



OFFICIAL REPORT  
AITHISG OIFIGEIL

DRAFT

# Equalities, Human Rights and Civil Justice Committee

**Tuesday 29 April 2025**

Session 6



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Pàrlamaid na h-Alba

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**Tuesday 29 April 2025**

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**EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE**  
**10<sup>th</sup> 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:**

Lorne Berkley (Scottish Commission for People with Learning Disabilities)

Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con)

Clare MacGillivray (Making Rights Real)

Charlie McMillan (Human Rights Consortium Scotland)

Lucy Mulvagh (Health and Social Care Alliance Scotland (the ALLIANCE))

Professor Angela O'Hagan (Scottish Human Rights Commission)

**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 29 April 2025*

*[The Convener opened the meeting at 09:33]*

### Motion to Remove a Member of the Committee

**The Convener (Karen Adam):** Good morning, and welcome to the 10th meeting in 2025 of the Equalities, Human Rights and Civil Justice Committee. Maggie Chapman and Evelyn Tweed will attend remotely.

The first item of business is consideration of motion S6M-17314, in the name of Tess White, on the removal of Maggie Chapman from office as a member of the committee. I refer members to paper 1 and I invite Tess White to speak to and move her motion.

**Tess White (North East Scotland) (Con):** My motion, under rule 6.3 of standing orders, calls for the Equalities, Human Rights and Civil Justice Committee to recommend that the Parliament removes Maggie Chapman from office as a member of the committee. It follows Maggie Chapman's public comments in Aberdeen on 20 April 2025 relating to the Supreme Court judgment in *For Women Scotland Ltd v the Scottish Ministers*. She said:

"We say not in our name to the bigotry, prejudice and hatred that we see coming from the Supreme Court and from so many of our institutions".

She added:

"Not in our name, never in our name."

Her outburst was shocking and was a totally unjustified attack on the rule of law. Her comments about the Supreme Court were not just rabble-rousing; they were dangerous and incendiary.

Maggie Chapman has been deputy convener of this committee since June 2021. Our remit as a committee includes civil justice. She is not a private individual; she is a legislator, and, as deputy convener of the committee, there is a high bar for her conduct. Words matter. Tone matters. There must be boundaries around behaviour and rhetoric.

Section 1 of the Judiciary and Courts (Scotland) Act 2008 is clear: members of the Scottish Parliament must uphold the continued independence of the judiciary. The Faculty of

Advocates has written to the committee. It not only restates that legal imperative but highlights the

"risk of danger to the Members of the Court"

created by Maggie Chapman's comments.

The faculty was unequivocal in its criticism of Ms Chapman. Its correspondence to the committee said that her comments were

"beyond the pale"

and that her behaviour was

"irresponsible and reprehensible".

It added that her comments fail

"to respect the Rule of Law"

and

"constitute an egregious breach of Ms Chapman's duties to uphold the continued independence of the judiciary".

It is worth noting that the correspondence came from the office-bearers of the Faculty of Advocates, including Ruth Crawford KC, treasurer of the faculty, who acted for the Scottish Government in the case in question.

The faculty called on Maggie Chapman to apologise, but no apology has been forthcoming. Instead, Ms Chapman has doubled down on her remarks and refused to reflect on her position. She is devoid of remorse. Given that she has done so, her position as deputy convener and member of this committee is clearly untenable.

Let me be clear that the Supreme Court's ruling on 16 April was about correctly interpreting the law as it stands. Page 2 of the judgment states as much. The Supreme Court was not making policy but answering a question about statutory interpretation.

As legal academic Scott Wortley, at the University of Edinburgh, said:

"judgments can be legitimately subjected to criticism."

No one is saying that the committee cannot disagree with a legal outcome or point to the potential consequences of that outcome. However, Scott Wortley adds:

"any legitimate criticism should be made while respecting the independence of the judiciary and the importance of upholding the rule of law."

Maggie Chapman's emotive remarks did not pass that test. The judiciary cannot defend itself publicly. However, she used words such as "prejudice" and "hatred", which suggests animus on the part of the Supreme Court judges. In doing so, she attacked the judges' perceived motivations rather than critiquing the substance of the ruling. That is why her comments are so deeply disturbing and why Maggie Chapman has failed to discharge her duties as deputy convener of the

Equalities, Human Rights and Civil Justice Committee.

Words matter, especially when they are weaponised. Rather than take the heat out of the situation, Maggie Chapman doused it in petrol. As a committee that deals with civil justice, we now have a deputy convener who has publicly claimed that Scotland's apex court is bigoted and prejudiced. How can anyone working in the civil justice system have confidence in the committee following her remarks?

The Scottish National Party First Minister has said that Maggie Chapman's comments were wrong. The Scottish Labour leader has said:

"when we get into the place of attacking the judiciary ... I think that takes us down a very, very dangerous route."

MSPs of all persuasions have a duty to respect the rule of law, no matter what they feel about a particular verdict. Think of the precedent that will be set if Maggie Chapman's comments go without challenge or consequence.

I urge my fellow MSPs to do the right thing today and back my call to recommend that Maggie Chapman be removed from her position as a member and the deputy convener of the committee.

I move,

That the Equalities, Human Rights and Civil Justice Committee recommends that the Parliament remove Maggie Chapman MSP from office as a member of the Committee.

**Maggie Chapman (North East Scotland) (Green):** I want to express my solidarity with trans and non-binary people across Scotland. I have spoken to many of them over the past weeks and months and they consistently say the same thing: that they feel under attack; that they feel that, as a group, they have been cast as a threat to others when we know that they are not; and that they just want to live their lives as who they are, like any of us do.

I am grateful to the many people—trans and cis—who have been in touch with me over the past two weeks to tell me their stories. It has been devastating to hear about the exclusion and prejudice that they or their loved ones have faced and how worried they are for the future. Some have just been in touch to thank me for standing up for them in this cruellest of culture wars.

A culture war is what is happening. Trans and non-binary people are having their lives weaponised in absolutely dreadful ways and, for the first time in a long time, human rights appear to be going backwards. We are already seeing implications for women too, with challenges to our bodily autonomy, our abortion rights and our right

to exist as we wish, rather than according to socially imposed views of femininity or beauty.

The Good Law Project and others have produced detailed analyses of the questions that are raised by the Equality and Human Rights Commission's interim statement that was produced on Friday evening—and, indeed, the Supreme Court ruling—about compliance with our obligations under international human rights law. I will not go into that in detail now; we will spend time discussing that in due course.

This debate is about what I said in response to the Supreme Court ruling. I have never questioned the court's right to make the ruling that it did, but that does not mean that I must agree with it. I do not, and I am very concerned about the impact that it will have and is already having. Trans and non-binary people just want to be able to live their lives like any of us, without the fear of prejudice or violence, but they are now concerned about how their lives and rights will be affected by the ruling.

I have stood up for and advocated for trans and non-binary people and I always will. That is not just because it is the right thing to do; it is also my job to stand up for my constituents. All of us have constituents who are trans or non-binary. Other constituents have trans or non-binary children, parents, siblings and friends. They deserve representation as who they are.

I will not stop being a vocal trans ally. That is what I was doing in Aberdeen nearly 10 days ago, as I had done in Dundee the day before, and as I have done many times over the years on our streets and in our Parliament. Thousands of LGBTQIA+ people and their allies gathered on our streets after the Supreme Court verdict because they were angry, afraid and uncertain of what lies ahead for them and their loved ones.

We know that our courts reflect our society. We have probably all criticised court judgments in the past when racist or homophobic laws were upheld, when women did not get justice for the abuse and violence that they had faced, or when coal miners were convicted of offences during the miners strike of the 1980s. Just a couple of years ago, this very Parliament pardoned all those who were convicted during the strike with the Miners' Strike (Pardons) (Scotland) Act 2022. That is not to say that the courts did not have the constitutional right to make those judgments—of course they did. However, we would all surely hope that those rulings would be made differently if they were to be made today.

This ruling did not happen in a vacuum; it happened with a backdrop of a culture war that has seen trans people and their loved ones being targeted and demonised by too many politicians and by large parts of the media. However, as

politicians, we must use our voices to speak out when we see rights being removed or injustices faced by anyone, and perhaps especially when minoritised communities are threatened by societal prejudice. We not only have the right of freedom of expression to be able to speak out; we have the obligation to speak out.

I do not expect all MSPs on the committee to agree with my views on the ruling or about trans rights more generally, but I hope that members will uphold my right to them.

Lord David Hope, who served as the Lord President of the Court of Session and first deputy president of the Supreme Court—and who is not a Scottish Green Party member—said of me:

“I do not think that she should stand down or be removed from her post but she should be more careful with her language.”

I will let members be the judge of that.

09:45

However, this is not about me—it is about what message our Parliament sends, and what we do for people who feel under attack and who are worried about what the future holds.

Finally, I am sorry that I am not with the committee in person, but I am at the Scottish Trades Union Congress annual congress in Dundee. Congress opened yesterday with a clear statement of welcome to, and inclusion of, trans people. The STUC’s general secretary, Roz Foyer, has expressed grave concerns about the impacts and effects on trans and non-binary people of the Supreme Court ruling, and trade unionists from across the country spoke passionately in support of trans and non-binary people, expressing solidarity in the face of the onslaught that they face. I am proud to be a trade unionist, just as I am proud to be a trans ally.

**Pam Gosal (West Scotland) (Con):** I thank my colleague Tess White for lodging the motion, which recommends

“that the Parliament remove Maggie Chapman MSP from office as a member of the Committee.”

I agree with the points that Tess White has made and I will vote for the motion.

As parliamentarians, it is our duty to set an example for the people of Scotland. After all, our constituents chose us to be their voice and represent their interests in the Scottish Parliament. Unfortunately, the shocking behaviour that we witnessed on 20 April from Maggie Chapman MSP shows that she is not fit for the role. Maggie Chapman, MSP and deputy convener of the Equalities, Human Rights and Civil Justice Committee, with regard to the UK Supreme Court

judgment on the definition of the word “woman”, said:

“We say not in our name to the bigotry, prejudice and hatred that we see coming from the Supreme Court”.

That is shocking behaviour that is not appropriate for a member of the Parliament, let alone for the deputy convener of this committee, which deals with matters relating to civil justice and to equality. Therefore, her position is untenable.

I was privileged enough to witness the UK Supreme Court judgment in the *For Women Scotland Ltd v the Scottish Ministers* case in person in London two weeks ago. I was sitting in the courtroom as Lord Hodge eloquently delivered the court’s unanimous decision. He used understandable, measured and balanced language, free of legal jargon—that was a sentiment that was shared by many people whom I spoke to.

In this country, our judiciary is tasked with upholding the law and acting as a check on Government powers. Its role is not to make law but, rather, to uphold, apply and interpret it. Under the Judiciary and Courts (Scotland) Act 2008, members of the Scottish Parliament

“must uphold the continued independence of the judiciary”.

Members of this committee, which also covers matters of civil justice, ought to know that.

For Maggie Chapman to say that “bigotry, prejudice and hatred” come from our Supreme Court is not just irresponsible; it is dangerous. Roddy Dunlop KC, the dean of the Faculty of Advocates, has said in a letter to the committee, on behalf of the faculty’s office-bearers, that Maggie Chapman’s comments

“constitute an egregious breach of Ms Chapman’s duties to uphold the continued independence of the judiciary ... and create a risk of danger to the Members of the Court themselves.”

The faculty has come out to say that it does not believe that Maggie Chapman’s words

“allow her to properly discharge her responsibilities as Deputy Convenor in line with the impartiality requirements”.

Judgments are there to be welcomed and respected, and there is no place for such language. We have seen examples from around the world in which death threats have been issued against members of the judiciary; we cannot have such examples repeated here. Scott Wortley, a legal academic from the University of Edinburgh, said that although judgments are subject to criticism,

“any legitimate criticism should be made while respecting the independence of the judiciary and the importance of upholding the rule of law.”

When asked to apologise for making the comments, and whether she was considering her position on the committee, Maggie Chapman did not apologise but said:

“There are plenty of politicians in Scotland who are prepared to stand up and represent people with transphobic views, people who don’t think trans people should be out in public, should be allowed to use public facilities, like the rest of us do.”

Labelling supporters of the ruling and all those in favour of single-sex spaces transphobic is reckless, does a great disservice to women and women’s rights advocates and is a perfect example of gaslighting.

I have received correspondence from many constituents who have expressed concerns over Maggie Chapman’s flare-up. Today, the public is watching. We all have a duty as members of the committee to decide whether we continue to have people like Maggie Chapman on the committee, tainting the good work that we all do here. That cannot be the face of an equalities committee.

I fully support Tess White’s motion and encourage members to vote in favour of it.

**Paul O’Kane (West Scotland) (Lab):** I am grateful for the opportunity to contribute to the debate as we consider the motion before us this morning.

The motion has been lodged under the standing orders of the Parliament, and it is important that we have a full and open debate. I recognise that debating and deciding on such a motion is challenging, as it relates to a colleague and their responsibilities in the committee, so I wish to address my comments to all colleagues in a respectful tone. We should deal in factual information and provide an opportunity for the deputy convener to clarify her position to the committee and more widely. I have not provided commentary on the motion prior to the debate in the committee, because I believe that the proper place to have the debate and to reach a conclusion is in the Parliament.

The Supreme Court of the United Kingdom has handed down a judgment in the case of *For Women Scotland Ltd v the Scottish Ministers*, stating that the meaning of the terms “sex”, “man” and “woman” in the Equality Act 2010 refers to biological sex. That judgment was unanimous.

Since that judgment, there have understandably been a number of different reactions from different organisations, politicians, academics, lawyers and individuals in society. Many have welcomed the clarity of the judgment and the definitions that are in it, particularly for women and sex-based rights. Many have expressed concerns about what the judgment will mean in practice for transgender people and their lives.

Throughout debates on the broader issues, the discourse has often been heated, and I have consistently said in all my contributions on those issues that applying general pejorative terms to whole groups of people is wrong and does a disservice to our debates. I note, once again, that when giving the opinion of the court, Lord Hodge stated that the court

“counsel against reading this judgment as a triumph of one or more groups in our society at the expense of another. It is not.”

Since the judgment, people have exercised their freedom of speech to voice opinions on the judgment. That is, of course, entirely right in our democracy. MSPs around the committee table and across the Parliament have done likewise. However, in doing so, it is incumbent on us all to recognise and respect the jurisdiction of the court, the independence of the judiciary and the fundamental importance of upholding the rule of law. Indeed, we have a solemn duty as parliamentarians to do so.

As we have already heard, in the comments that she made in Aberdeen, the deputy convener referred to

“the bigotry, prejudice and hatred that we see coming from the Supreme Court and from so many other institutions in our society.”

Although I acknowledge the passionate reactions to the judgment, as I have previously outlined, I was concerned to read such a statement from the deputy convener, which appears to suggest that the institution of the Supreme Court and therefore its judges are engaged in bigotry, prejudice or hatred in relation to their judgments.

I was further concerned by the correspondence that the committee received from the Faculty of Advocates and the response of the Law Society of Scotland. The faculty sought to remind members that

“the Supreme Court—indeed, all judges—are in post to apply the law. They do not take sides. They decide without fear or favour, consistently with the judicial oath.”

The Law Society said:

“The Supreme Court’s task is to consider the most difficult and complex legal questions and it must be able to do so without fear or favour.”

I agree with those statements.

In the past, I was equally concerned when the Supreme Court was accused by members of Parliament of showing partiality in determining judgments on, for example, the consent of the United Kingdom Parliament in relation to triggering article 50 or in relation to the legality of the prorogation of the UK Parliament.

The Equalities, Human Rights and Civil Justice Committee has an important role in this



Parliament, not only on matters of equalities and human rights but on civil justice. It is the civil justice role that I am most interested in talking about today. It is our job to scrutinise the administration and delivery of civil justice in the Scottish courts and in relation to the Supreme Court as the final court of appeal.

Our scrutiny role is important but so, too, is our role in legislation, given that we recently considered a bill at stages 1 and 2 to amend the regulation of legal services in Scotland, which included taking evidence from the most senior members of the judiciary.

For us to be effective and our role properly carried out, all members must leave no doubt that we support the rule of law and the independence of the judiciary. To that end, it would be immensely helpful to me if the deputy convener would take this opportunity, on record in the committee, to withdraw her remarks relating to the Supreme Court; to state her respect, without qualification, for the rule of law and the independence of the judiciary; and to acknowledge the concerns that have been raised with this committee by the Faculty of Advocates and the Law Society with regard to her remarks.

I appreciate that the deputy convener has already made a statement. However, I do not feel that it has done what I have just set out, so I am willing to give way to her, if appropriate, convener, if she wishes to clarify anything at this point.

**The Convener:** There are a few members who still want to come in. I will bring them in, and then I will ask Ms Chapman if she wishes to come in at that point. Tess White will sum up at the end.

**Paul O’Kane:** Thank you, convener. The deputy convener and I have served on this committee together since 2023. There are areas on which we agree and there are areas on which we disagree. She has a right to express her views on a wide range of policies in relation to her constituents, her region and her party, and I recognise that many people view her as an advocate and a passionate voice for them.

However, fundamentally, I believe that, to retain confidence, particularly in terms of the committee’s role on civil justice, she must take the opportunity to clarify the points that I have raised. If she takes the opportunity to do so sufficiently, I believe that we can move forward as a committee. Otherwise, we might have no choice but to refer the matter for the consideration of the whole Parliament, with a recommendation for her removal.

**Marie McNair (Clydebank and Milngavie) (SNP):** I will be brief in my remarks. I certainly accept the decision of the Supreme Court. It is correct that we can agree or disagree with what Maggie Chapman has said or believes. It has

been helpful that Maggie Chapman has confirmed that she was not speaking in her capacity as deputy convener of the committee and that she was speaking up on behalf of her constituents. I feel that we have no control over what any member of the committee says in their personal capacity. It would be helpful if Maggie spoke again to clarify the points that were raised by our colleague Paul O’Kane.

I do not consider this to be a matter for the committee to decide on, and I cannot support the motion that Tess White has lodged. I will oppose it, but I will listen to further contributions by other members.

**Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con):** I thank you and the committee, convener, for welcoming me to the committee and giving me the opportunity to speak.

As members will be aware, I have supported the motion of my colleague Tess White. Maggie Chapman, who is deputy convener of the committee, must be removed. She has undermined judicial independence and breached rules on parliamentary conduct. I was surprised to hear her contribution just now. Maggie Chapman may not agree with the Supreme Court judgment, but it appears that she has doubled down; she is conflating her own opinion with the interpretation of law. This is not, as Paul O’Kane says, a triumph of one or more groups. This is about Maggie Chapman’s beliefs and opinions.

10:00

We could easily say that women have been victims of a personal culture war. Women have been accused of misogyny and sexism; they have been accused of racism and bigotry and could legitimately make the same claims that we are part of a cruel culture war. That has nothing to do with this matter. I agree with my colleague Pam Gosal—this is gaslighting, Maggie Chapman.

The committee is taking a highly unusual step today. Calling for an MSP to step down is a serious matter. We have been here before over lesser matters, but never has the Parliament seen such an egregious dereliction of duty. The convener will be aware that I was a member of this committee when Ms Chapman was sanctioned for breaching the MSP code of conduct by failing to disclose her former role as chief executive officer of Edinburgh Rape Crisis Centre, while questioning the CEO of Rape Crisis Scotland. That breach, in a way, was small fry compared with what is before us today. I do not have a vote; other members have a vote.

We are discussing what Maggie Chapman said in Aberdeen on 20 April this year. We have heard that she declared to an assembled group:

“And we say not in our name to the bigotry, prejudice and hatred that we see coming from the Supreme Court and from so many other institutions.”

We will all be aware that when lawyers take their oath to do right to all manner of people without fear or favour, affection or ill will, they mean it. Judges make decisions by interpreting the law, and to use the language that Ms Chapman used implies that Lord Hodge and his colleagues were not simply doing their job in interpreting the law, but bringing so-called prejudice, bigotry and hatred to their decision.

In response to Ms Chapman's shameful attacks, as we have heard, Roddy Dunlop KC, dean of the Faculty of Advocates, considered it his duty to speak out in defence of the judiciary. The faculty considers the comments made by Ms Chapman appalling and highlights that the Supreme Court and all judges are in the role to apply the law and not to take sides.

The most serious of points made by the faculty are that Ms Chapman has failed to uphold the independence of the judiciary, which members have talked about this morning, and that her comments

“create a risk of danger to the Members of the Court themselves.”

The First Minister, John Swinney, agrees that her comments were wrong and that she was wrong to challenge the independence of the judiciary, so I am surprised to hear that Marie McNair does not support Tess White's motion.

Many people will try to defend Maggie Chapman's comments by referencing the right to freedom of speech. We live in a democracy, but as the legal academic Scott Wortley said,

“any legitimate criticism should be made while respecting the independence of the judiciary and the importance of upholding the rule of law.”

In summary, why should Maggie Chapman stand down? She has not carried out her parliamentary duties in an appropriate manner, consistent with the standing of this Parliament. She has brought the Parliament into disrepute. Her comments are a direct attack on the independence of the judiciary. She cannot carry out her duties as deputy convener of this committee in line with impartiality requirements in guidance that is set by the Parliament, and in that vein, witnesses may be reluctant to partake in committee proceedings.

I call on all committee members to put personal loyalties and their personal opinions aside and to act to uphold the integrity and impartiality of the committee and vote to support Tess White's motion to remove Maggie Chapman as a member of the committee.

**The Convener:** Maggie Chapman has indicated that she would like to accept the committee's invitation to speak.

**Maggie Chapman:** I will just say a couple of words in response to members' contributions. First, Rachel Hamilton said that I was the CEO of Edinburgh Rape Crisis Centre, but that is not true. I was chief operating officer at the point of my election. At the time of the witness session in question, that connection had long ceased. I just want to correct the record there.

Pam Gosal said that we have been chosen by our constituents

“to be their voice and represent their interests”.

That is precisely what I have been doing: representing trans and non-binary constituents and their friends and loved ones who live in the region that I am privileged to represent.

In response to Paul O'Kane's challenge to me, I say categorically that I do respect the rule of law and the independence of the judiciary; I have no problems in confirming either of those things. I have never questioned the Supreme Court's right—its constitutional right—to make the judgments that it has made on this, or any, matter.

Finally, I repeat the words of Lord Hope:

“I do not think that she should stand down or be removed from her post but she should be more careful with her language.”

Convener, I thank everyone who has contributed to the debate so far—I know that Tess White will sum up in a moment. I am grateful for members' thoughts and comments and I will, of course, reflect on and consider what has been said this morning.

**The Convener:** I invite Tess White to wind up and indicate whether she wishes to press or withdraw her motion.

**Tess White:** Thank you, convener. May I give Maggie Chapman one final opportunity to show remorse and apologise for the accusations that she made?

**The Convener:** Tess White, I ask you to sum up and press or withdraw your motion—

**Tess White:** I would like to ask Maggie Chapman, one final time before I move to close, whether she is going to apologise.

**Maggie Chapman:** Convener, do you want me to come in?

**The Convener:** Maggie Chapman, are you satisfied that you have said what you needed to say, or do you wish to take up Tess White's invitation to speak?

**Maggie Chapman:** I have said what I wish to say.

**The Convener:** Okay—thank you. Tess White, please continue.

**Tess White:** I have heard what members have said, and I thank Paul O’Kane for his words and for actually stating that we do have a solemn duty to respect the rule of law.

To go back to what Marie McNair MSP said, I respectfully disagree. We can represent the voices of our constituents, but to do so in the manner that Ms Chapman has done, and to weaponise language like that and make it a direct attack, sets a dangerous precedent that says that parliamentarians can act in one way in the committee and in the chamber but that the rules do not apply when we are in our constituency and being the voices of our constituents. I would push back and ask, is that the Scottish National Party position? I would ask the SNP to reconsider that, because it is setting a dangerous precedent.

I would like to make one point of substance, and then I will sum up. There are protections under the Equality Act 2010 for the protected characteristic of gender reassignment—I think that it is very important to say that.

Maggie Chapman, in her remarks this morning, did not engage at all with the statutory duties of an MSP, or with the premise that, as deputy convener of the committee, she has responsibilities under the 2008 act, in particular as the committee oversees civil justice matters.

I say to the convener and the committee that, this morning, we have seen absolutely not a jot of self-awareness. There is no self-reflection at all, which in itself is dangerous. This is not about freedom of expression; it is about the words that Maggie Chapman used to attack the Supreme Court. She has weaponised language and the verdict, rather than engaging with the substance of the verdict. No one is questioning her right to critique, but she has violated very important boundaries and disregarded the rule of law.

The Supreme Court was clear that trans people are protected under the Equality Act 2010, but today we have heard no apology from Maggie Chapman, and no remorse. Therefore, I urge the committee to support my motion, which says that her position on the committee remains untenable.

**The Convener:** The question is, that motion S6M-17314, in the name of Tess White, be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

## For

Gosal, Pam (West Scotland) (Con)  
O’Kane, Paul (West Scotland)(Lab)  
White, Tess (North East Scotland) (Con)

## Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)  
Chapman, Maggie (North East Scotland) (Green)  
McNair, Marie (Clydebank and Milngavie) (SNP)  
Tweed, Evelyn (Stirling) (SNP)

**The Convener:** The result of the division is: For 3, Against 4, Abstentions 0.

*Motion disagreed to.*

**The Convener:** I suspend the meeting for five minutes to allow us to bring in our witnesses and commence the rest of today’s business.

10:12

*Meeting suspended.*

10:21

*On resuming—*

## **Decision on Taking Business in Private**

**The Convener:** Welcome back. Under agenda item 2, do members agree to take in private agenda items 4 and 5? Item 4 is consideration of evidence on the International Covenant on Economic, Social and Cultural Rights, and item 5 is consideration of the committee's approach to scrutiny of the implications of the Supreme Court judgment in the case of *For Women Scotland Ltd v the Scottish Ministers*.

**Members** *indicated agreement.*

## **International Covenant on Economic, Social and Cultural Rights (ICESCR)**

**The Convener:** Agenda item 3 is evidence on the Scotland-specific issues raised in the concluding observations and recommendations to the Scottish Government of the United Nations Committee on Economic, Social and Cultural Rights following its five-yearly review of compliance with the International Covenant on Economic, Social and Cultural Rights. I refer members to papers 2 and 3.

I welcome to the meeting Lorne Berkley, strategic lead for policy and rights at the Scottish Commission for People with Learning Disabilities, who is joining the meeting remotely; Charlie McMillan, interim director of the Human Rights Consortium Scotland; Clare MacGillivray, director of Making Rights Real; Lucy Mulvagh, director of policy, research and impact at the Health and Social Care Alliance Scotland; and Professor Angela O'Hagan, chair of the Scottish Human Rights Commission. You are all very welcome, and I thank you for attending.

As previously advised, we will move straight to questions. I will kick off with the first question. How do you assess the importance of fully incorporating economic, social and cultural rights into Scots law, as recommended by CESCR? I ask Charlie McMillan to answer first.

**Charlie McMillan (Human Rights Consortium Scotland):** Thanks very much. I thank committee members for the opportunity to speak about the rich experience of taking part in the UK's seventh ICESCR review.

The Human Rights Consortium Scotland is absolutely committed to working towards the full incorporation of human rights—especially economic, social and cultural rights—into Scots law. The breadth and scope of those rights are wide, as they encompass many elements of people's everyday lives. We have to be very aware that, even with the limitations that we experience with regard to the devolved settlement and the progression of human rights, duties and obligations in relation to rights realisation have been placed on all public bodies in Scotland, on the Scottish Government and on all spheres of government. We need to keep moving towards full incorporation, which the Human Rights Consortium Scotland believes is how we will make a real and lasting difference for individuals in Scotland, many of whom are living in extreme situations of exclusion or poverty or are experiencing discrimination on a day-to-day basis.

As ICESCR gives us the opportunity to make a real and lasting difference to people's lives, we are committed to working towards incorporation. I am happy, as we move along, to explore that and the mechanisms that we can use.

**Clare MacGillivray (Making Rights Real):** Thank you so much for inviting me here today.

I am the director of Making Rights Real, a small charity that does what it says on the tin. It supports communities to be able to name and claim their human rights, and a key element of that is their being able to take public authorities to court—if they are able to—to realise those rights. I work with a range of community groups, including Fa'side women and girls group in East Lothian; Rajpot, who are survivors and victims of the horrific tinkler experiment in Scotland; Cables Wynd house residents group, whose members live in inadequate housing; North Highland Women's Wellbeing Hub, whose members are not experiencing their right to health; and the SEVEN women, who are all from different parts of Scotland.

Part of our work is to ensure that communities progressively realise their own rights and to monitor that realisation. If we do not have those rights in law, it will be very difficult for communities to be able to name and claim them. We know that some public authorities do not like being challenged, but if we have this in law and if rights around health and housing are justiciable, it will be really helpful in giving those communities the ability to move forward and get their issues adequately addressed.

Someone said to me today, "You have to read out the line from SEVEN." That line is:

"It's hard for me to keep quiet".

It comes from one of the international plays that we put on here in the Scottish Parliament. It is really hard for these communities to keep quiet, and we need the legislation to back up the evidence that we are gathering from them.

**The Convener:** Thank you, Clare. We will now go to Lorne, please.

**Lorne Berkley (Scottish Commission for People with Learning Disabilities):** The SCLD believes that incorporation is a critical issue for protecting the rights of people with learning disabilities, who experience structural inequality and systemic disadvantages that are embedded within the social, economic and political framework. We believe that any approach to protecting and respecting social, economic and cultural rights must recognise and address the particular discrimination, the poorer outcomes and the denial of rights that people with learning disabilities experience.

Indeed, they experience daily barriers to accessing rights, including the right to support for independent living, and in relation to education and employment, access to social security, social care and housing, and the highest standard of physical and mental health. People with learning disabilities want and deserve to enjoy their rights in the same way that other citizens in Scotland do, and we believe that there is a need to recognise and tackle the persistent structural and systemic barriers that people with learning disabilities experience with regard to equality and human rights.

In our view, therefore, it is critical that an appropriate legal framework that incorporates human rights treaties is underpinned by appropriate resources and policies that are directed towards people with learning disabilities as a group of people whose rights are most at risk.

**Lucy Mulvagh (Health and Social Care Alliance Scotland (the ALLIANCE)):** Is the mic on?

Thanks very much for the invitation to take part in today's meeting.

The ALLIANCE really welcomes the opportunity to bring scrutiny of ICESCR back home, after the thorough scrutiny at international level by the United Nations, and we would echo what colleagues have already said about the importance of incorporation, which was outlined quite clearly by CESC in its concluding observations.

In relation to the recommendations from the UN committee, I point out that this is not just about incorporation; it is about undertaking an independent review of the legal and policy framework for economic, social and cultural rights to ensure that those rights are given full effect and that victims of any violation of them have full access to effective judicial and non-judicial remedies, guided by the committee's general comment 9.

10:30

Economic, social and cultural rights are our everyday rights. They protect the basic necessities of our lives, and everyone in Scotland is entitled to those rights, which need to be respected, protected and fulfilled by the state. The state is supposed to adhere not only to the realisation of those rights but to the fundamental principles that relate to economic, social and cultural rights. It needs to provide minimum core obligations in relation to those rights and to progressively take proactive measures to realise them by using the maximum resources that are available to it.

For us at the ALLIANCE, it is important not just to incorporate the rights within the treaty but to have a process to give effect to the important principles that underpin the economic, social and cultural rights.

**The Convener:** Just for information, we do not need to operate our mics—they will be switched on automatically for us.

**Professor Angela O'Hagan (Scottish Human Rights Commission):** Good morning, and thank you for the opportunity to be here. The Scottish Human Rights Commission welcomes the committee taking the time to discuss this issue and hopes that it will become a regular feature of committee activity. The commission has long called for a whole-cycle approach to parliamentary engagement with treaty monitoring, which would be consistent with the Belgrade principles in relation to parliamentary engagement. The CESCR was also very clear about the engagement of legislators.

Colleagues have very clearly and powerfully articulated why the incorporation of economic, social and cultural rights into law is so important. The Scottish Human Rights Commission's report to the CESCR and the breadth of civil society evidence detailed the significant and entrenched gaps and deficiencies in people's everyday rights to housing, food, health, social security, education and cultural recognition, which are becoming routine and normalised. In 2025, people are living in poverty and hunger in Scotland. As colleagues have said, without the incorporation of the treaty rights, there is no direct route to challenge that, so incorporation would bring those rights home.

However, the absence of incorporation does not mean that the Parliament, as the ultimate guarantor of human rights, cannot act, nor does it mean that this committee and other subject committees cannot act. It is even more incumbent on this and all committees to scrutinise Scottish Government policy and spending plans and to scrutinise and hold duty bearers—that is, the public authorities that are charged with discharging obligations and ensuring that those are met—to account. Those obligations are to rights holders—the people of Scotland.

We urge the committee to take the opportunity to fully engage with all the treaty monitoring on a regular basis and to ensure that the promised mainstreaming of human rights into policy making and spending decisions is effectively scrutinised and that people are held to account for that.

**The Convener:** Thank you for those answers. What are your opinions on any challenges or opportunities in the proposed human rights bill?

**Charlie McMillan:** The withdrawal of the human rights bill from the programme for government in

September last year was a huge disappointment for members of the Human Rights Consortium. We have 230 organisational members across Scotland and approximately—the number changes almost every day—198 individual supporters. Over the past four years, a huge amount of work has gone into preparations for the bill, so it was a massive disappointment when the decision was taken not to proceed with it.

The bill was challenging and complicated, but it had massive support and there was a willingness to try to move forward positively and to incorporate four existing conventions and covenants. Some of the difficulties came from the strength of feeling regarding the inclusion of some of the specific conventions, such as the United Nations Convention on the Rights of Persons with Disabilities. The disability grouping made it very clear in relation to the draft legislation that a duty to consider would not be deemed acceptable. Disabled people were clear that they have been asking to be considered for many years, yet they still experience human rights abuses and infringements daily, so it goes beyond the understanding that, under the current devolution settlement, all that we could have would be a duty to consider under the different equality propositions. That became a real challenge.

We are keen to work with the Scottish Government. In fact, especially since Christmas, we have re-engaged with the action plan for human rights, which is supposed to deliver preparatory work in developing the forthcoming human rights bill. We are utterly committed to Scotland having its own human rights legislation, noting all the points that we made about incorporation being absolutely necessary for people to have their rights fulfilled and to be able to hold others—duty bearers and public bodies—to account. The work on that will need to happen at pace, because the bill will be a big piece of legislation, and it is critically important. I return to my initial point about the experience of individuals and how we address discrimination in our country on an on-going basis.

For all those reasons, we are totally committed to the proposed bill and to its introduction—we hope—but we are not dismissing the point that there are challenges that need to be overcome. It will only be by working jointly and by including everybody meaningfully in the process that we will be able to move forward.

**Clare MacGillivray:** To say that I took the removal of the bill from consideration in this parliamentary session as an absolute kick in the stomach for all the community groups that I work with would be a massive understatement. I was lucky enough to facilitate the all our rights in law process before the bill was identified as a priority. I

spoke to more than 400 rights holders over a six-month period, and they were all committed to the idea that the bill would be a transformative change for them and for Scotland. It was about envisaging what Scotland could be like if we actually upheld all our rights.

Famously, Making Rights Real withdrew from SNAP2, which is Scotland's second national action plan for human rights, because we felt that there was not a genuine desire to move forward in the legislative framework in relation to human rights. We can take that position because we are not funded by the state, and we did so because the rights holders we work with felt that the process was disingenuous.

We will be absolutely delighted when the bill is introduced. There is no doubt that there will be massive technical and constitutional challenges. Indeed, I think that there will be a real difficulty with some of the constitutional challenges in ensuring that we can move forward. Change has to happen now for the people who need change most. It is up to you, as the legislators for this country, to ensure that a human rights bill that serves every single rights holder in the best way possible is introduced.

For me, this is an opportunity for Scotland to lead. I work in a lot of international spaces, and it is such an embarrassment to go back and say, "You know what? We've ditched the human rights bill in this programme for government." That is critically embarrassing, and it is a real kick in the teeth for the people who need the change now.

I am absolutely confident that you will bring forward a great human rights bill that will incorporate all the rights that we have talked about, which are the most important to the most marginalised people in Scotland. When you do that, I will be right at the front, championing and supporting you. Until you do that, however, expect a robust challenge from civil society to ensure that you get it right. I will take you for a gin when you do get it right.

**The Convener:** Thank you, Clare.

**Lorne Berkley:** I identify with much of what colleagues have said. The delay to the human rights bill has been hugely disappointing for many people with a learning disability in Scotland. We believe that it is critical that the Scottish Government fulfils its promise of a human rights bill, which, in our view, requires full incorporation of both ICESCR and the CRPD. We believe that a maximalist approach to incorporation in the confines of the devolution settlement is needed to set minimum standards to address the systemic discrimination that people with learning disabilities face.

In addition, a robust learning disability, autism and neurodivergence bill is equally critical to respecting, protecting and fulfilling the human rights of people with learning disabilities. Such a bill should place new duties on public bodies, the Scottish Government and existing human rights bodies to help to realise and uphold the economic, social and cultural rights of people with learning disabilities in Scotland.

**Lucy Mulvagh:** I echo what colleagues have said. The human rights bill was, and is, an extremely important issue for the more than 3,500 members of the ALLIANCE, who were deeply disappointed, as was the ALLIANCE, that the bill has been pushed back again. We welcome the Scottish Government's commitment to introduce the bill should it win the next election but, as we told the UN committee in our parallel report, there is a pressing need to introduce a bill that will incorporate UN treaties into our domestic law.

Given other examples of legislation that has been introduced in the Scottish Parliament, the challenge will be to ensure that the bill is robust and fit for purpose and can actually be used by both duty bearers and rights holders to progress human rights in the country. We have the experience of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, so we have important learning there, as well as from other bits of domestic law that have sought to progressively realise rights, such as the Social Care (Self-directed Support) (Scotland) Act 2013.

The proof of the pudding will be in the eating, so to speak, in that this is about incorporating not only the rights themselves but robust processes and mechanisms whereby not only duty bearers will properly know and understand their obligations and be able to take action to fulfil them but, importantly, rights holders will be able to name and claim their rights. At the moment, we often see the implementation gap between the rhetoric of rights and the ability to claim those rights when people are trying to experience them every day.

The opportunities are potentially endless. This could be a game-changing piece of legislation for Scotland, which would really see us—practically as well as rhetorically—embed a human rights-based approach into our everyday practice and, as I said previously, would ensure that duty bearers and rights holders really know their obligations and are able to claim their rights. It will enable us all to better view and respond to some of the intractable major issues that we face in Scotland as human rights issues and take appropriate action to address them. Human rights are a common language and unifying philosophy through which we can really tackle some of the major challenges that Scotland faces today.

**Professor O'Hagan:** I will try to be brief. The convener's question was about challenges and opportunities. There is no question but that incorporation is, indeed, absolutely challenging. That has been well rehearsed and well discussed. However, because something is difficult is not a reason not to do it. There are, of course, constitutional issues to be resolved, but they were not seen as an obstacle to incorporation by the UN committee. CESC—in full and individual members thereof—is very clear on the direction to incorporate and expressed its disappointment that rights have not been incorporated across the constituent territories of the UK.

Therefore, there is an opportunity for leadership, which was highlighted by CESC members, who recognised that there had been some efforts that had, disappointingly, stalled in Scotland. However, again, that is perhaps a low benchmark.

10:45

There are other challenges with regard to building the capacity across public bodies and education bodies to support rights holders, and there are certainly capacity issues across civil society, which sees its funding being continually eroded. There is also a need to improve the capacity of duty bearers to make policy and spending decisions and design services in a way that starts with a human rights lens and a human rights-based approach.

When the bill commitment was withdrawn in September, the Scottish Government told us that we were in a pre-implementation phase. Some significant number of months on, I am still not quite sure what that means. We were told that, during this period, there would be significant cross-border liaison to address some of the constitutional questions. However, I fear that there is limited evidence of the cross-border engagement that was promised. That is certainly not terribly evident, and nor are clear policy proposals for a revised bill and other instruments emerging, so progress is sluggish.

There is also a need for parliamentary support—parliamentary demand—for human rights to be realised in Scotland and perhaps more proactive engagement and commitment from across the Scottish Parliament to draw international rights into law in Scotland, in terms of the everyday scrutiny and accountability that Parliament undertakes and in terms of the commitment to bringing rights into law.

There is an opportunity for leadership of all political interests for whoever forms the future Government. A commitment to human rights should be a commitment that is common to all who seek to represent rights holders, but human rights

realisation should not in itself be politicised. That is another danger and another challenge—to avoid reducing human rights to political competition. Rather, human rights should be at the core of the improvement in the dignity and rights of all in Scotland.

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

**Maggie Chapman:** Good morning to the witnesses. Thank you for joining us, and I am sorry that I cannot be with you in person. I am interested in what we can do now and in the coming months before we have—we hope—a maximalist approach to incorporation, as Lorne Berkley described it.

CESC called for a legal framework for mandatory human rights due diligence. I am curious about how you think that not only public bodies but businesses are engaging with that concept, because there is perhaps a mixed understanding of what due diligence might look like and what the obligations actually are. Angela O'Hagan said that there are things that we can and should be doing now, so I wonder whether part of the work that we need to be doing now is ensuring that everybody, including businesses, understands what their responsibilities are. Obviously, there has been a lot of focus on public bodies. How are public bodies and businesses engaging with the concept of due diligence?

**Professor O'Hagan:** Good morning, Ms Chapman, and thank you very much for your question. There are existing principles around human rights in business, but I do not know that they are terribly well understood or that they have been terribly well disseminated and promoted. There are really positive conversations to be had—and not just conversations but directions to be given to business. One of the ways in which direction can be given relates to Government contracts and procurement. Millions of pounds of public money are spent in procuring services and goods from private companies, so that is a direct way in which human rights incorporation—human rights integration—into business practice can be ensured.

Another example is that public moneys and funds for local economic development can be used to promote and support rights realisation at the local level. Public funding from the Scottish Government for community change funds and others should not only be subject to a human rights assessment but be framed in terms of how it is going to realise the rights of the people in the communities to whom it will ultimately be directed.

If you would like further information on that, I suggest having a conversation with Castlemilk housing and human rights lived experience board,



which has seen millions of pounds being directed towards the community there, yet Castlemilk still has no supermarket. In Castlemilk, people cannot buy nappies, but 14 alcohol outlets surround the scheme, and public money has been directed to the development of a supermarket that has not yet been realised. That is absolutely an example of where the relationship between public money and business is a human rights issue.

**Maggie Chapman:** That is a really useful example of the connections that we perhaps do not always get.

I ask Lorne Berkley the same kind of question. I am particularly interested in the commission's view on due diligence because of the failure to support disabled people in the workplace, which is the case across society. What role can and should businesses be taking in that?

**Lorne Berkley:** Thank you for the question. Employment outcomes for people with learning disabilities are certainly among the worst of any group, and there is no evidence of progress being made. People with learning disabilities face multiple barriers when it comes to securing and retaining work and progressing in work. Issues include a lack of access to accessible recruitment and interview processes; employer attitudes and a lack of knowledge, stigma and discrimination in the workplace; low aspirations and expectations from significant others; an absence of reasonable adjustments; limited opportunities for progression; and the welfare system's complexities.

The best estimates for employment rates for people with learning disabilities are between 4 to 8 per cent, which compares with a rate of around 50 per cent for disabled people more generally. In comparison, Office for National Statistics data from February shows that Scotland's national employment rate is 74 per cent.

In regard to the need for a human rights-based approach to employment, we highlight the lack of routinely published disaggregated data to determine the exact nature of the problem, because the failure to have that enables the extent of the discrimination and disadvantage to be hidden. It also makes it difficult to track progress and outcomes. Disaggregated data needs to be collected in order to provide a baseline and subsequently allow annual statistics to be produced on people with learning disabilities in education, training and employment.

**Maggie Chapman:** Thanks for that, Lorne.

Are there any specific issues or questions that we need to be asking or to be aware of in order to ensure that human rights due diligence is understood by businesses, particularly those that should be providing the kind of support for people with learning disabilities that you have described?

**Lorne Berkley:** Yes, there are. Recent research by the Fraser of Allander Institute highlighted a lot of the barriers that employers experience when employing people with learning disabilities and the best ways to overcome them. Employers would definitely benefit from having greater knowledge of the human rights implications of that and of the mechanisms for providing support.

**Maggie Chapman:** Thank you, Lorne. That is helpful.

Charlie McMillan, do you have any comments on the point about public bodies and businesses engaging with the content of the mandatory human rights due diligence? I also have a question about action plans, which follows up on your earlier comments.

**Charlie McMillan:** This is a rich area for discussion, and it is one that we do not address very often in relation to the human rights framework that we all operate within.

Bringing human rights centre stage is a repeating theme that you will hear throughout the evidence this morning—it is about bringing human rights centre stage and celebrating them. All too often in the business world, for example, people do not wish to talk about human rights in case they get it wrong or they say the wrong thing. We have a huge responsibility to share our knowledge base about human rights and how they help us to progressively realise people's best lives. They bring to the fore the things that we, as a country, have embedded in our values base.

We need to redouble our efforts on the awareness-raising process. All too often, people do not wish to talk positively about human rights in case they get it wrong. In fact, there is something to be celebrated there.

In relation to employment, the Economy and Fair Work Committee report on the disability employment gap that was completed last year was a fabulous report—in my former role, I gave evidence on it last May. I heartily recommend it in relation to the specifics for people who have learning disabilities or who are neurodivergent or autistic. So much is starting to happen on that subject, and we need to nurture the awareness of it in the business community.

I am thinking about some of the advertising that leans in to a human rights focus. At the weekend, I was in my local hostelry, where there are posters about women's safety—when women go to the bar, they are able to ask whether a certain person is working, to indicate that they are at risk of domestic violence. That is human rights-based work. It is the grass-roots fundamental realisation of human rights that we, as a society and as a country, should be celebrating, applauding and moving forward with. Only then will we start to

change the values and attitudes that, for example, prevent people with learning disabilities from working—as many people in this room will have heard me say before, their careers are being in receipt of social care, and that is not what they wish for. SCLD employs something in the region of 30 people with learning disabilities, who make a massive contribution. We need to bring the learning and awareness from that into the mainstream, as the mainstreaming of human rights is absolutely central both in business and across the country.

**Maggie Chapman:** You talked about the national action plan and the value that it has. The UK's national action plan on business and human rights is being updated. What are your views—and what are the consortium's views—on how civil society should be engaging in that process, particularly in the Scottish context?

**Charlie McMillan:** The economic development aspects of business are fundamental to that. They are so central to the thriving of our country that we need to have our voices heard in those processes. We need engagement and participation—we, as a civil society and as non-governmental organisations, need not be afraid of engaging with business. We must try to find a common language and share an understanding of the benefits that a human rights-based approach could bring.

Some of the toolkits and resources that we have in civil society, such as the participation work that we are doing, transform individuals' lives and help people to develop skills that they can take into work. The contribution of civil society is fundamental.

On food security, there is a massive contribution to be made. Indeed, I am aware of many shops that distribute unsold food and so on—that is a starter for 10. There is a growing corporate social responsibility movement that, to me, is 99.9 per cent about human rights realisation. How do we maximise those elements? How do we get people to understand that we are building both an economy and a community? After all, that is how Scotland will thrive, and human rights are critically important to our thriving.

11:00

**Maggie Chapman:** Thanks very much for that, Charlie.

Clare, do you have any thoughts on how businesses as well as public bodies are engaging with the concept of human rights due diligence? What do we need to be looking for and what do we need to be doing between now and maximal incorporation?

**Clare MacGillivray:** Thanks for the great question, Maggie. As you would expect, I have some views on that from the grass roots.

First, I should say that, when I was setting up Making Rights Real, five years ago, I did a trawl of public authority leaders to find out what they knew about human rights and what would enable, support and advance the human rights movement. After all, if we were going to set up an organisation that gave people the tools to be able to name and claim their rights, duty bearers needed to be ready to hear that.

One public authority leader, whom I will not name, said, "Bring it on. This could transform our services in every department. I cannae wait until communities are using this approach to hold us to account." That was fantastic, but another public authority leader said, "Dinnae give me human rights," and I was like, "Mate, you've had them since 1948, when the Universal Declaration of Human Rights was enacted." There is a real disparity in public authorities across Scotland with regard to their understanding of human rights, and that is a massive issue when it comes to people being able to speak truth to power and to advance their rights.

I will give you a couple of examples of that. We have been working with Gypsy Travellers in Perth, Cupar and Pitlochry for a number of years. Some brilliant human rights monitoring work has been done in Perth, which I would say is pretty globally significant from a community development practice point of view. They are saying, "These are the rights that are being breached, this is what we want to change, these are the public authorities responsible, and we'll progressively monitor those rights." We took the concerns of the three communities involved to the Scottish Housing Regulator, the Committee on the Elimination of Racial Discrimination—or CERD—and CESCR, and, after investigating, the Scottish Housing Regulator has for the first time, as far as we are aware, taken on board tenants' concerns and upheld them in each of the three sites.

I am getting to my point, convener. We had a meeting yesterday with the Scottish Housing Regulator. In its report on risk assessment of landlords, which came out in March, it found serious issues at three Gypsy Traveller sites after concerns were raised by tenants, even though landlords had reported that the sites were meeting the Scottish Government's minimum standards. There is a real disparity between what people are living in and what we are measuring in Scotland—they do not match. Thankfully, after working with us for a few years, tenants are well enough able to articulate their concerns. They would love to be invited here, by the way, and they also invite you to come and visit them.

What really speaks to me is the fact that landlords in the housing sector think that they are doing an amazing job while the evidence is telling us they are not. Perth and Kinross Council's response, which came a month after the report was issued, was to blame tenants in *Scottish Housing News* and in its briefing to elected members. There has been no outreach to the tenants one month after hearing that their serious concerns have been upheld. To me, that speaks of the testimonial injustice that is happening to rights holders in Scotland. It is one of the culture and leadership things that we have to change. It is not just about the legal process or due diligence—duty bearers do not know that they are duty bearers, and they are not yet ready to accept that that is the case when public challenges are made in relation to their monitoring of human rights.

Cables Wynd house residents group in Edinburgh produced a fantastic report that looks at the progressive realisation of rights from its perspective. The City of Edinburgh Council has announced £69 million of investment, which is fantastic. The council's leader and Lezley Marion Cameron, its housing convener, have said, "Chaps, we've got it wrong. We apologise." The different attitudes across public authorities in Scotland make it really difficult. We need to shift the culture and leadership so that duty bearers know that they are duty bearers, that they have a legislative responsibility and that human rights defenders who are speaking truth to power should in no way be blamed for raising complaints in legitimate forms—blaming them is absolutely unacceptable.

Before I go off on another big rant, I will talk about accountability frameworks. When I work with communities, it is not easy for me to say, "Here's how Scotland is doing" on a human rights report card. If I was in New Zealand, I would be able to say, "Hey, let's look at this tracker. Here's what we're doing—it's fab." If I was in Norway, we would find out that a report had gone to the UN about how we were doing, and I would say, "We're no doin very well. We hae tae dae better at that. By the way, we're also gonnæ put human rights budgeting into that, which will follow the money." There are real accountability issues when it comes to human rights budgeting, how we get Audit Scotland to use a rights-based approach and how we encourage and support human rights defenders.

In relation to procurement, how much of the £69 million of investment in Edinburgh will be spent on public participation? Each public authority in Scotland has a wealth of money that is going into the private sector. How much of that money is going back into the community sector to hold people to account and to allow people to participate properly? One of the rights that is at

stake here is the right to participation—in other words, for rights holders to be able to be demanding of duty bearers and to say that things need to change.

We could be doing loads of stuff around culture, leadership, monitoring and evaluation frameworks, human rights budgeting and the ability to advance a rights-based approach in practice. I would be happy for the committee to come and visit any of the community groups that we have spoken to in order to hear from them, particularly around what they would see as being helpful.

**Maggie Chapman:** Thanks very much, Clare. There is a lot for the committee to think about in exploring where to go with some of this work.

I have a final question for you, before I ask my questions for Lucy Mulvagh. Given your experience of SNAP2 and the withdrawal of Making Rights Real from the process, what do you hope will happen with the national action plan on business and human rights in Scotland? What role can civil society play in that? Do you hold out much hope for that process?

**Clare MacGillivray:** We must have radical hope in every aspect of our lives, Maggie, and we must have radical love in the work that we are doing. I would hope that everyone who is involved in the SNAP2 process brings to the fore the fact that business can actually be good for revolutionising systems, for working out what is best for the people's purse and for advancing rights. Loads of things in tech and artificial intelligence can be used to advance rights, and business could be doing loads of things around children's rights. For example, look at the work of the Children's Parliament on artificial intelligence for Scotland. There is loads of brilliant practice out there, and we need to advance that kind of initiative to ensure that businesses understand that they also have obligations as duty bearers, particularly if they get any money from the state. I always have to have radical hope. Even though I will not be taking that kind of work forward, others with brilliant minds will be able to do so.

**Maggie Chapman:** Thank you very much for that, Clare.

Lucy, what are your views on what we need to do and how engagement is going on the concept of a legal framework on mandatory human rights due diligence?

**Lucy Mulvagh:** I echo what colleagues have said. Many members of the ALLIANCE are in the business of providing social care services, for example, and are therefore subject to procurement and commissioning exercises. We have the fair work framework and the fair work principles, so we are already there to a certain extent.

One thing that we can sometimes overlook in Scotland is that an awful lot of human rights practice is already under way, but we might not be using the jargon, the terminology, the language and so on. It is important that we start to introduce—or reintroduce—that human rights language, because it does mean something. You would be hard pushed to find a human rights term that has not been parsed and examined and had a concluding observation, general comment or other interpretation made of it by eminent independent experts at the UN and other bodies who have been able to tell us what it means and what it needs to look like in practice.

I will give an example to do with procurement. It is a few years old and it is a while since I visited it, but the ALLIANCE was previously involved in work on peer research and we did an exercise in partnership with Public Health Scotland and the University of Strathclyde to look at work that was undertaken in Fife to mainstream and embed a human rights-based approach to the procurement of employability services. One of the ways in which that was done was by asking those organisations that were seeking to provide those services, many of which were third sector organisations, to set out how they would give effect to the PANEL principles through the contract if they were awarded it. I will try to dig out that report—it is a few years old—and send it to the committee after the meeting. There are examples of where it can be done in practice.

We know that extensive work is under way to look at what ethical commissioning should look like under the national care service or the proposed reform of social care. The ALLIANCE has been keen to push the fact that there is no universal definition or common understanding of ethical commissioning. We have been pushing the fact that a human rights framework is at the heart of this, and that that is what it means. Our hope is that, if that comes to pass, future commissioning of social care services will take a human rights-based approach.

My other observation is that capability building is needed society-wide, as colleagues have said. One of the commitments that we have from the Scottish Government—work is under way—is that, while we await the introduction of the human rights bill, it has committed to the capability building programme on human rights and to exploring the introduction of a human rights tracker tool. If we consider the capability building programme in relation to the question, our argument at the ALLIANCE is that everybody's capabilities need to be built and that the programme cannot afford to focus only on the public sector. The state and the public sector are of course primary duty bearers, and they must understand their obligations to give effect to people's rights and help people to realise

them. However, it is equally important that the private sector understands human rights. It needs to understand that this is an opportunity and not a threat. It is also hugely important that rights holders know about and understand their rights so that they can claim them.

11:15

One way of achieving that might be through the development of a Scotland-specific business human rights action plan. There was one in the works, but I understand that it has fallen by the wayside somewhat. I was involved in SNAP2 at points, so I know that there was discussion of the issue by the SNAP leadership panel, and SNAP2 refers to a business and human rights action plan. Basically, it sets out the actions that we can identify that need to be taken by rights holders and by public sector duty bearers and civil society, but it also says that there needs to be a business and human rights action plan that will set out action that can and should be taken by business, not on its own but in partnership. To echo what Clare MacGillivray said, it is absolutely important that that action includes rights holders and people with lived and living experience.

In the ALLIANCE, we take a broad definition of the third sector, which includes social enterprises. There is a vibrant body of social enterprises in Scotland from which we can learn a huge amount about ethical everyday business practice, whether that is about employing people with lived and living experience or what those enterprises do with their profits. We could have a whole session on that alone.

**Maggie Chapman:** Thank you, Lucy. I will leave it there for now, convener.

**Marie McNair:** Good morning. I thank the witnesses for their time this morning. The committee really appreciates it.

My first question is on social security, and I will direct it to Lorne Berkley. The concluding observations highlight concerns about the two-child limit, universal credit delays and benefit caps. I am interested to know how those policies are impacting the people and communities that you work with, Lorne.

**Lorne Berkley:** [*Inaudible.*]

**The Convener:** There is no microphone. You are muted, Lorne. We will get that mic on. Will you try again? [*Interruption.*]

Lorne is unable to come in, so we will go to someone else.

**Marie McNair:** Maybe we could go to Lucy.

**Lucy Mulvagh:** Sure. Sorry, Lorne—I hope that you will be able to come in at some point.

Social security was one of the issues that the ALLIANCE covered in our parallel report for the ICESCR committee, and it has been a subject that the ALLIANCE has worked on for many years. Obviously, we are aware that some elements of social security are reserved and some are devolved. It is very welcome that the Scottish Government and Social Security Scotland have decided to put equality and human rights front and centre of the system. The goal was to create a rights-based system.

Although some extremely positive steps have been made in that regard, there remain unclaimed amounts, and there is no reliable estimate of levels of take-up of, for example, disability social security. There is evidence that suggests that there could be underclaiming. For example, we know that there are unpaid carers who are not claiming the social security to which they have a right.

We have asked for better data gathering to understand the levels of take-up of disability and unpaid carer social security. We have also called on the United Kingdom and Scottish Governments to ensure the adequacy of social security payments for disabled people and unpaid carers. At the moment, the amounts that are awarded are not adequate to help people to fully enjoy their right to an adequate standard of living.

I know that others will want to comment on this, because it is a hugely important topic. My other point is that the recent announcements by the UK Government were shocking in the extreme to the ALLIANCE and our members. We have made a couple of statements to the effect that we believe that the changes will cause real hardship and confusion and will put at risk the values of the Scottish system. The chief officer of the ALLIANCE has said that she is concerned that the chancellor's spring statement

"doubled down on the cuts to social security for disabled people and people living with long term conditions".

She went on to say that the changes

"will plunge thousands of disabled people into hardship, and threaten Scotland's devolved system, founded on dignity, fairness and respect."

We certainly want the Scottish Government to do whatever it can to mitigate any of the measures that were introduced that will lead to further hardship, particularly in the light of the unacceptable and disproportionate levels of poverty among disabled people, those with long-term conditions and unpaid carers.

**Marie McNair:** We are in very worrying times.

**The Convener:** Lorne Berkley's microphone is working now. Lorne, it would be really helpful if you could keep your mic unmuted for the

remainder of the session, but be aware that you will be live.

**Lorne Berkley:** We have real concerns about the impact that welfare reforms over the past 15 years have had on people with learning disabilities, as well as the potential consequences of further planned reforms at a UK level. In particular, the potential impact of changes to the personal independence payment and the eligibility for, or levels of, adult disability payment in Scotland could lead to a reduction in essential support for people with learning disabilities. We are also concerned that the welfare and social security system is becoming increasingly complex and difficult for people with learning disabilities to navigate.

Reforms and cuts to the UK social security system, including the use of sanctions and the benefit cap, have led to increased financial hardship for many individuals, which has been compounded by the cost of living crisis. Recently published research by the SCLD and the Fraser of Allander Institute highlighted significant financial insecurity for people with learning disabilities, with a large proportion of research participants living below the minimum income standard and experiencing material deprivation. More than half of the participants were in relative poverty when additional benefits such as the personal independence payment and the adult disability payment were excluded from their incomes. There is additional anecdotal evidence that some people with learning disabilities are relying on disability payments that are designed to cover the additional costs of disability for their day-to-day living expenses.

We believe that there is a strong argument for reviewing social security payments at both a UK and Scottish level in order to assess their adequacy for providing an adequate standard of living for people with learning disabilities, who face some of the greatest barriers to employment. We believe that that necessitates a human rights-based approach to social security that is person centred and takes account of the social and structural barriers that infringe on the rights of people with learning disabilities to independent living and equal participation in society.

**Marie McNair:** Does anyone else want to come in on my first question?

**Clare MacGillivray:** We see poverty in every community that we work with. However, the impacts are not equally felt. The UK Government's cuts were a consciously cruel decision that will impact the most marginalised people in Scotland and the rest of the UK. The cuts are consciously designed to withdraw the social security protections that rights holders have under the ICESCR rights, which cannot be acceptable.

States must be able to say that they are using their maximum available resources in order for people to be able to progressively realise their rights, which means that their rights will improve over time. The UK Government's decisions will only dismantle the systems that disabled people in particular require in order to be able to live a good life—not just a life.

A piece of research that we carried out at grass-roots level in East Lothian was with the Scottish Women's Budget Group and Fa'side women and girls group. Although it was on the cost of living crisis, it actually looked at the right to an adequate standard of living, which is justiciable and something that duty bearers have a responsibility for. As far as I know, that group is the only grass-roots one in Scotland to use gender-based budgeting as a tool to hold duty bearers to account, and what it found was that the cost of living crisis—or the consciously cruel systems of the UK Government; I do take on board what has been said about the Scottish Government, whose approach to social security has been a bit more rights based—is not impacting on people in the same way. It disproportionately impacts on women, who are more likely to experience poverty throughout their lifetime. They have lower levels of savings and wealth compared with men, and they often cannot increase their work because of caring responsibilities.

Where women have different protected characteristics or social identities with regard to race, class, ethnicity, sexuality or disability, we found that inequality was increased and experienced as a double, triple or quadruple whammy. This is what the data tells us: 36 per cent of women and girls—around 300 women—who responded to our survey in one of the most affluent areas of Scotland struggle to manage food costs, 50 per cent struggle to manage energy costs, 31 per cent struggle with housing costs and 55 per cent struggle with social care costs. East Lothian Council, the Scottish Government and the UK Government are breaching a host of human rights including those in the Universal Declaration of Human Rights around dignity and respect; those in ICESCR; those in the CRPD, which sets out disabled people's rights; those in the UNCRC, on children's rights; and those in the Convention on the Elimination of All Forms of Discrimination against Women, or CEDAW. Meanwhile, on food and energy insecurity, 64 per cent of single parents struggle to afford food, while 70 per cent struggle with energy costs. I repeat that that is in one of the most affluent areas of Scotland.

For me, this is all about unequal resource allocation. When we look at budgeting in Scotland, we should be looking at the maximum available resources, although I am not sure that we quite have the tools in our systems to do that yet.

This is what is happening at the grass roots in Scotland, and it is only getting worse. I urge you to take as many deep and bold steps as you can to advance rights under the social security protections, as they are absolutely required for people who are the most marginalised in Scotland to live a good life.

**Marie McNair:** Thank you. I really appreciate those comments. We could indeed have a full session on social security and poverty, and I hope that we will follow that up.

Does anyone else want to comment before I move on?

**Professor O'Hagan:** I thank you for engaging on this issue. Clare MacGillivray has laid bare for us all the daily realities, but there are also links with other parts of this morning's conversation. A moment ago, we talked about the language of rights and the fact that it has not been normalised; instead, what has been normalised is austerity and the cost of living crisis. That starts to mask the realities that Clare has just talked about, and it becomes too easy to roll everything up into something abstract instead of highlighting the crippling and chaotic realities of people's lives.

The committee in Geneva was really clear on that, and its deep concern was that the right to welfare and the entitlement to social security and social protection were being devalued and undermined in a system that was becoming more and more engineered to drive people to employment rather than to provide the essentials of a basic life of dignity. The committee also called for a cumulative assessment of austerity measures over the past decade plus. However, before such an assessment has been carried out, and even before we have engaged in that work—something that I strongly encourage the Parliament to do—we see more changes being proposed to the social security system in Britain. The impact that those changes will have on people in Scotland has to be carefully and robustly scrutinised by this committee and, indeed, by all committees in Parliament. That oversight is essential.

The pre-budget assessment period will be upon us fairly soon as we move into summer, and we have to look at the implications for the Scottish budget of the withdrawal of those moneys from future UK budgets. They will be very significant, and they will have a very significant impact on people's lives.

The two-child limit and the benefit cap in 2015 were the products of the most misogynistic policy making that we have ever seen. It has taken nine years for the Scottish Government and the Parliament to engage in dismantling and seeking to mitigate those specific actions.

11:30

As colleagues have said, CESC, the committee in Geneva, specifically mentioned PIP. This committee and others in the Parliament need to bear in mind that there is a duty to ensure non-retrogression—to not roll back—but that is exactly what we are seeing with those measures. When confronted with those options for scrutiny, you need to ask whether those measures are justified and whether retrogression is the only option that is available to the UK Government, the Scottish Government or the Parliament, and to consider what other ways have been exhausted, in order to ensure the maximisation of available resources and the progressive realisation of rights, because that is the responsibility that sits on all duty bearers.

There is a lot for the committee to bear in mind as committees across the Parliament move into scrutiny of a whole range of policy and spending.

**Marie McNair:** We will deal with and scrutinise that in the Social Justice and Social Security Committee, and we will deal with the green paper as well.

**Charlie McMillan:** I absolutely agree with the passionate evidence that the rest of the panel has given on the range of ways in which changes to social security and poverty are impacting on people's lives. In fact, it would be true to say that poverty is becoming hard wired in the lives of far too many Scottish people. Yesterday alone, the Joseph Rowntree Foundation launched a new report on deep poverty, which I commend to committee members. It makes for shocking reading.

I also want to highlight—although I acknowledge that the social security system in Scotland has taken a values-based and human rights-based approach to rights realisation—that there is much to be done at the Scottish level. I want to focus quickly on public debt. I was recently at the Aberlour conference at the University of Glasgow with Professor Morag Treanor. Aberlour has been campaigning on the issue for many years. The estimates in relation to public debt in Scotland are that our public sector will remove £1 billion over the next five years from Scotland's poorest people, using the public debt collection system.

Our public sector is the largest debt collection agency in the country, but it uses a system that breaches human rights on so many different levels. There is a six-year statute of limitations on such debt in other areas of the United Kingdom but, apparently, a 20-year statute of limitations in Scotland. There is no right to representation—if an individual's social security benefits are cut to repay debt, they have no right to representation in the process. There is a joint and several liability that

means that, if a woman has experienced an abusive partner for many years who runs up debt and then leaves, that woman is then held accountable for her abusive ex-partner's debt.

I found the revelations at the conference about the depth to which we have hard wired poverty into the lives of the poorest people of Scotland—predominantly women and disabled people—quite astounding. That has been done on our watch. For me, those revelations absolutely sum up what the committee in Geneva has been focusing on—poverty, the abuse of people's experience and the use of personless processes and systems that just hard wire the discrimination that people are facing.

Public debt is a hugely important area, Marie. We must do a human rights review of the public debt system in Scotland.

**Marie McNair:** Another committee is holding evidence sessions on the matter that you are talking about.

I will move on to my second question. I am sorry about this, convener, but I will be quick. Lorne Berkley, CESC, urged a review of the digital-only system for social security. In Scotland, we have a choice of online and paper applications for social security. What is your experience of the main barriers that those systems present to rights realisation? Scotland's system is fairer, but we could still make a lot of improvements to make it even fairer.

**Lorne Berkley:** Thank you for the question. If I may, I would be happy to provide a written answer to the committee on that issue. I do not feel that I can provide a full answer at this stage.

**Marie McNair:** That would be okay, Lorne, if you would not mind. Does anyone else want to come in on that one?

**Lucy Mulvagh:** I can certainly also follow up in writing, but it would be interesting to wait and see what the independent review of adult disability payments will have to say on that. The review's chair, Edel Harris, is looking at whether there are issues with the system, and I am pretty sure that the issue that you asked about is included in that work.

The point of the review was to counter any concerns that lifting the UK-wide system and laying it in Scotland without further scrutiny would mean that we would bake into the Scottish system any problems that exist at the UK level. If the independent review makes any recommendations on that front, we will certainly want the Scottish Government and Social Security Scotland to take action on them. We understand that the report should come out this summer.

**Charlie McMillan:** That is another important topic. Our experience is that digital-only systems

are highly exclusionary, because they exclude people who do not have access to technology. The latest figure that I have is that 30 per cent of people with learning disabilities have no access to the internet. Speaking personally, my 86-year-old dad does not have a smartphone, and he refuses to use that kind of technological approach.

There are massive questions about digital only, as we discovered recently with the eVisa scheme for migrants. It is now a digital-only scheme and it has caused huge challenges, because you need a specific smartphone with a specific operating system to engage with the system.

**Marie McNair:** Absolutely. We also face digital poverty.

**Charlie McMillan:** Absolutely.

**Marie McNair:** You have probably already touched on my final question. How well do the disability-related benefits in Scotland reflect the human rights model of disability that is endorsed by international bodies? Lucy, you have touched on that already, but I am just throwing it out to the panel to see whether you want to expand on that.

**Lucy Mulvagh:** I recommend looking at a report that was produced for the Scottish campaign on rights to social security a few years ago, but which is still relevant. It looked at what has now become adult disability payment and the transition from the UK system to the Scottish system. The campaign's approach was to consider what a rights-based social security system would look like.

It is well recognised that we can build a rights-based approach into the system in relation to how people make applications and receive awards. We welcome Social Security Scotland's approach in ensuring that staff get training in carers rights awareness and disability rights awareness and so on. That training is very often provided by our members, third sector organisations and people with lived experience who are working on those issues.

We need to look at the eligibility criteria, the points system, the questions that people are asked—or have to ask of themselves—and the evidence that they must provide in order to be awarded X or Y amount. In the Scottish system, we can take much more of a rights and capabilities approach to that. That is the direction of travel that the UN Committee on Economic, Social and Cultural Rights and the Committee on the Rights of Persons with Disabilities have very much recommended that countries such as the UK need to take.

It is not about someone getting X points if they cannot wash below their waist or if they can wash only above their waist; it is more about what

someone can do in everyday life and what barriers they face. The barriers are the violations of people's rights—it is not their impairments that are the problem. The barriers that society puts in someone's way stop them enjoying everyday life in the way that everybody else enjoys it.

In many ways, the Scottish system is already really ambitious compared with other systems around the world, and that approach would help it to push and be even more progressive.

**Clare MacGillivray:** Digital exclusion is a massive issue for the Gypsy Traveller communities that we are working with. They might not have access to devices or to the internet. Requiring them to go through a system and use those devices is already discriminating—actually, it is racially discriminating against people who are not able to access those systems. I would sound a note of caution on ensuring that Social Security Scotland continues to deliver a range of approaches to people, including face-to-face options, which people would value.

When Social Security Scotland was being established, I did a bit of work with tenants groups to consider what a rights-based approach would look like under the new system. How would such an approach make people feel when they engaged with the system? To be fair, Social Security Scotland was brilliant in telling us that it would design the system in that way and could be held accountable on that, because people with lived experience would be able to say that they agreed or disagreed and ask what could be done to shift things.

There has been quite a different approach here in Scotland, which I commend. However, you are not getting brownie points all round from me, as much could still be done to advance the system so that dignity and respect are really at the heart of it. That change needs to consider monetary value and putting more money in the pockets of the people in this country who need it most.

**Marie McNair:** I certainly agree that we can go further.

**The Convener:** We are rapidly running out of time. We have had questions from only three members of the committee and we are still to hear from four members. I ask for the answers to be as succinct as possible, because I want all members to have their questions answered. However, please do not cut out essential information.

I am minded to extend our time a bit, but we have to be mindful that time is finite. Thank you for what has been a fantastic evidence session so far.

**Pam Gosal:** Good morning, and thank you so much for the information that you have provided so far. The UN Committee on Economic, Social



and Cultural Rights recommends enhancing gender-responsive budgeting and intersectional approaches. Gender-responsive budgeting is something that we frequently discuss in the committee. Could you give us any examples of good practice in Scotland and of where there is a need for improvement?

**Clare MacGillivray:** The Scottish Women's Budget Group is doing incredible work across Scotland, examining gender-based budgeting and how public authorities can respond in a way that supports and enhances the rights of women. The group has recently done a brilliant report on Gypsy Travellers' access to housing and women's experiences of that. You need to look at that report; the group has been doing brilliant work, along with us, at the North Highland Women's Wellbeing Hub. I will send round the reports later. The group was looking into how we follow the money when it comes to what public authorities are spending, as we cannot really hold public authorities to account until we can follow the money. That has been a real difficulty for us in the work that we have been doing with the Scottish Women's Budget Group on the Fa'side women and girls group. It is not easy to follow the money. Often, when you are looking at accounts or at how budgets follow through, it is like smoke and mirrors.

11:45

There is brilliant practice out there—I am sure that Angela O'Hagan has seen incredible practice as well. Some small groups to look at include Fa'side women and girls group and the Scottish Women's Budget Group. The work that they are doing is exemplary globally. If we are not learning from them, we are missing a trick.

**Professor O'Hagan:** Thank you, Ms Gosal, for the question on gender budgeting and taking intersectional approaches. I agree with the findings from the powerful work of the Scottish Women's Budget Group and I disclose that I am a founder member of that group. It is not only that I am biased—there is fantastic work being done there and across the network of women's budget groups in the UK. That work is a rich source of data, experience and examples that the committee could look at.

One of the last things that I did before I entered my role at the Scottish Human Rights Commission was a piece of work with the Scottish Women's Budget Group, Glasgow Disability Alliance and other women engaged in projects relating to servicing women's experience of multiple low-paid employment. The only question that we asked those women all the way through that project was, in relation to the economic policy and the budget process in Scotland, "Do you see yourself there?"

That is a very powerful question. They did not see themselves represented in the policy decisions and spending allocations coming through the Parliament or from the Government. They did not feel close to the processes or think that they had had any engagement or say in the processes or outcomes. It is important to encourage and support the development of that knowledge base, so that budgets and public spending can be better interrogated at the grass-roots level as well as by the Parliament.

Colleagues from the Scottish Human Rights Commission gave evidence to this committee recently—we appreciated the opportunity to talk about our "Tick Tock.." report on the "Coming Home" implementation plan to take people out of institutions and realise their rights to independent living.

A key aspect of that spotlight report was how difficult it is to follow the money. In response to that finding, the challenge from public authorities was that we were looking only at the publicly available data—well, if the publicly available data can show only £1.4 million of a £20 million fund, there is a problem with the publicly available data. That response echoes earlier conversations about a culture of human rights: when we asked how the clear framework to help follow the money to secure the realisation of rights was landing with public authorities, the response from a public official was, "Looks like awful hard work." That is the culture that we have, collectively, in relation to change.

Around the world, many countries are taking an intersectional approach to gender budgeting at the grass-roots level and in the leadership of Parliaments, legislatures or Governments. Perhaps this morning's news from Canada gives some hope that the Canadian gender budget analysis-plus approach, which was pioneering, will be sustained and will remain, and that Canada can apply the lessons that it has been learning.

I have been involved in the Scottish Women's Budget Group since its inception and in the Scottish Government's equality and human rights budget advisory group since its inception, and I chaired that advisory group for a long time. That said, progress continues to be sluggish, as I have discussed with the committee before. The budget advisory group is revisiting its pilot approach and is tempted by the approach of budget tagging, which was promoted by the Organisation for Economic Co-operation and Development. However, there is a caveat that tagging expenditure to say that it is women friendly or that it addresses gender inequality runs the risk of missing, or misunderstanding, the causes of the inequality in the first place. It also runs the risk of looking at spending only in the margins rather than

at spending across the full allocation, the interaction of policies with spending, the intersections of causes of discrimination, and how multiple forms of discrimination manifest and affect individuals in their everyday lives.

There are lots of examples of approaches around the world. I strongly encourage members to look at the resources from the women's budget groups in Scotland, the UK, Northern Ireland, Wales and a range of other countries. I am sure that colleagues at the Scottish Women's Budget Group would be happy to build on what I have said.

The commission has long argued for and tried to demonstrate an approach to human rights-based budgeting that ensures that resources are maximised to secure the progressive realisation of rights from a perspective of service design and spending that is about ensuring that rights are protected, respected and fulfilled. The Parliament can pass the best legislation in the world, but if the implementation and the information about how to access rights is not resourced, that legislation will not have the desired effect. There needs to be a whole cycle.

I am sorry, convener—you said that we should give short answers, but there was a lot to say.

**Pam Gosal:** You say that the Scottish Government has put the sluggishness aside, but it needs to improve transparency to allow you to follow the money, and it needs to improve engagement. It needs to make sure that people at the heart of policies—whether they are women or people with disabilities—are heard, so that the Government can set its budgets in line with that. I take it that that is what you meant—is that right?

**Professor O'Hagan:** That is a helpful summary, but this Parliament has a key role in the accountability and scrutiny of public spending and in scrutinising proposals as they come through. The pre-budget scrutiny phase that happens over the summer is absolutely key to the process of looking back to what commitments have been made and the direction of travel. It is also key to look at the outcomes from those spending commitments, whether they are in the budget of that year or are cumulative, in relation to Parliament's recommendations to redirect spending.

Your point about participation is key. There is an important and significant role for the Parliament in engaging much more with, and ensuring a much broader participation of, people across Scotland on the outcomes of public spending.

**Pam Gosal:** I have one more question. Women from minority ethnic backgrounds and disabled women often face discrimination based on their sex and on their ethnic background and disability

status, respectively. How can we, as policy makers, better include groups of women who face multiple discrimination in decision making and service design?

I will go to you first, Angela, but I will also go to Lorne Berkley on disabled women.

**Professor O'Hagan:** I think that we have had this conversation before, Pam, about the many facets of the issue, including making women visible, removing the barriers to women's participation and addressing the fact that multiple forms of discrimination result in multiple barriers.

Lucy Mulvagh's phrase from earlier struck home with me. The barriers are the violations, not the individual impairments. The barriers are the violations to participation, not the individual characteristics, which should not be a barrier to participation or to being visible. We need to be mindful of the diversity of our population and our experience, and of the barriers that colleagues have elaborated on so clearly today, such as digital exclusion, poverty, voicelessness and distance.

In the commission's recent spotlight on economic, social and cultural rights in the Highlands and Islands, we see that remoteness is not just geographic. There is remoteness from power and there is remoteness from participation and voice, which is multiplied in the experiences of women of colour and disabled women across Scotland.

**Pam Gosal:** Perhaps Lucy Mulvagh will answer this question. I know from this committee and from working with people from ethnic backgrounds that it is sometimes hard to get that information and to reach out to those communities because of the trust issue. Have you done any work there, and have you found it difficult to reach out to those people?

**Lucy Mulvagh:** That is an important question. As a national third sector intermediary, if we were trying to work with specific communities or reach specific communities, we would work with our members to do so. I would recommend trying that to anybody.

Many communities are connected to community organisations at the local level—that might be because they are from an ethnic minority or because they have another identity—and they might also be involved with some national organisations that have community-level projects. Those organisations have built up trusting relationships, so that would be a very good route through which to connect directly with communities. The ALLIANCE uses trusted intermediaries or our other member organisations.

The ALLIANCE is well known and highly respected for the work that we do for and with people with lived and living experience. There is a huge amount of consultation fatigue at the moment among people in Scotland and among third and community sector organisations. That is because we are being asked questions that have been asked and answered multiple times before, and one thing that can lead to consultation fatigue is people feeling that they are being asked the same questions without anything visibly changing as a consequence.

The issues that people face are very well known. Reports have been submitted to the United Nations International Covenant on Economic, Social and Cultural Rights, an overwhelming number of which have been done by UK civil society organisations and Scottish organisations in particular—it is the largest number ever. A lot of the issues are not new; they are very well rehearsed. What is less well known and less well rehearsed is the action that is going to be taken to address the issues, so that people no longer experience violations of their rights.

Consultation is one area in which practical action could be taken. For example, if you want to reach out to a community and find out what matters to them and what they want to see happen, build into that process the fact that you will return to that community and tell them what you did with what you heard from them. We do not often think about building feedback loops into the process as well as making it easier for people to directly engage. It is for duty bearers to report back on what they have done.

**Lorne Berkley:** I do not have much more to add. The work that we have done in our report—“Unequal, Unheard, Unjust: But not Hidden Anymore. Women with Learning Disabilities’ Experience of Gender Based Violence in Scotland”—demonstrated that women with learning disabilities encounter significant barriers to disclosing and reporting gender-based violence. I would be happy to share that report with the committee, if it would be of interest.

**Pam Gosal:** I previously brought up the question of domestic abuse and the fact that more has to be done to identify when a victim or survivor is talking about abuse. In the past, when someone with a learning disability has spoken up, it has been said that they are not talking clearly, that the abuse is not happening or that the police are not trained to that level. There are a lot of gaps. It would be good if you could pass that report on.

**Paul O’Kane:** Good morning to the panel. Housing and homelessness are extremely topical at any time, but particularly at this juncture, given that legislation is progressing through the Parliament. We have covered quite a lot of issues

this morning. Based on your work, how effective do you think the current policies in Scotland are in assessing the right to housing and addressing the right to housing?

Obviously, all of the witnesses work with particular groups, but it would be good to get a first stab at the terminology, and then we will look at the issue in more detail. Clare, I can see that you are ready to go now.

**Clare MacGillivray:** I am happy to do that. I love housing. I have been involved in housing for 25 years, so it is a big thing for me. Thank you for your question, Paul.

There is such a critical underinvestment in social housing in Scotland that it is at a crisis level nationally. There has been decades of underinvestment in social housing. We cannot change anything until we change that.

The right to housing is not well understood by the public authorities that provide housing; indeed, registered social landlords and local authorities often do not know that they are duty bearers. It is therefore very difficult to measure their impact against the seven standards in the right to housing, because our systems are not set up for that. When we wrote to the Scottish Housing Regulator recently, it was all in the language of rights—that is, all of the rights that had been breached—but its response was not in the same language. The language of the right to housing has not yet percolated into the housing system.

12:00

The massive issue is underinvestment in housing. We have a massive housing crisis in Edinburgh, and other regions in Scotland have identified that they will not be able to meet what is set out in the homelessness legislation. That legislation, which sets out just the minimum core of housing, is not being adequately addressed.

What we have to understand, though, is that the right to housing impacts on all the other rights that people enjoy. For example, when we were doing the housing rights work in Leith, we found people living with dampness, with mould, with rats and with sewage coming up through their sinks. Such conditions are still being experienced by communities across Scotland, and they do not meet even the minimum core of the right to housing.

I will send you reports from the Gypsy Traveller groups that we have been working with, because they raise significant concerns. Travellers we are working with in Bobbin Mill in Pitlochry—again, I would encourage you to visit them—got electricity and hot running water only in 2010. I will repeat that—2010. They are still living in cabins that were

provided second hand to them, and the charge is still the same as a two-bedroom rental. I encourage you to go and see the historic injustices being experienced by Gypsy Traveller communities in Scotland with regard to the right to housing—I am happy to facilitate those conversations. It is a legacy of decades and decades of systemic injustice, particularly to that community. I know that we are not talking about it today, but the CERD report—which I will send over to you—was very critical of the Scottish Government's view of the forced assimilation of Gypsy Travellers and the subsequent right to housing.

A lot needs to be done, but with an understanding that there is a right to housing and that tenants have that right. Just imagine every tenants group in Scotland holding its landlord to account through the methods that some of our groups are using—you would see a massive change in culture and in outcomes for people. When people have good housing, they have good health and better opportunities for education and learning, because they are able to live in a home that does not have damp or mould or sewage coming up through their sinks, and they do not have the privilege of paying £500 a month for it, either.

Our systems need to be better at monitoring that sort of thing. The systemic injustice of blaming tenants needs to be challenged at every single level, because it is unacceptable for human rights defenders to be treated in such a way that their voices and complaints are not met with a joyous response and people saying, "Actually, you're pointing out the system's failures to us, and we need to address them." A massive amount of work needs to be done, and it will start with investing heavily in social housing, because that is the only way in which other rights will be realised in this country.

**Paul O'Kane:** Thank you very much.

My next question is for Charlie McMillan. Angela O'Hagan referred to the "Tick Tock..." report, the "Coming Home Implementation" report and the fundamental right to a home, not just the specific issue of housing for people who have a learning disability. Obviously, the committee has covered such issues in detail, but it would be useful to get a sense of them from you.

**Charlie McMillan:** Absolutely. Lorne Berkley might wish to come in on this question, too.

I take the experience of people with learning disabilities as symptomatic in so many ways, which again brings us back to the point about how discrimination and human rights abuses are hard wired into our systems and approaches. We know from the "Tick Tock..." report that people have

been living in institutions for up to 50 years. One of the key issues for me is that although that might be spend, it is crisis spend. As Clare McGillivray said, we need to spend our money where it will have the most impact—in other words, by building affordable and accessible housing.

We need to be much more progressive. It costs £1 million a year, on average, to keep someone in a locked ward in an assessment and treatment unit. If they are locked up for a number of years, the multiplier is significant. How many housing units could that money be used to build? How many care and support packages could it be used to provide?

We spend our money in the wrong places. The key points that we have been making as a panel about preventative spend would enable people's human rights. You will see from the very specific recommendation in the housing section of CESC's concluding observations that that was a key concern for the committee, as was housing in general. It speaks to the root causes of homelessness, and we are not dealing early enough with the root causes that lead people with learning disabilities to end up spending their lives in locked institutions. We know many of the risk factors in childhood. We should be wrapping ourselves around those individuals and ensuring that their lives are not ancient history and that we are able to create a very different future in partnership with them. I welcome CESC's comments and its focus on housing.

**Paul O'Kane:** I do not know whether anyone wants to come in on the broad point. As I said, the Housing (Scotland) Bill is progressing through the Parliament and is now at stage 2. In the bill, there are ask and act duties in relation to homelessness and people's rights. However, I am keen to get a sense of whether the witnesses think that there has been a missed opportunity and that more could be done through the bill. It has been an interesting bill in its attempt to deal with some of the issues outlined by Clare MacGillivray, but it does not deal with supply. It is about trying to use a system that does not have enough houses. It would be good to get views on that, if we can.

**Charlie McMillan:** I wonder whether a fundamental human rights impact assessment of the bill has been done. I have often heard Lucy Mulvagh speak about a human rights-first approach. Actually, we have stopped trying to tack on human rights to the work that we are doing to develop legislation. As the starting point, we take things such as the CESC concluding observations—we start from there.

How do we realise human rights as we develop legislation? I do not know the detail of the Housing (Scotland) Bill, but I am absolutely convinced that language such as "We are taking a human rights-

based approach” will be used in talking about it. That is one of the most overused phrases in Scotland, but what does it really mean? Are we building it into the fabric of the legislation? Are we really considering the complexities and the multiple ways in which human rights are engaged? It will not just be CESCER making comments, either.

**Paul O’Kane:** It would be useful to reflect on those duties when they are passed on to local authorities and housing associations and how they are monitored and delivered. We might legislate in this Parliament, but how are they delivered on the ground? Do we need to do more analysis of delivery and provide more support for agencies to do that?

**Charlie McMillan:** As part of the “Tick Tock ...” report, the Scottish Human Rights Commission co-produced a measurement tool with individual human rights defenders—largely parents, in that instance. It was recognised as an exemplar by CESCER when we were in conversation with it. We could easily build on that.

**Paul O’Kane:** Angela, would you like to comment on the commission’s duty in relation to some of these issues?

**Professor O’Hagan:** Our mandate is to promote human rights awareness and to educate on human rights. However, what you have outlined is the relationship between and the thread from the Government to the Parliament and from the Parliament to public authorities.

There is still a role for the Parliament in the scrutiny of and accountability for how the legislation is implemented and how the duty bearers in local authorities behave. If they think that it looks like hard work to implement the framework that Charlie has just alluded to, quite frankly, the Parliament needs to be all over that. If that is the prevalent attitude—I am not saying that it is in every local authority—and it is part of the mindset, clear direction from the Parliament is required and, as I have written across my notes during our conversation this morning, it is about tolerance. What is the level of tolerance of poor practice and of the poor acceptance and integration of human rights?

If human rights continue to be seen as an abstract concept, something that is othered or something that is, at best, added on at the end, their transformative effects on and outcomes for people’s lives will not be delivered. That is what the framework that is set out in our “Tick Tock...” report is all about—I thank Charlie McMillan for making reference to it. Our framework takes the requirements that are set out in international legal frameworks, as produced by the European Union Agency for Fundamental Rights, and says, “This is

how you can apply the indicators across issues in Scotland as a duty bearer.” A duty bearer can use the framework to diagnose issues, the status quo and its performance and, in so doing, realise what it needs to do to get things right.

Clare MacGillivray made reference to the seven standards in the right to housing. Those measurements of affordability, accessibility, cultural adequacy and availability are not beyond the wit of our public authorities, but I think that they are seen as either another layer of bureaucracy or another burden for them to discharge, rather than the way in which their thinking needs to be framed. As the Housing (Scotland) Bill progresses through the Parliament, it needs to be interrogated and scrutinised from that human rights perspective. Are those standards being met? If the legislation is being effectively implemented and resourced, are we seeing its potential to secure the progressive realisation of rights?

The commission touched on the wider issues of precarity in relation to housing, evictions and homelessness in its report to CESCER, which we have also submitted to the committee. More evidence is contained in that report as well as in the evidence that we submitted at stage 1 of the Housing (Scotland) Bill. Again, the commission is available to provide further advice to the Parliament on the human rights implications of that bill.

**Paul O’Kane:** Thank you. I am conscious of the time, so I will stop there.

**Tess White:** My first question is for Ms Mulvagh. CESCER called for improved mental health services. How does your organisation view Scotland’s progress on that front?

**Lucy Mulvagh:** In our evidence to CESCER as part of the parallel report that we sent, mental health was one of the issues that we focused on under the much broader right to the highest attainable standard of physical and mental health.

We have seen some progress in Scotland. Prior to working at the ALLIANCE, I worked at the Scottish Recovery Network, so I have worked in and around mental health for a few years. I definitely think that some progress has been made, particularly in terms of mental health being seen as a human right and the situations that surround mental health—for example, access to appropriate, good-quality services that are available in a timely fashion—being seen as human rights issues.

Most recently, the independent review of Scottish mental health law made many recommendations in relation to changes that need to be made to mental health and incapacity legislation in Scotland. We have a relatively new

mental health strategy, which is currently also being reviewed, and we are expecting to bring out a new delivery plan soon—if not this summer, then later on. Those pieces of work are accompanied by work plans in relation to the medical workforce.

I know that the committee has looked at mental health in great detail in the past. We could have a whole day's session on that one topic alone. The ALLIANCE has very much welcomed the independent review of mental health law, the recommendations that it made and the Scottish Government's response to them. The Scottish Government is in the process of setting up a long-term programme, because making mental health and incapacity legislation compliant with the CRPD and ICESCR, as called for by the Scott review, will take quite some time.

12:15

However, we are somewhat disappointed and a bit baffled at the delay in the programme. We are seeking further information from the Scottish Government about where the mental health law reform programme has got to. There have been some discussions about refining or redefining the definition of mental disorder in the Mental Health Act 1983, for example, which particularly affects people with learning disabilities and people with autism. I am sure that Lorne will have plenty to say on this, but those people have made it perfectly clear that they should not be considered for inclusion in the provisions of the Mental Health Act 1983, hence the calls for a learning disability, autism and neurodiversity bill. We would like to see progress and find out more about what is happening with the law reform programme.

In relation to mental health services, evidence suggests that there have been improvements in some areas and no improvements in others. If we were to look at it through a human rights lens, we could probably see issues with all the main elements of the right to health. There is not enough access and availability, quality can be a postcode lottery, and timeliness can sometimes be in question. People are still not fully involved in participating in decision making on their right to mental health and other aspects of their lives. There are gaps in accountability when people experience problems and in relation to the redress that they can have if they are trying to claim their rights.

The remark in the school report would therefore be "Seeing improvements but could do better".

**Tess White:** We are tight for time and, as you say, we could spend a whole session on this issue. Mr McMillan made the point about somebody being locked away for 50 years. That is not good enough and the money could be spent

elsewhere. I will not continue that discussion, but the committee is focusing on it.

In response to Lorne Berkley, I note that we are looking at autism. The focus of the committee is on patients who cannot get autism and attention deficit hyperactivity disorder assessments and on waiting times in child and adolescent mental health services. You are all in agreement that those are huge areas that need to be looked at.

I will go on to my second question. Access to affordable food is a huge issue, and nobody seems to have grasped the ears of that elephant in the room. Ms Mulvagh, you mentioned access to good-quality affordable food. I have a few facts.

Sixty per cent of the food that is consumed on this island is produced on this island, and that has not changed for about 100 years. That is a fact. Another fact is that the majority of people do not achieve the dietary requirements set by the Government, so the quality of food is going down dramatically. Charlie McMillan talked about his 86-year-old father. When we were growing up, we all got used to quality food that was locally sourced, but now the direction of travel is taking us somewhere completely different. If we were to take a holistic human rights-based approach, we should do rural proofing of our food supply to ensure that it is sustainable and affordable. I know that Professor O'Hagan mentioned that theme when we talked about rural proofing of health. However, instead, we have this drive to industrialise our landscape with huge monster pylons and substations. It looks as though our energy strategy and planning are geared towards one thing, and the danger with that direction of travel is that we will not be able to source our food locally or have quality food.

Professor O'Hagan, what are your views on the potential for a human rights-based national food strategy in Scotland, bearing in mind the context of that holistic landscape?

**Professor O'Hagan:** Industrial policy and its interface with environmental policy is not really my area of specialism. However, the core of this is about food security.

What your own statistics have outlined and what our report, "Economic, Social and Cultural Rights in the Highlands and Islands", demonstrated very clearly is that remote and rural communities in particular have additional issues and face human rights violations in relation to access to and the availability of fresh and nutritious food, in terms of distance, availability and all the rest of it.

The committee could follow that matter up with Nourish Scotland and good food nation organisations, which, along with many civil society organisations, made significant contributions to the framing of the right to food in the proposed human

rights bill. They are among those who contributed a great deal and who were promised a great deal—promises that were not realised in relation to a human rights bill containing the right to food.

Across the panel of witnesses, we have talked about food insecurity as a daily reality for many. You used the word “holistic”, and that is absolutely what the approach must be. The right to food—its availability, accessibility, adequacy and cultural appropriateness—must be present, so that has to inform any industrial or agricultural strategy, just as the right to work and the right to dignity would. We cannot have any tolerance for the reality that much of our food is produced by migrant agricultural workers who live in appalling conditions on our agricultural sites and experience extreme destitution. They live in horrible, very poor living conditions, although they pay significant amounts in rent.

If we are talking about a whole-systems approach, that must be taken across the suite of rights that are contained in the International Covenant on Economic, Social and Cultural Rights. We set out a framework in our spotlight report on the Highlands and Islands that allows for that analysis, working through the rights and the extent to which those rights are being realised and are available and adequate across the piece. That links to our conversation—some time ago now, I feel—on human rights and business and the extent to which the conditions for the workers and the quality of the food produced are considered. Again, what is the tolerance level of our legislature with regard to rights realisations in those areas?

**Tess White:** You said that the summer is the opportunity for the Scottish Government to look at rural proofing and the direction of travel. Is the strategy for a sustainable food programme something that you would like to see placed fairly and squarely at the feet of the Scottish Government?

**Professor O’Hagan:** The commission wants a full response to the CESC recommendations and concluding observations. We have called for, and encouraged the Scottish Government to produce, a full response to all the concluding observations and to set out what actions it is taking or is proposing to take.

The opportunity in the summer is about pre-budget scrutiny and proposals, so it is then back to the Parliament to say what it wants to see in the next draft budget. That is your opportunity to say that there is a series of recommendations from the UN Committee on Economic, Social and Cultural Rights and to ask how those are being addressed and resourced in the forthcoming draft budget in the next cycle.

**Tess White:** Will you be requesting a meeting with the Scottish Government to progress that?

**Professor O’Hagan:** We have requested meetings with the Parliament, the Government and a range of relevant ministers.

**Tess White:** You have requested meetings. Have they replied yet?

**Professor O’Hagan:** In relation to CESC, we have had an acknowledgement of the process, but otherwise no. However, I will be raising that in what should be a regular meeting with the First Minister.

**Tess White:** Maybe that is something that the committee could help with.

**Maggie Chapman:** I hope that this is a quickish question on education. I will start with Angela O’Hagan, given that you just talked about CESC’s concluding observations, which clearly stress the importance of culturally appropriate and inclusive education to ensure the fulfilment and realisation of rights. How well is Scotland meeting the expectation for specific groups such as children from the Gypsy, Roma and Traveller community and disabled learners? I will come to Clare MacGillivray and Lorne Berkley, too, because I know that they have special interests.

**Professor O’Hagan:** Again, my colleagues will provide much more detail across the piece, but we highlighted education in our report to CESC. The issue is about the accessibility and availability of appropriate education—ensuring that individuals have access to appropriate education and are sustained and supported in appropriate educational settings—as well as about education on human rights.

That touches on what colleagues said about building capacity and ensuring the normality of rights in our way of thinking and doing in Scotland, and that means moving beyond the sometimes tokenistic issuing of little cards with the rights of children or the Universal Declaration of Human Rights on them. The approach needs to turn into practice. Colleagues at the Children and Young People’s Commissioner Scotland have produced a significant report on children’s rights and education, which I commend to the committee.

In the interest of time, I will pass to other colleagues.

**Clare MacGillivray:** There is definitely a gap in relation to the granular data that we need to assess how culturally appropriate education is being taken up by the Gypsy Traveller community and how available and accessible it is. An issue that we hear about in the conversations that we have with people is that there is not culturally appropriate education for a lot of Gypsy Traveller children in Scotland. You would be better speaking

to Article 12 in Scotland, which is a great organisation that works alongside families and children of Gypsy Travellers and looks at the education systems that they are part of.

One experience that we have heard about is that a family were not supported to access school places when they moved from one local authority area to another. We had to get the Children and Young People's Commissioner involved to get two primary school-aged children into a local school, because the process for applying had not been made clear—there was a digital application, which people were not able to access.

Fundamental barriers have not been addressed, and they require to be addressed if we really want to advance the educational outcomes for Gypsy Travellers and the opportunities for children to take part and to be proud of and celebrate their heritage. I suggest that the committee should get community members here, because I am not a Traveller, and you would hear much more adequately and passionately from people who have experienced the systems.

On children's rights, it is about hearing from Gypsy Traveller children what it feels like to be at school. We have heard in some of our conversations about people trying to hide their identity. People should not have to hide their cultural identity to fully flourish in their life—they should be able to celebrate their cultural identity in a way that supports their learning, but I am not hearing about that in the conversations that I have had with the communities. Get them here—talk to them or visit them and find out what is happening for Travellers who are in the settled community, for those who are on sites and for those who are on the road and travelling. Find out what is actually going on for them.

**Maggie Chapman:** Thank you very much. You have highlighted the barriers to accessing education at all, never mind culturally appropriate education. I come to Lorne Berkley on the same question.

**Lorne Berkley:** I will be brief. We are aware that children with learning disabilities face barriers to accessing educational opportunities. We undertook research that examined early learning provision for children with learning disabilities—that is a specific focus for us. That research illustrated the complex and fragmented system that can lead to children and young people with learning disabilities missing out on funded early learning and childcare places. I would be happy to share that report with the committee.

**Maggie Chapman:** It would be helpful to see that report—we would appreciate that.

Unless anyone else wants to come in on that point, I am happy to hand back to the convener.

**The Convener:** Charlie McMillan can come in briefly.

12:30

**Charlie McMillan:** This is an excellent example of how intersectionality complicates the discrimination that children and young people face. For a child or young person who is from a Gypsy Traveller community or a black and minority ethnic community and has a learning disability or is perhaps in the care system, those complexities mean that, in many situations, they are not receiving an education. The use of restraint and seclusion for people with learning disabilities is another specific concern that we need to flag—we are talking about the convention against torture. We also need to consider the mental health impacts post-Covid. There is a real risk that we start to blame the individuals, rather than looking at possible solutions. An intersectionality analysis could be really useful.

**Maggie Chapman:** That is really helpful, thank you. I hand back to the convener.

**The Convener:** I am aware that we are well over time, but it is important that we have on record, very briefly, your views on monitoring and data gathering and the importance of it for everything that we have spoken about.

**Charlie McMillan:** I do not mean to be flippant, but my answer has to be that there should be more of that. Monitoring is happening throughout civil society and through people's individual experiences feeding into the work that we are doing at the consortium, the commission and other umbrella organisations, but there is a real paucity of clear human rights-focused information. Data collection in Scotland is a significant weakness, which has been proven since Covid. There is a real gap in intersectional data, as required by some conventions, and there is so much more to do.

This was the first time that I had been involved with international monitoring, and it was hugely beneficial for me to understand the depth and level of understanding of UN committee members, as well as their breadth of concern for people's experiences in the United Kingdom and in Scotland and the other devolved nations. All too often, I do not hear the concern being expressed locally that people who live their lives in poverty—some experience extreme poverty for 40 or 50 years—do not see the result of any of the promises that we make or the expectations that we raise.

We need monitoring and data collection to be much more sophisticated than what we have at the moment in order to evidence the experiences that we keep hearing about. Daily, I receive emails



that detail people's horrendous experiences; they sit in my inbox.

**Professor O'Hagan:** The absence of data is a real problem across a range of protected characteristics under the Equality Act 2010, across individual rights holders and across international treaty framing. You will be familiar with the series of spotlight reports that the commission has produced, which are a form of domestic monitoring. Our reports highlight—I think very effectively—where people's rights are not being realised, and that is very often among the most hidden populations in Scotland. The Mental Welfare Commission for Scotland has produced a report on people who have in effect been detained in inappropriate care settings. That commission began its research with a fixed number in mind and found that there were significantly more people affected than was previously recorded.

We have significant issues with deaths in custody. The way in which the data is collected and how those deaths are reported will be the focus of discussion during this week's national preventive mechanism conference in Scotland, where UK bodies will come together. We will be raising the issues about practices in Scotland, just as we did in our spotlight report on places of detention.

The potential for a tracker tool has been mentioned as one of the Scottish Government's engagements in response to the absence of the human rights incorporation bill. A tracker tool would allow public and parliamentary exploration of and insight into the extent to which concluding observations were being realised.

In all our spotlight reports, we set out frameworks for those issues, and we have asked the Scottish Government for responses on the extent to which the deficiencies that we have identified, in data and in practice, are being addressed. We would like to hear from the Government on the points that we have raised about the situation.

The publication of our report, "State of the Nation: Civil and Political Rights in Scotland", was the first time that the commission has produced a state of the nation report on international human rights day. Last year, we focused on civil and political rights; in this year's report, we are continuing our focus on economic, social and cultural rights. That will provide another opportunity for this committee to explore many of the issues that we have raised today and to discuss the concluding observations of CESCR.

We have recommended to Parliament that the national human rights institution's state of the nation report would be a useful way to frame

parliamentary scrutiny, through committees, on human rights, annually on human rights day.

**The Convener:** Thank you. Lorne Berkley will come in, and then Lucy Mulvagh and Clare MacGillivray—briefly, please, everyone.

**Lorne Berkley:** Data collection is a critical issue for people with learning disabilities. There are many gaps in equalities data and evidence, including for those who face multiple layers of discrimination due to intersecting protected characteristics. Routine collection of data is vital for protecting economic, social and cultural rights, and the lack of disaggregated data hampers the ability to measure equality and human rights impacts across the board for people with learning disabilities.

Although the public sector equality duty requires local authorities to set measurable equality outcomes, there is a lack of formal obligation on authorities to collect and monitor specified information. Without such a legal obligation and the resources to collect the data, local authorities and other responsible bodies are likely to continue to make do with the current systems and processes, in which disaggregated data for people with learning disabilities is either incomplete or non-existent.

**Lucy Mulvagh:** I will try to be brief. I agree with what colleagues have said so far. Our report to CESCR noted that there are persistent gaps in intersectional equality and human rights data and that we need more robust data. We need that data to be gathered and, importantly, we need it to be analysed and then used.

The SNAP2 action plan noted several specific issues on which there are data gaps and proposed action to help to fill those gaps. I commend that plan to the committee and suggest that members take a look at some of the actions in SNAP2, in which research has been recommended to help to fill those gaps.

To track our progressive improvement, we need to know what the baseline is. The development of a tracker tool is a long-standing SNAP recommendation. It was in SNAP1 as well as in SNAP2, and the ALLIANCE was pleased to see it being picked up by the Scottish Government.

It is extremely important that the evidence that is used in a tracker tool is neutral and independent. We cannot have public bodies marking their own homework—we already have too many examples of that and it does not lead to the progressive realisation or improvement of rights.

On monitoring, I echo what Angela O'Hagan said—it would be great to hear the Scottish Government's response to the CESCR concluding observations. As we mentioned at the beginning,

the Parliament, including this committee, has an incredibly important monitoring role. You are a national human rights guarantor, and citizens rely on you to play that role.

Civil society and rights holders also have a hugely important—nay, vital—role to play in human rights monitoring. Clare MacGillivray can speak to that eloquently from the point of view of rights holders that she works for and with.

To do that monitoring, we urgently need resources. We are under an almost existential threat because of the on-going cost of living crisis and the public finance crisis. Without resources, we cannot do our job to monitor and gather data. A lot of public bodies rely on data that is gathered by third sector organisations, which include the ALLIANCE and our members. We definitely want that to continue, but we really need resources to do it.

**Clare MacGillivray:** I will be quick, and thanks for the question. It is critical that we have disaggregated data across all services so that, when I am working with communities, I can say, “Here is what is going on for your community,” or, “Here is what is going on in this particular area of work.” However, the systems all need to be connected up. We need to measure what matters. We have a measurement industry in Scotland that is worth millions of pounds. What is it measuring? Is it actually measuring the things that matter to communities and that will make someone’s life better? I am not sure that it is. That is why we have created blueprints for communities to monitor their own progressive realisation of rights.

Imagine if we had that at a national level, so that the indicators for the national performance outcomes had been set by people to relate to what actually matters for them and their life. I encourage you to go in the direction of more disaggregated data; more regulatory frameworks that embed human rights in their processes, in their systems and in what they are measuring; and much more cognisance that testimonial injustice is happening to rights holders across Scotland.

We are being told that the data does not match what we are saying. Well, ken what? The data is wrong; what people are telling you is not. Their stories tell of systemic failures and breaches of rights across Scotland, and their voices need to be at the heart of whatever is measured. Get that right, and we will be much better off as a society. We will know where our rights are being realised and where they are not. Then, we can develop the tools, systems and resources, and we can embed them in the places where they are most needed.

**The Convener:** On that very powerful testimony, I bring the session to a close. I thank all

the witnesses for attending and for giving us a very full and valuable evidence session.

We move into private session to consider the remaining items on our agenda.

12:42

*Meeting continued in private until 13:11.*

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