



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Equalities, Human Rights and Civil Justice Committee

Tuesday 13 January 2026

Session 6



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EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE

1st Meeting 2026, Session 6

CONVENER

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

DEPUTY CONVENER

*Maggie Chapman (North East Scotland) (Green)

COMMITTEE MEMBERS

*Marie McNair (Clydebank and Milngavie) (SNP)

*Pam Gosal (West Scotland) (Con)

*Paul McLennan (East Lothian) (SNP)

Paul O'Kane (West Scotland) (Lab)

*Tess White (North East Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Nick Bland (Scottish Government)

Jennifer Laughland (Equality and Human Rights Commission)

Kaukab Stewart (Minister for Equalities)

Vuyi Stutley (Scottish Government)

John Wilkes (Equality and Human Rights Commission)

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Equalities, Human Rights and Civil Justice Committee

Tuesday 13 January 2026

[The Convener opened the meeting at 10:02]

Public Sector Equality Duty

The Convener (Karen Adam): Good morning, and welcome to the first meeting in 2026, in session 6, of the Equalities, Human Rights and Civil Justice Committee. We have received apologies from Paul O'Kane, and Marie McNair will be joining us remotely.

Our only public agenda item is an evidence session following the committee's report on the operation of the public sector equality duty in Scotland, which was published last year. Under the duty, public authorities in Scotland are legally required to consider equality when carrying out their functions. This morning, we will hear from the Equality and Human Rights Commission and the Minister for Equalities.

The witnesses on our first panel are representing the Equality and Human Rights Commission. I welcome John Wilkes, its head of Scotland, and Jennifer Laughland, its head of Scotland legal. Thank you for joining us.

I refer members to papers 1 and 2. Before we move to questions, I ask John Wilkes to make a brief opening statement, please.

John Wilkes (Equality and Human Rights Commission): Thank you very much, convener. Happy new year to the committee.

We thank the committee for the opportunity to comment on your report on the effectiveness of the public sector equality duty in Scotland and to share our thoughts on the report's recommendations and the Scottish Government's response.

The written submissions, the oral evidence sessions and the committee's final report highlighted many issues with which we agree, and we hope that that was reflected in our contributions to the committee last year. The evidence that the committee heard chimes with the commission's decade-long experience of regulating and monitoring the effectiveness of the current Scotland-specific duties. Our evidence base has been built up through our 2013 to 2017 "Measuring Up?" project, which monitored the PSED in Scotland, and our on-going regulatory work, which takes a more project-focused approach around themes and sectors. That work provides valuable insight into the work that public sector bodies still

have to do to understand and meet their public sector equality duty obligations and how improvements can be made.

We agree with the committee that there is a need for reform of the PSED. In 2022, we used our experience to develop a clear set of recommendations on how, in our opinion, the duties could be changed to improve the performance of public authorities. That work informs our on-going engagement with the Scottish Government on its work to reform the Scotland-specific duties.

Regulation is not an end in itself but a framework to enable public bodies and services to achieve the three main goals of the general duty, which are worth restating: eliminating discrimination, advancing equal opportunities and fostering good relations between people with and without protected characteristics.

We are clear that targeted improvements to the existing regulations are key to enabling us to better consider equality issues, foster good relations and place more focus on the importance of setting clear equality outcomes. The key recommendations that we made to the Government included amending the regulations to require that equality outcomes be accompanied by published evidence-informed action plans, ensuring that regulatory inspection bodies in Scotland play a clearer role through their inspections and on-going engagement in monitoring and improving public sector equality performance, ensuring that public body reporting cycles are better aligned and ensuring that the Government uses its leadership role in considering setting national and sectoral equality outcomes.

We are clear that strong leadership and clear guidance will assist public bodies in understanding and meeting the requirements of the duties. We welcome some of the initiatives that the Government has put in place recently, including its first use of regulation 11 and its mainstreaming guidance and toolkits. However, we share the committee's view that, although the regulatory reforms that the Government has proposed represent a step in the right direction, they will not achieve the full potential that could be achieved by public authorities utilising the PSED requirements.

As the regulator of the duties, the commission remains committed to continuing to play our part through providing guidance and support, working with public bodies to improve their performance and, when necessary, using our enforcement powers to ensure that public bodies meet their obligations under the duties. A more effective framework will help the public sector to achieve improvements to the performance of public services in Scotland, and we remain committed to

working with the Government, the Parliament and other key stakeholders to achieve that aim.

The Convener: Thank you very much.

We will move to questions. The committee found that the PSED is not delivering its aim to improve outcomes for people with protected characteristics. Why do you think that it has failed to achieve that?

John Wilkes: Gosh—there are a number of reasons. In many public bodies, there is still a fundamental lack of understanding about what the public duties are there to do. Some of the work that public bodies do is at quite a high level and is very process focused, so we think that there needs to be a shift in public bodies' thinking in relation to the duties being there to help them to develop quality outcomes over certain periods in order to achieve the three main pillars of the general duty.

An awful lot of guidance has been produced. We like to think that we have produced excellent technical guidance and other guidance to support all aspects of the operation of the duties. That includes guidance on what "due regard" means, how to foster good relations and all the other areas for improvement that the committee picked up on in its report.

There could be better direction and leadership from bodies such as the Scottish Government through the setting of, when appropriate, national and sectoral equality outcomes.

In many public bodies, understanding of the PSED is still very much at the top of the organisation; the PSED might not be understood throughout the whole of the public body. It should be second nature—we hope that everybody who works in the public sector will think about the PSED in their day-to-day work in the same way as they think about health and safety and all sorts of other things. When they are developing policies or services, they should think about equality considerations and what to put into equality impact assessments.

There is still a challenge in accessing good equality data. The commission recognises that that can be challenging, particularly for public bodies that do not have a big workforce and need to gather data from outside. The Government's equality data improvement project, which we have been a part of over the past few years, has been a good step in allowing us to consider better ways of developing good equality data across the Government and the public sector.

Those are some of the reasons why public bodies have difficulties. It is important to say that progress has been made since the introduction of the specific duties in 2012 and the subsequent ones in 2016, so the picture is not all bleak. There

are good examples of the equality duty having achieved change and progress in the public sector, but there is still a lot more to do.

Jennifer, do you want to add anything?

Jennifer Laughland (Equality and Human Rights Commission): I do not think so. That was quite a comprehensive answer.

The Convener: Tess White will ask the next questions.

Tess White (North East Scotland) (Con): John, should I address you as John or as Mr Wilkes?

John Wilkes: John.

Tess White: Thank you. Is it the same for you, Jennifer?

Jennifer Laughland: Yes.

Tess White: Thank you.

This has been a long-awaited evidence session—we have been waiting for almost a year—so thank you for coming this morning.

What is the EHRC doing to help public authorities to focus on outcomes rather than processes? You talked about having good-quality leadership, but why is it so difficult for public bodies to deliver on their duties?

John Wilkes: On your question about what we are doing, we recognise that many stakeholders think that we are not doing enough, but a lot of what we do is done behind the scenes. We get regular inquiries from members of the public or organisations about local authority X, health board Y or the police not having followed the guidance—a lot of that goes on—which says to me that there is increasing awareness about the role of the public sector equality duty. We follow up on those cases.

A good example of our work is the work that we have done with the Scottish Funding Council, which is the funder and part regulator of the higher and further education sector in Scotland. The Scottish Funding Council's response to our inquiry in 2020-21 on racial harassment in universities was to ask what it could do to combat that. We entered into a formal memorandum of understanding, whereby we work with the Funding Council and, through it, the higher and further education sector to develop appropriate national equality outcomes for the sector. That does not prevent individual universities and further education institutions from developing other equality outcomes, but we think that a sectoral approach to some of the issues is a good one.

We have recently reviewed that approach. We have been through one cycle and have just started

the second cycle, which involved setting equality outcomes for the 2025 period. I might get the numbers wrong, but something like 40 out of the 42 institutions involved have adopted the national equality outcomes. We are currently doing a bit of evaluation research, which we hope to publish later, about the effectiveness and impact of the equality outcomes in the first cycle. That is an example of our work with a specific sector in the public sector.

Another example is from, I think, 2022. We were drawn to the clear fact that integration joint boards, which commission social care in Scotland, did not understand that they have responsibilities under the PSED. We found that something like 30 out of 31 of them were not meeting their PSED obligations, so we approached the sector and worked with chief executives, boards and staff for a year to help them to understand their obligations and how to meet them. When we revisited the issue last year, I think that all the integration joint boards were compliant with the basic PSED standards. Those are examples of our targeted work.

If public bodies are failing to a greater extent, we can use our enforcement powers, which Jennifer can talk about. In the past few years, there have been examples of organisations that we have worked with—the Scottish Qualifications Authority and the Scottish Legal Aid Board spring to mind—because, for different reasons, they were failing in their PSED responsibilities. In such cases, we set up a section 23 agreement, whereby an organisation agrees to work with us on an agreed plan.

Those are some examples of how we approach such situations. There is an on-going issue about the production and updating of guidance and the various things that go along with that.

10:15

On the second part of your question, I refer to the comments that I made in my opening statement. There is still a lot of work to do to help public bodies to understand why the duties are important and what their obligations are. However, we are fortunate in Scotland that we have the secondary duties, because that has helped public bodies to better understand the requirements. If we compare that with the work of our EHRC colleagues in England, where there is not the same landscape of secondary duties, we can see some of the differences and some of the advantages that we have, but there is still a long way to go.

There is still very much a focus on process in relation to the PSED. Public bodies are very used to processes, so they see the duty as another

process that they have to follow, rather than seeing it as a tool to help them to address certain equality or discrimination issues over longer periods.

I do not know whether—

Tess White: We are pressed for time.

John Wilkes: Sorry.

Tess White: Jennifer, we will cover the outcomes later, so perhaps we can focus on the immediate question for now. As a region MSP, I cover several educational authorities, IJBs and council areas, and I have had extensive meetings with all of them. I want to discuss a local example with you but, before I do, I would like to ask about the Scottish Government short-life working group that was established in April 2025 on taking forward the Supreme Court judgment. Last night, I went to the website to look at the composition of the group and I noticed that it talks about the EHRC as a key stakeholder and that the minutes suggest that the EHRC is active in engagement. I could not find out what advice the EHRC gave to the working group, so could you tell me? I note that there have been no minutes since last August.

John Wilkes: In response to the Supreme Court judgment of last year, which is what I think you are referring to—

Tess White: I am referring to the short-life working group.

John Wilkes: The Government has stated that it accepts the outcome of the judgment, and that, to address it, it has set up a short-life working group to look across the span of Government policies, regulations and so on, to identify what needs to be changed.

In—I think—June of last year, our chief executive met ministers, to get a sense of the progress that is being made. Our advice to Government, which is our advice to all public bodies in this regard, is that the judgment is there and that it is up to public bodies to take such advice or do such things as they need to, in order to make sure that they are compliant with it.

We have received updates to the effect that the short-life working group is still working. Our chair happens to be in Scotland this week, and she and our chief executive met the Cabinet Secretary for Social Justice and the Minister for Equalities. They said that the scope of the work is quite large, as it involves thinking about trying to apply the judgment across all of the Government's policies, and that, effectively, the group is no longer a short-term working group, because it is involved in a longer piece of work, during which it will work to address all the issues. They pointed to some examples of things that have been amended, such as the schools' guidance, and also identified other

areas where it was felt that no changes were needed. However, Government is quite huge, so there is a lot to go through.

Tess White: The way I interpret that answer is that not much has happened with the short-life working group. It has stalled and has not had much engagement, and it is almost as if it has been put to one side and that separate meetings have taken place with the Government. Is that a fair assessment?

John Wilkes: I would not articulate it like that, no. Our role is not to be part of the working group or to check its homework. We have urged the group to do as swiftly as possible all the things that it needs to do to ensure compliance with the judgment. Our impression from the meeting yesterday is that it is a huge exercise and that the group is working through things actively and at pace—that is what the ministers said—to deal with all the implications. We did not get the sense that the group is not doing anything; it is just working its way systematically through an awful lot of material.

Tess White: The website says that the EHRC is a key stakeholder—my definition of a key stakeholder seems to be different from the one that is being used there—and that MSPs will be kept updated. However, we have not been kept updated and it is quite obvious that you are not seen as a key stakeholder. The website said that the group was going to meet every two weeks, but it has started to meet monthly. You have mentioned one meeting—

John Wilkes: Yes.

Tess White: Thank you; you have answered the question.

As you have mentioned, following the Supreme Court judgment, the law is clear. Has the EHRC started work on an awareness campaign for employers, so that there are no more tribunals like one in the Sandie Peggie case? I have asked officers in my community which guidance they are following, and it seems that, even though parts of the old technical guidance have been taken down—and there is a view that, to be direct, that guidance needs binning—employers are still relying on it, and it is still being referenced in court cases. Does the EHRC have a workaround for the sort of muddle that we are in right now, with people referring to old guidance that should be binned?

John Wilkes: The main thing that we have done since the judgment is update the code of practice on services, which we had been working on anyway. In 2024, we reviewed the code, which came out in 2011 and needed updating. Then, as you know, we had to do a second exercise following the Supreme Court judgment to revisit

those specific parts of the code—not all of it—that required amendment because of the judgment. That exercise has been completed and, as you will be aware, is now with UK ministers. It is in their ballpark to progress and lay that code. Obviously, all sorts of other guidance will need to be updated, and there will need to be a rolling programme of activity in that regard. There is also the code of practice on employment, which Jennifer Laughland can talk about.

Jennifer Laughland: We are working on the schools' technical guidance in England, Scotland and Wales, and the employment code is part of our planned programme of work. I might have to get back to you in response to your question about the current code of practice and what we intend to do about it, because I am not sure exactly what the status of that is.

Tess White: If you can, that would be good, thank you. It is mentioned on the short-life working group's website.

MSPs regularly engage with the IJBs, chief executives and council officers. In your view, how has the EHRC helped employers to not fall foul of the law?

John Wilkes: We help employers in a number of ways, mainly through the guidance that we produce. There are thousands of employers across Scotland and Britain. Some are in the public sector and many are in the private sector. Employers have a responsibility to ensure that they are compliant with the relevant legislation—the PSED, for public bodies, and the 2010 act more generally, for other bodies—so they need to engage in understanding the impacts of that legislation. There are instances where we might use our enforcement powers to engage on particular cases that come up, and our evidence-gathering activity keeps us informed about what is happening out there. However, we are a relatively small regulator in the scheme of things, so our main support for employers is delivered through the guidance that we produce. We will engage with them where we need to and, in certain circumstances, we will use our enforcement powers. An example of that would be our current engagement with McDonald's. Lots of sexual harassment issues at McDonald's have been raised with us, so we have entered into an agreement with the company to help it, as an employer, deal with that particular issue. That is an example of where we can use our powers strategically and sectorally.

Tess White: That is fine; that is a private sector example. However, there are more than 100 public sector organisations in Scotland, and I would have expected the EHRC to do a gap analysis against the nine protected characteristics, because it is

quite clear that many of those public bodies are not following the law.

I will give you a local example that has generated much of my caseload over the last year and which concerns two swimming pools in my own area: one in Aberdeen City and one in Aberdeenshire. One of the swimming pools—Bucksburn swimming pool in Aberdeen—was the only swimming pool in Aberdeen that had single-sex changing. The issue concerns people who fall under three of the protected characteristics: women, women with disabilities and women who are elderly. When the pool was threatened with closure, the local community fought tooth and nail to keep it open, because people from all around Aberdeen and Aberdeenshire came to use the pool, because they wanted to change safely and in privacy. For some, that was important because it can take someone with Alzheimer's or other disabilities extra time to change. The community, including mental health workers, said, basically, that the pool was a lifeline, both physically, for those with disabilities, and psychologically. The community got together and kept the swimming pool open but it had to take the council to court to do so. One of the guarantees was that it would keep the single-sex changing facility—bear in mind that it is the only pool in Aberdeen City with such a facility, and one of the few in the north-east.

The other pool, in Stonehaven, got a refit that involved mixed facilities. Women complained about that, as did I—I even took it as far as the chief executive of the council, and the head of legal was here in front of our committee, giving feedback on the PSED. However, the council said that it was still going ahead with the refit. Women and women with disabilities have protested against the proposal, and even some of the men have said that they do not feel comfortable changing in front of little girls and using mixed showers. However, the complaints, including mine, were just dismissed. When I raised the issue with the director of the council, he said that the council was waiting for the outcome of the Sandie Peggie case, which has now happened.

You talk about your enforcement powers, but this issue concerns something as basic as swimming. The issue has hugely negatively affected many people's lives, yet we, including me as the MSP, are being dismissed, and the council is just saying, "We are waiting, we are waiting". Aberdeen City Council has kept one pool and Aberdeenshire Council says that it is not breaking any laws, and it is not listening to the community or to me as the MSP. There is a separate issue in Angus Council, where teachers say that they like the mixed-sex changing facilities because they can keep an eye on all the children. However, what about the young girls?

My final point concerns an inquiry that was conducted while I was on the Health, Social Care and Sport Committee—if you have not read the report, I would be happy to share it with you—that looked at why women and girls exclude themselves from sport. You can overlay the other protected characteristics, and it is not rocket science to observe that women and girls are self-excluding. However, that report has not been taken forward, and it is obvious why.

I am coming to my question. I know that I have rambled a bit, but I am here speaking passionately about the women, the women with disabilities, the children, and the men who do not feel comfortable when they are in the mixed-sex facilities. A report by the Women's Rights Network, which I am happy to share with you, said that only six of the 31 local authorities that responded to a freedom of information request said that they offer any form of women-only swimming sessions, and that, of those, only three sessions—just 10 per cent—are guaranteed to be genuinely single sex.

Here is my question. Given that the public sector equality duty requires public bodies to advance equality of opportunity between women and men, what steps, if any, has the EHRC taken to understand the problem that I have outlined and give guidance, so that local authorities such as the three that I have mentioned—and leisure trusts, because councils give over a lot of their management to leisure trusts—provide lawful, clearly advertised and genuinely single-sex swimming sessions and changing facilities for women and girls and men, especially those with disabilities, particularly in the light of evidence showing widespread inconsistency in relation to what I have said about people following the old rules and misunderstandings of the 2010 act, not just in my region, but across Scotland?

10:30

Jennifer Laughland: As John Wilkes mentioned earlier, we issue guidance on the public sector equality duty that covers the duty of public sector organisations to do things such as carrying out equality impact assessments. That means that, before they make decisions, they should consider how the decisions will impact the various protected characteristics.

As you will be aware—John Wilkes mentioned this earlier—we have also recently revised the services code, and we then had to revise it again in the light of the Supreme Court judgment. It gives specific guidance to organisations that provides services to members of the public, which includes swimming pools. As you know, that is currently with the minister in Westminster and has been for some time. We are trying to provide additional

information so that that can be laid as soon as possible.

Tess White: But the Supreme Court judgment was just a clarification of the law. The legislation has been in place since 2010. Under the Equality Act 2010, there are nine protected characteristics.

I have given three examples: one in Angus, which relates to changing facilities for schoolchildren; one in Aberdeen city; and one in Aberdeenshire. I recognise that the EHRC has only 20 employees in Scotland, but the issue is about enforcement and equality of opportunity, and politicians who represent the community are being dismissed. What enforcement have you been doing since 2010, including in relation to leisure centres and swimming pools?

Jennifer Laughland: I am not aware of us having done anything specifically in relation to leisure centres and swimming pools. However, as you have pointed out, we have limited resources. At the moment, I have three solicitors under me, which is not a lot to cover the whole of Scotland.

Recently, although much of our focus has been on guidance, we have taken enforcement action. John Wilkes mentioned a couple of examples of enforcement action that has been taken against public bodies in the recent past. We do a lot of work on the public sector equality duty that is described as compliance or pre-enforcement work, when we become aware of situations such as those that you described. That involves us looking into what is happening and working with the organisation with a view to ensuring that it is considering its equalities duties and properly complying with them. Most of the time that helps and we do not need to take formal enforcement action, but when we need to, we will.

To my knowledge, we have not done that specifically in relation to leisure centres, but if we became aware that there was a problem and we had the resources to take action, we would consider that in the same way that we would consider complaints about any matters in relation to which there was a suggestion that the PSED was not being complied with. We would look into that and, if we felt that enforcement was necessary, we would take proportionate measures. We have a lot of competing priorities, so we would not take enforcement action in every case, but we do take action.

Just because we have limited resources and we have had more focus in the past few months on our guidance and pre-enforcement work, rather than harder-edged enforcement, I would not like any public authorities to think that we are not in the business of taking enforcement action. We still are, and we will do that when it is required. We might not have the resources to do it every time we

realise that there is a problem, but we will consider every problem that is brought to us, and we will take enforcement action in the cases in which we feel that that is the only way to resolve the matter.

Tess White: Thank you.

I am conscious of time, so I want to turn to the report. We have 11 weeks of the parliamentary session to go. If I were to come to the EHRC with examples of what is happening in the north-east, along with the data from the FOIs, would you work with me and consider enforcement measures where that was appropriate?

Jennifer Laughland: Yes, we would triage that in line with our processes.

Tess White: So I would not be dismissed, as I have been for the past few years by local authorities. I will come to you. Thank you.

John Wilkes: I have a quick additional point. The primary responsibility still rests with public authorities, in the course of their business and the thousands of decisions that they make on services and all the rest of it, to follow their obligations. Our job, as Jennifer has outlined, is to assist them in doing that. We do that primarily through the provision of guidance and by working with public authorities, where we can, to help them to improve their practice. When issues are brought to our attention, we will consider whether it is appropriate for us to take action and what that action might be.

Every week, we get lots of inquiries about whether public authorities are meeting their obligations. We do a lot of triaging, and we make appropriate responses where we can. However, the overall landscape must be borne in mind. In that regard, we are trying to be a strategic regulator. That said, we consider everything that is brought to our attention, and we try to respond appropriately.

Tess White: I hear you, but I was feeling quite positive after Jennifer's response. Now, I almost feel as though the issue that I have raised is priority number 10, after paper clips.

John Wilkes: No, not at all.

Tess White: You can tell that I feel strongly about this. My background is in human resources. I am a fellow of the Chartered Institute of Personnel and Development. In the private sector, I would have acted as the enforcer, and there would have been consequences for anybody who was not delivering on the requirements of the organisation. Right now, there are no consequences.

The committee has produced a damning report on what is happening in public sector organisations. John, you have said, "We will

review it.” With respect, I say that I will come to you, because what is required is not happening.

I accept that the EHRC has only 20 staff and that it is limited in what it can do, but the system is broken. Women, including women with disabilities, have come to me and said, “Tess, please can we start to go swimming, because not being able to do so is affecting our physical health and our mental health?”

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

Maggie Chapman (North East Scotland) (Green): Good morning, and thank you for joining us. I want to focus on balancing characteristics and fostering good relations. It has been a bugbear of mine for some years that there has been limited understanding of, and virtually no conversation about, what fostering good relations means, and you have picked up on that. It has been very much the poor cousin of the various elements of the public sector equality duty. Why do you think that it is so hard for public bodies to grasp what fostering good relations means and what such a process should look like? In your view, what would good practice look like when it comes to fostering good relations?

John Wilkes: As we said in our evidence to the committee last year and as you picked up in your report, it is the least developed of the three pillars of the general duty from the point of view of the public sector responses to it.

Why is that the case? There could be many reasons for that. It can be challenging for public authorities to think about what fostering good relations means when they are doing their business, and how they can promote and address some of the competing priorities, risks and tensions that can emerge in relation to different protected characteristics. Fostering good relations is a tool for looking at those considerations.

One aspect of the on-going current debates is about the tensions and issues between women and trans people with regard to sex. That is an area where a fostering good relations approach could help a public body to navigate its way through the process of meeting the needs of two communities that are both protected by the Equality Act 2010 in that regard. That process could involve taking a similar approach to the one that has been taken in policing to fostering good relations between different communities of race and to other tensions that we see in communities.

We would like public authorities to do a lot more work on, and to give a lot more recognition to, such aspects when they set their equality outcomes. As I said earlier, we have guidance on that stuff on our website, which talks about fostering good

relations. We have also done some updates to the code to help with that, which should be coming out soon. There is information and evidence available, but the issue is to do with public bodies having the confidence to start to tackle these issues, which can often be quite tricky.

Maggie Chapman: I will come to the guidance in a moment, but when you talk about confidence, do you mean confidence in doing something or confidence in understanding what fostering good relations means? I think that those are two different things, and I see weaknesses in both. Which are you referring to?

John Wilkes: I agree that, first, there is a need for understanding, and then it is a case of having the confidence to do something about it.

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

Jennifer Laughland: No—unless you have any supplementary questions.

Maggie Chapman: John, you mentioned the police taking a fostering good relations approach in managing different situations in which race, ethnicity and other characteristics in that space are causing flashpoints in communities. Has the EHRC had any conversations with Police Scotland about that? Can you give us a bit more detail? Many communities and many people across Scotland are greatly frustrated by the rising levels of hate, whereby people of colour are being targeted on the streets and the police are doing nothing about it, or are seen to do nothing about it. Can you shed any light on the work that you have done with the police on those issues?

John Wilkes: Yes. Obviously, a balance needs to be struck when it comes to policing. It is a difficult role to get right. As part of our work with the police, we have been doing our uniformed services project for a couple of years. That is about tackling the evidence that exists of sexism and racism in the police force itself in terms of employment. That project covers the whole of Britain. In Scotland, we are engaging with Police Scotland, the Scottish Police Authority, His Majesty’s Inspectorate of Constabulary in Scotland and the Scottish Fire and Rescue Service. Although that project has an internal focus, our sense is that, if we can help to develop better attitudes within the police, that will help with how they comport themselves when dealing with the public.

That is one example of where we are currently working with the uniformed services. There seems to be evidence that suggests that the uniformed services tend to have a cultural ethos that somehow leads to high levels of sexism and

racism, among other things. That is one of the things that we are trying to do at the moment.

Maggie Chapman: Do you get a sense from any of your conversations with Police Scotland, either as part of the uniformed services project or elsewhere, that the notion of balancing needs—as opposed to risks—is sometimes used as an excuse to do nothing?

John Wilkes: I am not sure that I would articulate it quite like that, but I think that there is sometimes a sense that it is difficult to decide how to tackle such issues. We hope that our work as part of the uniformed services project will help to open up some of those debates and topics and to improve practice. I am pleased to say that both Police Scotland and the Scottish Police Authority are committed to engaging and working with us on that process.

Maggie Chapman: Is there also a role for political leadership in this area? How do you see the political context of debates and discussions around race feeding into that? What should we, as parliamentarians, you, as the EHRC, and all of us who have an interest in and a responsibility with regard to the notion of fostering good relations be doing differently?

10:45

John Wilkes: Political leadership is important in such debates. As politicians, you engage with public bodies on a variety of issues all the time, and introducing such concepts into those conversations can be a helpful way of reminding public bodies of their obligations in that regard. Tess White mentioned her engagement with Aberdeenshire Council. That approach can be helpful.

With regard to racism, we must recognise that we are in a climate of growing racism because of the on-going debates about issues linked to immigration and so on. We are living at a time when such tensions are on the increase, which means that it is important for everyone in public life, and us in our role as regulator, to put across a sense that we have human rights and equalities frameworks and that, although we can have dialogues in which we can have differences of view, rights are for everybody. I think that we are at risk of losing acceptance that those are the frameworks that we operate within as a society and as communities. However, that is difficult work, which there needs to be a continual focus on.

Maggie Chapman: What am I trying to get at here? I am not at all suggesting that this is what you are doing, but I think that it is sometimes easy for regulators and for people who are not politicians to say, “Oh, we can’t get involved in the

politics of that.” However, as you have just said, it is the job of us all to ensure that we get involved and have those conversations.

I will change tack a bit. You talked about your work in the higher and further education sector and with the SFC in response to, I think, one of Karen Adam’s question. Given that some of the fertile territory for debate and discussion is in institutions in that sector, how do you see colleges and universities understanding the element of the duty to foster good relations? We have seen some pretty poor examples of understanding, particularly around sex and gender-related issues. How does that element feature in your conversations and work with the SFC and those institutions?

John Wilkes: We see the advantage of working in that way with sectors where that is appropriate. In trying to get agreement on a set of national equality outcomes within them, we can start to look at developing outcomes around fostering good relations. One advantage of doing that sectorally is that it gives confidence to everybody in that sector that they are not the only ones who are trying to do it.

The tranche of equality outcomes that we are about to launch is only the second one. As I said, we will be evaluating what impact the first tranche has had on improving higher and further education institutions’ understanding generally of their PSED obligations, and how they have they found using a common set of national equality outcomes and using the outcomes that each institution develops. We think that there is potential to do that in other big parts of the public sector, such as health. That could be another area in which we could adopt and encourage this approach.

We would also say that ministers and the Government have a role to play. In a recent publication entitled “Regulation 12 Report”, ministers have set out the issues that they will be tackling, which are helpful signals, as is the use of regulation 11 of the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, through which they have drawn the attention of public bodies to look at certain issues.

We were very pleased to see that regulation is now being used. It allows the Government, where appropriate, to say what key things public authorities need to keep a focus on or should have a focus on as part of their general adherence to public sector equality duties and other things.

All those elements together could help to move forward this agenda.

Maggie Chapman: Thank you. Given that we were talking about SFC matters, I should declare

an interest: I am the rector of the University of Dundee,

My next question will cover an issue that you were hinting at there. If we take the notion of how we understand and promote fostering good relations as a tool, how could the Government and local authorities better incorporate it into budget conversations—that is, not only in budget decisions but in all the conversations that lead up to those decisions?

John Wilkes: Budgeting is really important, and it is an area that could act as a lever for applying the public sector equality duty. If public authorities start to introduce that thinking into how they allocate their resources, that will help them to consider these issues in a different way.

Maggie Chapman: There is a general understanding that that is what we should be doing, but, specifically, how do you see fostering good relations linking to budgetary conversations?

John Wilkes: If there is a clearer link between organisations setting their budgets and carrying out appropriate equality impact assessments as part of that, you can start to introduce all elements of the three pillars of the duty into those discussions. That would be a way of starting to engage where people are not engaged in those concepts currently.

There have been improvements in budgeting. We are part of the Government's equality and human rights budget advisory group. That is concerned with ensuring that, when setting the national budget, equality obligations, including human rights obligations, are absolutely woven in at that stage. That is a way of shifting the mindset about how resources must follow need—that is, the different needs of people with different protected characteristics. There is still some way to go on that, but it is certainly one way that could improve the situation and move things forward.

Maggie Chapman: Thanks. I have a final, very quick question. Is there a shining example of fostering good relations that you could tell us about?

John Wilkes: Oh, gosh. Is there a shining example?

Jennifer Laughland: That is a tricky one to put us on the spot with, actually.

Maggie Chapman: It is possibly indicative that there is no shining example. There might be, but I struggle to find one. If you find one, please let us know.

Jennifer Laughland: We will do.

John Wilkes: If you find one, please let us know.

Maggie Chapman: I will do.

The Convener: Pam Gosal has a question.

Pam Gosal (West Scotland) (Con): Good morning. Thank you for the information that you have provided so far. Can you confirm that the commission has changed its position on recording sex based on self-identification—which has been the case since the publication of the chief statistician's guidance in 2021—and that you agree that it is necessary to collect data on biological sex for equality monitoring?

John Wilkes: Are you asking if we have changed our position?

Pam Gosal: Yes, I am asking whether the commission has changed its position.

John Wilkes: The commission was involved in helping or providing our perspective when the chief statistician introduced the guidance back in 2021. Obviously, the situation has changed with the Supreme Court judgment. In fact, the matter of how the Government was recording its own workforce data using its guidance has been brought to our attention in the past couple of weeks or so, so we are currently looking at that.

Pam Gosal: You are currently looking at that.

John Wilkes: Yes.

Pam Gosal: You know the importance of clarity in that regard when collecting that data for equality monitoring. At the moment, that is one area in which there is a big gap. Are you fully aware of that?

John Wilkes: Absolutely. As we said in our opening remarks, one of the challenges in making progress on the public sector equality duty is the lack of good equality data in many different ways. There are challenges in gathering it.

You mentioned guidance on gathering data for men and women, or on sex, but there are equally challenges in gathering data on, for example, all the different disabilities and ethnicities. That is an on-going issue, and we are pleased to be working with the Government on its equality data improvement project to find better ways to improve the gathering of such data. Without the data, it is really hard to set good equality outcomes and to understand the fostering good relations duty.

We recognise the challenges that are involved. Some of the communities that are involved are quite small, and an aspect of that is how we ensure appropriate data collection and do not compromise individuals.

I will shift the conversation to the Government's proposals. Our understanding is that one reform that it is intending to introduce is ethnicity and disability pay gap reporting. One of our concerns

is how to introduce a system that looks at ethnicity pay gaps and disability pay gaps when there is such a wide spread of different groups within those categories, as opposed to the gender pay gap, which is much more binary, as it looks at the gap between men and women.

Your point about data is really important. It is an on-going issue, and we try to play our part in helping its development.

Jennifer, do you want to add anything?

Jennifer Laughland: I do not have much to add. We would always encourage people to make sure that, when they are gathering data, they are thinking about the purposes of doing that. If one of the purposes is to carry out their public sector equality duty in order to comply with the Equality Act 2010, they must ensure that they are able to measure things and collect information in an appropriate way.

As John said, we have sometimes found that to be a challenge in the past, with organisations just not having good enough quality data, which really is the starting point if they are going to make any improvements.

Pam Gosal: It is good to hear that you place importance on that—that having that monitoring, and having good data on biological sex, is important. Do you agree that the Scottish Government should therefore withdraw the 2021 guidance, which still encourages data collection based on self-ID?

John Wilkes: As I said, we started looking at that recently. There might be other elements that we need to think through and consider.

I cannot remember which member asked a question about the Scottish Government's programme to meet its obligations following the Supreme Court judgment. I think that it was Tess White. That clearly will be one of the things that the Government will need to look at as it works its way through.

Pam Gosal: Do you have a timetable for that?

John Wilkes: It is the Government's timetable, not our timetable. The Government needs to work its way through all aspects of its operation and consider where things do and do not need to change as a result of the judgment, which is quite a big project. I am sure that the minister will be able to elaborate on that.

We recognise that it is a big project. Our sense is that the Government is actively working on it and trying to do it as quickly and effectively as possible.

Pam Gosal: Do you also understand that you cannot compare apples and pears and that there are some things that you cannot provide services

for if you do not have the correct data? Basically, self-ID will screw up the data, especially when it comes to ethnic minorities—people like me. How will you know if females from an ethnic minority are being discriminated against in any way if data on biological sex is not captured? If you use self-ID, people will not have the exact data and would not know what is happening. You talked about the pay gap and other things. Do you not agree that self-ID would muddy the waters?

11:00

John Wilkes: Potentially, in some data sets, where you are talking about sex—men and women—the proportion that might be captured through self-ID might not have that much impact. However, it is important to get the data collection correct and in line with the Supreme Court judgment. Those are some of the issues that have been brought before us and that we are considering. Some areas can be quite complex. It will take a bit of time for us to think about that and go back with our judgment about it. However, your basic premise is absolutely right: good, quality, accurate data is really important—for all aspects.

Paul McLennan (East Lothian) (SNP): Thank you, convener. I am conscious of time, so I will try to keep my questions as brief as possible. In talking about the proposed reforms, the Government talked about its mainstreaming strategy, and we will be asking the minister about that. The report mentions the role of the Scottish Government. Jennifer Laughland talked about the role of the EHRC and how limited that can be, given your staffing. There is also a major emphasis on the role of public authorities, whether local authorities, police, health or others.

What are your thoughts on the Government's evolving approach to mainstreaming? There is a strong onus on public authorities to take ownership of this, too, which is really important. They cannot just wait for guidance from the EHRC or the Scottish Government. In my opinion, public authorities have to do that little bit more to move this on.

Maggie Chapman said that we all come at this from different viewpoints on equality. The massive worry that I have is about the increase in racism that we have seen and the discourse around asylum seeking and so on, which is really concerning.

What more can the Scottish Government do? What can public authorities do, other than just waiting for guidance from the EHRC or Scottish Government? What do public authorities need to do to try and move this forward? This is about data collection, but it is also about doing the right thing, to make sure that everybody is treated equally.

John Wilkes: Sure. I will pick that apart a bit. On the Government's proposed regulatory changes, as far as we are aware, its intention is to extend reporting on the gender pay gap to include ethnicity and disability, which we welcome in principle. We hoped that there would also be other regulatory reforms, as I outlined earlier. However, some of the proposals that we made are not being brought forward at this time.

It is important to say that we have told the Government that it is obliged to consult us on any regulatory changes that it proposes to make, because our job is to look at proposed regulation and determine whether it is something that we can regulate, in case, further down the line, someone comes to us and says, "We think public authority X is in breach of that."

We have said that the process of reviewing the proposed regulations will take us six weeks and we understand that we will not get sight of them until the end of this month. We are concerned about whether the regulations will be able to get through the parliamentary process before the end of this parliamentary session. It will be disappointing if they cannot do so.

Other initiatives that the Government has indicated around the mainstreaming strategy—the toolkit and inclusive communication—are welcome. We have yet to see the toolkit. I think that we will have a demonstration of it shortly. We hope that those things will be complementary and that public bodies will not be overloaded with things that they need to consider.

Regarding communication, when we gave evidence to you last year, we pointed out that a potential new regulation was being considered and we were concerned about how it would be framed. I do not think that we fully understood the intention behind it or how it would interact with the existing reasonable adjustments duty under section 20 of the Equality Act 2010, which focuses on disability. This is a good way for public authorities to look at how they should ensure that they communicate effectively for the needs of different types of communities. We understand that communication will be part of the toolkit, and that is more about guidance than regulation. However, we have not seen the toolkit yet, so we hope that it is clear and that public authorities will understand what is expected of them.

Your other question was what public authorities should be doing rather than waiting for guidance. These are obligations that public authorities have already had for many years. It is their responsibility to ensure that they are adhering to their obligations with the PSED and that they are doing what is required of them by moving forward in setting their equality outcomes to address eliminating

discrimination and the promotion of equality and seeking appropriate advice when they need to, where there are fundamental changes such as might be the case with the Supreme Court judgment.

Public authorities should not be waiting for the guidance that we or other people produce. They should be seeking whatever they need to ensure that they are compliant. Our guidance is there to assist and the code of practice will hopefully do that as well, but it is a tool that will not cover every possible eventuality that public authorities may be looking at. The concept of the code is to translate law into a format that can help authorities in how they need to deal with their obligations. However, the onus is on all public authorities to not wait when there are major changes but to carry on fulfilling their obligations. Jennifer Laughland might want to add something here.

Jennifer Laughland: I agree with John Wilkes. As he said, we hope that when the code is laid it will be a useful tool for people and will give them some practical examples. Much conversation has been focused on the Supreme Court judgment and the changes that were made in relation to that, but the code will cover not just that one topic but a range of issues. It will not cover everything in detail. We do not know each sector as well as that sector knows itself.

It is absolutely right to say that sectors are responsible for looking at what they should be doing, should take their own legal advice where necessary and should get on with trying to make sure that what they are doing complies with the law, best practice and so on. We will try to assist where we can by providing guidance. If matters come to our attention that suggest that people are not doing what they should be doing, we will hopefully be able to get them to a place where they are, but, if necessary, we will take enforcement action.

John Wilkes: A key area that we are disappointed will not be brought forward as part of the reforms is ensuring better engagement with all the other regulators and inspectorates in the Scottish landscape, which often have better knowledge than we do of the sectors that they inspect. We had recommended that the regulations should be framed in a way that would tie those bodies in more closely so that, when they were doing their core work—inspecting health or schools or whatever—they would also check adherence to and compliance with the PSED. We think that that could be a good way forward to help improve the capacity and understanding within sectors. In our experience, although people listen to us and take note of what we say, they are much more focused on their own inspectorates. We work regularly with regulators, inspectorates and

ombudsmen in Scotland, but we feel that making that link more clearly in the regulations could be helpful.

Paul McLennan: That is a really important point. There is a part in the report that says that this should not be an add-on for public authorities; it should be integral to what they do, and the inspection regime is an incredibly important part of that. There is a role for the Scottish Government and there is a role for the EHRC, but there is a role for public authorities themselves to almost self-govern and have that self-discipline. We need to focus on that as well, not just on the Government and the EHRC. That is a closing remark on that topic, convener. As John Wilkes said, the inspection regimes are already there.

The Convener: Before we head to Marie McNair for her questions, I remind members and witnesses to be cognisant of the time. We have gone over time a bit, but I want to give everybody the opportunity to ask their questions in full as much as possible.

Marie McNair (Clydebank and Milngavie) (SNP): Thank you, convener, and good morning, panel. I wanted to ask about enforcement action, but that has mostly been covered.

As has already been mentioned, establishing and maintaining relationships and being able to provide support and guidance are so important; they are key to compliance. Am I right that enforcement would be a last resort and that you would continue to work with bodies first to save you going down the enforcement route? Are the majority of folk in public bodies and employers complying with their duties? Has enforcement action over the past five years decreased from year 1 to where we are now, in year 5?

Jennifer Laughland: Yes, enforcement is a last resort, generally speaking, but it depends on the circumstances. There might be situations where something is so bad that we feel that the only option is to go straight to enforcement, but most often it would not be the first port of call. I do not have the figures comparing levels of enforcement action over the past five years off the top of my head. I will have to get back to you with those.

Marie McNair: Would you mind sending in a written submission on that? I think it would be helpful to the committee to compare the past five years.

Jennifer Laughland: No.

John Wilkes: Some of this was before my time. Our general approach to matters since the regulations were introduced in 2012—the first phase—has been to support and engage public authorities through our guidance and our direct work with them. I mentioned our measuring up

project. In that phase, it was all new for everybody. We were working to provide support following that first wave of equality outcomes. Next, we were in a phase of expecting public authorities to be more cognisant of their responsibilities and what they were supposed to be doing. We were therefore going into a phase where we were looking more at taking on a compliance approach where we needed to or, as Jennifer Laughland said, in some cases to enforce.

We have a number of tools and we try to pick the most appropriate for whatever situation is presented to us. We are trying to be strategic in how we carry out regulatory activities while being cognisant of our capacity and what is the best approach. We often find that approaching a public authority in and of itself is sufficient to get them to do what they need to do. We try to match what we can do with the situation.

You asked whether public authorities' performance has improved. Generally speaking, there is much evidence to suggest that there has been an improvement in many aspects over the 10 years since the regulations were introduced. However, there is much more to do and there are always examples of that. Some examples of things not being done properly have been shared with us today and that is evidence that it is a continuous process that we have to keep working at.

Marie McNair: Thanks. It comes down to resources. You are resourced from the United Kingdom Government. Do you feel that you are adequately resourced? What more could the Scottish Government do to assist you guys in Scotland so that you can regulate public authorities?

John Wilkes: Our budget has not really increased in the past six years or so, but the range of responsibilities has. If we had more resources, we could expand our activities in all areas, including regulation and enforcement activities. That is a matter for discussions with the UK Government, which our board and chief executive have continuously, but we have to work within the envelope that we have, and that means that we have to make careful decisions about what we choose to engage with.

11:15

The PSED is the topic today, but we have to also look at the many other things that we are doing under our strategic plan. That is why we try to engage proactively with public authorities either through providing guidance or working with them in the kinds of examples I mentioned earlier, and we always have the capacity to take them down the road of enforcement if that proves necessary.

We have to continually juggle and make those decisions.

What can the Scottish Government do? It can advocate with the UK Government but, yes, we have to operate within the world that we have at the moment.

Marie McNair: It is obviously about better joint working between the UK and Scottish Government. You have the opportunity to state a case for further resources from the UK Government.

John Wilkes: Yes, which I think our commissioners do well.

Jennifer Laughland: Some of the things that we mentioned earlier such as the Scottish Government providing leadership, and the regulations that the Scottish Government brings forward addressing areas that would help us to do our job, are also important.

Marie McNair: Okay, thank you. Back to you, convener.

The Convener: Again, I am cognisant of time. Our witnesses for our next panel are waiting. I will bring in Pam Gosal and then Tess White.

Pam Gosal: Thank you, convener. I have one question and then a supplementary. John, you said in response to my colleague Tess White that the EHRC sent an updated code of practice for services, public functions and associations to the UK Government following the Supreme Court judgment in the For Women Scotland case. Has there been any further update from the UK Government and has there been any engagement with the Scottish Government?

John Wilkes: The code is with the UK Government. It is now the responsibility of UK ministers to take it forward, and I know that our commissioners have been urging the UK Government to do that as quickly as possible. It has asked for certain additional pieces of information, which we are providing or have provided, but that is in their ball park. Sorry, what was the other part of your question?

Pam Gosal: It was to do with engagement with the Scottish Government.

John Wilkes: When we submitted our draft code to the UK Government, it was shared with the Scottish and Welsh Governments, which were consulted with for their views, and the Scottish Government provided its views on the draft code. We have not seen the assessment, but we understand that that is what has happened: the Scottish Government has been consulted by the UK Government on our draft code.

Pam Gosal: I have a bit of a technical supplementary. Section 112(3) of the Equality Act 2010 states:

"B commits an offence if B knowingly or recklessly makes a statement mentioned in subsection (2)(a) which is false or misleading in a material respect."

Does EHRC consider that public bodies and the Scottish Government are potentially at risk of legal action if they continue to follow the 2011 code of practice? Given that the code is now clearly advising action, does the commission believe that the Scottish Government is out of line with the law as clarified by the Supreme Court ruling? Having advised the Scottish Government that it must abide by the ruling, disregard the 2011 code of practice and not wait for the new code, do you consider that civil servants or ministers might be committing an offence under section 112(3) if they fail to act in accordance with the law as clarified?

John Wilkes: That is quite a detailed question. Is it appropriate for us to write to you about that rather than make a verbal response now, given time constraints and the fact we have to go and look at that reference. Would it be okay if we wrote to the committee?

Pam Gosal: It is quite detailed, but it is important to understand if the Scottish Government is breaking the law.

John Wilkes: I think it is probably better if we go away and have a close look at that question and respond to the committee or to you. Would that be helpful?

Pam Gosal: We can do that. That is fine. Thank you.

The Convener: Are you content with that?

Pam Gosal: Yes, thank you.

The Convener: I will bring in Tess White.

Tess White: Thank you, convener. Thank you again for coming today, John and Jennifer; it is appreciated.

A huge amount of work and feedback—I think that there were 58 submissions—went into the report.

My final question is this: if the EHRC is truly independent, and if it is the duty of all public bodies—I have given the example of some in my own region—to comply with the Supreme Court ruling, why is the EHRC not telling the Scottish Government to just get on with it? You have mentioned the lack of leadership.

John Wilkes: I would say that we have done that. Following the Supreme Court judgment, there have been various discussions between our former chair, the chief executive and the Scottish Government. Our message to the Government

and all other public bodies has been that the judgment is there, that they need to comply with the implications of that judgment, and that it is the responsibility of them all to take appropriate steps. Although we have been working on the code—which, hopefully, will be laid before Parliament shortly—and will be working on updating other relevant guidance, people should not be waiting for it. They should be taking appropriate steps.

Tess White: But the Government is waiting and it is in paralysis, so will you be telling them to get on with it?

John Wilkes: That was our message to it and we gave that message again in yesterday's meeting. We welcomed the report on all the work that they said that it said it was doing in looking at the implications and progressing matters as quickly as it could. Our message was: "This is what you need to do. The code of practice will hopefully help when it comes out, but you should not be waiting for it".

Tess White: You have enforcement powers. Will you be considering those enforcement powers?

Jennifer Laughland: In line with the answer that I gave you earlier, if a matter is brought to our attention where duties in the 2010 act are not being complied with, we will triage it and consider enforcement.

Tess White: Thank you. This report is bringing it to your attention. We will leave it with you and we do expect follow-up.

The Convener: That brings this session to a close. I thank the witnesses once again for their evidence today. We will suspend briefly while we have a changeover of witnesses.

11:22

Meeting suspended.

11:24

On resuming—

The Convener: Welcome back. We will now move on to our second panel, and I welcome to the meeting Kaukab Stewart, Minister for Equalities. The minister is accompanied by Nick Bland, deputy director for mainstreaming and inclusion and Vuyi Stutley, solicitor from the Scottish Government's legal directorate. You are all welcome and I thank you for attending the meeting.

I invite the minister to make an opening statement before we move on to questions from the committee.

Kaukab Stewart (Glasgow Kelvin) (SNP):

Thank you very much, convener, and good morning to the committee. Thank you very much for the opportunity to discuss the report of your inquiry into the operation of the PSED in Scotland and my response. I also want to thank the stakeholders who gave evidence to the committee. Their insights add to the evidence about how the PSED works in practice, existing challenges and, of course, how those can be overcome. There is a lot for us to cover today and I welcome this discussion.

I am committed to a respectful, fair and diverse Scotland. The PSED and the Scotland-specific duties are important tools to achieve that goal. I am dedicated to demonstrating leadership to increase awareness of the PSED and the SSDs across the public sector. It is vital that public bodies understand and meet their obligations under the Equality Act 2010. I have championed equality and a culture of shared learning and accountability, including through engaging with ministerial colleagues and running round-table events for duty bearers and equality groups.

I seek to make the most effective use of all available powers. Notably, I used for the first time the power under regulation 11 of the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 when I wrote to duty bearers on 16 December, requiring them to consider our new equality and human rights mainstreaming toolkit.

We must continue to make Scotland's collective response to the PSED more effective, and on 8 December we published our proposals for PSED improvement activity until December 2029 in the regulation 12 report. That was an important step towards that goal, which demonstrates our continued commitment. The regulation 12 report sets out a range of concrete actions to enhance leadership, capability and capacity in the private sector, with a focus on sharing good practice, and it highlights fostering good relations, which was one of the key themes in the committee's inquiry.

Alongside the regulation 12 report, we published an impressive suite of mainstreaming resources, which I am proud of. They should help further establish equality and human rights at the heart of private sector decision making and service design. The suite includes the equality and human rights mainstreaming strategy, presenting principles and drivers for change; the mainstreaming action plan, showcasing 61 actions to embed equality and human rights across Government; and the online mainstreaming toolkit, featuring a self-assessment tool and over 100 practical resources to help duty bearers evaluate and strengthen their mainstreaming efforts.

I welcome the committee report's emphasis on fostering good relations.

We continue to experience a regression on equality, diversity and rights around the world where hate against already vulnerable groups is becoming increasingly normalised. This division and violence has no place in Scotland. Fostering good relations is crucial to a safe, respectful and inclusive Scotland and that is why the Scottish Government is taking action. We have recently invested an additional £300,000 to strengthen community cohesion, partnering with the STV children's appeal to support grass-roots projects that bring together people across generations, cultures and faith.

Our "We are Scotland" media campaign celebrates diversity and shared values, reminding us that Scotland is stronger for the differences that shape us. In addition, we continue to directly support a wide range of community organisations through investing £7.9 million this year in crucial work relating to community cohesion to uphold rights across all protected characteristics, fight discrimination, advance equality and foster good relations, and that includes funding for interfaith dialogue and anti-racism work. We have established the Anti-Racism Observatory for Scotland, known as AROS, a national centre of excellence to tackle structural racism and promote inclusion, for which we will provide £3 million between now and December 2027.

11:30

Embedding equality and human rights across the private sector is essential. The mainstreaming suite, our programme of PSED improvement and our work to foster good relations demonstrate our continued commitment to meaningful action and to making the most effective use of the powers that we have. We will continue to do so to make Scotland a fairer, safer and more inclusive place for everyone. Thank you, convener.

The Convener: Thank you, minister. We will move to questions from members. I give a reminder that we need to be cognisant of the time. We have 60 minutes for this session, and I would be grateful if we could pay attention to that, so that all members can ask their questions.

I will ask the first question. The committee found that the PSED is not delivering on its aims for improved outcomes for people with protected characteristics. Why do you think that is?

Kaukab Stewart: The PSED was introduced due to the desire to see tangible improvements for our society. That positive vision is clearly set out in the three underlying goals that I mentioned. Since the PSED was created as part of the Equality Act 2010, we have seen significant improvements to

some groups' experiences of equalities and rights. For example, we now have equal marriage, stronger hate crime laws, new domestic abuse laws, a more robust approach to using equality evidence and significantly more investment in equality groups.

However, as the PSED is a due regard duty, it is procedural. It cannot be used to require public bodies to act in certain ways beyond what might be provided under the Scotland-specific duties which are in themselves restricted due to the "due regard" part of the duty.

It might be helpful for the committee to understand the interactions and complexities, so I will bring in Vuyi Stutley.

Vuyi Stutley (Scottish Government): To slightly revise what the minister has said, the public sector equality duty is a duty under section 149(1) of the Equality Act 2010. It imposes a requirement on public authorities to have due regard to three things. The first is to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the act. The second is to advance the equality of opportunities between those who share protected characteristics and those who do not. The third is to foster good relations between those who share particular protected characteristics and those who do not.

The key point about the duty is that it cannot require public authorities to take specific actions; rather, public authorities are required to have a conscious approach to the manner in which they carry out their functions, and that conscious approach has to take into account those three needs that I highlighted.

In Scotland, there is a further layer of legislation in the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012. Those have some further requirements on public authorities in relation to issues such as reporting, but that is in a wider framework that is restricted by the competence and the issues that are reserved to the UK Government. In the event that that focus were to shift in any way, it would be incumbent on the UK Government to bring in those changes.

Kaukab Stewart: On that backdrop, I would add that, in my role as Minister for Equalities, visible leadership is key to driving change. I know that that is an area of interest for the committee. I believe that I have consistently demonstrated leadership to ensure that public bodies have strong awareness of the requirements of the PSED, and that we all do, because it is a shared endeavour across all public sector bodies to tackle inequality across Scotland.

I am sure that we will come on to questions about building strong awareness in public bodies of how important equality is for our society, paired with an understanding based on robust data and reporting, where public bodies still have some way to go.

Paul McLennan: With the previous panel, I raised with the EHRC a question about the mainstreaming strategy. What is the role of local authorities and other public authorities in that? There are a few things, I think —

Kaukab Stewart: I am sorry, but could you repeat that?

Paul McLennan: With the previous panel, I talked about mainstreaming and the role of the EHRC and the Scottish Government in that. What are your thoughts on public authorities' understanding of the PSED and mainstreaming? For me, the key point is that this should not just be an add-on for public authorities; it should be an integral part of what they do. What is the Government's role in trying to promote that in public authorities to encourage them to take ownership and, rather than relying on guidance from the Government and the EHRC, take it on and make it an integral part of what they do?

Kaukab Stewart: I can expand on the bit about providing leadership on mainstreaming. In my opening remarks, I referred to the suite that we have published, which is extensive, and to using regulations 11 and 12 of the 2012 regulations. I have also taken part in relation to equality outcomes. The Scottish Government is leading by example. We are responsible for setting our own equality outcomes, but we have done that in workshops, bringing in stakeholders and creating those outcomes together. Obviously, it is incumbent on all public sector organisations to set their own equality outcomes. Doing it together and having that shared understanding builds that.

I will bring in Nick Bland briefly.

Nick Bland (Scottish Government): We work closely with the listed authorities—the public authorities that are required to operate under the public sector equality duty. As the minister has set out, in a range of areas relating to regulatory and non-regulatory reform, we are seeking to provide leadership and a steer to public authorities. Groups such as the Scottish councils equality network and the non-departmental public body equality forum demonstrate concerns. There are specific groups that are aimed at sharing practice and having that focus on equality issues across sectors.

We work closely with public authorities; you are right that they have their own legal responsibilities, and they also have their own aspirations and

ambitions on equality. That is a dynamic relationship. However, there is certainly a feeling in the Scottish Government of an onus on us, both in the regulatory and non-regulatory space, to demonstrate the leadership that the minister has been talking about.

Paul McLennan: I have a supplementary question for you, minister, and Nick Bland. The EHRC mentioned the existing inspection regimes for public authorities in areas such as health and education. Do the inspection bodies have a role in making sure that the PSED is part of the inspection regimes?

Another key point is about the role of Government in monitoring. That is not only for Government; it is also the role of Parliament, this committee and its successor committees. How do you see Parliament and Government monitoring the situation? What is the role of the inspection bodies in making sure that public sector bodies continue to follow the PSED?

Kaukab Stewart: Nick Bland can kick off and then I will come in.

Nick Bland: If I may say so, that is a good point. The mainstreaming strategy sets out a framework of six drivers for change, and accountability is one of those. Scrutiny, or inspection, is an important element. That framework demonstrates that our action to improve outcomes on equality is not a single kind of work and that no single improvement activity will be successful. We have to work across those six areas.

In relation to accountability and scrutiny, I cannot speak for scrutiny bodies, but I do not think that they would want to look closely at the application of the PSED, given the boundaries with the EHRC role. However, in our engagement with scrutiny bodies, we encourage them to think about mainstreaming equality into their functions as much as into the functions of public authorities and service delivery organisations. That is one of my responsibilities. We all have a role to play, as you say, including this committee, and scrutiny bodies have a role to play from that accountability perspective.

Paul McLennan: Thank you.

Marie McNair: Good morning. The committee report and your response stress the importance of robust equality evidence. Can you say more about how the Scottish Government is improving the collection and analysis of equality data?

Kaukab Stewart: The preparations for developing the third equality evidence strategy are under way and we expect a draft of the strategy to be ready for consultation by late November 2026, with a view to publishing the final strategy by March 2027. The third equality evidence strategy

will be designed collaboratively with Government analysts, policy makers and external organisations, including public authorities and bodies that are interested in improving equality evidence.

The priorities for the third evidence strategy will be shaped through the evaluation of the second strategy, a stakeholder engagement process and an internal audit of Scottish Government data sets. Initial engagement suggests that some areas from the second strategy will remain a priority, such as encouraging opportunities to further intersectional analysis.

An evaluation of the Scottish Government's current evidence strategy, from 2023 to 2025, is now under way and is due for publication in spring 2026. That evaluation will provide an assessment of improvements to the equality evidence base and identify areas for improvement to take forward as part of the next strategy.

Marie McNair: It is helpful to get that assurance. There has been concern and challenge about data, so I certainly welcome that. I do not know whether the rest of the committee will, but I hope that that is the case. The Scottish Government response to the committee report says that it might be complex to change the reporting cycles for the Scotland-specific duties. Could you or your officials explain further those complexities?

Kaukab Stewart: That is a good question to highlight. The Scotland-specific duties have a complex framework, and listed authorities in Scotland already have multiple mandated reporting cycles to balance. If reporting cycles change for the SSDs, that could impact the others. They are all interrelated, and that could cause duplication, increased administrative load or misalignment with other statutory processes.

Many factors have to be carefully considered if we are to streamline the reporting process. Reporting cycles often align with regulatory requirements, governance frameworks, funding timetables, for instance, or indeed cross-departmental collaboration. Any adjustments, therefore, would require careful consideration and clear communication to avoid confusion or misalignment. Of course, we have stakeholders who rely on reports for operational planning, and they might well resist changes if the new cycles make it harder for them to forecast and monitor performance.

11:45

Managing those expectations is essential to minimise disruption and maintain trust. As we continue to take a phased approach to PSED improvement, we will carefully consider how the reporting cycle could be improved, and that will

include consideration of possible alignment with the reporting requirements related to the new human rights bill, for instance.

For completeness, one further complexity to note is that different public bodies have come on stream as duty bearers at different times, meaning that there is no single set of reporting dates. That is also a factor that we would consider in any reviews of cycles.

Marie McNair: With that, will there be continued engagement with stakeholders to keep them informed and to get feedback from them?

Kaukab Stewart: Yes. Our intention is always to continue engagement as widely as possible.

Marie McNair: Thank you.

The Convener: Thank you. Minister, on the point about delivering on PSED aims, the committee heard that there is an overemphasis on processes rather than an emphasis on outcomes. How can the Scottish Government monitor whether public bodies will concentrate more on outcomes in future?

Kaukab Stewart: It is well known that I concern myself with outcomes. Processes should help to achieve outcomes. They should not be hindering them or be overly cumbersome or difficult to navigate.

We are absolutely committed to advancing equality, and the PSED is an example of the important levers that we have available to us. We are leading by example to inspire other public bodies to put equality front and centre. However, we need to remember that it is ultimately for public bodies that are independent of Government to set out what they intend to achieve and how they will do that. I take a leadership role in that regard and, as you know, I take it very seriously, I have communicated that to a wide range of audiences and groups, both in person and in correspondence.

In engaging with the PSED, we also have to be mindful of the limits on legislative competence in such frameworks. Vuyi Stutley has gone over some of that detail and I will not repeat it, but we need to remember that, because it is a "due regard" duty, it is by its nature a procedural duty. That means that it is not outcomes focused in its form, but I am clear that the policy intention behind the PSED is substantive.

The Equality Act 2010, in which the duty sits, was intended to be transformative when it was introduced. It is a wide-ranging and on-going duty to engage in conscious consideration of the three needs, and we see that as a strength. If it required a narrower focus on identifying or achieving particular outcomes, we would see that as a

limitation. It needs to be seen in the wider sense. I can go into further detail on that if you wish.

Nick Bland would like to add to what I have said.

Nick Bland: The committee's focus in its inquiry is, understandably, the public sector equality duty. However, in policy terms, we continue to take a range of actions across the protected characteristics that are focused on improving outcomes for those groups. Examples include the disability equality plan and the Gypsy Travellers action plan, and we have a proposal that we will have a gender equality strategy published before the pre-election period. Outside the specific work on the public sector equality duty, we have those action-focused plans for delivery, in which we work with public authorities, that are absolutely aimed at outcomes for those specific groups.

Maggie Chapman: Good morning, and thank you for being here. My questions are on balancing protected characteristics and the fostering good relations element of the PSED, but before I come to that, I will pick up on what you both said in your previous answers.

Minister, you said earlier that the PSED is procedural. We heard from the EHRC, which was on our first panel this morning, that there needs to be a shift away from thinking of it as procedural and towards using it as more of a tool. What conversations have you had with EHRC about that? How has it informed your conversations with other public bodies and within the Scottish Government?

Kaukab Stewart: I will bring Nick Bland in to comment on that.

Nick Bland: There is an aspect to the public sector equality duty that is clearly legalistic. It is about ensuring that the Scottish Government and public authorities are meeting the statutory requirements. In talking about it, I always say that it is a floor and not a ceiling for our ambitions for equality. There are requirements in the duty that are helpful. However, I talked earlier about regulatory reform and non-regulatory reform, and it is in the non-regulatory space that we see the importance of our actions. The mainstreaming strategy, the mainstreaming action plan for Scottish Government action and our toolkit are absolutely in that space. They do not focus simply on the duty and its due regard status.

We have worked with the EHRC on most of that work. It has sat on working groups for us, for example on the mainstreaming toolkit. We share the view that, from a legal perspective, the duty is quite constrained. However, that has not stopped and does not stop what the Scottish Government seeks to do in relation to advancing outcomes for equality, as the minister has been saying.

Maggie Chapman: Okay—thank you. It does represent a shift in focus for public bodies, where awareness may not be as high as it should be across the board. John Wilkes, who was on the previous panel, said that there might be good understanding of the PSED at the top of certain public bodies but that it may stop at that point and not filter all the way down. However, in our inquiry, we also saw clear examples of where people on the ground understood exactly what they should be doing but they were hampered by processes elsewhere. A shift is needed away from it being a legalistic process.

Minister, you raised this in your opening remarks, but it has been a bugbear of mine for a long time that the fostering good relations pillar is clearly the poor cousin in the three pillars of the PSED. In your conversations with ministerial colleagues, how often do you talk about fostering good relations? Do you talk explicitly about that element of the PSED?

Kaukab Stewart: If I am honest, we do not talk about it enough. There is no doubt that we do talk about it, but I share your frustrations about that, especially at a time when we are seeing quite divisive rhetoric playing out in public discourse that is pitting groups against one another. That is not helpful at all. I have reflected on this in my role as minister. Given that polarisation, I have reflected on the leadership role that I have. I certainly do my absolute best to make sure that all discourse is conducted respectfully, being mindful that we are protecting everybody across the protected characteristics. I have said to the committee before that it is not about a hierarchy of needs, and it is not a pick and mix either.

Before I go into detail on what we have done in the area, I note the responsibility that we all have—all of us in this room—as public sector workers. At every level, all of us who work for the public have a duty to foster good relations. It is incumbent on us all to reflect on how we are conducting ourselves and what we are doing to make sure that we foster good relations between the people that we serve. We need to be mindful of that.

This year, we have provided £7.9 million of funding across third sector organisations to support anti-racism work, interfaith dialogue, hate crime prevention, and asylum and refugee integration projects. Part of that investment is the work that I mentioned in my opening remarks on establishing the Anti-Racism Observatory for Scotland, which is a national centre for excellence to tackle structural racism and promote inclusion. It is anticipated that, once AROS is fully operational later this year, it will focus on developing strategic partnerships across all sectors to collaboratively embed anti-racism change. That will include working collectively with

third sector organisations to ensure that lived experience and co-production are at the heart of driving that meaningful change.

I am very mindful of the tensions that can arise when people maybe feel that their standard of living has plateaued and resources can be scarce. My opinion is that we all have more in common and that, actually, we all want the same thing. We all want access to good public services. We all want to feel a sense of belonging, to be included, not to be discriminated against, and to have equality. In order to enhance community cohesion in that space, I was able to secure £300,000 of additional funding that will directly support the community cohesion work and projects—I hope that they will be mainly grass-roots projects—in the heart of our communities that build strong, connected, resilient communities across the country. As far as I am concerned, that is a must have.

Maggie Chapman: Can you give us more of a flavour of some of those projects might be, or is it too early to say? One challenge is that the Government says, “We’ve got this money for community cohesion”, but people on the ground wonder what it actually means for them, especially if they live in situations where there is conflict and tension and they feel powerless to resolve it.

Kaukab Stewart: I have thought about that very carefully. It is one of the reasons why we partnered with the STV children’s appeal to distribute the funding, because that organisation already has well-established links and it supports a wide range of organisations. Often, they are very small projects that are based in local community centres. They may hold drop-in coffee mornings or offer sports opportunities. They may offer knit and natter meetings, dancing workshops or arts and crafts. They do all sorts of things. That is not an exhaustive description, but it gives you a flavour of what some of those local groups do. Some are run by two or three people, while other organisations are bigger.

For the organisations that provide those spaces, a little extra money goes a long way. It may pay for bookings in community centres, it may pay for the teas and coffees, or it may pay for staff training so that people can have constructive conversations about issues that are causing tensions within communities. That means that people can discuss those concerns in a constructive manner with people who can support them through that, using a trauma-informed approach. The safe spaces already exist, so this is about enhancing funding for them.

12:00

I am very cognisant that brilliant work is already happening. However, because of the additional

challenges that we are facing in fostering good relations in the community cohesion space, the extra funding was required in order to enhance those opportunities and provide more. We are talking about bringing people together so that they can speak to one another and communicate. We know that, the more people get to know one other, the more we dispel the myths and break down the barriers. We can deal with misinformation and disinformation and get into the heart of the communities where people are having those conversations.

Maggie Chapman: I appreciate that the examples that you have given are indicative and that you have not given an exhaustive list. However, one of my concerns is that, although such work is very valuable and important, people need to opt in, so there is a challenge in how we get those resources and have those conversations in communities that do not want to know about those things. In such communities, there might have been generations of disenfranchisement—there could have been a series of situations that have led people to think that nothing good can come from engaging with the state in a meaningful way.

How can we tackle the structural barriers that prevent the fostering of good relations? We can say that we will have a knit and natter group, for example, but the people who need such groups will not necessarily be the ones who come to them. How can we ensure that it is not just a case of opting in and including people who are already interested in being in these kinds of spaces and having these kinds of conversations?

Kaukab Stewart: That is a really good question. I will not name any specific organisations, but I will give a general overview. I have visited a wide variety of organisations that are based in the heart of our communities. One reason why I will not mention names is that, unfortunately, some groups have drawn negative attention and been targeted as a result of the work that they have done in relation to anti-racism, for example, so I want to avoid that.

When I ask such organisations how we reach the people we need to reach—those who feel disenfranchised—I am reassured by the fact that the organisations are based in the heart of communities. That is one reason why STV, not the Government, is distributing the fund. It has extensive networks and is very experienced in doing such work, in creating new opportunities and in enhancing current ones.

The organisations gave me the example of outreach workers, who go into the heart of communities and communicate with people wherever the touch points are. People are bound

to attend a centre of some sort, whether it is a leisure centre, a general practitioner surgery or a shopping centre. Those outreach workers have conversations in which people can express their concerns or views, and they can signpost those people to services or have difficult conversations with them. That is very skilled work. Some people might be applying for £50 from the fund, whereas others might be applying for much more. There is no prerequisite, because I want the fund to be as flexible, responsive and accessible as possible so that we can reach the very people you are talking about.

Maggie Chapman: Do I have time to ask one last question, convener?

The Convener: Yes.

Maggie Chapman: My final question follows on from what you said about having people who can get into the middle of things, as it were. In the community discussions that I have been part of, one of the frustrations that I have heard has been about a perceived lack of awareness and understanding among police officers. Attempts by police officers to balance people's rights and those of different groups might create more conflict, because people might not see police officers acting on racist attacks on people of colour who just happen to be walking past or on much more targeted attacks. How can we bring Police Scotland into some of this work, because police officers are in every community? How can we ensure that the need for balance is not used as an excuse to do nothing?

Kaukab Stewart: I get what you are saying. We have policing by consent, and I am very pleased that we take that approach through community police officers. As an MSP, in representing Glasgow city centre and Kelvin, I have extensive contact with local police representatives, so I have the opportunity to raise the concerns of my constituents, who sometimes raise the concerns that you have raised. The police are covered by the public sector equality duty, so they must fulfil their duties by having due regard for such issues. Police Scotland is, of course, totally independent.

I will bring in Nick Bland.

Nick Bland: I can give a few more illustrations. The policing of protests is a particular situation, for example. The police are very careful in allowing protests to happen, and there might be different sides. In a sense, that crystallises the issue of fostering good relations.

You would be better to hear this from Police Scotland, but, having spoken recently to the lead for its policing together strategy, I am aware that it has dedicated specialist officers whose role is to engage with communities and work on community

cohesion. That might be seen as a recognition of some of those issues. As well as officers on the beat, there are specialist officers who do that work.

In the past year or so, during which such issues have been heightened, we have got the sense from communities that they have felt well supported by Police Scotland and that it has been very attentive to those issues. That is not to say—I am sure that Police Scotland would not say this—that there are not improvements that could be made.

On the broader point, the Government has recognised that it needs to be more explicit in the PSED framework about the importance of fostering good relations. That is why it is one element of the regulation 12 proposals. A related example is our work with the Convention of Scottish Local Authorities on the production of a hate crime toolkit, which was published just before Christmas. The development of that toolkit very much points to the need to foster good relations under the PSED framework. For local authorities—which, along with Police Scotland, are crucial partners in local areas—that activity illustrates the emphasis that we are giving to the issue. Police Scotland is an important partner on our strategic partnership group in relation to the delivery of our hate crime strategy and delivery plan, so it is active in that space, notwithstanding the examples that Maggie Chapman has cited.

Maggie Chapman: That is helpful.

Pam Gosal: I have a couple of questions. Minister, in its submission to the committee, Murray Blackburn Mackenzie warned that

“Scottish public authorities are failing to meet their existing obligations in relation to protections for women and girls”

and that

“Failure to get the law right here carries a cost to the public purse”

because it

“is likely that more cases will be brought against Scottish public bodies.”

We have seen that in relation to the Sandie Peggie case, For Women Scotland's lodging of legal action regarding school and prison guidance and the case of the Darlington nurses in England. Is MBM wrong to say that failure to properly implement the law could lead to more legal battles and, therefore, more taxpayer money being wasted?

Kaukab Stewart: Since the Supreme Court's ruling, we have been clear that we accept that judgment, and the Government is taking forward the detailed work that is necessary as a consequence of the judgment. I remind the committee that it is the statutory role of the Equality

and Human Rights Commission to monitor and enforce compliance with the Equality Act 2010, given that it is the regulator of that act. I have been clear that we expect everyone to follow the law. There is no ambiguity about that whatsoever. I have said that repeatedly in my answers in the chamber and, indeed, in front of this committee.

The Supreme Court ruling provided clarification, but it did not say anything about the how, in that sense. As part of the work that we have been undertaking to scrutinise the judgment and ensure that everything aligns, a working group has been established. It was originally known as a short-life working group, but the work is taking more time, so it is now known as a working group. The group, which is convened by the permanent secretary, was established to consider the implications of the Supreme Court judgment in areas such as legislation, guidance and policy.

It might be helpful for me to give a summary update of the work that we have undertaken—I know that you would be very interested in that. The Government is often asked what we have done. Some people say that we have done nothing, but I do not believe that that is true at all. We have made progress in what is quite an extensive area. The EHRC acknowledges that we are talking about a huge estate. There are many areas to consider, and we are proceeding through the work systematically.

To date, the Scottish Government has updated its guidance on the Gender Representation on Public Boards (Scotland) Act 2018. We have amended the public appointments recruitment process for public bodies that are subject to that act, with data on biological sex at birth now being collated and used. We have introduced an interim trans and non-binary inclusion policy for Scottish Government staff, and we have removed a line regarding facilities use while we develop new policy and guidance in consultation with trade unions.

We have published revised guidance on supporting transgender pupils in schools, and we recognise that the EHRC is reviewing technical guidance for schools. We have advanced joint work with Police Scotland, with a public consultation on the stop and search code of practice to be issued shortly.

We have also actively engaged with health boards. On 30 September 2025, the director of the health workforce wrote to health boards to reinforce the importance of ensuring that the law is followed and that the Supreme Court judgment is implemented. However, the application of the law following the Supreme Court ruling remains a matter for boards, in accordance with their legal advice.

Furthermore, we conducted an initial review of facilities across the Scottish Government estate, and a more detailed review is now under way to ensure that our provision meets the needs of staff and the legal requirements. Our approach is focused on ensuring accuracy and clarity, so that we avoid unnecessary complexity or confusion at a time of heightened public debate.

12:15

You mentioned legal challenges, which can come from all directions. People have the right to test the law through legal challenges, and we all support everybody's legal rights in that regard. However, it is important to remember that the Supreme Court stated that its ruling should not be seen as a victory for one group over another. We must also be cognisant that everyone, across all the protected characteristics, has rights. We are following the law—I have made that clear, and I emphasise again that I expect everybody to follow the law—but we must not exclude people from accessing their basic rights. We need to find a way forward in which everybody's human rights are protected, because I am sure that nobody on this committee would want one group to be excluded, marginalised and so on for the sake of another group. I believe that we can find solutions to this.

Pam Gosal: Minister, it is good to hear that you accept the judgment and that you want to follow the law. However, it has recently emerged that SNP ministers have issued a declaration of incompatibility with regard to the Supreme Court's judgment for the For Women Scotland case. Why is the Scottish Government seeking to undermine the law by putting the rights of dangerous criminals, who claim to be women, above the rights of some of the most vulnerable women?

Kaukab Stewart: I am going to stick with the protocol of the Scottish Government; I am not going to make any comment on any proceedings that are in court.

Pam Gosal: I asked that question because you were very clear that you are accepting the judgment and the fact that you are following the law. However, this clearly states that you are not following the law. I know that you spoke earlier about the word "how", but how is the Scottish Government interpreting that "how"? The law is the law. The Supreme Court judgment was very clear, hence why I am asking you these questions today, minister.

Kaukab Stewart: It is fair enough to ask the questions, Ms Gosal. I have respectfully listened to that question and I have given you an answer. Any discussions about the law with regard to any court cases are best conducted within that court setting. It is only right that they are discussed there

and that is fair to both sides—to the litigants and to the presenters.

Pam Gosal: It has also emerged that the Scottish Government has allocated £13 million of taxpayers' money to LGBT Youth Scotland. LGBT Youth Scotland has begun operating in primary schools, which is something that I have been contacted about by many concerned parents from my area, East Dunbartonshire. Apart from that, LGBT Youth Scotland refuses to abide by the Supreme Court ruling on the definition of the word "woman". Why is the Scottish Government providing funding to this organisation that refuses to follow the law? What are the Government's procurement rules when it comes to handing out money to such organisations?

Kaukab Stewart: Our equality and human rights fund continues to advance equality for those with protected characteristics, and we support 47 organisations that make a difference to people's lives. That of course includes working with a range of LGBTQI+ organisations to help shape policy and practice in order to improve outcomes for LGBTQI+ communities. This is particularly important at a time when we are seeing a rise in attacks against the members of that community. These organisations receive funding to create lasting improvements in the lives of LGBTQI+ people in Scotland, including the funding that is being referred to, providing funding to LGBT health and wellbeing to support their LGBTQI+ helpline, which provides emotional support and information to LGBTQI+ people.

I have said to the committee before that we are talking about 0.44 per cent of the population here, a very small body of people, who can often be mischaracterised, misrepresented and draw quite a disproportionate scrutiny on their lives, which has a detrimental impact on their health and wellbeing. For instance, that helpline saw a spike—and I cannot remember off the top of my head what the percentage was—of calls from people who were vulnerable and considering suicide, for instance. That is horrendous. We are funding that suicide support helpline in order to reach the very people who are in the spotlight and need that support.

Through the funding, we have also commenced initiatives such as supporting the ending of conversion practices through legislative and non-legislative measures, advancing non-binary equalities, supporting policy development for LGBTQI+ people, and research into the lives of those within those communities.

All organisations that receive Scottish Government funding are subject to monitoring and evaluation to ensure that they are meeting their stated outcomes. We have no concerns about the

performance of LGBTQI+ organisations in delivering those outcomes for the communities they represent. I can reassure you that we fund specific pieces of work that I have outlined and we fund organisations that do many things, such as organisations in the disability field. We procure certain services from those disabled people's organisations, which they deliver for us and which achieve the aims that we want to achieve, and then they do their other work as well—

Pam Gosal: I am sorry to interrupt you, minister, but I have to be very clear on what the question was about. It was about LGBT Youth Scotland, which refuses to abide by the Supreme Court ruling on the definition of the word "woman". You said very clearly earlier that you follow the law and you accept the judgment. This organisation is refusing to do that. What example is that setting to the children, that you are bringing in an organisation to deliver to young children in schools which does not abide by the law? I would not be bringing this up if parents in East Dunbartonshire had not brought it up. They are very concerned. I got another email today and I have brought this up many times. They are very concerned about that organisation.

I know that a lot of good work goes on and that having clarity around understanding different backgrounds is important, but that organisation is refusing to abide by the law. To pay out £13 million to an organisation that does not want to abide by the law is not a good example to be setting those children.

Kaukab Stewart: The fund that you are referring to supports 47 organisations. It is important to emphasise that. We have previously engaged with LGBT Youth Scotland to determine the facts around various media reports. What you are referring to now and what you are presenting to me I have no way of fact checking in live time. It is an organisation that has been in the spotlight and it gets a lot of attention. I have visited the organisation, I have spoken to the users of that organisation, and I have seen first hand the good work that it is doing in supporting young people in various ways. As a constituency MSP, I have also had communications from parents who have been grateful for the work that the organisation has done in increasing awareness, supporting parents, and supporting youngsters. There is a wide variety of work that is going on there.

I have been assured that LGBT Youth Scotland has strengthened its safeguarding policies to ensure that they are in line with legislation and that they meet the national standards. It continues to review those policies annually to make sure that they are as comprehensive as possible.

Pam Gosal: I have one last question. I asked the earlier panel a question about data. It was emphasised that there is a big gap in the data and a lot of work needs to be done around it. The need to collect the right data was also emphasised. Do you agree that it is important to be collecting data on biological sex for equality monitoring? Will you be withdrawing the 2021 guidance, which still encourages data collection based on self-ID?

Kaukab Stewart: My answer to that is that I am very much in line with the EHRC on this. We know that robust, good-quality data is important. We know that because we shape our services around that data. We can forward plan based on it and allocate funding. There are lots of good reasons for having that data so absolutely, we need to do that.

We also need to remember that, for the data that we collect, there have to be good reasons for doing so, because people have to offer that data. Nobody could force any one of us in this room to declare anything about ourselves that we do not wish to. When I have filled in the additional forms that go along with recruitment processes, for instance, I know that, on occasion, I possibly have not filled in the bit about which ethnic minority you belong to. We need to make sure that people are engaged in relation to giving their data and know and have confidence that their data will be used appropriately and proportionately for the purpose for which it is collected. That is what I am saying on that just now. I do not know if there is anything else that officials would like to add.

Nick Bland: The office of the chief statistician is currently reviewing its guidance on collecting data on sex and gender identity in light of the Supreme Court judgment, so that work is continuing.

Pam Gosal: Thank you for that information. Convener, I—

The Convener: Just to note that we are running out of time and Tess White still has her question to ask. We have to be quite sharp.

Pam Gosal: Okay. I have a quick, sharp question. It has been almost a year since the Supreme Court ruling on the definition of the word “woman”, yet little progress has been made. Last month, I met with the chief constable, Jo Farrell, who said that Police Scotland did not wait for any guidance from the Scottish Government, but rather produced its own guidance, which is in accordance with the Supreme Court judgment and places an emphasis on biological sex as opposed to gender identity. Why have other public bodies not done the same?

Kaukab Stewart: I cannot speak on behalf of other public bodies. You would have to ask them.

Pam Gosal: You would be guiding them, minister, as the Scottish Government.

Kaukab Stewart: We have made it very clear, as I have said—thank you for the opportunity to restate it again—that the Scottish Government accepts the Supreme Court ruling. We expect everyone to comply with the law.

Tess White: Good afternoon, minister.

Kaukab Stewart: Indeed.

Tess White: We welcome the fact that you have said that no one wants anybody to be excluded. We also welcome the fact that you said that the Scottish Government wants to follow the law. This morning, we had a very important session with the EHRC. It said that, basically, a lot of the leadership resides with the Scottish Government on this, while accepting your point about monitoring and enforcement.

Vuyi Stutley talked about the Hate Crime and Public Order (Scotland) Act 2021 and mentioned in a comment that if nobody is going to be included, sex is excluded from the 2021 act. I think that it is important to state that point. Vuyi Stutley, do you want to add anything on that?

Vuyi Stutley: Just to note that I am not sure that I did make any reference to the 2021 act earlier on.

12:30

Tess White: Right, okay. Thank you for putting that on the record.

I am building on my colleague Pam Gosal's questions in terms of justice. I talked to the EHRC about the short-life working group—I looked at it on the website last night, but it seems to have stalled. It was supposed to meet every two weeks, then it met every month, and then nothing. The minutes have not been shared since August. What is your role on that short-life working group, minister? Have you met it? No.

On justice and the overlap with the PSED, minister, have you met the Cabinet Secretary for Justice in relation to the requirements of the PSED? Have you had separate meetings with Angela Constance about this? No. Okay, thank you.

I want to talk about justice, but first I want to mention the swimming pools and leisure centres example and focus on that. We covered it at some length earlier, and I am assuming that you have watched the session this morning. I quoted Stonehaven swimming pool as an example. Women and girls self-exclude from swimming when they cannot access single-sex spaces. I gave an example from Stonehaven. This disproportionately affects women—

12:30

Kaukab Stewart: Just to help you—I did actually see that bit.

Tess White: Great. I am not going to go into it—do not worry.

This disproportionately affects women with religious or cultural requirements, survivors of trauma and women who simply need privacy from the opposite sex, so this does directly undermine the Scottish Government's efforts to increase female participation in sport and physical activity. I quoted the inquiry that the Health, Social Care and Sport Committee did, and it has a section on this very subject. What is happening is, in many cases, incompatible with the public sector equality duty. My question is: how will the Government measure whether current leisure provision is advancing equality of opportunity for women and girls, particularly those who require single-sex spaces for cultural, religious and both physical and psychological safety reasons?

Kaukab Stewart: With respect, that question would be better asked of the minister for sport, who would have more in-depth knowledge. However, I would like to offer a short view, just to provide you with some reassurance of my understanding around this, especially when it comes to women from an ethnic minority not exclusively intersectional with communities of faith.

I have had representations from Muslim women and young girls who wish to have single-sex swimming sessions in order to make sure that they learn to swim—which is really important. I remember from way back, when we did not have advanced thinking on this, thinking that everyone should be entitled to be able to learn to swim. Sadly, I was excluded. I was not allowed to attend swimming classes when I was at school, and I know that I carried that with me, because I was never a confident swimmer. It is something that I am very aware of through my own lived experience.

What I always encourage people to do—and I have given advice to constituents who have come to me and made representations—is ensure that they work with the people who are in charge of the leisure centre, whoever that may be, whether it is the local authority or whoever, to make sure that a balance can be struck so that there is space in the timetabling, or whatever the logistics are, to have protected sessions in which whoever wishes to have a safe space in which to learn to swim, in this particular example, is able to do that. There is an overarching need for that in terms of health and safety, as being able to stop yourself from drowning is a life skill.

I sympathise with where you are coming from, and my view is that all the protected characteristics

deserve the same right. I refer you back to what I said earlier: it should not be seen as a competition between either. If your intention is to include, which it should be, then we should do so. However, we recognise that there are times when people need those spaces in order to be themselves, whether it is while learning to swim or whatever. We are able to do that.

The Convener: Could I just come in? We have gone five minutes over the minister's time. Minister, are you comfortable if Tess White wants to follow that up?

Kaukab Stewart: Apologies, convener. I was invited to come between 11 and 12, so I scheduled an extra half hour on top of that, and we are now over that as well. If there are any further questions that members feel they need answers to, the committee can—as always—write to me, and I will be happy to supply the information in writing.

Tess White: Minister, I would like to say on the record that we have not been given sufficient time. I have some key questions that I want to raise with you but that I have not been able to raise, about the balance of rights—the fact that one person's rights are outweighing another person's rights. I would like to say for the record that I told the committee that it was not enough time. I asked the committee if we could have a follow-up, and I think that this item has been squeezed in, which is disrespectful to the inquiry that we did. I would like to register my complete dissatisfaction that I have not been able to ask you, the minister, the questions that I want to ask. Sending them to you in writing is just not good enough.

Kaukab Stewart: I would like to briefly comment on that. You are addressing your remarks and registering your dissent to me. However—

Tess White: Not dissent, minister—dissatisfaction.

Kaukab Stewart: Dissatisfaction. However, it is not within my gift and control. It is also unfortunate that, in the short time that I have had here, I have not also been able to go into regulation 11, which I was able to use for the first time. I have not had the opportunity to discuss, or been asked about, the use of regulation 12. I have also not had the opportunity to talk about our mainstreaming toolkit. There are many areas that I have not been able to cover but that come under the inquiry and the public sector equality duty.

Tess White: On that basis, minister, will you meet this committee again before the end of the parliamentary session to raise all the issues that you want to raise with the committee, which you have just mentioned, and to allow us—out of courtesy—to ask you all the questions that we wanted to ask you today?

The Convener: Can I interject here?

Kaukab Stewart: Respectfully, that is not within my scope. That is for the committee to decide.

The Convener: It is for the committee to decide. Absolutely.

Tess White: But you would be willing?

The Convener: I invite the member to bring that up with the rest of the committee. We will have those discussions.

I thank the minister and her officials for joining us today.

That brings us to the conclusion of our session in public. We will now go into private to discuss the remaining items on our agenda.

12:38

Meeting continued in private until 12:45.

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