



OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities, Human Rights and Civil Justice Committee

Tuesday 18 March 2025

Session 6



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EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE
8th 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:

Nick Bland (Scottish Government)

Jennifer Laughland (Equality and Human Rights Commission Scotland)

Catherine McMeeken (Scottish Government)

Jennifer Singerman (Scottish Government)

Bill Stevenson (Equality and Human Rights Commission Scotland)

Kaukab Stewart (Minister for Equalities)

John Wilkes (Equality and Human Rights Commission Scotland)

CLERK TO THE COMMITTEE

Euan Donald (Scottish Parliament)

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Equalities, Human Rights and Civil Justice Committee

Tuesday 18 March 2025

[The Convener opened the meeting at 10:00]

Public Sector Equality Duty

The Convener (Karen Adam): Good morning and welcome to the eighth meeting in 2025 in session 6 of the Equalities, Human Rights and Civil Justice Committee. We have no apologies today. Marie McNair will be joining us online.

Our first agenda item is our final evidence sessions on the operation of the public sector equality duty in Scotland. The PSED is a legal requirement for public authorities in Scotland, which, under the duty, must consider equality when carrying out their functions. The Scottish Government is making reforms to the duty and this inquiry will be an opportunity to explore those reforms and consider how they might improve the delivery of the duty.

We will hear from two panels this morning, and I welcome our first panel. Representing the Equality and Human Rights Commission Scotland, we have John Wilkes, head of Scotland; Jennifer Laughland, head of Scotland legal; and Bill Stevenson, Scotland compliance manager. You are all very welcome; thank you for attending this morning.

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 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 our 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.

Before we move to questions, I invite John Wilkes to make a short opening statement.

John Wilkes (Equality and Human Rights Commission Scotland): Thank you, convener. I thank the committee for the opportunity to give evidence to this inquiry into the effectiveness of

the public sector equality duties in Scotland. We very much welcome the committee's interest in the operation of the duties, which still have so much potential in ensuring that our public services meet the needs of communities and their own workforces across Scotland, including those who are protected by the Equality Act 2010.

Thank you, convener, for clarifying the committee's position on on-going cases. We are aware that a number of principles and issues are subject to active legal proceedings, and we will not comment on any active and on-going proceedings today.

The commission has more than a decade of experience in regulating and monitoring the effectiveness of the current Scotland-specific duties. Our evidence base was built up through our original project between 2013 and 2017, which we called measuring up, and which was an approach to monitoring the PSED in Scotland when the duties were still new and bedding in. That work was invaluable to us in assessing how the duties were being implemented and the areas that needed more focus. In 2021-22, we used that experience to develop a clear set of recommendations to the Government in its review of the PSED as to how the duties could be changed to improve the performance of public authorities on their obligations and achieve better equality outcomes.

Since that period, our on-going regulatory work has taken a more project-focused approach around particular themes and sectors. Our regulatory work includes providing advice, raising awareness and understanding, transferring expertise, supporting organisations in their efforts to comply with the law and, on occasion and where relevant, entering into legally enforceable agreements with organisations. That work continues to give us a valuable insight into the fact that the public sector still has some way to go in totally understanding and meeting its current public sector equality duty obligations.

Although we are not necessarily of the view that, in and of itself, increased regulation is key to better consideration of equality issues, we are clear that regulations could be updated to sharpen their focus, be more coherent and place more importance on outcomes and action planning.

We are grateful to Scotland's public bodies for their willingness to work with us, where necessary; to other regulators, who can bring a focus on the duties in their own work; and to the many civil society organisations that provide useful intelligence and expertise, working with communities on the ground.

We look forward to using our insight and experience as regulator of the duties to help the

committee consider how effectively the public sector equality duty operates in Scotland and the implications of reforming the Scotland-specific duties, and to advise on how we have used our regulatory powers to improve compliance and outcomes in Scotland.

The Convener: Thank you very much. We will now move to questions, and I will start us off.

Over the period of our inquiry, we have noted that public authorities generally think that they have a good understanding of the terms and aims of the PSED in Scotland. However, equality organisations have suggested that, although public authorities might understand the aims, they focus too much on the process and do not make positive changes to people's lives. What you—that is, the EHRC—have said is that there are issues with

“the quality and consistency of compliance”,

which were reflected in the Scottish Government's consultation in 2021. Why do you think there is such inconsistency in complying with the PSED in Scotland?

John Wilkes: I am going to hand over to Bill Stevenson, who leads on this area and has lots of observations that will help the committee.

Bill Stevenson (Equality and Human Rights Commission Scotland): When we consider compliance with the PSED, we need to split the issue into two distinct parts. First, there is top-line compliance—in other words, do public bodies publish what they are required to by the duties? The answer, generally, is yes, they do.

The second consideration is the quality of what is published and the effectiveness of the work and its impact on outcomes for people, and that is where practice becomes more variable. Understanding of the PSED is variable by nature, and depends on the job, the seniority of the individuals involved and so forth. Although we can confidently say that most equality practitioners and human resources specialists are quite well versed in meeting the PSED's requirements, the fact is that other staff in organisations are sometimes not. Some organisations do not have an equality-specific function, which means that you have professionals who are not particularly well versed in undertaking that work.

That would be my opening reflection: top-line compliance with publication is relatively strong, but the quality of the work with regard to its impact on outcomes for people can be a bit more hit and miss.

The Convener: Thank you very much. We will move on to questions from Tess White.

Tess White (North East Scotland) (Con):

When we looked at the feedback from the committee's call for evidence on the PSED, we found that 80 per cent of the respondents indicated that public bodies do not understand or have a limited understanding of the duty. Such a high figure was very surprising to us. The EHRC's submission says that

“the setting of equality outcomes”

is

“not always informed by robust evidence”,

which is a cause for concern. Do you believe that it is appropriate for activist organisations to offer guidance that leaves public sector bodies vulnerable to legal challenge?

John Wilkes: I am not clear what organisations you might be referring to, but I think that public bodies, in setting their equality outcomes, need to consider the equality issues that they face in their particular sector or business, and they need to gather as much hard and proper data as possible on their workforce and the sorts of client groups that they serve to build up a picture of the outcomes that they should be tackling in the particular reporting period.

There are other organisations that can be used, too. Indeed, I mentioned in my opening statement that there is a range of civil society organisations that specialise in particular areas of equalities and which can provide useful context and intelligence from the ground. It is up to public bodies to take all of that evidence in the round and consider it appropriately, I think.

On particular organisations giving advice, public bodies need to consider whether the advice is relevant, but our experience is that, often, the organisations to which I think you are referring have a wealth of intelligence from the communities that they support. We get lots of the evidence that they provide, and some of it is really useful. We apply our own evidence and data standards to what we would consider and how we would rate it, and I suggest that public bodies do the same. Organisations can play a very helpful part for public bodies in the round, but there are many other aspects of the job of setting equality outcomes that they must take into account.

I do not know whether my colleagues want to add anything.

Tess White: I think that you have answered the question, thank you. That is really helpful.

You talked about organisations that offer. What about the organisations that receive? You used the word “balance”, so do you mean that those organisations must receive balanced feedback?

John Wilkes: Ultimately, it is down to the individual public authority to gather as much evidence and data as it can from whatever sources that it feels are appropriate and to use that evidence appropriately in setting its equality outcomes. The authority must take into account the law, professional advice and the hard data sources that it has access to. However, in other areas, particularly when you are dealing with smaller groups of people who are protected under the Equality Act 2010, it is really difficult to get good quality evidence. One of the big issues with the operation of the public sector equality duty is the lack of reliable, solid and consistent equality data, due to various reasons. Sometimes, it is not easy to get that data, and the Government has undertaken various projects to help to improve the quality of evidence and how it is gathered. All of that is in the mix, I would say.

Tess White: So the data is important.

John Wilkes: Yes.

Tess White: Do you agree—a yes or no answer would be helpful—that impact assessments of policies or policy changes that affect sex-based rights should involve input from those with the sex-based rights?

John Wilkes: It is important that any public authority that is looking at a policy initiative or a service provision initiative should be doing an equality impact assessment with respect to fulfilling the requirements under the public sector equality duty. It should seek to gather as much relevant evidence for that as possible, including from organisations that have very specialist perspectives. The public authority should be taking lots of information in the round.

Tess White: You used the word “balance” at the start, so my final question on this is, do you agree that when doing impact assessments—which are very important for the PSED—not taking into account the perspective of those who are directly affected leads to resentment, conflict and legal challenge?

John Wilkes: That can be the situation. One of the requirements of public authorities in that regard is to take evidence and to consult with communities. I watched some of your previous evidence sessions with organisations that represent those communities, and I think that we would agree that sometimes the consultation by public authorities is not as deep or as good as it could be to help them to set their equality outcomes.

Tess White: What about balance and prioritising one protected characteristic over another?

John Wilkes: It depends on which policy or service you are looking at, but you would expect to get a range of inputs from people with different protected characteristics who might be affected. Some policies or service initiatives might particularly impact one group over another—for example, in relation to disability or race—and within the context of gathering data and evidence, you would consider the sources of that data and where you could get it, including lived experience data, and balance all of that in the round when you reach the conclusions of your equality impact assessment.

Tess White: But data is important.

John Wilkes: Data is very important to this—absolutely.

Tess White: Thank you.

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

I will pick up on points about consistency and the overall impact. John, in your opening statement, you said that the point of the public sector equality duty is to identify areas where things are not maybe working as well as they might and to improve things so that groups and individuals with protected characteristics get the services, quality support and other things that they need.

We are very aware, from the evidence heard in the past couple of weeks and previously, that the PSED is maybe not delivering. That is the point of the reforms and there is an on-going discussion. Other members will pick up on reform specifically.

I am interested in the point about compliance. Bill Stevenson, you talked about top-level compliance and the variable responses below that. Last week, we heard that only 38 per cent of public authorities are meeting their legal requirement to report on occupational segregation, which means that 62 per cent are not. That does not sound like a high level of top-level compliance to me. Could you unpick that a bit?

10:15

Bill Stevenson: I think that the figures that you are referring to may be quite old. As John Wilkes said earlier, measuring up ran from 2013 to 2017. If that is the source, it is a bit old.

Occupational segregation is one of the elements of the public sector equality duty where we could probably do some development to improve compliance. More generally, though, when it comes to publishing outcomes and mainstream reports, gender pay gaps and so on, the figures,

historically, have tended to be more than 90 per cent.

I would caveat that by saying that we evaluated the compliance of every public sector body subject to the regulations between 2013 and 2017, but our resource has reduced quite significantly since then, so we cannot do that big-picture evaluation any more. We tend to take a more sectoral or thematic approach to monitoring now. For example, our recent work with integration joint boards has resulted in quite a significant increase in compliance. IJBs were established only in 2015 or 2016, so they were a bit late to the table in getting to grips with how to deploy the public sector equality duty effectively. However, after our improvement intervention, compliance was initially up at 100 per cent and has only recently dropped very slightly from that mark.

Maggie Chapman: I suppose that that thematic or sectoral approach allows you to get into the nitty-gritty with the different agencies and authorities involved. That kind of makes sense when, as you say, and as we heard last week, your resources have reduced over time.

Following on from that, and thinking about consistency a bit more specifically in relation to the characteristic of race, which covers colour, nationality, ethnic or national origin, BEMIS Scotland is clear that colour is well understood and well worked through in public bodies but that the others quite often are not. How might we tackle that? Is that something that the reforms need to deal with, or is that stuff that should be happening now, with PSED as is?

John Wilkes: A lot of the protected characteristics represent a range of different things. Disability, as a global term, represents a range of physical and neurological disabilities. It is the same for race and nationality. Public authorities need to understand that the protected characteristic of race includes the wide range of groups that you have mentioned. In the issue at hand, where is the discrimination occurring? What are the particular issues that need to be looked at and impacted around the issue of race, for example? That may be issues of colour, but it may not be.

Again, that comes down to gathering evidence and good data. One group that is particularly difficult for public authorities is Gypsy, Roma and Travellers. It is a group that is not necessarily easy to engage with. That is not their fault or anything like that. That group's particular needs are often not included or met because of those difficulties.

It is about what the issue is and where the discrimination sits. Do we have to look at particular groups? For race and nationality, that could

include different groups of people whose discrimination is not necessarily driven by colour.

Maggie Chapman: If there are particular groups that are having difficulties realising their equalities rights and human rights, is PSED the right tool to ensure that we, as the public sector generally, take those responsibilities and duties seriously, instead of saying, "Yeah, it's difficult, so we're just not going to bother."? That is not done out of malice, but we quite often hear from people with lived experience of discrimination and from organisations that support different communities that some public authorities think, "It's too hard, so we're just not going to touch it."

John Wilkes: Like any tool, the PSED can be quite blunt. A lot of the issues with compliance relate to compliance with process. Our view is that we should move into a phase in which we help public authorities to think about outcomes. The duties are really useful and important in getting public authority X to set good outcomes and consider the issues and challenges for it over the next few years, or it might need to address those issues over the next two cycles. That is why one of our recommendations for reform is about encouraging the use of sectoral outcomes. For example, when health boards or the police set their equality outcomes, they might need to consider a broader national issue alongside all their other outcomes.

We have set out our recommendations to try to help the duties to become a lot more outcome focused, but the processes to get to that point are really important. Without them, that becomes much more difficult.

Maggie Chapman: You mentioned the Gypsy Traveller community, which is one group of people with protected characteristics that, for a range of reasons, often falls through the cracks. People who are included in the race section might have different national origins or identities, and service provision and the requirement to uphold rights in Scotland can come into conflict with immigration policies, for instance. Where do you see the potential value or use of the PSED—as a blunt tool or otherwise—in enabling public authorities to provide services to people who have no recourse to public funds but to whom we still have obligations under those duties?

John Wilkes: It is correct that the public sector equality duty applies to everybody who happens to be here, irrespective of their immigration status. That is not always fully understood. However, other restrictions come into play, such as someone having no recourse to public funds, which the PSED cannot address.

In the past, through our work, we have tried to drive home the point about public authorities'

requirements. Way back in 2018, we carried out a project across England, Scotland and Wales that looked at the issues with access to health services for asylum seekers. The issues were different in each country. In a sense, Scotland came out better in some areas, because of the way in which the health service is set up. The project was also about helping public authorities to see how use of the PSED engaged with that work, because they are sometimes a bit wary about whether it applies.

Maggie Chapman: It is about public authorities understanding that the PSED could be a tool but that it will not necessarily solve problems relating to someone's immigration status.

John Wilkes: I do not know whether my colleagues want to add anything.

Jennifer Laughland (Equality and Human Rights Commission Scotland): What has been said is broadly right. The PSED applies regardless of other laws, but, when considering what you might be able to do in a particular situation, you obviously need to take account of all the other legal requirements in the area.

Bill Stevenson: The regulations require public bodies to consider relevant evidence and to involve groups with protected characteristics and those who represent them. The duty is on public bodies to ensure that that is done thoroughly.

With regard to race or ethnicity, a public body should undertake as much engagement and consideration as necessary, as long as it is proportionate and relevant, to ensure that it fully understands the impacts of any policy or process. That means considering how different sub-groups access and use services and what the outcomes are from service use.

The framework is quite clear that public bodies need to consider relevant evidence and engage with those groups to a proportionate level in order to understand the impacts of any policy or practice.

Pam Gosal (West Scotland) (Con): Good morning, and thank you for the information that you have provided so far.

John Wilkes, last week we heard from Jatin Haria from the Coalition for Racial Equality and Rights. On the issue of reporting on the gender pay gap for women, he said:

"the numbers are stark enough to suggest that somebody is not doing their job."—[*Official Report, Equalities, Human Rights and Civil Justice Committee*, 11 March 2025; c 15.]

When I asked him to go into more detail, he said that the issue extends to the Scottish Government and the Equality and Human Rights Commission. What is your response to that?

John Wilkes: I will ask Bill Stevenson to lead on that.

Bill Stevenson: On the gender pay gap, I will go back to one of my initial reflections, which is that compliance on publication of the figures is relatively high, and that is true pretty much across the board. Perhaps not so well understood are the drivers of the pay gap and effective responses to it. That is potentially a space in which further work will be required. However, there is some good practice out there: some public bodies undertake regular pay gap audits and are quite clear about how their remit links to actions that can be undertaken to address pay gaps. Understanding the drivers of pay gaps and how to respond to them effectively is absolutely key. It is fair to say that some sectors understand how to address pay gaps more effectively than others. Quite often, that is reflective of the size of an organisation and how much resource it can devote to addressing those issues.

Pam Gosal: You said that further work is needed on the drivers. Is that work being done?

I also want to touch on race, and the fact that people of colour—women, especially—are more disadvantaged in terms of the gender pay gap. Can you say anything about that? You said that work needs to be done in general, but is any work being done in that area?

Bill Stevenson: At programme level, I do not think that we have anything planned on the gender pay gap at the moment. However, a lot of our engagement with public bodies is at sectoral level, and the focus of that engagement is defined by the public bodies themselves. Therefore, if a sector wanted us to intervene and seek to drive improvement in understanding and knowledge of the gender pay gap, we would be more than happy to do that. However, as things stand, demand for our involvement on that specific topic has been pretty low of late.

John Wilkes: The thrust of your question is right, in the sense that there is the gender pay gap and then there are differentials around different groups within it—the data clearly shows that. There are certain categories where the gap is wider, including race and disability. That relates to issues around employment and access to the workplace for different communities, in relation to which there might be differential barriers. All those things must continue to be focused on.

Paul O'Kane (West Scotland) (Lab): Good morning. As we have discussed throughout our inquiry, the Scottish Government has revised its approach to inclusive communication. Instead of there being a specific duty, the intention is to use ministerial powers to draw attention to guidance and materials on inclusive communication.

John, you raised the concern that, given that the Equality Act 2010 already provides for reasonable adjustments, the Scottish Government's proposal could be viewed as unclear. Could you maybe explain the EHRC's position on that proposal?

10:30

John Wilkes: I will hand over to my colleague Jennifer Laughland on that one.

Jennifer Laughland: As we have said previously, and as I think that others have said, too, our position is that accessible communication is already a legal requirement. It is an anticipatory duty. Although the Scottish Government's commitment to greater inclusiveness in communications might aid compliance, we were initially a bit unclear as to what added value a new inclusive communication duty would bring. We raised concerns with the Scottish Government about potential difficulties relating to legislation, including the implications for us as a regulator around how we might hold public bodies to account on that duty.

It is not clear to us what detail the proposals will include, so we cannot really give a lot of commentary on that. We are waiting to fully understand what the expectations are of us as a regulator, and we will be able to comment further at that point.

John Wilkes: We were concerned about the initial proposal on putting the duty into regulation, for all the reasons that Jennifer Laughland has given. We were not really clear what it was about and, obviously, as a regulator, we need to totally understand the intention and how we would regulate any breaches of the duty or help people to comply with it. As I understand it, the proposal is to issue the duty as guidance, which is obviously better from our perspective. However, we still look forward to seeing the details of the exact intentions behind it.

Paul O'Kane: Part of the challenge is that, although we heard from public bodies and local authorities that they are aware of the duty and want to ensure that they are fulfilling it, we also heard from disabled people's organisations in particular that inclusive communication is just not happening as standard. A resourcing issue was mentioned, too. Would you want to see all that brought together and acknowledged so that we have a more robust system?

John Wilkes: The introduction of a focus on inclusive communications could be really helpful in tying the pieces together and getting a much better understanding. The issue with the reasonable adjustments duty is that it is anticipatory—public bodies should be thinking about how they will fulfil the duty in advance.

However, we often find that it is not necessarily done that way—it is done afterwards. On this journey that we are on, that is another area that needs more attention and focus.

Paul O'Kane: The point that the duty is anticipatory, rather than reactive to a request, is a good one. It is perhaps about the sector being more prepared. There are services that are offered in the public sector that should have such materials available as par for the course—for example, the Electoral Commission did good work on access to voting, because we know that that happens on a cycle. Is it your view that public bodies should, as a first step, consider where the very common interactions are, and then consider the more reactive stuff when it concerns a relationship with the person using the service?

John Wilkes: Absolutely. When thinking in the round about the development of a service, you need to consider who will be using it and whether they will have different needs in relation to how we communicate with them about the service and how we engage with them during the period of service provision. All those things—whether we need sign language, easy read or other forms of communication for neurodiverse people—should be thought about up front, because it is usually more cost-effective and straightforward to do it then. I think that it was the intention of the anticipatory duties that public bodies should think about all those things as they are designing or reviewing stuff.

The Convener: We now have questions from Evelyn Tweed.

Evelyn Tweed (Stirling) (SNP): Thanks, convener, and good morning, panel. Thanks for all your answers so far. They have been very helpful.

We have heard throughout the inquiry that resources are an issue. Bill Stevenson, you talked about a move to sectoral and thematic work. How might you change your work if resources were not an issue?

John Wilkes: It would be great if resources were not an issue, but we have to recognise that these are challenging times for the public sector as a whole, and we are no different. Some of the people who have already given evidence have reflected on the resource envelope that we have to deal with. We have cut our cloth accordingly and we have moved from the intensive approach that we described in the first phase to something that has to be more strategic.

If we had more resources for the public sector equality duty we would certainly be able to do more engagement with public authorities than we can do at the moment, certainly on setting their equality outcomes. As we are coming up to a new period, we have done a lot of round tables with

different parts of the public sector and we could do a lot more of that type of engagement and a lot more supporting of public bodies.

Over the years, we have provided an awful lot of guidance, some of which we are in the process of reviewing because it gets out of date. I was pleased that in some of the evidence sessions, I got the sense that quite a lot of public authorities thought that the guidance was quite helpful. That is another area. We often find that it is about pointing people to the guidance. Our approach to compliance means that we get lots of queries from lots of organisations or individuals on a regular basis about local authority Y not meeting its obligations on this or why a health board has not done that, so we deal with that sort of issue all the time.

It would be great if we had more resources. We could do a lot more, particularly to help public bodies to get better at what they do.

Evelyn Tweed: The reason why I asked the question—you will know this already—is that some organisations and people have said that your organisation is light touch, but you said that if you had a bit more resources, you could get into things in a different way.

John Wilkes: We would say that we are strategic in what we try to do. If we become aware of a particular issue—we often hear about organisations or cases in the media—we might look into it, depending on what it is. As we say in our evidence, we have a range of tools that we seek to use, such as the compliance work that Bill Stevenson's team does. We do not shy away from it when we have to use our harder-edged regulatory powers and we mention a couple of examples of where we have done that with a few public authorities in the past few years or so. Jennifer Laughland can certainly speak to that. It is much more resource intensive to use those sorts of powers, but we will decide to use them when we feel that it is appropriate to do so.

Evelyn Tweed: Jennifer, would you like to come in on those further powers?

Jennifer Laughland: We would probably challenge the assertion that we are light touch. As John Wilkes says, we have a range of tools and we use what we think is the most appropriate one in each particular circumstance as it arises. We base our actions on evidence and try to act in a proportionate way in the public interest. That can sometimes mean a light touch, but equally, as John says, we do not shy away from using our harder-edged powers when that is necessary.

If we had more money we might be able to do more, as always, but we are using the range of our powers. The work that we do using the harder-edged powers is not always necessarily visible

because the nature of that work is that it is often confidential, but that does not mean that we are not doing it. We respond when referrals are made to us, we triage the work and then decide on the most appropriate action.

As John Wilkes said, we publish a range of guidance and we are working on more.

Evelyn Tweed: Thank you for that. You say in your evidence that

"furthering equality must be a shared priority, and the Scottish Government should use its powers to ensure this is the case."

What do you mean by that?

John Wilkes: We welcome that the Government has said that it is prepared to look at the use of regulation 11 on setting sectoral outcomes.

It is not for the Government to dictate to individual public authorities what they should be doing, but there are certain sectoral issues on which we think that it would be useful for a bit more direction to be provided. For example, in the health and education sectors, it would be useful to say, "Whatever individual equality outcomes you're setting that are appropriate to you, there are these wider things that you should be focusing on."

There is a balance to be struck; it is a case not of issuing a diktat from the centre, but of setting certain principles. The work that we have done with the further and higher education sector, which Bill Stevenson can talk about, is an example of that.

Bill Stevenson: That is an example of the approach that we are recommending, which involves the Government, in partnership with us or with other regulators, setting the strategic direction with regard to what equality outcomes should focus on at sectoral level. We have a strong evidence base, including from our own publication, "Is Scotland Fairer?", which highlights a lot of the most significant inequalities in Scotland. We would like the resource that is spent on meeting the requirements of the PSED to focus on addressing those most significant inequalities.

We have been progressing a large-scale programme of work in tertiary education, in partnership with the Scottish Funding Council. We have considered the evidence and have—in partnership with the further and higher education sector—agreed a set of equality outcomes. We have provided training and have developed a measurement framework so that progress can be tracked. In general, that is the approach that we are recommending.

The next PSED publication deadline is at the end of April. We plan to do a full evaluation of the impact of that work, which should give us the evidence base to confidently state that the approach of setting outcomes at a national or sectoral level pays dividends and can have a significant impact on some of the most significant inequalities that are relevant to a given sector.

Evelyn Tweed: I take it that, if that approach to outputs was taken, those outputs could be measured.

Bill Stevenson: Measurement is absolutely key. Bodies need to be able to report on progress—that is part of the requirements of the duties. Although bodies will produce a set of outcomes that is supported by actions, how the impact of those actions will be measured is sometimes not considered at the outset, which means that some bodies struggle to track the impact over the two or four-year cycle.

Evelyn Tweed: Good point. That is me, convener.

The Convener: We move on to questions from Marie McNair, who joins us remotely.

Marie McNair (Clydebank and Milngavie) (SNP): Good morning, and thank you for your time.

Over the past few weeks, I have focused on reform of the public sector equality duty. Organisations such as local authorities have expressed mixed views on how the delay in such reform has impacted their ability to meet their duties. How has it impacted you?

John Wilkes: I am sorry—are you asking about the public sector equality forum?

Marie McNair: No. I am asking how the delay in reform has impacted your ability to meet the duties.

John Wilkes: Oh, I beg your pardon—your question is about reform of the duty.

We would say that we welcome the reform programme. We had a lot of evidence that led to the recommendations that we made in around 2021 and 2022, but other factors have got in the way of the reform process. The public sector equality duty could work better, and reform could help with that, so it would be good to speed up that process.

We are disappointed that not all the recommendations that we made were taken up. We have already talked about inclusive communications. We understand that the Government intends to expand pay gap reporting in relation to disability and race, which needs to be looked at. We also made recommendations on sectoral outcomes that would involve putting

duties on some of the audit and inspectorate bodies to lock them into such work.

If those recommendations are all taken up, we think that they could move the duty forward, make it operate better and produce better outcomes, which, at the end of the day, is what all the work in this area is designed to do.

10:45

Marie McNair: What impact have you had on the Scottish Government's reform of the specific duties? You have talked a bit about recommendations and so on, but is there anything else that you want to tell the committee in that respect?

John Wilkes: We have been very clear with the Government, when the opportunities have presented themselves, about what we think needs to change to help move the duties forward. I said in my opening statement that we do not believe that extra regulation in and of itself is always very helpful; it can sometimes add more of a process burden for public authorities. We also recognise that the public sector equality duty exists alongside all sorts of other duties and requirements that public bodies have to deal with. The recommendations that we made were those that we felt, based on our experience of how the duty works and is working, would really help move things forward.

Marie McNair: Do you have any indication of timescales for introducing the new duties, or any detail in that respect? If not, that is okay—the minister is coming in later, so I will press her on the issue. Do you have any inside information?

John Wilkes: I have no inside information that I am aware of. Do you, Bill?

Bill Stevenson: It is not inside information—I am sure that it is publicly available—but our understanding is that the extension of pay gap reporting to ethnicity and race will be effective from the reporting date in April 2027. If I had any reflection on progress to date, it would be that, organisationally, the commission has encountered some challenges from a slower-than-expected progress of revisions to the duties.

Part of the reason for that—and this is relevant to the extension of pay gap reporting—comes back to our role of developing guidance in support of the revised regulations. We have already said that the drivers of and responses to pay gaps are quite distinct; ethnicity pay gap drivers and effective actions in that respect will be different from gender drivers, which, in turn, will be different from disability drivers. We had resource-planned to develop guidance to support the new regulation, but because the regulation has been slower than

anticipated in coming through, we are not writing the guidance when we had expected to be writing it and, as a result, have had to revise our own delivery plans and move resource about.

Marie McNair: Thanks for that. I have no other questions, convener, so I will hand back to you.

John Wilkes: On the back of that, I just want to add that we have always had very open engagement with the Government, and it has always been keen to hear what we have to say. We have already talked about some of the potential questions and issues that we had about inclusive communications when the proposals were first made, and certainly the Government has been keen to listen to those.

On the extension of pay gap reporting, you might be aware that the United Kingdom Government has said that it is intending to publish plans in that respect, and our understanding is that the Scottish Government might be waiting to see those proposals before concluding its own proposals on the extension of pay gap reporting for public bodies in Scotland. Obviously, we do not know what the outcomes of all of that will be, but one thought that we did have is that if the UK Government comes out with proposals on how pay gap reporting will apply to bodies—which, in Scotland, would be private sector bodies and non-public sector bodies—and we produce different proposals for public sector bodies in Scotland, we as the regulator will have to try and balance how we deal with potentially different approaches.

I would raise that as a potential issue for us, because having different issues or different requirements to deal with means having to produce different guidance and take different approaches.

Marie McNair: Many thanks for that. That is me, convener.

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

Maggie Chapman: I just want to shift the focus a little bit. There are three top-line needs in the public sector equality duty: the need to eliminate discrimination, harassment and victimisation; the need to advance equality; and the need to foster good relations. We have heard over the past couple of weeks and in written submissions that people tend to focus on the first—elimination of discrimination—with advancing equality and fostering good relations being kind of lesser cousins. Do you agree that that is how people are operating the PSED, whether or not that is the idea behind it?

Bill Stevenson: Generally, I think that we would agree with that synopsis. If you consider fostering good relations in particular, we have limited

evidence that it has been used on a widespread basis. I would say that the evidence is somewhat anecdotal, and we have not formally assessed it. It is word-of-mouth feedback from duty bearers that suggests that that is the case.

Why is that the case? There are, likely, issues of confidence in deploying that particular need in the general duty. That might be partly because of the fact that the commission is somewhat limited as to what we can improve in that space, which is largely down to our remit. In considering fostering good relations, we might be considering how to address the balance of rights or freedom of expression and such like. A lot of the relevant considerations within those themes relate to human rights—not purely to equality—and our remit does not extend to human rights in the devolved context.

Colleagues down south have maybe been able to develop guidance in that space that considers both equality and human rights, but it is harder for us to do that in Scotland. That is part of the explanation for why the fostering good relations need might be less deployed than we would hope that it would be.

Our PSED technical guidance is really quite directive in relation to the types of activity that public bodies should consider to further those second and third needs, but we sometimes find, in discussion with public bodies, that the technical guidance is not referenced as frequently or in as much detail as it could be. There is a really good set of directives in the technical guidance that should help to clarify how to effectively deploy the second and third needs in the general duty.

Maggie Chapman: That is really helpful, but quite a lot of questions arise from your comments, Bill. From what you have said, the inference might be that fostering good relations is something that happens, maybe not on a widespread basis but in a much more integrated way, south of the border. I am not sure that I see evidence of that. I am interested in your perspective, given that across the EHRC, you will share information, knowledge and practice around that. In England, is better attention paid to fostering good relations, given that there is a relationship that directly feeds into the human rights sphere there?

Bill Stevenson: In a nutshell, no. I was pointing out the challenges to public bodies in Scotland, given our lesser remit and its relevance to human rights and, in turn, to fostering good relations. I was recently in discussion with a colleague who has considered this question. Down south, they considered integrated care boards' use of the fostering good relations duty and found that it was quite underutilised, despite the broader remit.

Maggie Chapman: Is there something about understanding, measuring or defining “fostering good relations”? My second question, on the back of your initial response, is to ask whether work needs to be supported between the EHRC and the Scottish Human Rights Commission in order to get connections between that need, as it is set out in the PSED, and the human rights obligations, with which the SHRC would have more direct engagement? Is that even on the horizon, as far as you are aware?

John Wilkes: We work closely with our colleagues in the Scottish Human Rights Commission. That is driven by the shared mandate that we have talked about before, which is set out in the equality legislation. It is set out in legislation that we are not able to do human rights activity in devolved matters. The Scottish Human Rights Commission has the mandate, so we can do it if the SHRC gives us consent, and we have a good working relationship to make that happen. There is potential for us to work closely together on such issues.

The issue about fostering good relations comes back to a lack of understanding and, maybe, nervousness about what it means to move into that space. There are some public authorities in which we would like to see more focus on it. For example, policing is an area in which fostering good relations is one pillar of the general duty that needs to be addressed. Local authorities are another example: focus on fostering good relations could be helpful and useful in education and schools.

Maggie Chapman: Do you hear questions being asked about that? Are the Scottish Government or other public agencies starting to think about it as we move towards reforming the PSED? Are people more alive to it and trying to get to grips with what it means? You are right that there is nervousness or reticence because they do not know what the duty is, what it looks like or what it means practically in day-to-day operations. Are those conversations happening in relation to reform?

Bill Stevenson: It is fair to say that we get fewer requests for engagement on questions in that space than we had anticipated. However, some sectors are quite proactive about taking on work relating to fostering good relations. For example, further and higher education institutions are always quite engaged in that. Other sectors might be less so.

Given the nature of the public discourse that is relevant to fostering good relations, I had expected to see more questions coming to us. They are less prevalent than we would expect.

John Wilkes: Certainly in a generic sense, the commission recognises that the issue needs consideration. In our current strategic plan, which ends in two weeks, fostering good relations was one of our priorities when we said that there are some issues—some of which are PSED related and some of which are not. We recognised that some of the issues are perennially difficult and asked what we could do, as the regulator, to try to understand them and help with them.

When we put the draft of the new strategic plan out for consultation, we asked for views about whether the new plan should move forward in the same way or in a different way. Until the strategic plan is laid in Westminster in a couple of weeks, we are not able to share the results of that, but it will make clear our priorities for the work that we want to do in that space.

Maggie Chapman: Others want to come in on the subject, too, so I will leave it there.

Pam Gosal: Last week, I asked a witness from Engender whether

“lesbian clubs and associations with 25 or more members should be able to exclude all males, including those with gender recognition certificates”.—[*Official Report, Equalities, Human Rights and Civil Justice Committee*, 11 March 2025; c 28.]

She said that she could not comment on the issue. Is the EHRC able to comment on it?

Jennifer Laughland: We can comment, but in a limited way. As you will be aware, we have intervened in the Supreme Court appeal case *For Women Scotland Ltd v The Scottish Ministers*. That was one of the issues that has been raised in that case. We have given our opinion on proper interpretation of the law. If there are any changes to be made to the law, that will be a matter for the Parliament.

Pam Gosal: Can I probe into that? If a lesbian group excludes trans women, would you say that it is not compliant with the Equality Act 2010?

11:00

Jennifer Laughland: That would depend on the particular circumstances of the situation. It is difficult to answer that as a global question. There will be some circumstances in which that might be lawful and some in which it might not. The EHRC has produced guidance on services in relation to single-sex spaces and how organisations can aid compliance and ensure that they are compliant with the law. We are in the process of updating our “Services, public functions and associations: Code of Practice”. That update will include issues that would relate to that situation. We are also involved in updating other sector-specific guidance.

Pam Gosal: Thank you. You talked about guidance. Is the law clear on that? I am considering what is happening out there—obviously without talking about a specific case. Is it clear that your guidance states what it states and that the people and organisations that provide services must comply with it, or are there grey areas on which people out there are not getting compliance right?

There are many organisations that make a lot of decisions on their own heads. Those are not collective decisions and they are not decisions that are based on policy or regulation—they are making their own decisions within their own organisations. How can a bit more clarity be provided? How can you give guidance so that people know exactly where they stand when no single-sex spaces or services are provided?

Jennifer Laughland: It is difficult for us to give absolute clarity in every situation, because there might be a range of things that could be done that might be reasonable options. The guidance that we give will point organisations towards the sorts of things that they need to think about in making decisions. It is not necessarily for us to tell an organisation, “You must do this or that in every single situation.” Obviously, organisations must comply with the law, but how the law applies will be different in different situations, depending on the circumstances.

In doing that, the public sector equality duty can be a useful tool for organisations. If organisations in these sorts of situations consider the impact of their policies on the different groups that they serve—if it is a service—I hope that that would lead them naturally to think about the things that they should be thinking about in order to make policies and decisions that will be compliant with the law.

In answer to your original question, it is probably fair to say that not everyone is compliant at this point in time. As in other areas—as Bill Stevenson commented earlier—there are varying levels of compliance and good practice, and there is practice that could be improved.

John Wilkes: We get a lot of correspondence from people raising issues in this area. Again, it is about evidence—we consider what evidence is right when things are brought to our attention. Sometimes people say, “We think that organisation X is not following this properly” and, when we are talking about single-sex services guidance, that might not be a public body. Sometimes people misunderstand what the legislation provides for. At other times we have a look and might get in touch with the organisation to ask for more information or to point something out. In the current climate, a lot of that goes on all the time.

Pam Gosal: Thank you for providing clarity. There is fear about how people are interpreting the law for their organisations and fear that many more legal cases will be spurred on, because people are unclear about what should be done. As a member of the Parliament, I can see that people are unclear, so it was important that I asked you the question about how the EHRC perceives the issue, which is about how people are interpreting the law. You have guidance, which, I take it, any organisation can approach you for. Your doors are open, which is a good thing.

Jennifer Laughland: I should also have said on the on-going Supreme Court case involving For Women Scotland, that the judgment has not been issued yet. That might provide further clarity in relation to the issues.

Pam Gosal: We live in hope.

John Wilkes: We recognise that, recently, it has been an area of great public debate and that the Equality Act 2010 provides for exemptions that reflect various needs. As the regulator, our job is to provide a clear set of guidance for people who wish to use exemption. Clearly, one piece of guidance cannot cover every eventuality, but we hope that it has been set up in a way that helps bodies, including public bodies that wish to use exemption, with information on the sorts of things that they need to think about in order to protect everyone’s interests.

Tess White: My question is for John Wilkes. Earlier, you said that the Scottish Government might not have gone as far as it could have, and you specifically mentioned education. Is it your view that the Scottish Government, in addition to the EHRC, should be providing more and better guidance on the Equality Act 2010?

John Wilkes: We are saying that, under specific duties, there are regulations that allow the Government to point to sectoral outcomes that could be considered. As we understand it, the Government is now saying that it wants to look to use that provision more than it has used it. For example, it could say, when setting equality outcomes for education or health, “There is a bigger sectoral issue that you should look at, as well as all the other things that you are going to do,” because a public body should not just be looking at one outcome. That will depend on which public body it is, what it is delivering and where it is—all those sorts of things.

Tess White: You could include education, health, and prisons in that.

I will quote your letter, dated February 2025, to the Cabinet Secretary for Health and Social Care. In the letter, you highlighted the importance of single-sex spaces and for public sector providers to design

“policies which take into account the rights of all affected protected characteristic groups”.

That goes back to your point about balance. In the EHRC’s view, to what extent has the Scottish Government got wrong the balance of protections between the different protected groups?

John Wilkes: Are we talking about particular guidance that has been issued, or about the issue in the round?

Tess White: We are talking about the whole thing. You said last month that the policies have not taken

“into account the rights of all affected protected characteristic groups”.

That is a very powerful statement to have made, so I want you to elaborate on which protected characteristics you think have been missed out, if any.

John Wilkes: Forgive me—I am trying to remember the letter. I think that we were asking for further information on some guidance that the NHS was about to issue. I am not sure that we were suggesting, because we did not say that in the letter, that a particular group was or was not more impacted. I think that we were just asking for more information, because of a particular on-going situation.

Tess White: You felt the need to issue that letter in February

“because of a particular on-going situation.”

John Wilkes: Yes, we want to know a bit more about what the Government is doing in that area: that is the reason for our letter. We will get a response and we hope to meet to explore things in more detail.

Tess White: There is a view that, basically, gender and gender identity have been privileged over sex.

John Wilkes: I am not sure that that is what we would say.

Tess White: Okay. This is my final question.

In your view, to what extent does the Scottish Government’s interpretation of the terms “sex”, “gender” and “woman” make it difficult for public authorities to meet their responsibilities under the PSED? I know that Jennifer Laughland said that the Supreme Court judgment on the For Women Scotland case might provide clarity. Are you waiting until that comes before you can provide extra clarity and guidance?

John Wilkes: Certainly on that issue, yes we are. There have been other issues. The Gender Representation on Public Boards (Scotland) Act 2018 went through various processes to do with definitions. There are occasions when

interpretation is not quite accurate, but all that we are saying is that, in terms of the application of guidance that is produced that has relevance to the Equality Act 2010 or to the public sector equality duties, we just need to get it accurate and right.

Tess White: If there is a lack of leadership at the top of the Scottish Government and you, as the regulator, are saying that

“all affected protected characteristic groups”

need to be factored in, this complete muddle and fudge that is created further down the line is a result of a lack of direction from the top, particularly in relation to the key definitions.

John Wilkes: I am not sure that we would make that extrapolation. The Government produces lots of guidance on lots of areas and issues. Some of the guidance for schools or on health, for example, might not impact on all protected characteristic groups, while some might impact on all groups.

The point that we are making is that, on this particular issue, we want more information about what the Government has done and the evidence that it has used. We are not reaching any conclusions on whether it has done anything right or wrong at this point. We are just seeking more information.

Tess White: This inquiry is coming to an end today. Of the organisations that gave feedback, 80 per cent said that the PSED is not being implemented. That huge amount is alarming. We, as a committee, need to take that away and ask ourselves, if we believe that the PSED is important—which we do—what we will do to ensure that it is implemented properly. Definitions are a very important aspect of that, because how can you manage what you do not measure?

John Wilkes: Absolutely, yes. There are lots of elements and parameters to this, and we certainly would not say that the public sector equality duty is working effectively in all aspects of its role, or that it is working as we want to see it working. However, there are many areas in which it is performing quite well.

It is very complicated—lots of elements feed into the operation of the public sector equality duty. We have talked about what is maybe nervousness or lack of understanding of certain elements of the general duty—around fostering good relations, for example. The lack of good quality data in some areas is another barrier, as is people’s understanding of how other regulations impact on the public sector equality duty work.

In terms of how the public sector equality duty is set up, are all public sector organisations utilising it to full effect? No. Could it be better? Yes. What are the ways to help to improve that process? I

think that we said at the top of the meeting that we have made recommendations that we feel could help that process along.

Tess White: You say that it is working better in some areas—

John Wilkes: Yes.

Tess White: —but when organisations crowdfund in order to go to court on basic definitions, one could argue that it is not working very well.

John Wilkes: I am not in a position to talk about individual cases in that regard, and some of the cases might not be to do with the PSED and might be to do with other aspects of the Equality Act 2010.

Tess White: Thank you.

The Convener: As members have asked all their questions, that brings this evidence session to a close. I thank the witnesses for their evidence this morning. We will suspend briefly to allow for a changeover of witnesses.

11:15

Meeting suspended.

11:20

On resuming—

The Convener: Welcome back, and I welcome to the meeting our second panel. Kaukab Stewart, the Minister for Equalities, is accompanied by the following Scottish Government officials: Nick Bland, deputy director, mainstreaming and inclusion; Catherine McMeeken, deputy director, equality; and Jennifer Singerman, solicitor, equalities and criminal justice division. Thank you for attending this morning.

For the benefit of those who were not here at the beginning of the meeting, I remind 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 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 our 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.

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

The Minister for Equalities (Kaukab Stewart):

Thank you, convener, and good morning, colleagues. I welcome the committee's inquiry and the opportunity today to set out the range of actions that the Government is taking to advance equality and make the operation of the public sector equality duty and the Scotland-specific duties as effective as possible. The importance of such issues is highlighted at a time when efforts to advance equality, diversity and inclusion are under threat in many parts of the world. Now more than ever, Scotland must be a leader in demonstrating our commitment to continuing progress towards equality.

I want to make clear my commitment to using all measures to ensure that public authorities in Scotland properly embed equality and human rights into their delivery, with a clear focus on advancing equality, tackling discrimination and progressing the realisation of rights. That means using all available levers, which will involve both regulatory and non-regulatory change, and providing active and visible leadership. As Audit Scotland noted in evidence to the committee,

"The PSED on its own obviously cannot deliver everything".—[*Official Report, Equalities, Human Rights and Civil Justice Committee*, 4 March 2025; c 29.]

I agree, and it is notable that the Scotland-specific duties are one of the few examples of equality legislation being devolved to the Parliament.

The Government will publish its mainstreaming equality and human rights strategy later this year, and its evidence-based framework sets out six drivers of change that we expect public authorities to use to direct their equality and human rights mainstreaming. Regulatory change is one such driver. The PSED and the Scotland-specific duties are important contributors to the change that the Government wants, but I recognise that there is some frustration among stakeholders about their effectiveness and impact. I recognise, too, that public authorities in Scotland are already doing good work to advance equality, but we have a collective responsibility to make our actions more effective.

I will set out my priorities in the areas where we are making good progress. I recognise the role of visible leadership from Government in order to drive change, so I have prioritised providing personal leadership on the PSED, both with my ministerial colleagues and in a series of meetings with public authorities. Those meetings have included the Scottish councils equality network, the non-departmental public bodies equality forum and more than 100 duty bearers whom I have met to communicate my expectations and ambition in

setting equality outcomes. In all those meetings, I am raising the profile of the public sector equality duty, pushing for better equality impact assessments and stressing our collective responsibility to improve our equality framework.

However, we recognise that there remain systemic and structural barriers to equality mainstreaming, and the Government will publish its equality outcomes for 2025 to 2029 next month. They will deliberately focus on more effective impact assessment, better use of equality data and evidence, and application of lived experience as drivers of system change, as all those things are critical to generating lasting impact.

It is clear that there remains more work to do to build the competence of public authorities to effectively apply the public sector equality duty. We have commissioned the development of new inclusive communications tools and training, which will be delivered later in the year for the Scottish Government and other public authorities. That responds directly to calls from public bodies for more practical support and guidance that is informed by lived experience. To support the mainstreaming strategy, a toolkit of practical advice and support is being developed collaboratively with stakeholders. We have also been working closely with the Equality and Human Rights Commission on a range of projects, including learning sessions during our recent development academy week and a series of round-table meetings on outcome setting.

Looking ahead, we will set out by December this year how we plan to continue to improve the operation of the public sector equality duty in Scotland under regulation 12 of the Equality Act 2010 (Specific Duties) Regulations 2011, which relate to Scotland-specific duties, and I will consider the findings of your inquiry carefully when preparing that report. I look forward to a productive discussion on how we can make our equality regulations more effective and collectively create the society that we all wish to see.

The Convener: Thank you, minister. Over the past few weeks, as part of our inquiry, public authorities have stated that they generally have a good understanding of the terms and aims of the public sector equality duty in Scotland, but equality organisations have suggested that, although public authorities might understand the aims, they focus too much on the process and do not make positive changes to people's lives. The EHRC said that there are issues with the quality and consistency of compliance, and that those were reflected in the Scottish Government's consultation in 2021. Why do you think that there is such inconsistency in compliance with the PSED in Scotland?

Kaukab Stewart: I understand that there might be differing perspectives between PSED duty bearers and equality organisations on the challenges of ensuring that the duty is as effective as possible. It is the responsibility of public authorities to properly comply with the duty, as well as with the relevant codes of practice and the other guidance that is published by the EHRC. I want to see more consistency in the compliance, and the expectation is that the PSED duty bearers should be embedding equality and human rights in their existing work. My responsibility is to ensure that we have strong scaffolding for that approach and to push for the cultural change that is needed to ensure that it is embedded.

I recognise that we all have that shared ambition, and it is important to remember that we are all trying to achieve the same thing and ensure that we get the right balance between the Government being supportive and ensuring that public authorities live up to their responsibilities in order to improve.

The Convener: Thank you. We move to questions from members.

Tess White: Good morning, minister. I would like to clarify something that you said in your opening statement. It is good that you are providing leadership on the public sector equality duty, and I thank you for that. However, will you wait until the committee has published its report before you draft the guidelines that you said you are going to publish?

Kaukab Stewart: I confirm that, as I said in my opening statement, the work of the committee is incredibly valuable. You have taken a range of views, so taking on board your recommendations would be the responsible thing to do.

11:30

Tess White: Will you be able to share a draft set of guidelines with the committee before they are published?

Kaukab Stewart: I am not sure. I will bring in Nick Bland, because I need to check the technical aspect to your question.

Nick Bland (Scottish Government): I just want to check what you are referring to. Under regulation 12, we are required to set out our proposals for future improvements to the public sector equality duty. Is that what you are referring to?

Tess White: When we conducted our consultation exercise, we got a huge amount of input. In the previous evidence session, I said that 80 per cent of the respondents said that the PSED was not being implemented, and they gave the committee a lot of information on why they thought

that. Before the cake is cooked, will you share with us the ingredients that are going into it?

Nick Bland: The findings from the committee's inquiry will be really helpful. This year, we propose to carry out a range of engagement with the stakeholders that you have heard from and other wider stakeholders in order to produce the publication by December. Although the regulations require that we set out the improvements that we will make, it was always our intention to do that, because we are currently in a phase of reform of the public sector equality duty and we have to think about what the next phase will be. The evidence from the committee and from stakeholders will be an important part of the evidence base that will inform what we propose to the minister for the next phase of reform.

Tess White: It might be a request, then. Before you put water through the pipe, you need to check the pipe. Minister, if the committee has an important role in your work, my request is that you consider providing any guidance to the committee first. I will leave that request with you to take away.

Last week, Vic Valentine, who was representing Scottish Trans, said:

"we are always clear that our advice and guidance is not legal advice ... We would never say that we were giving legal advice to organisations ... We do not provide legal advice."—[*Official Report, Equalities, Human Rights and Civil Justice Committee*, 11 March 2025; c 56.]

That was said last week and it is included in the feedback in the committee's papers. However, the following day, ahead of the debate on single-sex spaces in the public sector, Scottish Trans sent MSPs a briefing that said on at least two occasions that it would be unlawful not to allow trans people to access single-sex spaces in certain situations, which legal experts have refuted.

On one day, in front of the committee, Scottish Trans said one thing, but the next day, it issued a briefing that basically said the opposite. Minister, do you believe that it is appropriate for activist organisations to offer guidance that leaves public sector bodies vulnerable to costly legal challenges? Will the Scottish Government, as a funder of such organisations, distance itself from such guidance?

Kaukab Stewart: Thank you for that question. You have raised a very interesting point. You and I know that, whenever debates take place, a variety of organisations circulate briefings to all MSPs. As far as I am aware, that is standard practice.

On the issue regarding the legalities, I want to make full use of my team so that we get the position absolutely right. I will bring in Cat McMeeken on that issue.

Catherine McMeeken (Scottish Government):

I reiterate what the minister has said. Scottish Trans was clear that it is not a solicitor and is not offering legal advice on the matter. In its briefing, it will have set out lots of different things to the committee, but that should not be considered to be, and no one should use it as, legal advice. It would be for the Equality and Human Rights Commission, as the regulator, to set out various things.

Tess White: Thank you, Cat, but this is an example of an organisation that is in large part funded by the Scottish Government saying one thing in front of the committee and then, the next day, saying the complete opposite. It is an organisation that gives guidance to public sector bodies, so that is relevant.

Minister, given that you are providing leadership on the PSED, I would like you to take that issue away and say that there are big questions that need to be asked, given that that organisation is saying one thing and doing another. If I was giving large amounts of money to an organisation, I would want to question what was going on in that regard. I will leave the matter with you.

Kaukab Stewart: Thank you. As the Scottish Government, we fund a wide variety of organisations and procure the delivery of certain services from organisations. Our funding for any organisation will not necessarily be 100 per cent, because it will provide only specific services that we have commissioned. I just want to make that clear. Thank you for raising that point.

Tess White: Thank you. I will probably write to you after the meeting.

Kaukab Stewart: Please do. I would be happy to receive that correspondence.

Maggie Chapman: Good morning to you and your officials, minister, and thank you for your comments. I am interested in a couple of things that you said in your opening remarks and in response to Karen Adam's questions about consistency. One of the challenges is that some groups and individuals might rely quite heavily on the PSED to deliver positive outcomes for them, and we are not necessarily seeing consistent outcomes through the processes. What is the main reason for some of the challenges or the failures to deliver positive outcomes? We have heard quite a lot about the focus being on process rather than outcomes. Why have we not seen the shift to outcomes for individuals and for people with protected characteristics?

Kaukab Stewart: There is no simple answer—if there was one, we would have solved the issue—so I am in the position of extracting the different threads, some of which concern competency, some of which concern capability and some of

which concern cultural change. I heard from some of the contributors to your committee last week that they felt that there was often resistance, too. The other side of that, which I referred to in response to the first question, is that there are often different ways of seeing things and different perspectives.

My focus, which I think I share with you, is on the actual impact at the end of the day. We need to ensure that, although we have bureaucracy, duties and expectations, the processes are outcomes driven and impact driven, as opposed to being mechanistic and bureaucratic. I am trying to avoid using the term “tick box”, but I want to get away from that tick-box approach, and we recognise that, traditionally, there has been a danger of that.

If we are trying to embed a human rights approach in the delivery of all our public services, it is incumbent on us to make that our starting point as opposed to that consideration coming in later, when it is almost too late and we are then looking at mitigation. We want to be strategic, which is why we are taking a phased approach to reform. In that way, we can learn from each phase what is working and what is not working and then ensure that we distil that down into concentrating on the specific actions that will lead to change. I referred to that as scaffolding, but I can go a bit further into what that looks like, namely providing the training and the toolkits and ensuring consistency of delivery.

That is where the visible leadership bit comes in: people see that I am on this, that I am rolling my sleeves up and that I am engaging extensively with more than 100 different duty bearers. I am going to continue with that work. There is a relentless drive to improve consistency.

Maggie Chapman: I hear that, and your commitment to this is very clear. You have just mentioned the value of leadership. One of the EHRC witnesses in the previous session, when commenting on the consistency of compliance—particularly with the first of the needs covered in the PSED—said that it depends on the seniority of the person completing the report and on how data is gathered.

I do not want to get into data gathering and that kind of thing, but how do we ensure that we get leadership from the top of all the public bodies on the requirement to comply with the PSED and that it is not just left to one person to try to pull everything together? How do you see your interventions driving that leadership through organisations?

Kaukab Stewart: It is a complex trajectory and the value that I can add is to make it clear that I expect this way of working to be embedded and

not seen as additionality. I understand what people are saying; I worked in the public sector for decades, and I know that there can be a fear of additional expectations being put on already hard-working people who are trying incredibly hard to work on equalities. Often, the reaction to this sort of thing is, “Oh, here is another thing we have to do,” but I want to shift the narrative to, “This is about how we as public authorities approach and do our work.” It is not about the amount of work to be done; it is about improving how we do the work. That is not additional work.

Maggie Chapman: Okay. There are a couple of specific areas where inconsistencies have been highlighted to us. For example, we heard from BEMIS on the characteristic of race; although it covers colour, nationality and ethnic or national origin, the focus, usually, is on colour, not on ethnic origin or anything else. Has that example come up in your conversations with duty bearers? Has there been a recognition that the characteristic of race, for example, embodies much more than just that one part? After all, if that is true for the characteristic of race, it is probably true for other characteristics, too.

Kaukab Stewart: I have met BEMIS several times as a strategic partner of the Scottish Government; indeed, prior to my being in this role, the Scottish Government worked with it effectively for many years, and we will continue to do so. We really value its work.

However, I am sorry to hear that it takes that view, and I do not agree with its assessment. I think that the Scottish Government has been very clear about our obligations under the Equality Act 2010 and, of course, the International Convention on the Elimination of All Forms of Racial Discrimination. We are very clear that one size does not fit all; indeed, if we thought that it did, the approach to anti-racism for racially minoritised communities would fail to deliver.

As you have said, the racialised outcomes are not experienced uniformly, and any effective interventions that we make have to be evidence based and take specific experiences into account. In your previous session, one of the EHRC witnesses raised the issue of Gypsy and Traveller communities; we have an action plan to drive positive change and tackle inequality for those communities across Scotland. We have put our money where our mouth is, with over £15 million having been—or committed to be—spent between 2021-22 and the recent 2024-25 budget, and there are loads of local projects on cultural aspects specifically but also on accommodation in six local authority areas.

We are clear that we work to the definition of race in the Equality Act 2010. As a Government, we do not exclude or include specific minorities

when we talk about communities that experience racism or are racialised.

11:45

Maggie Chapman: Another interesting issue came up in evidence last week. You talked about the action plan for Gypsy and Traveller communities. On the issue of racism, there was an expectation that health boards would put together and draw up anti-racism action plans. Is it your intention that all public bodies with responsibilities under the PSED should have an anti-racist action plan? If so, do you see that just being done in a phased way rather than requiring everybody to do it all at once? Can we speed things up a little bit?

Kaukab Stewart: That is where the committee can add value, if that is one of its recommendations. A lot of public authorities already have anti-racism action plans. For instance, in the teaching sector, a lot of excellent work has been done over a number of years. I have seen the trend of moving from multiculturalism to being positively anti-racist in order to prevent those harms, as opposed to just having policies to deal with matters once the harms have come about.

It is only right that there is a phased approach. Every local authority or public body will be at a different stage of developing a plan, but my expectation is very clear that it is good practice to have that plan as part of the body's supportive policies.

Maggie Chapman: Thanks. I will leave it there for now.

The Convener: We move to questions from Pam Gosal.

Pam Gosal: Good morning, minister and officials. Thank you for the information that you have provided so far.

Last week, we heard from Jatin Haria from the Coalition for Racial Equality and Rights. When it comes to reporting on the gender pay gap, he said:

"the numbers are stark enough to suggest that somebody is not doing their job."—[*Official Report, Equalities, Human Rights and Civil Justice Committee*, 11 March 2025; c 15.]

When I asked him to go into more detail, he said that this extends to both the Scottish Government and the EHRC. I said that I would ask the Scottish Government about it, knowing that you were coming in today, minister. How do you respond to the comment that the Scottish Government is not doing its job?

Kaukab Stewart: I agree that there is a need to be clearer and to have a more integrated

approach to embedding equality into the work of all public bodies. I am not going to sit here and say that everything is hunky-dory. There are people in our communities who still face inequalities, and it is incumbent on us all to recognise that.

I stress that we are aware of the issue and that we are working on it very actively. I assure the committee, and I hope that I can demonstrate to it, that we are using all the levers that we can, which are probably more limited than we would like them to be; however, that is the nature of what we are working within.

Taking that integrated approach to embedding equality is important, and it applies to the PSED more broadly as well. That is why we will publish our equality and human rights mainstreaming strategy later this year.

On the issue of pay gap reporting in particular, in our consultation, most respondents were supportive about expanding reporting, but we need to do that in a way that makes a real difference. As I said, I accept that there is a disparity in perception around this. I am not minded to get public authorities and public bodies to gather data just for the sake of it. Data is very important, but we must triangulate the qualitative and the quantitative as well as lived experience and direct stakeholder engagement. That is the best way to make it robust.

Part of that is about recognising that you must take people with you. I understand and accept that some people will say that they have been doing such work for a while and that it is not going fast enough. However, we all recognise that it is a complex area. There are examples of public organisations that are already extending their reporting, voluntarily, to include disability and ethnicity data—the Scottish Government, for instance, does that voluntarily. We can learn from existing practice.

Pam Gosal: Going back to what you said about ethnicity data, you are probably aware that women of colour are more disadvantaged. They are also further away from the labour market and, when they are in that labour market and working, they sometimes come across many prejudices. Culture plays into that as well. Are you doing anything around that? You mentioned the mainstreaming strategy. Are you doing any work on how areas such as culture affect women of colour, especially when they are working or looking for work?

Kaukab Stewart: I totally understand the issue. The statistics are stark, which is why we are taking a lead on the matter and, as I said, my focus on those issues is relentless. As a minister, I am mindful that my duty is to serve all the protected characteristics. As a black and minority ethnic woman, I have extra knowledge of the matter, so I

assure Pam Gosal that it is definitely in my mind to be aware of the intersectionalities.

However, the same principle—that we are not one thing—applies to all protected characteristics. One day, your colour might be the most important thing; on another day, your gender might be causing the barrier; on another day, it might be your socioeconomic background or communication skills. That is where mainstreaming comes in, to ensure that we are in fact cognisant of all those different strands.

I will bring in Nick Bland to speak about the regulation on pay gap reporting. Pay gap reform is quite complicated and it might be beneficial to hear a bit more about it.

Nick Bland: I will start with the reform of pay gap reporting itself. Just this morning, the UK Government launched a consultation on its proposed equality (race and disability) bill and its plans to expand reporting to include the ethnicity and disability pay gaps. We want to look at its proposals carefully, because there is a lot of technicality in pay gap reporting—around the formulas for the calculations of that pay gap, for example—and, as best as possible, we want to ensure that the way in which it is reported is consistent. We need to see what the UK Government thinks is the best way to calculate it, because we will have to take account of that as we introduce our proposals on pay gap reporting.

In the earlier session, Bill Stevenson spoke about the importance of the drivers of the pay gap. As the minister said in her opening remarks, the PSED is one mechanism but the Scottish Government policies are really key in that area as well—policies on employability, fair work and childcare are all important drivers to support women in particular in relation to their experience of pay gaps in the workplace.

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

Paul O’Kane: Good morning. Throughout our evidence sessions, I have asked about inclusive communication. The Scottish Government has revised its approach such that, instead of having a specific duty on inclusive communication, it will use a ministerial power to draw attention to guidance and materials on inclusive communication. It would be useful to understand why that change was made to the initial proposal on inclusive communication. What do you think that the new proposal will achieve?

Kaukab Stewart: I will give you a general overview. There are technical reasons for that perceived change, which I will bring in my officials to explain.

We know that inclusive communication is fundamentally important to people’s use of public services, and that many people have diverse communication needs. That is why we are investing in the new guidance and tools to strengthen the public sector’s approach. My decision to pursue a non-regulatory route was informed by careful consideration of what I thought would make the biggest impact. That was the rationale behind my decision.

We identified that a new regulation might not drive the change that we wanted to see in the way that providing practical tools and support would do. That is always the number 1 ask whenever we make a demand on public authorities—they ask what support we will give them to enable them to do what we want them to do. It was a priority for us to make sure that they would get the support that they needed.

I am pleased to be able to share with the committee that Communication Inclusion People and Disability Equality Scotland are the leads on that work, and I welcome their partnership approach. When I met the project leads last week, I emphasised my support for the work that they are doing.

Our contractors intend to co-produce that work with people with diverse communication needs, including people who have lived and direct experience of communication exclusion, people with various disabilities and people with neurodivergence. I am excited about that work, and I hope that I will have the opportunity to update the committee as it develops. I am confident that the approach that we are taking will significantly change the ability of organisations to meet the needs of people with communication differences.

I will bring in Nick Bland to explain why the change was made with regard to the limits.

Nick Bland: As the minister made clear earlier, we are cognisant of the need to work with regulatory and non-regulatory levers when it comes to the Government’s overall ambition for embedding equality and human rights in public organisations.

I remind the committee that all the regulations under the Scotland-specific duties are focused on enhancing the effective performance of the public sector equality duty itself, so we must consider how those regulations can be developed in a way that is supportive of better performance of that duty. That means that we need to make some judgments at official level about whether regulatory or non-regulatory interventions will have that effect.

We have made the decision to go down the guidance route. The advice that we gave to the

minister was very much based on what we had heard—I think that the committee has heard this from others—about public authorities benefiting from increasing their competence across the piece. What we are discussing here is a very targeted piece of work to build their competence in relation to inclusive communication.

We have taken a very expansive view and have looked at the guidance and support that is provided by various organisations. The proposed power is very targeted—it is intended to be used to fill the gaps in that guidance and support to give public authorities a clear steer on inclusive communication and the need for them to engage in such communication in not just a reactive but a proactive way.

Kaukab Stewart: I heard previous witnesses say that what we were proposing was nothing new, because public authorities already have a duty to make reasonable adjustments. I listened very carefully to those comments and I thought that they were interesting.

However, there are limits with the reasonable adjustments approach. Equality law sets out that reasonable adjustments are applicable only to disabled people. The existing regulations on accessible communications and publications are important, but we want to help public authorities to address multiple communication barriers, as far as that is possible within devolved powers.

Part of my thinking was that the reasonable adjustments approach is not enough because that approach concerns only one protected characteristic, whereas taking the revised approach encompasses everybody.

12:00

Paul O’Kane: That was quite an overview. Do you recognise the evidence that we have taken from other witnesses—particularly those from local authorities and other parts of the public sector—that the challenge is one of resourcing? I appreciate what you said about practical support and resources, although this piece of work is more about developing and standardising guidance and trying to “fill the gaps”, as Nick Bland said.

Do you recognise that there is an overall resource challenge for local authorities regarding making things available in easy-read format and ensuring that that happens as a matter of course, rather than happening reactively? Do you recognise a lot of the things that those witnesses said? What is the Government’s intention with regard to providing that resource support?

Kaukab Stewart: I recognise that evidence. That is exactly why—as I shared with the committee—Communication Inclusion People and

Disability Equality Scotland are going to lead on this work. I hope that they will provide the work that a lot of local authorities are probably trying to do at their own level. This work will provide consistency, and I hope that it will be an extensive resource bank that can provide good practice and will be there for people to pick up and use. There will be a bit of an economy of scale, but it will also help with providing consistency so that, from one end of Scotland to the other, everybody gets the same service.

Paul O’Kane: So, your view is that public bodies will be able to access the resource as a means of delivering. That is the challenge. Local authorities say that they are aware of their duty and that they want to do more, but they very often do not have the resources that they need in terms of people and staffing—let us be honest—or time. Will that work have a demonstrable impact on the availability of time and staffing resources?

Kaukab Stewart: Absolutely. I hope that the toolkit and the guidance that goes with it will provide direct and practical support.

Paul O’Kane: Okay. I heard your offer to come back to the committee on the detail of that, which I think would be useful to colleagues, and then we can perhaps review the implementation.

Evelyn Tweed: I thank the minister and officials for all their answers so far.

Minister, it is good to hear that you are working closely with the EHRC. How effective is the EHRC as the regulator of the PSED in Scotland?

Kaukab Stewart: We are doing a double-hander today—I note that representatives from the EHRC were at the evidence session prior to this one.

The EHRC plays a crucial role in supporting and ensuring the implementation of the PSED in Scotland. However, I want to make it absolutely clear that the EHRC is—rightly—*independent*. As a reserved public body, its powers cannot be changed by the Scottish Parliament, nor can it be directed by Scottish ministers. It is not funded by the Scottish Government and we have no say in who it appoints to official positions.

Having said that, I also want to be clear that the relationship between the Scottish Government and the EHRC is built on our shared commitment to advancing equality, human rights and social justice across Scotland. We have a good working relationship at the ministerial level and at the official level.

Evelyn Tweed: You will have heard that we asked very similar questions of the EHRC in the previous evidence session. There are concerns about its effectiveness and funding—whether its funding is enough for it to do what it would like to

do. What more can the Scottish Government do to help it to be an effective body and to help with the PSED?

Kaukab Stewart: I have sympathy with the EHRC's position. Every organisation wants to be as effective as possible. I would be very supportive if the UK Government increased the EHRC's resources. I know that its budget has been cut substantially over the years, which is unfortunate in these challenging times, when, more than ever, we need to be leading on equality across the four nations in the UK. I would support any moves for the EHRC to have additional resources.

The Convener: We move on to questions from Marie McNair, who joins us remotely.

Marie McNair: Good morning. Over the past few weeks, I have focused on the impact on local government organisations, including local authorities, of the delay to reform. The feedback was that that mostly impacts them, although some have just been getting on with it. I welcomed your reference to the guidance being published in December. There has been chat about delay—for example, the pandemic was mentioned. What other factors caused the delay?

Kaukab Stewart: As a Government, we have consistently prioritised taking actions to tackle persistent inequality. We have supported those who are most disadvantaged and who face the greatest barriers to realising their rights, and we will continue to do so. Over the next year, we will publish new equality outcomes and deliver our mainstreaming strategy, including the associated toolkit. We will also launch our inclusive communications toolkit and the training that goes alongside that. We will progress the expansion of the pay gap reporting, publish our regulation 12 reporting and use ministerial powers under regulation 11 for the first time.

Alongside our work on the operation of the public sector equality duty, we continue to work on building capability, culture change, strengthening leadership—including at senior levels—making better use of our equality data and further building equality and human rights into our budgeting process. There is certainly momentum there; based on some committee members' comments, I think that the committee recognises that momentum.

Committee members will know that I am very pragmatic and practical. I want to base my work on outcomes, so I am very much future planning. I hope that the actions that I just listed will assist with that. If Marie McNair would like further information on perceived delays, I will happily bring in one of my supporting officials. Some of the delays will have happened prior to my time, so,

with the convener's permission, I am happy to bring in Nick Bland, who would be best placed to provide that information.

Nick Bland: We consulted on PSED reform a few years ago, and we have to accept that the initial progress was not as speedy as we would have liked—there was some redirecting of resources during Covid, for example.

Although there was some expectation that the Government would be in a position to do everything that was in the consultation, when we wrote to public authorities and stakeholders a couple of years ago, we were very clear that we were going to take a phased approach to the reform. The focus has been on the Government's manifesto commitments on inclusive communication and the pay gap. The minister has been able to set out everything that we are doing this year because of a lot of work that was done last year. A bit less of that was public facing—a lot of work was done in the back office, so to speak, to give us the momentum that the minister has spoken about.

As I said in response to the first question from Ms White, I am clear that we need dedicated resource to support the activity of the team with responsibility for the PSED in the next phase. We are clear about maintaining and building on the momentum that we have now, but I accept that we were not in that position a few years ago.

Marie McNair: I welcome that commitment, but do you anticipate any further delay?

Kaukab Stewart: We always do a sense check and risk assessments, but I refer to my earlier comment that we are taking a phased approach so that we are not applying undue pressure.

My expectations are clear. I am providing leadership through extensive engagement with duty bearers, public sector bodies and the equality networks. The messaging through that engagement is consistent and, I believe, wide and very clear. We have close connections and we communicate regularly, so we would be able to anticipate any tensions, barriers or hurdles that might arise, and we would plan accordingly, as you would expect—that would be good practice.

However, the short answer is no; I do not expect further delay. As Nick Bland said, a lot of the structural work that has allowed me to build the current momentum was done previously. I am mindful of that and grateful for it, and I am now taking it on to the next step. I am playing my role in the position that I am in at the moment.

Marie McNair: Thank you, minister. I will leave it there.

The Convener: We will go back to Maggie Chapman.

Maggie Chapman: I want to shift the conversation a little bit, minister. Within the public sector equality duty, there are three high-level needs: to pay due regard to eliminating discrimination, harassment and victimisation; to advance equality; and to foster good relations. In the past couple of weeks and this morning, we have heard that two of those needs—advancing equality and fostering good relations—are often overlooked, not given as much importance or not well enough understood. How would you describe the need to foster good relations to the people you are talking to, such as public bodies, public agencies or others with responsibilities under the PSED?

Kaukab Stewart: I gave the bit about fostering good relations some thought and I listened to the views that were presented to the committee by other witnesses. I have a two-fold approach to fostering good relations. We want to make sure that we maintain and advance cohesive communities. That is essential. We also have to make sure that we always deal with conversations with communities in a compassionate way. The two-fold bit is that communities can come together and public organisations and bodies have a role to play there. Moving on from that, it is also about increasing understanding between different communities, and education is needed to make sure that we do that in a compassionate way that shows that building strong, cohesive communities is important.

12:15

There was an example of that during the summer when there were the unfortunate situations in Southport. As a minister, my approach when tensions were heightened—it was led by the First Minister; there was leadership right from the top—was to bring together people with different views and experiences in order to communicate, to aid understanding and to provide clear expectations and leadership. You are right, in as much as the fostering of good relations does not get the profile that it deserves. It is quite hard to do that bit. Nick Bland may have more to say.

Nick Bland: I could add a couple of illustrations, although I will again take the matter out, from the narrow framework of the public sector equality duty to Scottish Government policies. I can speak to some of my other responsibilities where fostering good relations is embedded in specific Scottish Government policies.

I point the committee to the new Scots refugee integration strategy, the principles of which are related to fostering good relations. The strategy is about the integration of refugees in communities and there is very much a partnership between communities and refugees in that integration.

The minister rightly talked about her role in the summer, with the First Minister. Underneath that, we fund interfaith organisations to do a range of work on interfaith relationships and the sense of understanding and solidarity. Some of that work that we fund is precisely about going in to schools and educating children about different faiths and about understanding the relationships and commonalities between faiths.

We may not always articulate that as fostering good relations under the public sector equality duty, but I could point to a range of Government policies that are targeted at having that impact.

Maggie Chapman: It is helpful to draw out those broader examples that might not sit within PSED reporting. Perhaps that is also something for us to think about—how we talk about the fostering good relations element of PSED.

There are some challenges, and we heard from the EHRC this morning that the police, for instance, have a key role in supporting the fostering of good relations in different ways. Do those issues form part of your conversations with agencies such as the police? What is the Scottish Government's role in furthering this need—the requirement to foster good relations—especially with an organisation such as the police that has been identified as being institutionally racist? How can we expect different communities to trust that type of organisation to foster good relations? How do we unpick that knotty issue? I realise that that is a small question with big consequences and implications.

Kaukab Stewart: I will have a go at answering it and I will try to unpick some of the elements. Yes, the police were recognised as being institutionally racist. There is a clear distinction, however: that does not mean to say that the people working in the police force are all racist. We know how institutions and structures can reinforce and compound discriminatory practices.

Once we have that acknowledgement, my pragmatic piece is to move on. Our focus is on improving outcomes; that is what we need to do. The police take a community-first approach and they invest in community police officers to build those relationships within the communities and to be embedded within them. I know that they do amazing work in community centres, on the street, in our schools and so on. However, it is incumbent on us all to reach out and build that mutual trust and confidence, although I understand that there will be challenges when people are operating in a deficit model.

Nick Bland mentioned our work on new Scots, and we are also doing a lot of work around hate crime. The police play a crucial role in making Scotland a safe and cohesive place. I refer again

to the events of the summer, when the police were involved in extensive briefings and their response was largely well received by the communities. I think that, by and large, they struck that balance between providing a supportive presence and not being oppressive or taking a disproportionate approach. Of course, we have to remember that the police are completely independent, and what they do in that regard is up to them, in that sense.

Nick, do you want to come in briefly?

Nick Bland: I will just amplify that point about the work of the police last summer. As the minister said, they did a lot of work with communities and engaged in direct briefings with them, which were often very much focused on people's sense of safety in the context of the heightened tensions that were around at that time. In the briefings, the police indicated that they were there for everybody and aimed to prevent any escalation of violence. We were pleased to see that.

I point the committee to Police Scotland's policing together strategy, which is very much focused on this area. As the minister said, we have strong and good relationships with Police Scotland in relation to the delivery of the hate crime strategy. We are working closely with the police on that and, again, I point to that as an example of policy delivery that is focused on the duty to foster good relations.

Pam Gosal: Minister, I have a few questions, so I ask you to bear with me.

I want to ask about a point that I have brought up with many witnesses. There are nine protected characteristics under the Equality Act 2010, and characteristics such as religion and sex come into conflict with issues around gender identity. For example, as I brought up in relation to the Gender Recognition Reform (Scotland) Bill, many BAME and religious women do not feel comfortable having procedures such as smear tests and breast examinations performed by biological males, including trans women. Similarly, Sandie Peggie was suspended for refusing to share a changing room with a biological male who did not even have a gender recognition certificate. All too often, it looks as if women are thrown under the bus in favour of trans ideology. Will that be the case for every woman of religion or colour if they come forward and say they cannot undress in front of or be examined by a biological male? Do you think that it is okay for women and girls, including those of BAME and religious backgrounds, to be undressing in front of biological males?

Kaukab Stewart: You are right that there are multiple questions in there. I will do my best to address them; if I do not, I am quite happy for you to write to me and I can give you further information.

My role as an equalities minister is to balance the rights of various people. As you quite rightly said, there are nine protected characteristics, which were protected over time because it was recognised that people with those characteristics face additional barriers, systemic discrimination and harms. We want to ensure that people in each of those categories have a better life and have access to what everybody else has access to.

My job is to balance those rights in a compassionate and kind way that is within the law. It is not a competition, nor is it a hierarchy. If we strip back the approach and look at what underpins it, it is a human rights approach. If we accept that human rights must be at the heart of everything that we do to advance equality, we see the human who is in front of us and make sure that they have dignity and respect and are not in difficult positions.

I understand that there is a bigger debate around the issue, which has become very polarised, and that there are very strong feelings—it is difficult—but my position is that rights are not a competition or hierarchy. If we start from a point of dignity and fairness then, of course, nobody should be getting undressed in a situation that they feel uncomfortable in.

Pam Gosal: I want to probe that point. You talk about dignity and respect, and in one of your answers, you said that, as you are a woman of BAME background, like me, you know when an issue is affected by certain religious aspects.

Last week, I said that Governments and organisations were on the one hand giving rights to prayer rooms but, on the other hand, taking away a right to single-sex facilities. As a woman of colour and religion, you know that before a person goes into a prayer room, they have to visit the bathroom. If you are going to a single-sex space, that is fine, because you have respect and dignity, but when that space is up for question and becomes a unisex space—people out there, who are listening to this session, are very confused on this—what happens then? You will not need the prayer room because you cannot go in to the bathroom and do your wudu steps before prayer. What is the use of providing something but then taking away a right somewhere else?

You are right—it is not a competition—but there has to be a fair balance. Right now, I do not think that women of colour—even women and girls who are out there, in general—are finding that balance, because there is no respect and dignity in sharing a unisex toilet or facility with a biological male.

Kaukab Stewart: I understand the nub of what you are saying. I will give you an example from my experience—the member will be aware that I do not often talk from my experience because my job

is to represent everybody and do the best that I can for them—that may be relevant here, which is for you to judge. Many years ago, a similar debate was had around BAME and Muslim women who were fleeing domestic violence and getting accommodation in women's refuges. In that space, their harms were being compounded because they did not have access to culturally sensitive food, and they did not have access to other women who were like them—people take comfort in having such a service.

The women were also victims of racism in that space, and when those issues were talked about, it was discovered that, "Yes, there is a practical way forward," and solutions were looked at that accommodated everybody's needs—our needs as BAME women are complex and nuanced. After that, women's refuges were set up specifically for women from ethnic minorities so that they did not have to suffer the additional harm that is caused by racism in such a space. I hope that that gives the member some comfort that I take seriously and understand the complexities. My job as a minister is to balance that with as much fact as I can, to reassure people and to make sure that the letter of the law is being followed.

12:30

Pam Gosal: I have a few other questions. You touched on domestic abuse, minister. I have spoken to countless survivors of sexual assault and domestic abuse. Many of those women do not feel comfortable when surrounded by men and have stressed the importance of single-sex spaces. Do you believe that a woman who does not want to share a space with a trans-identified male should have to explain why, for example by disclosing a history of sexual assault or domestic abuse?

Kaukab Stewart: I have met many women who have suffered from domestic violence. I have visited—*[Interruption.]*—Rape Crisis Scotland, for instance. Forgive my hesitation; I was trying to think of the different organisations that I have met. I have spoken directly to those women and I think that the most important thing is that the service is based around the survivor and their needs. The law is quite clear that actions must be reasonable and proportionate. I have answered questions on that and my statement is on record. However, I can flesh it out a bit by saying that, of course, it should be person centred. If we take a human rights approach and look at the human who is in front of us, we can find ways around problems; that must be the starting point.

Pam Gosal: You will be glad to know that I have only two more questions.

The Scottish Prison Service policy for the management of transgender people in custody allows for some men and trans identities to be housed in the women's estate. That includes violent men, providing they do not have a known record of violence against women. In its equality and human rights impact assessment, the SPS says that it is public sector equality duty compliant. Is the Scottish Government confident that the SPS is PSED compliant?

Kaukab Stewart: You have touched on the prison service, so I will bring in Cat McMeeken.

Catherine McMeeken: That is the Scottish Prison Service's policy. It is for the SPS to work out whether it is compliant with the equality legislation. The EHRC, as a regulator, also plays a role. The Scottish Government has always been clear that it is for employers to ensure that they are compliant with all the appropriate legislation, including the workplace regulations and the Equality Act 2010.

Pam Gosal: So you could not comment on whether the SPS is compliant.

Catherine McMeeken: No. It would not be appropriate for the Scottish Government to do so.

Pam Gosal: The Workplace (Health, Safety and Welfare) Regulations 1992 state that changing rooms

"shall not be suitable unless they include separate facilities for, or separate use of facilities by, men and women where necessary for reasons of propriety".

It is the Scottish Government's duty to ensure that all public bodies comply with such regulations. However, we have seen female nurses and female police officers being forced to share changing facilities with biologically male colleagues. Why are the health boards and Police Scotland not complying with the regulations?

Kaukab Stewart: I do not know for a fact that they are not. I cannot sit here and say that about every single hospital or local board. I do not think that it would be reasonable to expect me to have that information here and now. However, I will refer you to my earlier comments. If we start with dignity and fairness, and if we ensure that the measures that we take are proportionate, we can accommodate. Nobody, from any community at all, should be forced into an undignified position. I am very clear on that, and always have been, wherever it might happen on the public estate.

Pam Gosal: Minister, I spoke to the EHRC earlier about the interpretation of the law. Without naming any specific cases, you will know that there are on-going issues with regard to the interpretation of the law, including the regulations. I would not say that people are confused, but they are all interpreting the law in their own way—every

organisation is. You are right: not every organisation is going out to basically not have those facilities, or to have them. Again, though, the issue is out there, and the waters are pretty muddy. People do not know what they are doing, and the fact is that more and more legal cases are going to come forward, so that clarity can be provided.

Can you shed some light on this, minister? Are you aware that interpretation is not clear? I have talked about regulations, and I mentioned the Equality Act 2010 earlier. Are people complying with them? Do you see that the water out there is pretty muddy when it comes to how people—and organisations, especially—are interpreting the law?

Kaukab Stewart: I cannot comment on anything specific, as the member will be well aware. However, I point out that there are also the regulations on health and safety in the workplace. There are lots of regulations in place.

This is certainly a role for the EHRC, which is the enforcer, as it were, with jurisdiction over this area. I will be meeting the commission very soon, possibly even next week. We have always had a close working relationship, and I am looking forward to meeting it to explore these issues of interpretation and enforcement. I am sure that those issues will come up.

Pam Gosal: Please do discuss them, because the situation right now is not very fair for women and girls out there. They do not have their dignity, respect or fairness right now, because they have to share single-sex spaces and services in many places. I hope that the Government will provide some clarity on this issue.

Kaukab Stewart: I will have that conversation with the Equality and Human Rights Commission.

Pam Gosal: Thank you.

The Convener: I call Tess White.

Tess White: Before I ask my main question, minister, I want to pick up on something that you said about Police Scotland. You said that Police Scotland is “completely independent”, yet the organisations advising it on equalities policy guidance are, in large part, funded by the Scottish Government. You used the words “dignity”, “fairness” and “proportionate”. I note that there is an organisation called Police SEEN UK, whose views and input the head of HR for Police Scotland would not entertain; Police Scotland would rather have input from organisations funded in large part by the Scottish Government. Given that, I question the use of the word “independent” in relation to Police Scotland. There are huge issues with Police Scotland right now.

I am happy to write separately to you on that, minister.

Kaukab Stewart: Yes. I do not understand the point that you wish me to address—I am sorry.

Tess White: I suppose that my key point is that you have stated that Police Scotland is “completely independent”—that is what you said—but on policies in relation to equalities, and, I would add, the implementation of the PSED, it is getting its guidance from organisations that are funded in large part by the Scottish Government. So, my question is: how can Police Scotland be independent?

Kaukab Stewart: We fund many organisations to provide specific services—I am thinking of suicide helplines, advocacy work and all sorts of other things. Of course, those organisations also do other work. For instance, we may ask charities to deliver a particular service on behalf of the Scottish Government, but they may provide a range of other services, and in amongst that, they may well be advising other organisations. It is a matter for the police from whom they take their advice. It would not be up to me to comment on that.

Tess White: What is your view on whether the Scottish Government should provide guidance on the Equality Act 2010 in addition to the EHRC?

Kaukab Stewart: I have made my position on that very clear several times in the chamber. We expect everyone to be following the equality act as well as the health and safety regulations. The position is absolutely clear.

Tess White: I am interested in the balance of protections for different groups, which we explored with the previous panel, and the conflict of rights that has emerged. You use the words “dignity”, “fairness” and “proportionate”. I agree that those three words are very important. Is it the Scottish Government’s view that public bodies can provide for single-sex services or spaces as a matter of policy; that is, not on an individual or case-by-case basis?

Kaukab Stewart: I understand that there are two separate parts to that, which are both valid. My original point was that, under a human rights-based approach, we have the equalities legislation, which is very clear and which allows for exemptions. I recognise that there will be situations in which decisions will be made on a case-by-case basis, because the numbers will be exceptionally small. Those cases will need to be sensitively and compassionately understood.

Tess White: To follow up on that, you said that the numbers will be small. I will take women in hospital as an example, which is when they are their most vulnerable.

Kaukab Stewart: They are.

Tess White: The NHS Tayside single-sex accommodation policy allows trans-identified males to be placed on women's wards, which effectively creates mixed-sex provision. That policy is based on the patient's presentation—the way that they dress, their name and the pronouns that they currently use. You say that the Scottish Government is providing leadership on the PSED, which is good. Does the Scottish Government support the principle of allocating people to hospital wards based on their gender identity, or does it believe that wards should be single sex?

Kaukab Stewart: I am sure that the health portfolio can provide further information about hospitals in particular, but my general understanding is that the estate is moving towards single-sex provision. It is a big estate that is moving away from mixed wards towards the provision of single-sex wards. Particularly as new hospitals are built, certain buildings are moving towards the provision of single rooms in order to ensure that patients' dignity is intact.

Tess White: Finally, I have noted that you have said that you want to provide leadership on the PSED and that you want to put your money where your mouth is, yet 80 per cent of respondents to the committee's call for evidence said that public bodies do not understand and have not implemented the PSED properly. So, there is an issue with public bodies. During the previous evidence session, the EHRC said that there was an issue with the education sector and we have highlighted an issue with hospitals. I have also talked about big issues with Police Scotland.

In relation to the lack of implementation of the PSED, your leadership and putting your money where your mouth is, should you and/or the Scottish Government not suspend the pay rises of the leadership of those public sector bodies that are allegedly in breach of their duties? As a head of HR, if there were a specific issue in a part of an organisation, I could not take money off people, but I could and would suspend pay rises. If you have concerns and you are providing leadership, would it not be a practical thing to say, "Hang on a minute, let's just suspend pay increases and review the implementation of PSED?"

12:45

Kaukab Stewart: We have decided to take a phased approach to reform, because, as I said at the beginning, we need to take people with us. I understand where the member is coming from and possibly some of the frustrations around how we hold people accountable for compliance. The question is whether we take a punitive or a supportive approach: I have been very clear that I

have decided to take a supportive, phased approach by providing that scaffolding. have set out my expectations very clearly and I will continue to do so.

I will bring in Nick Bland on the technicalities, because I think that you were asking about wages.

Nick Bland: I cannot speak to decisions about pay but, in relation to the public sector equality duty framework, I refer back to comments that the minister and I made about the PSED being only one element of all the work that we are doing to embed equality, inclusion and human rights into the functions of public authorities.

We consulted on the mainstreaming strategy. That consultation closed in February and we will publish the strategy later this year. It sets out six drivers of change that we will be expecting public authorities to be paying attention to, so that they take a systematic approach to mainstreaming equality and human rights.

There is a danger of a narrow focus on meeting the legal requirements of the public sector equality duty, when it is not a ceiling but a floor for the Government's ambitions in relation to equality, inclusion and human rights—hence its work on the mainstreaming strategy and policies with a specific focus on aspects of equality in health, education and so on. I would encourage the committee to think in the round about the contribution that the PSED itself can make alongside the wider area of work that the Government is taking forward.

Kaukab Stewart: I know that we are way over time, but it might be helpful for the committee's understanding to bring in Jennifer Singerman, who could talk about the limitations of the public sector equality duty.

Jennifer Singerman (Scottish Government): As the minister said, I can provide a brief outline of the legislative framework. In short, as provided for by section 149(1) of the Equality Act 2010, the PSED is not a duty to achieve any particular results, but a duty to "have due regard to" three particular goals or needs, which we have discussed already.

Those needs are: first, to

"eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under"

the 2010 act; secondly, to

"advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it";

and thirdly, to

"foster good relations between persons who share a relevant protected characteristic and persons who do not share it."

Fundamentally, the PSED is a procedural duty, not an obligation to meet any specific outcomes.

The Scottish Government's review of the operation of the PSED in Scotland is focused on the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, which are known as the Scotland-specific duties. Scottish ministers' power to impose those duties is contained in section 153(3) of the 2010 act, which provides that Scottish ministers may impose duties on a public authority for the purpose of enabling the better performance by the authority of the public sector equality duty.

Ministers' power to impose Scotland-specific duties is tied to the carrying out of the PSED; therefore Scotland-specific duties made in furtherance of the performance of the PSED cannot extend beyond largely procedural matters. I hope that that is helpful for the committee.

Tess White: Thank you, Jennifer. I interpret that as meaning that it is almost not a hard target in the objectives of chief executives of hospitals or councils. The councils are under financial pressures, the hospitals have huge financial pressures, yet the floodgates will be opened on non-implementation or interpretation of the law, and the costs could go into millions—for Scotland, it could be billions. Would you not consider suspending the pay increases until the outcome of this? If you say no, you are saying that it is very difficult and that you have not got the levers at your disposal to implement something that is really important in this space, which is dignity, fairness and a balance of proportionality in relation to the nine protected characteristics.

Kaukab Stewart: I refer back to what Jen has said, which is that the PSED is largely a procedural instrument. Nick, do you want to add anything to that?

Nick Bland: The Scotland-specific duties are a limited set of devolved competencies that the ministers must apply. The Equality Act 2010 is, of course, UK Government legislation within which we have to operate.

The minister's point, and the point that I made in support, is that the PSED offers some level of regulatory lever. That is why we are taking forward a series of non-regulatory work—such as the mainstreaming strategy and other non-regulatory reform—which the minister has spoken about today, to further push and direct requirements on public authorities to better embed the mainstreaming of inclusion in human rights. We must accept that we have not got there and that organisations must continue to improve, so the minister is using all the measures that are available to her to push on that ambition and to

really direct and encourage public authorities to do that.

Tess White: I started with a question in relation to your view on whether the Scottish Government should provide guidance on the Equality Act 2010 in addition to the EHRC. At the meeting that you will have with it, there might need to be leadership in that space, which is a vacuum.

Kaukab Stewart: Thank you for that, Ms White. It is not our role to do that, but you are right to point to the Equality and Human Rights Commission.

The Convener: Are members content that they have asked all the questions that they wish to ask?

Members indicated agreement.

The Convener: Thank you. That concludes our formal business in public. I thank the minister and her officials again for attending. We now move into private session to consider the remaining items on our agenda.

12:53

Meeting continued in private until 12:57.

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