real disconnect that must be addressed somehow.

The evidence on public sector operations and outcomes supports our view that people do not have a great understanding of the duty. That said, there has not been enough research into the operation of the public sector equality duty across the piece. We did some work for the Equalities and Human Rights Commission a few years back. Even then, we did not have a remit to look at mainstreaming reports, the effectiveness of equality outcomes or procurement, which Clare Gallagher mentioned. Those three things have never really been researched to see whether there is public sector body compliance with a lot of what is in the public sector equality duty and in the specific duties.

There is a job to be done to map out the actual effectiveness of the duty, but what we see on the ground and what we hear anecdotally shows that there is a real gap. As long as those in the public sector say that they have a great understanding of the duty, we will not go beyond that to have actual change and get what we need.

The point of the public sector equality duty was to change people's lives, but that change has been missing. It has become largely a process issue about how much people can publish, what they can get away with saying and how they can fit anything that they do into a public sector equality duty report. It is not about the change that we need to see in people's lives—the inequality that we are facing, the steps that the public sector needs to take to change that inequality or the evidence that they have made that change. We just do not see that.

Jill Wood (Engender): I agree that many of the listed bodies do not understand the aims and purpose of the PSED. Colleagues on the panel have done a lot of engagement work that points to that.

I think that it is widely accepted that the PSED is not fit for purpose, which is why the review was announced in 2018. Analysis from the EHRC shows that there has been very little impact for people with protected characteristics, and there is widespread agreement across the equalities sector that the duties do not work. In 2020, 26 organisations came together and collectively criticised the proposals that were on the table at that point, saying that those proposals were not ambitious enough to drive the change that we need to see, as Jatin Haria said.

We know that performance is poor and that there are issues with compliance. It is clear that the intended mid-point outcome of embedding equalities at the heart of public sector operations

is not being achieved, never mind the longer-term intended purpose of driving change on the ground.

The flip side of the question is that there is huge potential to drive change with this review—and with the PSED in general. That potential is just not being optimised, which is something that we are keen to emphasise today. There is a mainstreaming lever in place and there is also a legislative framework in place. Public bodies are already engaged with that to some degree, and I hope that they know that the review is taking place. There is a lot of potential, and we are really pleased that the committee is looking at the issue through the review.

Lindsey Millen (Close the Gap): I agree with everything that Clare Gallagher, Jatin Haria and Jill Wood have said. We have worked with the other panel members on PSED engagement.

We have done a lot of work around the PSED since it was originally introduced. We have worked directly with public bodies, we have developed guidance to support the implementation of the duties and we have also undertaken assessments of performance.

I completely agree that, although public bodies understand the process, they are not enacting it in a way that achieves the aims of the duties, so there is definitely a disconnect. One of the big drivers of the lack of action is that the PSED has contributed to a diminishing focus on the inequality that is experienced by people with protected characteristics from the different groups.

That concern was highlighted when the duties were brought in. The duties were designed to minimise the process approach in favour of outcomes, but that has not been reflected in practice. Instead of considering the specific inequalities that affect each group, the response from public bodies has been to treat protected characteristics in an undifferentiated, homogenised way, glossing over and ignoring specific disadvantages.

The average public body's approach to the PSED is to set outcomes that are for all and that do not mention specific groups. Such a broad-brush focus on everyone without targeted action is a key driver of the failure of public bodies to deliver improved outcomes for women and other groups.

A good example of that is the failure of public bodies and the Government to consider gender inequality in relation to the inadequacies that exist in social care, childcare and unpaid care. The low pay in those professions, the poor accessibility of services and the lack of support for unpaid carers are all driven by gender inequality and the undervaluation of care work.

Although we have moved a long way since the National Care Service (Scotland) Bill was introduced, the EqlA for the bill did not mention the gendered undervaluation of care work. Women have become increasingly invisible in the discourse on care work, which is a strong demonstration of how EqlAs and the duties more broadly are not being used to shape policy decisions and to create change in women's lives.

It is not just a problem with the broader parts of the duty, such as mainstreaming, EqlAs and outcomes. There are persistent shortcomings and failures in public bodies being able to meet even the most basic of the duties. For example, the duties on publishing data on the gender pay gap and occupational segregation are very clear and straightforward: public bodies have to do calculations, gather a set of data and publish it. However, when we assessed that data in 2023, only 87 per cent of public bodies had published their pay gap data. Although 87 per cent might seem like a large number, it is a significant concern that 13 per cent are not publishing that figure. On top of that, only 38 per cent of public bodies had published their occupational segregation information. Those figures show that there is a failure across the piece to use the duties as they were intended—as a set—and to use the different data and directions under each of the duties to create change. In the process-focused approach, large data sets are published but sit unused.

The Scottish Government has proposed changes to the gender pay gap reporting duty to bring in reporting on ethnicity and disability pay gaps. The action to tackle that inequality is welcome, but the evidence on the performance of the pay gap duty shows that it is not working. Those changes are therefore likely to replicate the failings with the pay gap duty and become further data exercises that fail to create change.

The Convener: Thank you very much to all the panel members. We now move to questions from Maggie Chapman.

Maggie Chapman (North East Scotland) (Green): Good morning. Thank you for joining us and for your comments so far.

The difference between the presentations that you are giving us and what we heard last week is quite stark. To an extent, that is one of the reasons why we are undertaking this inquiry. Without the opportunities that we were hoping for during the human rights bill discussions, the PSED is something that we can focus on. We can look at where the duties are not being met.

I was interested in what Clare Gallagher said in her answer to Karen Adam's question. We are failing on the intersectional aspects and we are

failing to understand the complexities of the duties. Do you see that failure as being because the focus is on the process rather than on the outcome? Does that need to be addressed in the reforms? Others around the table will explore the reforms in more detail later, but is the reason for failure that distinction between process and outcomes?

09:45

Clare Gallagher: Yes, the reason is definitely the focus on the process rather than on the outcome. If we think about it pragmatically, if public authorities are struggling to understand all nine protected characteristics—which can have an impact on and cause disadvantage in access to services and support—they will really struggle to think about the crossover between protected characteristics and to have an intersectional focus. It is hard to move towards intersectionality without a baseline understanding of the protected characteristics.

I am not saying that they do not know what protected characteristics are, but it is about knowing what they mean in practice. When public authorities do equality impact assessments, how do they identify the disadvantages and barriers that people face? Once those have been identified, how do they change or mitigate their policy or service to make sure that it is inclusive? That part is not done. If we cannot do it for nine separate protected characteristics, we might struggle to do it for intersectionality, but it is definitely something that we recommend, and it could be captured through outcome-focused work.

Maggie Chapman: Do you think that some of that is down to a lack of data or to not collecting the right type of data?

Clare Gallagher: I work weekly with public authorities on data collection. There can be simple solutions, such as following the latest census for guidance on equal opportunity forms, but authorities must then analyse and unpick that. A lot of public authorities struggle with the general data protection regulation and what they can and cannot share. Where numbers are very low, that can be very evident. In lots of public authorities, the workforce or services do not reflect all protected characteristics. Often, if they do not have the data, we see their mainstreaming reports saying that they do not have that number because they could not collect it, rather than that they could not collect the data and saying what they will do to improve collection. It is that next step that is missing.

Maggie Chapman: Thanks very much, Clare.

Jatin, you said that

“the point of having the public sector equality duty was to change people’s lives, but that has been missing”.

That is a very stark statement that we, in this committee, should take seriously. Is your view similar to Clare’s—that the reason for that is the gap between process and outcome—or is something else going on, as well?

Jatin Haria: I think that there must be something else going on. What we heard last week, and what we hear from public sector bodies, is that they believe in equality and think that they are doing the right thing. They do not need the PSED in order to do the right thing on equality—equality should be their core business, and the PSED is just an aid to get there and to report on the findings.

We are not, however, getting the reporting, as the committee has just heard, so I think that there is much more going on. I am not sure what that is. Blaming reporting cycles, for example, which a lot of authorities have done, is nonsense, because the PSED allows for different reporting cycles. Blaming resources is also not a real excuse: they will always use that excuse. We have heard in some submissions of evidence to the committee that leadership is blocking things in some public bodies. That needs to be addressed, if it is the case. We do not really know what is going on. I am sure that there are differing reasons among public bodies.

There is a real need to get to grips with the matter, which is why we want more robust regulations. For some reason, although the Government recognises the inequalities that exist, it is not willing to take the next step and say that we need better regulation.

Maggie Chapman: Do the reforms that are currently under discussion go far enough?

Jatin Haria: They absolutely do not. When the specific duties came in in Scotland back in 2011, the Scottish Government proposed a really weak set of regulations. Luckily, when the CRER appeared before the Equal Opportunities Committee—as it was then—the committee rejected those regulations. The Government had to go back to the drawing board and propose something that was a little more robust. It was not ideal, but it was better than the initial suggestion.

Since then, in the past 15 years, things have weakened in relation to the reports. We have seen cases in which, for example, mainstreaming reports have been copied and pasted from the previous one because people think that they have to report something. There is no actual analysis of the quality of the reporting. Judgment is based on whether a mainstreaming report or an equality outcome impact assessment was published, but nobody looks at their quality. As Clare Gallagher said, people do EqlAs, and they do not understand what is going on because “data” is a misnomer.

On employment, for example, most public bodies have underrepresentation of black and minority ethnic people in their workforce: we do not need more data to tell us that. Do not get me wrong—data will be useful on specifics about various ethnic groups in the workforce and so on, but not having data should not stop us from doing something immediately. We know what the problem is.

Maggie Chapman: Thanks, Jatin.

I ask the same question of Jill Wood, about the gap between process and outcome, and whether the PSED is delivering the outcomes that it was thought it could deliver.

Jill Wood: We share many of your concerns about the lack of data and the potential for intersectionality. If we want the PSED to work, it will have to be able to handle intersectionality for the most marginalised groups in Scotland, including disabled women, BME women and so on.

When we responded to the initial Scottish Government consultation, we worked with Professor Nicole Busby, who is an equalities lawyer, to develop our own set of draft regulations and to put forward a positive set of proposals that we knew were legally competent. Many of the core strands of that have not been addressed.

Jatin Haria mentioned the mainstreaming duty: EqlAs are the primary mainstreaming tools. We recommended an amendment to the mainstreaming duty. At the moment, the duty is to report on mainstreaming. As you picked up on in your question on process versus outcomes, we want something that is more robust about doing the mainstreaming work, because if the work has been done, it is not hard to report on it. If the PSED is to achieve the aim of becoming part of the bread and butter of their work, we should address the sense that we get from public bodies that it is too onerous and burdensome.

We would like to see a more prescriptive approach to EqlAs in the duties—that is something that public bodies have also indicated could be helpful to them—and we think that more could be written for clarity about how and when an EqlA should be done. We know that EqlAs are very poor—Jatin pointed to the lack of systematic research. I think that all of us around the table have seen dreadful EqlAs in policy areas that we work in.

For our draft regulations, we looked at how we could bring intersectionality into the regulations through amendments. There is a huge question about competence, which we sought to address in our draft regulations through putting a duty on Scottish ministers to provide for capacity building.

So, in answer to your question about the reason for the failure, and what else might be going on, I say that there is a lack of equalities competence, including gender-related competence.

We also have to face up to the fact that in the public sector there is active resistance to equalities mainstreaming. Some interesting work has been done at the union level on that. We skirt around it a bit, I think, but some people just do not want to have to do equality. They do not think that it should be part of their job, even though it is the core purpose of all this.

Finally, on your question about data, we, alongside the National Advisory Council on Women and Girls, have been calling for many years now for new duties on intersectional data collection and use. We are seeking, first, a requirement not just to collect but to use the data in equality outcome setting and so on, and secondly, a duty to integrate intersectional gender budget analysis in budget processes and revenue raising. We feel that that could have a huge impact.

Maggie Chapman: Thank you. Those specific suggestions on new duties are really helpful.

Lindsey Millen talked earlier about significant failures even to meet basic duties across different groups. Clearly, Close the Gap's view is that something is missing, and that the public sector equality duty is not delivering outcomes. Is it your view, too, that the PSED cannot deliver the outcomes? Is it only an implementation issue, or is it bigger than that?

Lindsey Millen: I think that the issue is bigger than that. As colleagues on the panel have identified, it is a multistrand problem.

As I have said, if the duties were implemented in the spirit in which they had been designed and as intended, they could be really effective. The question is: why are they not being implemented? A big part of it is a lack of accountability for the failure to do so. We know that what gets measured gets managed. Evidence on effective equality regimes, particularly gender pay gap reporting regimes, both internationally and at the UK level, shows that you need to put in place a set of regulations that produce measurable commitments, then follow up on that with progress reporting and accountability for failure to meet them.

A big driver of failure is the lack of leadership on the duties. There is a lack of accountability, specifically on public sector leaders, for delivery of them, and the lack of an accountability lever has led to a lack of prioritisation—in fact, I would say that there has been a steadily diminishing focus on equality since the duties were first introduced. The lack of prioritisation leads to a lack of investment

and resource being devoted to the duties, so the work just does not happen. Indeed, some public bodies do not have an equalities lead—they have people doing it off the side of their desks—but even in public bodies that do have them, we are talking about only one person, and it tends to fall to them to drive the work, instead of it being mainstreamed across the piece.

We have also seen, as Jill Wood has identified, public sector leaders actively working against the duties. We have intelligence from equalities leads with whom we have worked that they have presented mainstreaming actions and equality outcomes to leaders and boards, and have seen them being watered down or their advice ignored, which is really concerning.

Again, on the lack of investment, there is a question about a lack of data not only for carrying out the duties as they are, but for doing intersectionality within them. It is 12 years since the duties were implemented, and it is not acceptable that we have seen no progress in terms of public bodies improving their systems for, and their competence in, data gathering and analysis. We have had a long time to make progress on this, but we have just not seen it.

I totally agree with Jill Wood that one of the big issues with the failures in implementation is a lack of competence in public bodies. I would say that it is a lack of competence in implementing the duties, and specifically on equality, on gender equality and on intersectional inequalities. Again, it all comes back to a lack of prioritisation and investment.

Yes, a lot of people do not want to do this work, and I really think we cannot underestimate the impact of the global backlash against equality, diversity and inclusion on all this. We have already seen the impact in the private sector, with big organisations ending EDI programmes in order to be able to win contracts in the US, which creates more space for people who have a resistance to working on equalities to deprioritise that work.

Maggie Chapman: Thanks very much. Jatin—I see that you want to come back in.

Jatin Haria: On the back of what others have said, I think that the Scottish Government has really not helped. Reviewing started in 2018, and we have had three reviews since then. I have not come across any other policy area in which there have been three reviews on the same issue.

10:00

However, each time the proposals have been weakened by the Scottish Government, and that sends the signal that Lindsey mentioned. That was happening even before recent events. Since 2018,

the Scottish Government has been sending a signal that the matter is not very important to it and, therefore, to the public sector. We are now left with a couple of changes to regulations, and that is it. What message does that send out to public sector bodies? It tells them what the Government wants them to hear, which is, “This is not important. Get on with your real work.”

Maggie Chapman: Thanks. Marie McNair wants to ask a little bit more about the reforms, so I will leave her to pick that up, because we need to explore it. I will leave it there.

Paul O’Kane (West Scotland) (Lab): Good morning. I am particularly interested in how we report and record in situations where ethnicity and disability cross over. I have had the opportunity to ask questions, particularly on the recording of data belonging to people who are applying for social security and on understanding their rights.

I appreciate that there is a proposal to extend gender pay gap reporting to look more specifically at ethnicity and disability. I know that CEMVO said that there are risks associated with reporting on that—in particular because low numbers could impact on the results. We have seen that issue in social security more broadly, which I have referred to. Could witnesses make some general comments on that?

Clare Gallagher: CEMVO welcomes the inclusion of ethnicity and disability pay gap reporting in the reforms, but it is important that, when working on the reforms, we learn from gender pay gap reporting. We have heard already today about the issues with reporting on the gender pay gap and occupational segregation. We have low numbers across the board on ethnicity data, which can present a challenge for ethnicity pay gap reporting.

Since the announcement about inclusion of ethnicity pay gap reporting was made in 2023, we have not had any talks on how it is progressing. We have conversations with the Scottish Government’s fair work directorate fairly regularly, and the indication from it is that it is waiting to hear what is going on in Westminster. We would welcome the Scottish Government using its levers on the ethnicity pay gap and exploring the subject a wee bit more, because there are challenges, but that does not mean that it cannot do anything.

Ethnicity pay gap reporting will not solve all the problems—a multifaceted approach is needed. If we focus on one thing only—ethnicity pay gap reporting, for example—we need to think about the outcome of that and whether it will change people’s lives. It is a good lever, but it is not the only thing that we need to do.

Paul O’Kane: I will pick up on the point about the Scottish Government pointing to interaction

with the UK Government. In the discussion about the Employment Rights Bill, there is a commitment to address the disability pay gap. Do you sense that the Scottish Government is keen to see the outcome of that? Was that the reason that it gave you?

Clare Gallagher: That conversation was based on what our opinion would be on ethnicity pay gap reporting, which we were happy to provide.

The latest conversation was about updates. There were no updates, because we were waiting to see what approach would be taken and what was going to happen down south, in Westminster. Although we fully appreciate that it is good to work in harmony with the UK Government, we would welcome a wee bit more exploration and momentum from the Scottish Government.

Paul O’Kane: That is useful.

Jatin Haria: We do not support prioritising reporting on the ethnicity pay gap just now. The data is so weak that analysis would be meaningless. Some organisations already report on ethnicity pay gaps. We did some work on looking at what people are already saying.

The numbers are skewed—in many public bodies, there are very few BME people at the lower end of the workforce, but there are a few more in higher-grade positions. There are many reasons for that, but it skews the pay gap. Our analysis found that there was a mean pay gap of 3.2 per cent in favour of BME staff in local authorities. That is replicated in a couple of other sectors. If you were to follow that through, based on the data, you would need to take action to improve white workers’ pay, which would be meaningless. The real priority is, first, to get more BME people into the workforce, then we could look at pay differentials. In the public sector workforce, pay differentials are, in the main, about levels, rather than jobs. Addressing that would cause a mess, because people would stop working to attract more BME people into the workforce, and would instead focus on having more senior staff in order to adjust the pay gap. The implications need to be thought through very carefully, before we go down that road. However, if Westminster legislates for that, it might happen across the piece anyway, in which case Scotland would need specific duties to militate against what I have just described.

We need duties that require public sector bodies to analyse their pay gap in much more detail before taking action, rather than just reporting on the pay gap. Lindsey Millen has already talked about the deficiencies with reporting on the gender pay gap.

There are many other problems, including how we define ethnicity in a pay gap situation, because different ethnicities will have different issues. We

already know that people who are of Bangladeshi and Pakistani origin are among the most disadvantaged people, so mixing their data with that on people who are of Indian origin would skew the gap. That would also happen if you were to include Polish people in the data. As far as we know, none of those issues have been thought through.

Paul O’Kane: I started by asking about data. I know that CRER has also commented on the need for social security data in order to understand the poverty gap if folk are not in work. Do you think that we need a broader suite of data in that space?

Jatin Haria: I would never say that we do not need more data but, as I said before, the lack of more data should not stop us from taking action. Social Security Scotland has pretty good data, but it is very limited in terms of its services. We are trying to get metadata from the Department for Work and Pensions. We know that unemployment is much higher in BME communities in Scotland, and that child poverty is at extraordinary levels—it is more than 50 per cent for some ethnicities—but no one is really doing anything about that. We do not need more data to take action.

Paul O’Kane: On reflection, my question probably goes back to an earlier point, which was that we need to analyse and understand causes and effects and then think about what action could be taken, which is of interest to the committee. Jill Wood or Lindsey Millen, do you want to add anything on multifaceted reporting? Lindsey, I saw you nodding during some of the previous contributions.

Lindsey Millen: I totally agree with Jatin Haria that there is a massive issue in that ethnicity and disability as characteristics are not analogous with gender. We are dividing our data on the gender pay gap into two groups, but we cannot do that with ethnicity or disability, because there is a huge range of different impairments and factors that might affect disabled people’s inequality in the workplace and, as Jatin Haria said, there are low numbers of disabled people in the workplace. The evidence is there: you do not need more data on those two characteristics in order to take action.

A big gap in the data is created by the narrow focus on numbers in an organisation, or even numbers at a Scotland level, to the exclusion of work with equality organisations and advocates and the wider body of evidence on inequality, whether that relates to women or disabled people, on the issues that affect those groups in the workplace. There is a lot of available data—not just numbers on workforce representation—that can be used to say, “Here is what experts are saying about the issues that are affecting BME people in the workplace, so let’s do X, Y and Z.

Let's evaluate that in two years and see whether it has been effective. If it has been effective, let us keep going; if it hasn't been, let's do something else."

The competence of public bodies when it comes to the issues and to data gathering, handling and analysis is a real issue here—and that is before we bring in the intersectionality element. Jatin Haria has highlighted the experiences of different ethnicities; there is a pay gap between white people and BME people, but once you add in gender, you see a bigger pay gap between BME women and white men. It is the same with disability; there is a pay gap between disabled men and disabled women, but when you compare disabled women with non-disabled men, you see that the pay gap is absolutely massive. Therefore, there is an issue with competence on equality, and competence on data gathering and analysis, as well as with the data itself.

Paul O'Kane: That was helpful. Thanks.

The Convener: Pam Gosal has a supplementary question.

Pam Gosal (West Scotland) (Con): Good morning. This is a question for Jatin Haria. The Coalition for Racial Equality and Rights has said that its research strongly suggests that the guidance that is produced by the EHRC

"is not being widely used either for development or quality assurance purposes within listed bodies",

going on to say that the EHRC's

"enforcement activities do not appear to be effective."

The EHRC, for its part, has said that it has yet to have

"sight of draft regulations from the Scottish Government on ethnicity and disability pay gap reporting".

Is it not clear that the Scottish Government is not doing enough?

Jatin Haria: Enough on what?

Pam Gosal: Enough on what I have just asked about: enforcement activities.

Jatin Haria: From what Lindsey Millen has said about gender pay gap reporting, if only 38 per cent are meeting the legal requirement to report on occupational segregation, we have to ask: what is happening with the other 62 per cent? Why are they being allowed not to report? It is a legal requirement in the duties, but the numbers are stark enough to suggest that somebody is not doing their job. As for whether it is Scottish Government or the EHRC, you can ask them next week.

Pam Gosal: Who do you feel is not doing their job?

Jatin Haria: Both, I think. Lindsey Millen also mentioned the fact that the gender pay gap is not being calculated properly. The guidance is very clear on the calculation, but a lot of public authorities are not using that guidance or that equation. Why are they being allowed to get away with that? Can they not see that what they should be reporting on is actually there in black and white?

There are some answers to this situation. For example, we need templates for reporting so that we can standardise it across the piece, and we need templates for data collection on ethnicity and employment. People will be able to collect what we ask them to collect in the template, and that will make reporting easier.

There is also a job to be done to get more people to give their ethnicity data, because there is a problem in that respect; people are not willing to give it for some reason. I find that strange. After all, even if I did not give my ethnicity data, most people would know my ethnicity anyway, so why would I still choose to hide it? Something is going on there that needs to be addressed.

As I have said, though, even when we do not have data, we have knowledge. We know that there is a problem with a lack of BME people in the workforce generally. There is a fair bit of data in that respect; the Scottish Government says that the figure is 4 per cent—or 3 per cent if you take out the unknown ethnicities—but the figure for the working-age population in Scotland is now over 7 per cent. Indeed, the employment rate for BME people is getting worse, because the population of BME people is getting higher. However, no action is being taken. The duties say that you must gather and use the data, but we have seen hardly any evidence of anybody using it.

Pam Gosal: That was very helpful. I will certainly be asking the Scottish Government about this next week.

Jatin Haria: You will also need to ask the Government about what it is doing itself, as well as the wider question about what it does with other public bodies. It should be leading by example—it cannot say that it does not have the resources.

The Convener: We move on to questions from Evelyn Tweed.

Evelyn Tweed (Stirling) (SNP): Good morning, and thanks for all your answers so far.

What are your views on the Scottish Government's revised approach to assisting listed public authorities to embed inclusive communication? Clare Gallagher, would you like to come in first?

10:15

Clare Gallagher: Specifically on inclusive communication, we welcome the inclusion of that measure in the proposals, but we do not think that it will achieve all the changes that are needed to change people's lives. The Government needs to go much further than just the simple duty of inclusive communication. There is a wee bit of uncertainty about what is included in inclusive communication, so that needs to be developed more. We are unsure how inclusive communication will eradicate institutional racism and discriminatory practices in listed authorities and public authorities.

We think that, in general, we need more specific actions in the proposed reforms. One thing that we are asking for—Lindsey Millen mentioned this—is accountability. The proposed reforms are not nearly hard-hitting enough and will not achieve the change that is needed in the public sector. We would like more specific actions. In one of our recommendations, we referenced a new directive from the Scottish Government for national health service boards to develop anti-racism action plans, but we are not aware of that being asked of any other public authority. It would be interesting to see that happening.

With the reforms in general, there is nothing specific in them that we would be confident would achieve what we would like them to achieve.

Jatin Haria: To follow on from that, my question on inclusive communication would be: is it just about issues related to disability or is it a wider definition of inclusive communication? From a race perspective, will it include issues facing people whose first language is not English? If so, we would call for more English for speakers of other languages—ESOL—provision to help that group of people as a priority, rather than doing something on inclusive communication.

The main problem is with trying to lump inclusive communication into the public sector equality duty review when it is already a legal requirement. The Government is trying to bring in things just to pretend that it is doing a review, when that is already in existing legislation.

Evelyn Tweed: Would anyone who is online like to come in?

Jill Wood: I do not have specific comments on the inclusive communication approach, as we very much look to the disabled people's organisations and race equality organisations for that.

I want to pick up on a couple of other things that have been said, if that is all right. On enforcement, it is clear that we do not have a functional accountability process, and that is a massive driver of the poor performance that we have been

describing. Clearly, the Scottish Government cannot control what the EHRC does or its funding package but, through reform, the Government can introduce a more effective set of duties that would be easier to enforce. For example, with the EqIA, which I have mentioned, if there was a more prescriptive approach and if there were the templates that Jatin Haria just talked about, that would make the reporting and the enforcement easier.

I am also keen to pick up on what Jatin said about the policy process around the review so far. In our view, it has been a very poor policy process, which is one reason why Engender and other organisations that are represented on the panel were keen to engage in the parliamentary process on the review. It is not the case by any means that officials at operational level have handled it badly, but there has been a low level of capacity allocated to this.

On top of that, in recent years, we have seen staff redeployed to different areas that were seen as being more important at the time. That is the key point. Time and time again, equalities work is bumped when something that is perceived as more important comes along. As we are all aware, in times of crisis, whether it involves a pandemic, public spending cuts or rocketing inflation, women and people with other protected characteristics pay the price for that, because you need increased focus and investment and so on in such times. Equalities are still routinely seen as a nice added extra that you can have when times are good.

It is ironic that that has happened with the PSED review and the equality and human rights strategy over recent years, with staff being moved off to work in other areas, because with a better embedded and functional PSED, equalities would be seen as an absolutely integral part of any kind of crisis response.

As I mentioned, we are advocating for better intersectional EqIA and gender budget analysis. One would hope that when those decisions are being made, gender budget analysis on any resourcing decisions could help make better decisions from an equalities perspective.

On the substantive side, as I mentioned, we collectively criticised those initial proposals back in 2022 for being insufficient. As Jatin Haria said, they have been scaled back and scaled back, which sends a clear signal to public bodies about where equalities sit in the Scottish Government's pecking order. The reason given for that was lack of capacity. The conversation inevitably shrinks down to the small changes that we have seen, but much more was originally on the table.

We are concerned, because a second phase of this phase of the review has been promised, and

we are supposed to see what is coming forward by the end of this year, but there is no indication yet of what that will include or whether regulatory change will be back on the table. We think that that is vital because the evidence shows that even legal requirements are not enough to make public bodies comply.

It is beyond optimistic to think that the softer approaches that we see, including on equality outcome setting, will have the impact that we need.

Lindsey Millen: I will pick up on a few things. I totally agree with Jatin Haria on inclusive communication. If you understand the purpose of the duties, inclusive communication should be implicit within that. There should be no requirement for an additional duty on public bodies to deliver that.

The current small set of proposals for reform is indicative of that move to smaller-scale reform. Far less investment is required to do those smaller things. Not that inclusive communication is not important, but it is part of that radically reduced picture of the reforms that are needed. That touches on the lack of commitment to put that money in. As Jill Wood said, equalities spending gets scaled down in times of crisis. It is the first thing to fall off the side of the table.

Another thing that has concerned us throughout the engagement process is that the reform of the duties has been framed by the Scottish Government in conversations as a resource burden. When you frame something as a resource burden, you are saying that it is a “nice to have”. You are telling public bodies that it is okay to devote minimal resources to it, which is really not helpful, to say the least.

Because of that lack of commitment to investment, an encourage-and-support approach is currently being proposed alongside the minimal reform. It is true that public bodies need more guidance, encouragement and support, but we know that that approach will not work. What has also been proposed in relation to that in no way matches the scale of the issue with regard to the lack of competence on equality, on gender, on intersectionality and on the duties more broadly. We would welcome a broad programme of competence building from the Scottish Government, but it would have to be accompanied by a lot of investment, because you cannot do that sort of thing on a zero or small budget.

The Convener: We move on to questions from Marie McNair.

Marie McNair (Clydebank and Milngavie) (SNP): Good morning, panel. Having listened to your earlier responses to my colleagues’ questions, I feel that the delay in the PSED reform

seems to be affecting every organisation’s ability to fulfil the duty. Do you want to say any more about that? I was going to go to Lindsey Millen first. I am sorry to put you on the spot, Lindsey, but I listened to what you said about all the work that you have done on the matter. Do you want to say anything about what more can be done to assist in that respect?

Lindsey Millen: Yes. I think that the delays have undoubtedly had an impact on public bodies’ performance. It was already recognised in 2013 that there was poor performance, and performance has only declined since then.

However, the delay in reform has sent the message that the PSED is on pause and it is therefore okay for bodies to operate as they are doing—or, indeed, to do even less than they were already doing. Public bodies are saying, “We’re waiting to see the new set of duties and to set new equality outcomes, because maybe the equality outcome duty will be different.” That is what we are hearing from public bodies. I understand that, to an extent, because the messages have been very mixed, with people saying, “We’re going to do this,” and then, “Oh no—we’re not going to do that,” and then, “We’re going to do something on an even smaller scale.” The length of time that it has taken to get to this stage has been really problematic, as it just sends the broader message that equality is not important.

This reform needs to be prioritised by the Scottish Government if it is committed to being a leader in equality and human rights. Broad, generic approaches are not going to work, and no investment is going to work—we really need to see something more radical. Therefore, we, alongside colleagues on this panel and on the panel to come, have been strongly calling on the Scottish Government to re-engage with the reform process and commit to putting in place the more radical set of reforms that are needed to address the substantive and substantial issues that we see in performance.

Marie McNair: How has your organisation been receiving updates? How have updates about the PSED reform been communicated to you by the Scottish Government?

Lindsey Millen: We have definitely seen issues with communication throughout the reform process. We all understood that there was a pause during Covid, but that is just evidence that, in times of crisis, equality gets sidelined.

When the public consultation was published, in 2021, there was frustration among equality organisations at the poor engagement at the stage prior to that. There was a real lack of communication, and, as was stated in the response that someone has already mentioned,

26 equality organisations came together to criticise it. Following that, we saw a commitment to improved engagement and communication. The equalities minister at the time, Ms McKelvie, committed to setting up an advisory group with equality organisations to support the reform process. However, although that would have been very welcome, it was not progressed, and the next set of reforms under the subsequent equalities minister were massively scaled back. Because of that, there was a massive scaling back in communication about the reform process.

We have been picking this up in other areas, too, but we have been seeking greater communication on and information about the reform of the duties. We have been trying to glean that information not only through proactive communication, but through other conversations that we have been having, because it has not been forthcoming. That is all that I would say on that.

Marie McNair: Thanks, Lindsey. Your comments are really important to us, given that we will be hearing from the minister next week. Does anyone else want to come in on that question?

Clare Gallagher: The delay in the PSED reform has had an undeniable impact, as Lindsey has mentioned and as we have talked about before. If we think way back to 2018 and to 2021, when the initial reform consultation was carried out, it has been said continuously that accountability is a fundamental thing that has to change. You could include new duties, inclusive communication, and disability and ethnicity pay gap reporting, but, if accountability does not change, you will probably see us sitting here again in six or seven years' time, talking about the same issue.

On accountability, we think that the Equality and Human Rights Commission needs to use its regulatory powers more. We understand that that has to come with more resource, but it really has to do more with its powers. We also believe that there is lots to be learned from the private sector in some instances, such as the use of business penalties for corporate financial mismanagement. There is also a threat of reputational damage if organisations do not comply with their duties.

10:30

So, the questions are: who are they, what are they not doing, and how can we support them with that? There is a very clear balancing act between financially penalising a public body and achieving equality, because, if you financially penalise a public body, the impact will be felt by people who are trying to access services, so we would not recommend that. When a public authority fails to meet its mainstreaming outcomes, we would like

to see regulators such as the SHRC provide intensive support and expertise in whatever particular area it may be needed in, whether it is related to race, gender, disability or all protected characteristics. The public authority should receive that expertise and support, and it should earmark or ring fence a certain amount of its budget to progress that work. Regulatory bodies should have to check in on that, progress reports should be published, and there should be a smaller one-year action plan. People should be updated on what is going on and there should be transparency in order to improve people's trust in the public sector as a whole and build accountability in the first instance.

Marie McNair: Thanks for that. What do you think, Jatin Haria?

Jatin Haria: I have a couple of points to make. Undoubtedly, Covid delayed some things, but it should also have been a wake-up call. The disparities for people with protected characteristics that were evidenced during Covid should have made public bodies say, "We need to get this done and do it right the next time and in the future," but we have not seen great evidence of that.

Lindsey mentioned that public bodies think that the PSED is on pause. I will give you one example of why we think that that is true. In setting equality outcomes, there is a requirement to consult people with protected characteristics and their representatives. I would say that CRER should have been high on the list of people to be contacted on the protected characteristic of ethnicity, yet, to the best of our knowledge, only two national bodies have contacted us to discuss the proposed equality outcomes. That is a big step back from previous years, when we used to get quite a few emails from people—although even that was a bad process, because it was after they had drafted their equality outcomes and it was almost too late to make any changes. This year, we have had communication from only two national bodies across the piece.

The specific duties under the Equality Act 2010 largely operate on a four-year reporting cycle, the next one beginning in April 2025, so we have a bit of time in which to get it right before the next four-year cycle. There will be a Scottish Parliament election next year, but I think that there is general cross-party support for the aims of the PSED and the specific duties, so I do not think that the election cycle should interfere with that. However, the Scottish Parliament should be pushed to set up the advisory group that Lindsey mentioned as soon as possible, so that we can start working on it and get a draft in place before the election, get something agreed straight after the election and get things in place for the next reporting cycle.

Marie McNair: Thank you for that. Jill Wood, do you have anything to add?

Jill Wood: I want to highlight something in response to the question about the impact of the delays and to pick up on what Jatin Haria said about how Covid should have been a wake-up call.

The whole purpose of these reforms is the impact on the ground for people with protected characteristics, including women. The pandemic took place against the backdrop of years of austerity in which we saw those rights and equality being rolled back. Then, there was the cost of living crisis and staff were moved to work on that. Now, we are seeing the rise of the far right. It is crisis after crisis.

I just wanted to make that brief point about what the impact of delays has been and what actions we could have made progress on to improve outcomes for people in our communities. Obviously, it is vital to do that.

Lindsey Millen: One thing that I would like to pick up on relates to the answer that was just given and what was said previously about what is needed.

A narrative has developed that the duties, mainstreaming and equality impact assessments do not work. That is not the case; the problem is that they have not been done effectively, or at all, because of a lack of leadership, prioritisation, resource and competence. All the evidence shows that. The National Advisory Council on Women and Girls recently did an evidence review of public bodies' performance and found that zero public bodies had actually used an EqIA to shape their policies. I am sure that there is further detail on that in that organisation's written submission.

Jill Wood mentioned Covid. The reason that women were disproportionately affected by the pandemic is that women's experiences and needs were not considered in policy development—or they were not considered enough. For all the pre-existing inequalities, the impact will only get worse the more that they are not considered in policy development. The Scottish Government and public bodies are more than capable of gathering a wide range of complicated data, analysing it and considering it in other ways when they are developing their policies, services and employment practices. They can do that for equality; there just needs to be the will, the leadership and the investment.

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

Maggie Chapman: I am going to shift focus a bit. A lot of our conversation has been around discrimination and the needs to eliminate

discrimination and to advance equalities. Jatin Haria, right at the start, you talked about the potential conflict between the three needs in the Equality Act 2010 and the operational duties. The third need—fostering good relations—often gets overlooked. It is something that we are missing, both in the broader conversation about the public sector equality duty and in the proposed reforms. Do you think that public bodies understand what it means to foster good relations? How can we ensure that that need is taken as seriously as it should be?

Jatin Haria: No, I do not think that they understand that at all. It is probably the weakest understood of the three needs. Having said that, the second need—to advance equality of opportunity—is not very well understood either. That must be key to achieving equality: you can avoid discrimination, but that, in itself, does not advance equality. If people understood where the specific equality duty came from, they would better understand why we need to advance equality as a key public sector aim. There is still a discussion to be held about what people are doing to make those changes.

One reason that good relations are overlooked—I will be generous to public bodies—is that it is really hard to get a grip on how to foster good relations and how to measure that you have achieved that. It is an incredibly hard thing to measure. It is not just laying on events for BME people—that is not fostering good relations. We need to bring communities together somehow in a meaningful way, which would take resources and time. Last week, some people said that they had had such events, but, in my opinion, the people coming to those events do not need to work on fostering good relations; they are there because they already believe in equality between people. It is a really tricky one, so I am not going to criticise public bodies about it.

We just heard about the rise of the far right, which is going to be an increasingly important issue to tackle. That will start with tackling racism in schools. We need to get more black teachers in post, so that people see BAME people as normal and not as the other, and we need to get BAME people into employment across all areas, so that people mix with people of other ethnicities daily. We need to look at housing, which is quite segregated in that there are very few people of certain ethnicities in social housing, for example, which then leads to greater poverty in those communities. A whole range of activity will eventually fall under good relations; however, it will not happen immediately.

It is a tricky question, and not enough attention has been given to what it means. It used to be about fostering good relations between people of

different racial groups, but the fact that it has now been expanded into the generic duty makes it even harder. We should, absolutely, do much more work on that.

Maggie Chapman: I ask the same question of Clare Gallagher.

Clare Gallagher: On good relations, my response is very similar to Jatin Haria's. In my experience, besides the need to advance equality of opportunity, the need to foster good relations is something that people do not understand as well. I do not think that it is the public sector's fault—there is a lack of guidance about what it means. As Jatin has said, how would you measure it?

CEMVO Scotland would encourage much further exploration of the matter. That must take priority. As we experience the rise of the far right in communities—we saw it in England only last year, with the riots—it needs to be given a lot more thought, and in a meaningful way. It is not about saying, "We've engaged with this one group this year and we haven't seen them again, so we've ticked our box." It needs to be a prolonged and meaningful process.

Maggie Chapman: Would you like guidance to be addressed in the discussions that are happening about the PSED reform?

Clare Gallagher: That would be welcomed. One of the struggles with fostering good relations is that the needs of each listed and public authority and those of the people they serve in their community are all different, so guidance cannot be overly prescriptive and say, "You must engage with this group at this time." It must tell people enough of what to do for there to be a balance, because I am not confident that we would see meaningful fostering of good relations if we left it to the discretion of public authorities. We must reflect on the fact that, across Scotland, we have lots of different public and listed authorities with different remits.

Maggie Chapman: Okay. Thanks. Lindsey Millen, I ask you the same question on fostering good relations.

Lindsey Millen: I agree with Clare and Jatin that it is poorly understood. The core issue is that of competence—you will not identify how to foster good relations or how to understand conflicts between different groups if you do not understand the structural inequalities that affect different groups and how all those inequalities interact.

I agree that advancing equality is very poorly understood, too. Not enough attention is paid to that proactive, positive part of the duty. Tackling discrimination is important, but, for public bodies and, I would say, employers more generally, it is more about the response when something

happens—the discrimination or sexual harassment cases, and the response to those incidents and to discrimination more broadly—and the legal aspect of the duty than it is about how they can prevent those things from happening and how they can advance equality everywhere.

That is reflected in the role of the EHRC. The EHRC's work to advance equality used to be much broader, but recently, and probably in parallel with the shrinking of its budget, the EHRC has been discussing itself—and is being discussed—as a regulator taking legal cases and pursuing an individualised approach to inequality. It needs to lead by example and work outside those responses to discrimination, because, although that role is very important, it will not be the thing that achieves change at a societal level.

Maggie Chapman: Okay. Thanks, Lindsey. Jill Wood, I ask you the same question about fostering good relations.

Jill Wood: I am not sure that I have anything to add to what has been said. The answers have been quite comprehensive. We did not look specifically at fostering good relations in our response to the initial consultation or in our general work on the PSED, as we have had less engagement with public bodies on that.

10:45

I can pick up on your point about guidance. I think that it is something of a red herring in that there is quite a lot of guidance out there, and it is quality guidance, but the problem is just that it is not being adopted and used. However, if we were to see substantial revisions, which we want to see to make the duties happen, there would be a role for amended guidance. We have various things in the draft regulations. For instance, I mentioned the more prescriptive approach under EqIA. We think that it could be addressed through regulation, but a template could also be put into the guidance. There are creative ways in which we could put things into the legislation, and guidance could be really helpful in that regard.

Maggie Chapman: Thanks very much. Others want to come in on the subject, too, so I will leave it at that.

Pam Gosal: The inclusion of single-sex spaces and services is absolutely vital for women, including women from BAME and religious backgrounds. During the passage of the Gender Recognition Reform (Scotland) Bill, I highlighted that many religious women do not feel comfortable being touched by biologically male doctors or nurses who are performing examinations such as smear tests or breast examinations.

As our witnesses will know, the national health service employs many women from BAME backgrounds. Now, they will also be made to feel uncomfortable—especially given what happened to Sandie Peggie and how she has been treated—changing in front of a biological male. Doing that would mean that they would break their religion, which, by the way, is also a protected characteristic under the Equality Act 2010. Would that mean that all those women would have to go through a tribunal?

I need to ask about this, because I do not understand it. On the one hand, the public are given separate rooms for prayers but, on the other hand, single-sex facilities are taken away. That defeats the purpose of promoting equality. You will know that women of faith need to use those facilities before their prayers, without the presence of a biological male. Should it be mandatory for all public bodies to offer single-sex spaces and services?

Jatin Haria: We do not really have expertise in the law around that, so I will defer to my colleagues. However, you made a point about where the law already stands on religion and things. I assume that people would abide by that. If there is a conflict, that needs to be addressed. However, I am not an expert on those issues.

Pam Gosal: Jatin, my question is about balance. Those characteristics are all protected under the Equality Act 2010. Sex is protected—female and male—and there are eight other protected characteristics. How would you translate that to get balance? Outside here, those things are happening to women live, every single day. It is so important for the women who are listening, who want an answer about what will happen. Should they not work for the NHS? You mentioned earlier that, in relation to teachers, if people do not see someone of colour, they are not going to be comfortable, or they might not think that the profession is for them. There are so many inequalities, but this inequality is right here in our faces. Will those people not be employed by the NHS? Will they think that the profession is not for them?

Jatin Haria: If that is preventing them from getting employment, we absolutely need to address it. There are other issues that are preventing people from getting employment, but if that one is a particular concern, it needs to be addressed. I am not sure how. We might have to wait for the court decision, as it is very legalistic. However, it is not my area of expertise.

Clare Gallagher: That is similarly not our area of expertise. We would defer to our colleagues who have legal expertise on that. The Equality Act 2010 is very clear that actions that are taken must be proportionate and achieve a legitimate aim.

Although we as an organisation cannot comment on the on-going tribunal that the convener mentioned and we will refrain from making generalised comments relating to the issue at hand, we are clear that everyone has human rights and that every person, regardless of identity, should have dignity and respect, including in the workplace.

Pam Gosal: Can you answer the question on balance?

Clare Gallagher: I think that I have answered it through my answer on proportionate and legitimate aims.

Pam Gosal: Does anybody else want to come in on that question? It appears not.

My next question is for Jill Wood. Do you think that lesbian clubs and associations with 25 or more members should be able to exclude all males, including those with gender recognition certificates?

Jill Wood: That is not something that we looked at in the scope of our written submission to the committee or as part of the original consultation process on the PSED, so I would not be able to comment on that issue this morning.

Pam Gosal: You would not be able to comment on the issue.

Jill Wood: My understanding is that I am here to give evidence on the Scotland-specific duties of the public sector equality duty, so I would not be able to comment on that issue.

The Convener: Pam, do you have any more questions before we move on?

Pam Gosal: No—that is fine, thanks.

The Convener: We move on to questions from Tess White.

Tess White (North East Scotland) (Con): Jill, is it your organisation's view that the law should permit employers and service providers to exclude all trans women from women-only spaces? Will you give a simple yes or no answer, please?

Jill Wood: I give the same answer that I gave to Pam Gosal. I am not here to comment on that this morning, so I cannot give you an answer.

Tess White: Okay. I will move to my second question, convener. In its submission to the committee, the LGB Alliance says that

“unclear definitions of sex, women, men, gay and straight, make it difficult for public authorities to actively meet their responsibilities under”

the PSED. Jill, do you agree with the LGB Alliance that a lack of clarity around the definitions of sex and women has resulted in poor compliance with the PSED?

Jill Wood: Similarly to my answer to Pam Gosal, that is not something that we looked at in this part of the review, the on-going inquiry or before the Scottish Government's consultation. As I said, we are keen to emphasise the potential of the review and the need to return to a more expansive set of proposals that focus on the core duties where there is a lot of potential for change—that is, the mainstreaming duty, EqIA and so on—and for better policy processes from this point onwards.

Tess White: Do you accept that failures by public bodies to meet their existing legal obligations around single-sex spaces will carry a significant cost to the public purse?

Jill Wood: Again, that is not something that we looked at within the scope of the review.

Tess White: Okay—you cannot comment. This is my fourth question, and I have two more questions to ask after it. The First Minister has emphasised that it is currently possible to exclude a trans woman from a women-only space on a case-by-case basis. Do you believe that that is practicable in the public sector, and what about the risk of women self-excluding from spaces and services because they cannot be certain that they are male free?

Jill Wood: Again, that is not something that I have looked at, so I cannot comment, but we would be happy to get back to you.

Tess White: That would be helpful. My next question is on something that Engender has highlighted, which is the importance of data. Given your organisation's support for self-identification, what analysis have you done around women self-excluding from spaces and services—and, as my colleague Pam Gosal said, what about women of faith self-excluding?

Jill Wood: Again, I will need to get back to you on that, but we would be happy to do so.

Tess White: Do you accept that clarity of data on protected characteristics is important?

Jill Wood: [*Inaudible.*—for many years alongside the National Advisory Council on Women and Girls. We have advocated for a new duty on intersectional data collection and use, as well as gender budget analysis. We absolutely support better data use. I cannot comment specifically on any analysis that has been done as I have not personally been involved in that work, but I would be happy to get back to you.

Tess White: This is my final question, convener. If you are calling for better data, it is absolutely critical that data on the protected characteristics is clear and that the definitions are clear. How can you manage that if you do not measure properly?

Jill Wood: I think that your question relates to broader aspects of the Equality Act 2010. We are here this morning to talk about the review of the Scotland-specific duties. Let me take that question away and come back to you.

The Convener: Do members wish to ask any other questions before I end this part of the meeting?

Members: No.

The Convener: I thank our witnesses for their evidence. I will suspend the meeting briefly to allow a change of witnesses.

10:55

Meeting suspended.

11:05

On resuming—

The Convener: Welcome back. We now move on to our second panel. I welcome to the meeting Dr Pauline Nolan, head of participation and policy at Inclusion Scotland; Rohini Sharma Joshi, diversity and inclusion manager at Age Scotland; and Vic Valentine, Scottish Trans manager at the Equality Network.

For the benefit of those who were not here at the beginning of the meeting, I remind all members that rule 7.5.1 of the Parliament's standing orders prevents members from referring to any matter in relation to which legal proceedings are active, except to the extent permitted by the Presiding Officer. I advise members that Sandie Peggie's employment tribunal case against NHS Fife is considered to be active for the purposes of the sub judice rule and contempt of court. I have sought and received permission from the Presiding Officer about the extent to which we can explore matters related to the case today and throughout the course of the PSED inquiry. On the basis of that permission, questions about issues connected to the case will be admissible today, but questions about the specifics of the case will not.

We move on to questions. To what extent do you think that public authorities understand the terms and the aims of the public sector equality duty in Scotland? We will start with Rohini Sharma Joshi.

Rohini Sharma Joshi OBE (Age Scotland): Thank you for the opportunity to speak about this. First of all, "public sector" means that it is for the public, and the public sector duty is about delivering to the public. I am not sure that the public sector fully understands: it may understand the written text, but when it comes to the delivery of the public sector duty, I am not sure that it fully

understands. Some public authorities do understand the public sector duty, but there is a huge gap when it comes to what to do with it and how to deliver it.

If you ask whether public sector equality duty requirements are being delivered, my answer is that, mostly, they are not. There are some very good examples of public sector organisations doing much, but others do the minimum and get away with it.

It is important to say that understanding the duty and understanding what to do with it are two different things. That is where the big gap is.

Dr Pauline Nolan (Inclusion Scotland): Thank you very much for inviting me here today. We are no closer to achieving disability equality and disability justice than we were 12 years ago when the PSED regulations came in.

As you heard last year, the listed public authorities say that they do understand the PSED. I agree with my colleague Rohini Sharma Joshi that that is a basic understanding of the duty, rather than an understanding of how to deliver it.

There is the opportunity for the PSED and the associated EqlAs to be a real driver for change for disabled people and for all people with protected characteristics. However, currently, the process is often a tick-box exercise. There is a lack of evidence on the effectiveness of mainstreaming, equality impact assessments and procurement duties, which is not being addressed. There may be complaints about bureaucracy and about challenges such as resources, but there are no evidenced actions to improve implementation. That is a big problem: without that implementation and evidence, there is not much to report on.

Vic Valentine (Equality Network): Thank you for inviting me to be here today. I echo lots of my colleagues' comments and also those of the witnesses on the first panel. There is a good understanding that the PSED requires a process of public authorities, but maybe less of an understanding that the required process needs to connect to the change that the duty is designed to drive.

On challenges around the public sector equality duty for LGBT people specifically, and maybe trans people in particular, there can be a real lack of understanding of how LGBT inequality relates to what you might call bread-and-butter issues. We tend to find that public authorities approach us about issues that specifically consider LGBT or trans people's lack of access to a particular kind of healthcare or experience, but there can be a total lack of awareness of inequalities for LGBT people when it comes to things such as housing, homelessness or social security. That, again, has to do with a lack of connection to the whole

purpose of the duty, which is to drive change for all people with protected characteristics and to genuinely transform people's lives. If people are not able to connect their policy processes and what they are working on to the fact that inequality is even there or that they need to address it, then, automatically, those processes will not address those issues.

Maggie Chapman: Good morning to the witnesses. Thank you for joining us this morning and for your comments so far.

You have all identified a gap between process and outcomes, and a failure to understand the connections. Given that one of the reasons for this inquiry is the lack of other levers to consider changing outcomes and making human rights and equalities real for people, where are the failures in that implementation gap? We have talked a bit about understanding, but we also heard questions about lack of accountability and leadership. Why does the public sector equality duty as we have it now not work? Rohini Sharma Joshi, I will start with you.

Rohini Sharma Joshi: Thank you very much. That is a very appropriate question. I said at the start that there is a huge gap between understanding and delivery. Although the public sector is there to serve the public, it has been allowed to make excuses—much was said on that in the previous evidence session. In Age Scotland, we try to make sure that, when we are delivering a service for older people, we take account of what is required and how to communicate with them.

The biggest issue is that equality belongs to us all; we all are part of equality. When delivering equality, the public sector equality duty can be an overarching theme in everything and anything that we do. Why is it that resources are used as an excuse all the time? Why is it that, when it comes to equality, there are no resources? Why is that difficult when it comes to equality?

We use the term “hard-to-reach people”—we say, “We can't get to them. We don't know who they are.” The public sector and the officials who deliver the duty find it comfortable to sit in their offices and do the desk job rather than going out to the public that they are there to serve. We can bring in much legislation, but the mindset needs to change and there needs to be a wish and a will to do what needs to be done.

I have learned from my experiences that most important is the fear of getting it wrong. Excuses are then used—“If we don't do anything, we won't get it wrong.” It is a complex issue, and there is a combination of trying to do everything at one time, not taking it one step at a time and learning from it to go forward.

There is also this idea that we need more guidance. Some of us have been in this area of work for 25 or 30 years. How long can we continue to speak about needing more guidance, more good practice, best practice, and about the living experiences? We change terminology to say the same thing.

We need to get away from those excuses and from why it is not happening; the public sector needs to focus on what needs to be delivered and how we take the first step towards it. Otherwise, there are so many barriers—not for public authorities themselves, but for the public. Public authorities talk about their own barriers, but they do not think about the barriers faced by the public.

11:15

We need to really look at the bigger picture and the foundations of the PSED. We can have legislation, we can reform it, and we can change it, but, unless it delivers, it is meaningless for the people at the grass-roots level who suffer. I take pride in working in a community at a grass-roots level and understanding it. We at Age Scotland try to listen to the community all the time, particularly to older people. The public sector needs to go to the public to see what their real needs are, rather than people sitting in their offices thinking about what they need and thinking to themselves, “We have power, we have authority, and we can say no.” There needs to be a mindset change. Much needs to be changed, rather than just the legislation.

Maggie Chapman: Thanks, Rohini. That is very strong. You talked about the “hard-to-reach” communities. Last week, we heard them reframed as the “seldom heard” as well. I like the framing of “easy to ignore” because that puts the responsibility on us, on public sector bodies and on public agencies. In terms of going out and listening, how do we ensure that we do not just spend more time talking? I am interested in your view on that.

Rohini Sharma Joshi: Generally, with the public sector equality duty, people think that having a meeting or discussion, or having a one-off consultation with some groups, means that you have taken something forward, but it does not; it is just talk.

You are quite right. Reaching out to people is done by reaching out; we do not need any labels, such as “hard to reach”, “seldom heard” or any of that. We do not need labels for people. They are the public. Local authorities and the NHS should know who the people are who live in their area or their city. We have been talking about data. Data can only be valuable when we go out and speak to people, getting over the fear and getting out of our

comfort zone. We should leave labels out. People are people. They are our communities.

Communities can be different. We talk about different protected characteristics. We might all have one, some or many of those characteristics. That is the intersectionality of it. We understand that when we speak about this topic, but the issue is when we can take off and start delivering. We do not need 20 pages of action plans—just have one page. Start something. Learn from it. Deliver. Continue it. We cannot come back here after 20 years—I will be very, very old—to say the same thing. It is tiring. It is exhausting for people who work in equalities to keep saying the same thing when nothing changes. I watched the local authorities giving evidence. It is the same thing again and again.

What we need to do is measure the impact of the guidelines and of the good practice. Have they made a difference? If they have not, we need a new approach. Everybody should have examples of their own good practice. Why do they have to follow? Organisations are different. We need to get away from it being the same, the same, the same—we need to look at what works and what does not. Again, it is about the impact on the individuals we are here to serve. That is important. If those individuals cannot access services because there are so many complex barriers, that means it is not working. We can call it what we like, but it is not working.

Maggie Chapman: Thanks, Rohini. Pauline, you were nodding.

Dr Nolan: Yes, quite vigorously. Quite a while ago, I started referring to groups of people as being “seldom reached”—rather than “seldom heard” and “hard to reach”—because of both the lack of effort to go and meet people directly, which Rohini mentioned, and the barriers that those individuals face in being involved in mainstream exercises.

I urge public bodies to engage with people with protected characteristics in all parts of this work. Public bodies should go beyond taking reasonable steps to involve people and remember that there is a requirement. For example, in the United Nations Convention on the Rights of Persons with Disabilities, general comment 7 says that disabled people’s organisations, as representative organisations of disabled people, need to be involved

“at all levels of decision-making.”

It should be a requirement that, instead of cutting funding to voluntary organisations, public bodies should work at a local level with disabled people in their communities. Those organisations make a huge difference in their communities and need to be reached out to. We need to get to those

communities, and then to the intersectional communities that they represent. Again, disabled people are not a homogeneous group. I am a disabled woman, and there are disabled BAME people and disabled LGBT people, and efforts need to be made to take an intersectional approach, and to find out what the barriers are, where the discrimination is taking place, and what needs to be done to overcome discrimination for those groups in those communities.

Maggie Chapman: You talked about the failure overall to address inequalities for disabled people. The PSED is only one lever in the range of available measures. I am wary of stepping on colleagues' toes—I know that others want to come in on these issues, too—but is the understanding of what equalities actually means underpinning some of the failure? If so, what needs to change? Given the lack of action for years, is there something particular going on for disabled people?

Dr Nolan: As previous witnesses said, excuses have been made, which has diminished action on equality. For example, the Covid pandemic was used as a reason for not focusing on the PSED. During the pandemic, the rights and equalities of disabled people were trampled all over, as were the rights and equalities of other groups. Those groups were not considered in the emergency planning and were not considered properly in the response. There was too much panic around, I suppose. As colleagues have said, there is a lack of accountability there.

On other ways of doing it, there is the disability action plan. As you are aware, we had a campaign about the plan, because we had worked hard with the Scottish Government to develop it, but it was watered down. After we campaigned quite hard against the watered-down proposals, new proposals are coming up. However, we still do not have a disability action plan—I believe that we have been waiting for about two years for it to come down the line. I am not leading on that work, but there was supposed to have been an immediate priorities plan. Two years later, we are still waiting for those immediate priorities to be met, never mind planning ahead.

Maggie Chapman: The frustration that you and Rohini Sharma Joshi feel comes out quite strongly in what you said.

Vic Valentine, given that the PSED is not delivering, what are the barriers and the failures?

Vic Valentine: It is important to be realistic. One of the big barriers, if we genuinely want to drive transformative change and address the widespread inequalities that still exist across Scotland, is that that requires resourcing—resourcing of people and financial resourcing. We often find that public authorities know what the

problems are and often—not always, but often—know what some suitable solutions would be, but are unable to deliver them. They just revisit the problem in a new way, using a new process of engagement. What really needs to happen is that they fix the problem that they have identified, and which communities have often empowered them with the tools to solve. That is a massive gap.

We have seen that issue throughout the process. Several people will refer to the joint submission that a range of equality stakeholders made to the Scottish Government in 2022. Overall, we think that the problem that public authorities face when they report on the duty is that they do not have a very good story to tell about the change that they have been able to make. The issue is not that the reporting requirements are difficult because they are overly bureaucratic; ultimately, it is that public authorities are not able to evidence that they have done all that much in achieving the three aims of the duty. We can make the requirements as easy as we want to, but if we do not change the problems around resourcing and competency in such a way that the requirements deliver positive change for people, it will not matter how public authorities report on the duty. The outcome will always be the same.

Maggie Chapman: You talked about the lack of connection to the whole purpose of the duty, which is to drive change, and you mentioned resourcing and competence. Do you think that those are the two issues that are working together to create that disconnect, or are there other things going on as well?

Vic Valentine: It is a pretty complex picture, but there is also the issue of equalities being seen as an add-on. For example, I genuinely think that equality impact assessments can be a powerful tool for ensuring that policies meet the needs of everyone, provided that they are really robust, that they look at all protected characteristics and that they stress test the actions that public authorities intend to take. However, they tend to be used at the end of a policy process in which the action that a public authority is going to take has already been decided.

All that equality impact assessments tend to test is whether there are unintended negative consequences that have not been thought about. They are rarely done at the start of processes, and they are rarely more ambitious than that. In particular, they rarely look at whether the proposed course of action will address any existing inequality. It is all very well and good to say that a policy will not cause any additional adverse impacts on people with protected characteristics, but if it ignores existing inequalities and does nothing to address those, while it might

not be a negative, it will not be the right policy decision if it does not address existing inequalities.

A range of things are going on, and I do not think that there is an easy, quick-fix, one-step solution. However, overall, in theory, the duty could be a really useful tool for transformative change. That is why third sector stakeholders are so frustrated about the duty. It is not as though we think, “Oh, this is totally rubbish.” It genuinely could make a real difference. The frustration exists because it is not being used in that way.

Maggie Chapman: You mentioned the idea of using the tools earlier on—in other words, starting from the equality impact assessment approach and looking at existing structural inequalities and so on. Do you think that that would help us to get into the nuts and bolts of what you described as the “bread and butter” of everyday life—housing, education and healthcare—rather than specific issues that relate to specific protected characteristic groups?

Vic Valentine: I think that it would definitely help to an extent if more resourcing was given to enabling public authorities to have a better understanding of the fact that it is not only with certain kinds of policy issues that they need to consider the impact on their communities.

Although we might think about protected characteristics when we look at the public sector equality duty through the lens of the Equality Act 2010, ultimately we are simply talking about members of communities. It is important that housing policy addresses the housing needs of everybody. Of course that will include people with protected characteristics, which will involve thinking about the issue in the context of the public sector equality duty, but, often, that is not how people think about it. They think that they will develop a housing policy and then, at the end of that process, they will check that they have not accidentally written it in a way that would somehow increase the inequality of LGBT people’s access to housing—assuming that they are aware that LGBT people have unequal access to housing.

I think that the approach that you described would help, but there would need to be an increase in competence and skills among public authorities so that they could properly identify what the equality needs are in certain areas. The question of why the duty is not delivering is complex but, equally, I do not think that it is unsolvable.

Maggie Chapman: I see that Pauline Nolan wants to come back in.

11:30

Dr Nolan: Yes, I just wanted to add to that. Inclusion Scotland has recently conducted two surveys: one for LGBT+ disabled people, on their experiences of health and social care support in Scotland; and one for providers, on their experiences of delivering that health and social care support. The survey for people with lived experience closed on Monday, and we are analysing that at the moment, so I cannot share any highlights from it. We had about 90 responses to that survey, but we had a limited number of responses from the service delivery organisations and public bodies that we aimed to hear from, which I think is telling.

The idea of those surveys is to help us to produce a toolkit for providers and public bodies to show them what needs to be done with regard to taking an equality and human rights approach and to help them in terms of planning, PSED and mainstreaming outcomes. However, we needed that engagement, and it is disappointing that they are not engaging in such things. Again, it shows the devaluing of the intersectional issues and barriers that are faced.

The Convener: We move to questions from Paul O’Kane.

Paul O’Kane: Good morning. I asked the previous panel of witnesses how we might extend pay gap reporting, particularly in terms of ethnicity and disability, and I am particularly interested in getting a broader view on that.

With regard to older people and people who are ageing in work, there is often something of a disability gap that can be tested and might develop over time. It would be good to get a sense of whether you think that we should extend the reporting to consider disability within that pay gap. It would also be interesting to hear witnesses’ views on ethnicity in that regard. Pauline Nolan, could you start?

Dr Nolan: We have generally been supportive of the proposal to extend the pay gap reporting to disabled people. That move is overdue, because there is a big pay gap there. There are other barriers to work, of course, as was brought up by the previous witnesses. There are big barriers to employment for disabled people, and we know of disabled individuals who have repeatedly applied for jobs and have undertaken internships with us and others but still face barriers to getting in the door in workplaces.

There needs to be a greater examination of the barriers to getting into the workplace and of discrimination in the workplace. However, in terms of the pay gap, the points that were raised earlier about data are important. There needs to be a more nuanced approach to analysing data. We

already have figures that show that, on balance, disabled people earn £2.50 an hour less than non-disabled people, and we also know that people with learning disabilities are less likely to be in work, are more likely to be on the minimum wage if they are in work and are more likely to experience that pay gap. Further, we know that, as others said earlier, disabled women are more likely to experience a pay gap. Again, the issue is nuanced and intersectional, and it needs an approach that looks at the pay gap between different impairment groups and also takes a gendered approach. It is going to be quite challenging.

The other point to make is that we need to get the gender pay gap reporting right before we bring in reporting on disability and ethnicity, because there are a lot of shortfalls there.

Rohini Sharma Joshi: I do not have much to say about this, but, on the issues of discrimination and the pay gap, it is good that work has been done to look into the gender pay gap as it has made a difference in the local authorities and in the bigger picture. That showed the benefit of doing that work, and there is good practice in that regard, although the work was done by people sitting at their desks and more needs to be done. As a next step, it would be hugely useful to include the issues of ethnicity, disability, sexuality, age and location in terms of access to jobs, and to consider the scale of those issues. Understanding all of that is very important.

For Age Scotland, what is more important is what the public sector does with the data to really showcase the gaps that exist and where more work needs to be done. The public sector equality duty talks about identifying the gaps and taking positive actions as well.

I think that it is important, starting from the gender pay gap, to move on to other protected characteristics and to people who feel left out and face barriers, and then it is about what we do to fill that gap.

Paul O’Kane: Your last point is interesting, because in the earlier session, the point was raised that although we have data sets and quite a lot of information, and people are very often good at reporting—although not perfect, as Pauline Nolan suggests—if everybody reports but there is a lack of action, the implementation gap then becomes the issue.

This is maybe a broader question about data for everyone, but do you agree that there is a lot of data, but the challenge is the deep-dive interrogation of that data?

Dr Nolan: Yes, I think that the challenge lies in interrogating the data. There is also a need to collect better and more disaggregated data,

although there are challenges in that in small local authority areas, where GDPR issues, which were raised this morning, might come into play. If we are just talking about looking at the data itself and asking what changes need to be made, and ensuring that we are looking at all those different aspects, I think that we need to consider collecting more data and collecting it in a different way. We must also ensure that we can match it up and compare and contrast it, which will be a challenge as well.

Vic Valentine: We do have lots of data, although the widespread collection of data on sexual orientation and trans status is newer. Questions were asked about that for the first time in the Scottish census in 2022, so we sometimes see a bit more of a gap in the data around LGBT+ people. Sometimes, that has been a justification for a lack of action, specifically on improving LGBT people’s equality. It is really important to acknowledge that the lack of data collection is partly a product of negative social attitudes towards LGBT people. For example, asking a question on sexual orientation in the census before the previous one did not pass public acceptability testing, so we end up in a scenario in which we do not have a lot of national-level data about people’s sexual orientation. Because there are negative views about lesbian, gay and bisexual people, we are not able to ask those questions; subsequently, we are told that there is not enough data about sexual orientation to take action on it, so there is almost a double punishment around a lack of data, although the position has been significantly improving in recent years.

As I said in my answer to Maggie Chapman’s question, we sometimes see that people know what the solution is, but there is not the resourcing to do it. There can be the same issue with data collection, and public authorities end up saying, “We have heard and understand the issues, but we have not collected the data on them in the way that we have described we will collect data in order to evidence actions that we will take,” so they need to go back and collect the data in that way before they can connect it to doing something. That can be really frustrating, particularly for the people who are involved in those processes, because they have already shared their experiences and explained their situations to people, but because that does not fit the process-driven approach to making change, they are asked about them again to try to fit them in.

Paul O’Kane: Thanks.

The Convener: We will move on to questions from Evelyn Tweed.

Evelyn Tweed: Good morning to the witnesses. Thanks for being with us and for your answers so far. What are your views on the Scottish Government's revised approach to assisting listed public authorities to embed inclusive communication? Would Rohini Sharma Joshi like to come in first?

Rohini Sharma Joshi: Inclusive, two-way communication is very important. Removing communication barriers is a foundation of delivering the public sector equality duty, and how that is done is important. We need to be mindful of multiple communication barriers. We mostly talk about language, but some people need to have audio, Braille or sign languages.

There have been opportunities; some agency organisations were given a lot of money to develop good guides on specific communications. Over that period, a lot of good work was done but, after that, those guides were not used by the public sector, and then all the investment, resources and expertise disappeared. It was a waste of money.

Inclusive communication can lead to an openness with the public; it also gives them information about services. We want to speak to the public and we need to ask why they are not coming to us.

I am sorry to say that, post-pandemic, the public sector is increasingly making its information available digitally, because there was no face-to-face contact during the pandemic. In a way, the public sector ticks the boxes, because information is available on the websites or social media, but that information does not reach the people it is for. Resources and money are used, but the information is only on websites, and there are people who cannot or do not use them. Older people in particular are highly unlikely to go to websites, as they do not know how to navigate the system—let alone get the information if they cannot speak English as well.

There is no real understanding of whom the communication is for—who the target audience is. The public sector uses communication to tick the box, but that is for its own convenience, rather than for the audiences it is meant for. Inclusive communication can easily be done once we start understanding whom it is for and who we have as an audience. Removing the language barrier and providing different information formats is required by law.

The situation is going backward in the sense that the more services are online and inclusive—it could be a doctors' surgery or any public sector local authority—the more the burden is on the public, whom we are there to serve, to really find out the information one way or another. If that

becomes challenging and difficult, the public are just left the way they are—they do not seek the information or know what is out there for them.

Inclusive communication is at the core of delivering the public sector equality duty. The public sector needs to understand the public at grass-roots level. I am all about reaching out, speaking and delivering to the public—that is our job; we get paid to do that. However, the public are not accessing information and there is no two-way communication. It is only one way—giving out the information and telling people where it is so that it can be said in the equality impact assessment that it was done.

Vic Valentine talked about the resources that are needed, but resources could be wasted, because they are not serving their purpose and whom they are meant for.

I can go on about this, but I will leave it here.

Evelyn Tweed: Thanks. Does anyone else want to come in?

Dr Nolan: Inclusion Scotland, disabled people, disabled people's organisations and a lot of other organisations welcomed the initial proposal for a specific duty on inclusive communications. However, we note that the reformed proposals are much weakened. They propose training and guidance, which we think is unlikely to lead to meaningful change.

There is already a requirement to make reasonable adjustments, and making changes to deal with communication barriers can be a reasonable adjustment. However, I agree with Rohini Sharma Joshi that the onus is put on individuals to communicate those barriers. We need a standard for public bodies, because failure to provide information in accessible formats prevents disabled people from accessing communities and services on an equal basis with others. There are really good reasons to provide those formats, but we must do it well.

11:45

I can give an example from lived experience. We recently did research as part of a project on disabled people's lived experience of the DWP and universal credit. Two blind participants in a focus group told us about their struggle with getting public authorities to provide letters in alternative formats. We know of one challenge by JustRight Scotland, which had to write to a local authority to say, "This person needs to be sent emails rather than physical letters." The people would go one time and say, "I need information in this format, so could you please note that down in my folder?" and the authority would do that once, but then would fail to reimplement that the next

time. That is an important demonstration of the need for additional regulation.

Public bodies need to go much further so that the system does not rely on individuals knowing what to do. Public bodies need to know what to do specifically on inclusive communications. We might also need to be a bit clearer on what inclusive communications cover in public authorities when it comes to information, which I might go into a bit more in answer to the follow-up questions.

Vic Valentine: I mostly echo the other panellists' comments. To go back a bit, we really welcomed the idea of introducing a specific duty on inclusive communication. When we recently carried out a survey with trans people, one thing that they told us about trying to access benefits was that, essentially, the application processes for benefits are themselves inaccessible. A lack of inclusive communications means that, although public bodies should allow people to seek redress for the negative experiences that they have, those processes become shut off to people. A duty that requires inclusive communication could really address that.

What probably happened is that the realisation of how much such a duty would cost and what it would mean if public authorities were genuinely delivering on the duty caused the Scottish Government to think that it was almost too ambitious. Instead, that has now become a kind of retreat into saying that the approach will be about guidance and trying to show leadership. I hope that that will make a difference, but will it make a transformative difference? I really do not think so, unless there is actually a duty in law.

Evelyn Tweed: How effective is the Equality and Human Rights Commission at regulating public authorities' performance on the PSED? You are smiling, Rohini, so I will go to you.

Rohini Sharma Joshi: The commission is doing the job, but it could be better. We are not sure whether there are any penalties for any public sector organisation that is not delivering on the public sector equality duty. We are not sure whether there is a power that can be enforced or whether bodies can be given a period to do more on specific issues, as I think was mentioned earlier. More needs to be done through the regulatory power. We can have a duty or a law but, if there are no consequences for not delivering on that, we will continue with the situation in which some organisations do much more, others do little and some do nothing at all.

Another issue is that it is difficult for people who are interested to find out who did what and which public sector organisation did much better than others. That is similar to the situation with equality

impact assessments when there is a change in service—the public sector hides. The impact assessments are not very good in the first place—I am surprised sometimes, because you sit and read 10 pages and think, "What does it say?" You cannot find two points that you think are meaningful.

We need less emphasis on writing pages and pages and more emphasis on being very specific. Previously, there was discussion of how the new equality impact systems that can be put in place are very specific and focused, whereas currently there is an opportunity for some public duty providers to write things that are irrelevant, are not meaningful and do not make sense at all to the public. We need to know where the information is, and it should be more open and available to the public, because they have a right to know if any public sector body has not delivered to the public. If that is more apparent, it will put more onus on the public sector to improve. I know that there are issues with resources, and I am sorry, but I do not want to see that used as an excuse for non-delivery. The PSED is law and bodies have to deliver on it and make it work.

Dr Nolan: We did not answer a question about the EHRC in our written communications, but we agree with the points that Engender made earlier about issues with compliance coming down to a lack of funding and the big funding cut. The EHRC has had an 85 per cent cut in funding since 2007, and the scope for enforcement action is narrow. I really agree with Engender's recommendation to make an example in public of authorities that are not delivering on the PSED and then support them to improve that delivery, rather than punishing them. If they are not given that support, nothing will change and they will keep reporting on the same old, same old.

Vic Valentine: I echo my colleagues' comments. The Equality Act 2010 is a fantastic piece of legislation that protects many people from discrimination, but one of its weaknesses is that it relies on individuals knowing their rights, knowing that they face discrimination, getting legal representation and winning discrimination cases. Sometimes, a case that they win will have strategic significance and make a difference for others, but sometimes it will not. Ultimately, the public sector equality duty provides an opportunity to shift the onus from individuals having to make change around the discrimination that they face and on to authorities with resources, which should make a difference.

I echo the idea that some of the problem might be around talking about the PSED in terms of enforcement, which can make it sound as though it is about punishing public authorities after the fact, whereas it is more about looking at what

resourcing and support is required for public authorities to take the actions that mean that individuals are not required to seek redress from them. The term “enforcement” is in the 2010 act, so that is how we talk about the approach. However, it is about collectively agreeing that it is public authorities that should be doing the work of addressing inequality and discrimination, rather than people who face discrimination having to seek redress.

Evelyn Tweed: Thank you. That is me, convener.

The Convener: Thank you. We move on to questions from Marie McNair.

Marie McNair: Good morning, panel. I note that you observed the previous panel session, so you probably heard the question that I asked and the responses that I got about the delay to the PSED reform having an impact on organisations’ abilities to fulfil those duties. Has the delay had a similar effect on your organisations? I ask Pauline Nolan to answer first.

Dr Nolan: Yes, it has. We represent people with lived experience. We can look at the reasons for the delay, such as the Covid pandemic, which I mentioned earlier and which Jill Wood from Engender spoke about. She said that that crisis meant that equalities were pushed to the back and that public bodies did not carry on with the review during that time. One of our largest member organisations, Glasgow Disability Alliance, produced a report about the impacts of the pandemic and it says that inequality was supercharged by the planning and the responses to the Covid pandemic. The effects both in advance and afterwards need to be looked at, because the changes were hugely important.

The delay has caused public bodies to review and weaken the proposals. It has been difficult to sit by when we know that inequality for disabled people is widening across Scotland. There is also the wider context of the cost of living crisis and the general crisis—which Jill Wood talked about—with attitudes and world views changing because of a new world order, as it were. Disabled people’s lives could be impacted as they experience attitudes changing.

The duties need to be strengthened, but they have weakened. We hear arguments that the PSED is not compatible with United Kingdom law, but we need to take a hold of it, because these are our public authorities.

Marie McNair: Do you have any suggestions on what needs to happen?

Dr Nolan: Public authorities need to work closely with equality organisations at both national and organisational level, to listen to our

recommendations on what reform of the PSED is needed, and to give us fuller answers. They also need to close the feedback loop and to involve us more. There has been a lack of proper engagement and involvement overall. We probably need a group of the type that the previous panel talked about—a committee or advisory board of equalities organisations to advise public authorities.

Vic Valentine: The main impact is that there have not been improvements in how public authorities actually deliver on the duty. To go back to my initial points, we are perhaps approached less by public authorities that understand the duty in the context of their PSED work around trans equality issues, because public authorities often do not see where trans people fit into those bread-and-butter issues.

I do not want to repeat myself, but this is ultimately about the change in outcome that is wanted as a result of the reforms, and not about consistently revisiting changes to the process. That has been the big frustration for our organisation. We have responded to numerous consultations on the subject, been to lots of stakeholder events and fed in in lots of ways. I reread our submission to the Women and Equalities Committee’s 2018 inquiry into the enforcement of the Equality Act 2010, and one of the key things that we said was that the PSED could be a fantastic tool for transformative change but that it was not well understood or well implemented. It feels like we go round in circles on the issue. We need to get on with the things that make a real difference.

Rohini Sharma Joshi: Strengthening the public sector equality duty can be positive if there is an understanding of why it has been strengthened and if what needs to be done is taken forward. The other side of the coin is that the public need to know what their rights are. I am trying to organise consultation with older people to make them aware of their rights to access services, because the public sector duty is there to deliver that. If public authorities know about that, they can tell people that they have those rights. The public sector equality duty needs to be reformed and strengthened, but I believe that what is done with it is more important than the changes that are made.

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

Maggie Chapman: I want to shift the focus a little bit. In the public sector equality duty, three needs are outlined, and the third of them is about fostering good relations. That need is often overlooked; public bodies do not necessarily focus attention on it or fully understand what it means. I am interested in your thoughts on that.

Pauline, I will start with you. Where do you see the fostering of good relations in your work with public bodies on the public sector equality duty? Do they get it? Do they talk about it? Does it feature at all?

12:00

Dr Nolan: I do not think that there is a big focus on it. They need to be careful not to put the onus for fostering good relations on the equality group. The onus needs to be on all those who provide services to disabled people. They need to provide more positive opportunities for fostering good relations.

Disabled people are not a homogeneous group, so it is difficult to speak to the needs of individual disabled people and communities of disabled people where they intersect. However, people's experiences of things such as equality not being advanced or discrimination in the workplace and the community in the form of hate crime or mate crime really exacerbate those poor relations.

As others have said, there needs to be more equality training for people from an early age. There needs to be visibility of disabled people in leadership positions, in the Parliament and in positions of representation. That is why we run the access to elected office fund. There needs to be more visibility at local levels, in local councils and community groups. Access to politics needs to be widened—and, again, it should not be because a disabled person wants to access politics, it should be the community organisations widening the access.

A lot of voluntary organisations in Scotland are doing some of that work—for example, befriending—but they are being defunded at the moment because of the resource crisis in local government. That defunding is really unhelpful and it can leave people very isolated. Although that is a separate issue, it is the other side of the coin for fostering good relations. If you do not do that work for individuals and communities, you will leave individuals isolated, lonely and experiencing all the different health issues, including mental health problems, that we know can result from that. It contributes to those social problems.

Maggie Chapman: The example that you used is one that involves thinking about equality stuff at the end of a budgetary decision process, rather than thinking about the equalities impacts of budgetary decisions as they are being made.

Dr Nolan: Exactly. Working in co-design at every level with people who have lived experience, with disabled people's organisations and with groups of disabled people means that you do not have to look back and change things. It means

that you start the process at the time when it should be started.

Maggie Chapman: Rohini, what are your views on Age Scotland's understanding of, or work with, the third need of fostering good relations?

Rohini Sharma Joshi: I think that relations are a two-way street. We cannot have one party putting in more effort than another. Age Scotland has been trying to involve many different groups to have their say and have a discussion on the issues, because that relationship creates understanding of their needs, expectations and aspirations.

Pauline Nolan talked about the cuts in funding. The community groups, the voluntary sector and charities are the vital link in those relations. They are the mediators but, when it comes to making cuts, they go. That has been happening a lot.

Another big part to consider is how the public sector uses those groups. If you fund a community group, do you see it as a partner as you develop good relationships with communities, or do you still act as an authority? The approach is, "We give you so much money, and then you do it for us." However, there is a different way to foster good relations with different groups, communities and so on, which can help community members to develop their understanding and relations between one another.

The practical side of that is that older people can have different complex needs or communication issues. We talk about good relations, but we need to understand better what needs to be done to make sure that our relations with older people are better and are at the same level as our relations with others. That comes with understanding the needs of the most forgotten, vulnerable and marginalised in our society—disabled people, religious people, ethnic minorities or people with different sexual orientations—because they are the ones who are left out when those good relationships are developed.

Some people with protected characteristics are more marginalised than others, but we have to look at the bigger picture and think, "We have a good relationship in that area but not in this area. How do we develop and progress from there?"

Maggie Chapman: Thank you, Rohini. Vic, will you comment on fostering good relations? Where do you see the barriers and the opportunities? Is any work happening in that area?

Vic Valentine: I share the reflections of the previous panel. I do not think that the second arm—"advancing equality"—is necessarily well understood, but I agree that "fostering good relations" is the least well-understood duty. There is an opportunity for it to make a real difference,

but different public authorities, depending on what they do and the make-up of their populations, will have totally different roles to play when it comes to fostering good relations.

To address the lack of understanding about LGBT people's needs, I note that social attitudes around sexual orientation and towards lesbian, gay and bisexual people have, as a rule, really improved. However, in rural communities, for example, lots of lesbian, gay and bi people can still feel really socially excluded, judged by their communities and unable to come out. In such areas, the LGBT population is smaller and more hidden, and you might end up with a situation where the fostering of good relations in the context of sexual orientation is seen as really important but the local authority does not have much experience of working on LGBT issues or connecting with LGBT community groups. That creates a vicious cycle in which the work that is most needed is the least well-evidenced and has the least amount of expertise involved in it.

Pauline Nolan mentioned hate crime. There is probably a lack of good, robust evidence on what actions are effective in fostering good relations. It is so important that there is an understanding that those actions will differ depending on the groups that you are talking about. I cannot think of any instance of a public authority approaching us on LGBT+ equality work in the context of fostering good relations.

Maggie Chapman: That is pretty stark and, arguably, pretty damning, given how long the duties have been in place.

On the second and third needs, I take the point about "advancing equality" being lesser, but do both "advancing equality" and "fostering good relations" need to become much more prominent in the Scottish Government's work on current and future reviews and the public sector equality duty, given the level of hate crime, the rise of the far right and the undermining of equality and diversity work that is happening across the board and not just in Scotland? Does there need to be more focus on that?

Vic Valentine: On the point about advancing equality, it is easy to give an answer—yes. On the point about fostering good relations, there are much broader questions about social attitudes and good community cohesion between groups, so the public sector equality duty might be simply too blunt an instrument to solve all the problems in that regard. Does that mean that we should not use it? Of course not, but we should use it as a lever.

Our organisation is involved in a lot of work on delivering good legislation to address hate crime, and we work with criminal justice agencies to try to

ensure that LGBT people have good experiences when they report hate crime. However, we have endless conversations about that very much being a case of solving the problem after it has occurred. We need to drive changes that mean that people are not prosecuted for hate crimes because hate crimes do not happen, although I know that that sounds horribly idealistic.

It is important to be honest and say that we do not feel that we have all the answers to that. That would require dramatic changes in social attitudes, and that is true not just for LGBT people but for a range of people who are marginalised in society. Across the board, it would be good to see a shift in focus, emphasis and resourcing in order to drive that change, because, ultimately, that is what will reduce inequality and discrimination. How to do that is the more complex, difficult and less-known work.

Rohini Sharma Joshi: If good relationships are established between different groups, advancing equality becomes easier. There is a gap if there are no relationships. If there are no relationships with the people for whom you are delivering and working, advancing equality becomes difficult.

The communities must have their own voices; we should not speak on their behalf. For example, Age Scotland has set up a Scottish ethnic minority older people forum and an LGBTQ+ Scottish older people's network. That brings people together so that they have a stronger collective voice. Giving community groups a voice matters. Only by allowing them to raise the issues that they face—older people, in particular, have faced barriers over the years—will it become easier to advance equality of opportunities for everyone.

Maggie Chapman: Pauline, do you want to come in?

Dr Nolan: I have nothing to add.

Pam Gosal: I thank the witnesses for all the information that they have provided so far.

I asked this question of the witnesses on the first panel—those of you who were here will have heard me ask it—but I did not really get a response, so here's hoping that I get some direction and a response from you.

The provision of single-sex spaces and services is vital for women, including BAME women and those from religious backgrounds. During consideration of the Gender Recognition Reform (Scotland) Bill, I highlighted that many religious women do not feel comfortable being touched by biological male doctors or nurses when, for example, smear tests or breast examinations are being performed.

As you know, the NHS employs many women from BAME backgrounds, and they will now be

made to feel uncomfortable and scared to speak up, especially given what has happened to Sandie Peggie and how she has been treated. Changing in front of a biological male would mean that those women would break their religion—religion is, by the way, also a protected characteristic under the Equality Act 2010. Does that mean that all those women will have to go through a tribunal?

I do not understand why, on the one hand, the public are given separate prayer rooms but, on the other hand, single-sex facilities are taken away. That defeats the purpose of promoting equality. As you will know, before praying, women of faith need to use the facilities without the presence of a biological male. Should it be mandatory for all public bodies to offer single-sex spaces and services?

12:15

Rohini Sharma Joshi: I am not speaking on behalf of Age Scotland when I say this, but in my personal opinion, as a woman from an ethnic minority background who has worked across Scotland with many women of all ages over the years, I think that it is good for services to take account of an individual's requirements. They do not have to be an ethnic minority woman or any particular individual—if they have specific requirements, those should be met, if possible. It is about decency, privacy, what is culturally appropriate and, if they feel uncomfortable, looking at what can be done to ensure that their wishes are met.

Quite understandably, with toilets as with religious practices, women also need a little bit of decency and privacy. I think that we can have both. We can have single-sex toilets when that suits everyone and there is a need.

If people are saying that something does not meet the requirements of our ethnicity, race or religion, what can be done? Reasonable adjustments can be considered—that is in the law. You are absolutely right—there are priority characteristics in religions that should and must be considered for most of, if not all, the time.

Pam Gosal: I agree that it is not just about being a woman of colour and the only minority in the group. I have voiced that because women of colour have come to me, but other women and girls have come to me, too. It is not just about faith and religion; it is about decency.

I want to probe this a little more, because I know that you work on the Scottish ethnic minority older people forum. I also know that sometimes you may not be able to speak directly on behalf of Age Scotland because—and I am going to be honest when I say this—there is fear about talking about

these issues in a lot of organisations. Could you give your personal view?

I know the sort of people—I am going to respectfully call them aunties and uncles—who come to forum meetings and do really good work. You mentioned that earlier, and I have also heard about them bringing community groups together so that they can respond to many of the issues that we have spoken about today.

I certainly know that there are no unisex toilets in a gurdwara, a mosque or a mandir. There are toilets for males and females, and there is sometimes another toilet that can be used by non-binary or disabled people—or whatever the need is at the time. Do you feel, in the religions that we and other faiths practise—again, religion is a protected characteristic—that it is quite clear how we achieve a balance in that regard with other characteristics under the Equality Act 2010, in terms of single-sex services and biological males and females?

Rohini Sharma Joshi: Again, I go back to reasonable adjustments. It is important that views are heard. You talk about older women, and the next generation—I am not young either—has changed and adapted, but it has been challenging for the first generation. For them, it is about how they were brought up and what they thought was the right thing to do. In some religions in particular, it is challenging for men and women to be together in the same place, especially if there is a privacy issue around using toilets and so on.

Again, as I have said, there is a need to listen to people and hear what they say, and, to go back to the issues of dignity and decency, where possible, those facilities should be made available.

Pam Gosal: I want to talk about not only toilets but facilities in general. We are not talking only about need, but about religion. My parents came to Scotland and I was born here, in Glasgow, and I think that equality should be there for everybody and needs should be addressed for everybody—I absolutely agree with that. However, we are talking about breaking a religion here. If I was in a changing room with my mother or Muslim auntie and she had to change in front of a biological male, that would break our religion. There are many consequences for that in the Muslim faith, in Indian faith and in other faiths that I could mention. How can we have balance in that regard? That is what this question involves.

I acknowledge what you are saying about need but, right now, people out there are really confused. It is not just about women and girls; it is about faith and religion. There is so much going on out there and nobody knows where the guidance is or who is guiding who. People from all

backgrounds—not just religious backgrounds—are confused.

How do you see those issues? It is not just about toilets. I know for a fact that a Muslim woman cannot go into a changing room and change in the presence of a trans woman, because that person is a biological male. That view should not offend anybody. It is our religion, and we cannot change that. I am not going to break my religion for somebody else—I will be honest about that. I know how to keep myself safe and keep to my faith.

How do you balance those issues? I know that it is not just women from the older generation who would not go into that room; it is people from the younger generation, too.

Rohini Sharma Joshi: I absolutely agree. I think that people must be heard when they say that they are never going to do that. They need a separate space. That goes back to the issues of decency and privacy, as well as their strongly held beliefs.

There are many good examples of what can be done. For example, some local authorities have times when swimming pools are open only to women, so that no male will be swimming with them. It is up to the public sector to examine each case and scenario and see what can be done to make sure that men and women feel comfortable and that their rights to privacy, decency and self-respect are maintained.

Pam Gosal: Thank you, Rohini. You are absolutely right to say that it is up to the public sector. Again, we are here talking about the public sector duty, and it is important that it is clear so that people can understand it. The issues of dignity and respect are relevant not only to Muslim women; they are relevant to all women and girls.

I have one more question, which is for Vic Valentine. Do you accept that policies based around gender self-identification potentially open up employers and service providers to discrimination claims on the basis of sex and religion or belief?

Vic Valentine: I am not sure I totally understand what you mean about policy around gender self-ID. What I would say is that it is completely undeniable that there is a range of diverse views around how trans inclusion should work in services and workplaces, and it is pretty apparent from the past few years that that is resulting in litigation involving people with a variety of views. Some cases have been found in favour of people with gender critical views and some cases have been found in favour of people who are trans or have the protected characteristic of gender reassignment. However, I hope that we can all agree that public authorities have a duty to ensure

that their policies are in line with the law and that they respect the rights of everyone and do not discriminate against anybody.

Pam Gosal: You are absolutely right that we should not discriminate against anybody. I would like to dive into what you said about the policies. With regard to the issues that arise in relation to cases such as the police searching somebody or someone in the NHS changing in front of a biological male—or a trans woman, I should say—do you think that the law is not clear enough, or is the problem with the policies and guidance? As I said to Rohini Sharma Joshi, there is a lot of confusion out there, and—whether it is in the police, the NHS or wherever—someone does one thing and thinks that they are obeying the law, but someone else does something else and thinks that they are obeying the law. Everybody is very confused.

I think that people from all backgrounds, whatever they believe in, feel that they are in a position in which their performance on the public sector equality duty is not what it should be, because the law is not clear. Do you think that everyone is interpreting it in their own way? Should the Scottish Government be doing more to provide clarity through guidance or policy on the issue?

Vic Valentine: I think that there are sometimes two separate issues. It is definitely the case that people do not always have a good understanding of the law on single-sex services and spaces and how that interacts or engages with trans people's access to those spaces. However, there is guidance, which has been the same since the law was passed in 2010. It is in the Equality and Human Rights Commission's statutory code of practice, which was published in 2011. The guidance will be the same when the EHRC updates the statutory code of practice next year.

I think that one of the other issues is that some people disagree with the status quo of the law. The status quo of the law says that trans people can be excluded from single-sex spaces and services that align with who we are and how we live our lives only if that is

“a proportionate means of achieving a legitimate aim”.

Sometimes it will be, but, in our view, in the overwhelming majority of circumstances, our total exclusion from single-sex services and spaces that align with how we live our lives is not needed. In addition, crucially, if it is not a proportionate means of achieving a legitimate aim, it is unlawful under the Equality Act 2010. That has been the case since 2010. As I said, that is very much the status quo.

It is really important—I say this wholeheartedly—that services are able to meet the

needs of absolutely everybody. Sometimes, trans people will require to be treated differently by service providers so that they can ensure that they can meet the needs of everybody. However, there is a difference between offering person-centred services that are responsive to the needs of a range of people with a range of needs and excluding or discriminating against trans people or causing them to face a detriment. We should always try to find the happy middle ground where, as far as is possible, service providers meet the needs of everyone.

Pam Gosal: Thank you for that.

The Convener: We now move on to questions from Tess White.

Tess White: My first question is for Pauline Nolan. People with disabilities are an overlooked group, as are—when it comes to interactions with services—women and older people. In this inquiry, we are looking at the public sector equality duty and impact assessments. In the Victorian era, women were on a urinary leash—they could not go out of their homes. It seems that we are going backwards when it comes to the provision of toilet facilities, which is having an unintended effect on people with disabilities and women. I am thinking, in particular, about public transport. There is a much lower percentage of people with disabilities in the workplace. If people with disabilities cannot get to and from work and have access to toilets, that is a massive issue.

I want to make two points before I ask my question. We have had the Scottish Government's policy change whereby it is no longer going to provide £10 million for changing places toilets. There is also the unintended consequence of local government closing down local public loos. When it comes to the basic duty to carry out an impact assessment on new policies and to monitor the impact of current policies, is the provision of toilet facilities an issue that needs to be concentrated on, given that it is a basic need?

Dr Nolan: Yes. The issue of disabled people being unable to go on holiday, to go to work or to go out in the community because there is nowhere for them to go to the toilet is one that needs to be equality impact assessed. In my local community, there are discussions about reopening a closed public toilet, which would require significant investment.

I proposed in a Facebook group that we should invest in a changing places toilet, which would lead to more disabled people coming to my town and using the facilities there. Nationally, we need more accessible toilets.

12:30

Tess White: Many of the organisations that have submitted statements say that impact assessments are a tick-box exercise. Even that basic right is not being looked at or measured. What is your view on that?

Dr Nolan: I have already said that those are tick-box exercises that happen without properly looking at delivery.

Tess White: My next question is to Vic Valentine. Will you provide the committee, either now or in writing, with a full list of public sector organisations in Scotland that you have advised? Is that something that you are able to do?

Vic Valentine: That is something that we can try our very hardest to do. I cannot do that off the top of my head just now.

Tess White: Thank you very much. You talked about public sector organisations not really having a good understanding of their equality duties. Has Scottish Trans sought legal input on the advice and guidance that it has given to public sector bodies?

Vic Valentine: We have worked with lawyers in the past to develop a good understanding of equalities law, but we are always clear that our advice and guidance is not legal advice and that it is in fact about our understanding of the needs of trans people and of how the law has tended to interact with the equality and human rights of trans people. We would never say that we were giving legal advice to organisations.

Tess White: It is an interpretation of the law that is based on advice that you have been given.

Vic Valentine: We do not provide legal advice. We provide advice on what we think good practice and service delivery for trans people looks like within what we understand to be the equality law framework.

Tess White: Okay—so it is your view of good practice.

The EHRC's submission highlighted "poor compliance" by listed authorities in relation to the duties, and stated that the

"setting of equality outcomes"

is

"not always informed by robust evidence."

Do you agree with that?

Vic Valentine: That probably applies more broadly than just to trans people. We do not often see public authorities with equality outcomes that are specific to trans people, so it is harder for me to comment on whether their equality outcomes tend to be based on good data.

However, we have had a wider conversation, and I would say that, generally, there is more and better data available for public authorities. Are outcomes always necessarily data driven? No, I do not think that they are, and that could definitely be improved.

Tess White: We are talking not only about compliance but about generating a positive culture in an organisation. If that is not informed by advice and guidance and by robust evidence, that can open the door to miscommunication and misunderstanding. Do you believe that it is appropriate for activist organisations to offer guidance that leaves public sector bodies vulnerable to legal challenge?

Vic Valentine: I would like to understand a little bit more about your understanding of an “activist organisation” or how you would describe such an organisation. My organisation is a charity, and we work to improve the lives of LGBTI people across Scotland. It is absolutely appropriate that organisations of a range of persuasions and flavours that represent the needs and experiences of diverse and marginalised groups should be given a seat at the table to share the experiences of their communities with those public authorities. Obviously, it is not then within the gift of those groups what decisions public authorities make about their choices on policy and next steps.

Tess White: You say that you are a charity, but you are largely funded by the Scottish Government. What percentage of your funding comes from the Government? Is it 90 per cent? Is it 100 per cent?

Vic Valentine: I can 100 per cent say that is not 100 per cent, but I would need to provide the actual amount in writing, because I do not know for sure, and I would not want to give you the wrong answer.

Tess White: So you are a charity, but you are funded largely by the Scottish Government. You will come back with the data, but you are saying that your organisation is almost 100 per cent funded by the Scottish Government.

Vic Valentine: I did not say that it is almost 100 per cent funded by the Scottish Government. I said that I do not know for sure what the percentage is, other than that it is definitely not 100 per cent. I do not want to give you the wrong answer, so I will let you know when I find out.

Tess White: All right—thank you very much.

My final question is also for Vic. I know that Pauline Nolan wants to come in, so if she would like to come in after Vic, she should please do so.

In its written submission, the LGB Alliance suggested that issues of sexuality—the lesbian, gay and bisexual or LGB part—should be

decoupled from issues of gender identity, or the TQI part, when collecting and analysing data on a range of issues. Do you agree with that?

Vic Valentine: No, I do not agree with that. I respect that that is the view of some people who would prefer to separate sexual orientation and gender identity equality. I am a little confused about the inclusion of the letters of Q and I in the suggestion that that part would be separated. My understanding is that, generally, queer refers to sexual orientation as well, and the I is normally used to talk about people with variations of sex characteristics. It tends to be only the T that is about trans people.

I am the manager of a trans-specific project in a lesbian, gay, bisexual, trans and intersex organisation, so it is clearly our view that working to improve the rights and equality of people on the grounds of sexual orientation, gender identity and diversity and sex characteristics is the right thing to do.

Tess White: People talk about LGBTQI+ as an umbrella term. A lot of organisations, including the LGB Alliance, are saying that there are two distinct groups.

Vic Valentine: I completely agree that there are distinctions between sexual orientation and gender identity. Our organisation thinks that often, although we are diverse communities with diverse needs and there may be diverse reasons why we face inequality or marginalisation, lots of those issues are driven by the same things.

For example, one of the ultimate gender stereotypes is that everybody will be straight. It is about who you will be attracted to. Also, it is a pretty set gender stereotype that you will not be a trans person—that you will be comfortable with your sex at birth and that you will not go on to identify as trans. We see that as one of the key underlying reasons why, on the basis of sexual orientation or gender identity, people might face discrimination. Because we see a commonality in what drives that discrimination, even if the drivers are not identical, we think that there is merit in people collaborating and working together on those issues.

Tess White: That takes me to the basic question. There is a huge difference between sex and gender. Do you think that people just do not understand the difference?

Vic Valentine: There are a range of views on the meaning of words such as “sex” and “gender” and I think that that will continue to be the case for decades to come. Clearly, there is a difference between people’s physical bodies and between the social meaning that we give to those physical bodies. I do not think that it would be fair to say that there is any kind of universal or unified view

on exactly how we define the boundaries between those things, which ones are more important and how they interrelate to each other. In fact, it is pretty obvious that there is quite widespread disagreement on those questions.

Tess White: I suppose that if you are looking at—

The Convener: Excuse me, Tess.

Tess White: —protected characteristics, the nine are important.

The Convener: Tess, can I please ask if you have a question for Dr Pauline Nolan at this point?

Tess White: I just want to finish this, convener.

The Convener: I would just like to remind members that we are here to question witnesses about our inquiry on the PSED. I suggest that the member returns to focusing their questions on the inquiry, as this line of questioning is not relevant to what we are discussing under this agenda item.

Tess White: My argument is that it is relevant, because the public sector equality duty focuses on the nine protected characteristics, and definitions are very important. However, we will draw a line under that one, as you requested, convener. I know that Dr Nolan wants to come in.

Dr Nolan: I wanted to take issue with your line of questioning earlier. As a national disabled people's organisation, we are fully funded by the Scottish Government, so I was not sure—

Tess White: So, for your organisation, it is 100 per cent.

Dr Nolan: Yes.

Tess White: What about Age Scotland?

Rohini Sharma Joshi: I would not be able to answer that. I am sure that Age Scotland is not 100 per cent funded by the Scottish Government, but I am not in a position to answer that question.

Dr Nolan: We are equality organisations, and I think that most of us are funded to deliver on equality and human rights through the fund of that name, so I am not sure how the question relates to this inquiry.

The Convener: If members are content that they have asked all their questions relating to the inquiry, that concludes our formal business in public. I thank everyone for attending. We now move into private session to consider the remaining items on our agenda.

12:40

Meeting continued in private until 12:51.

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