



House of Commons
Scottish Affairs Committee

Work of the Equality and Human Rights Commission, Scotland

Third Report of Session 2008–09

*Report, together with formal minutes, oral and
written evidence*

*Ordered by the House of Commons
to be printed 17 June 2009*

The Committee Name

The Scottish Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Scotland Office (including (i) relations with the Scottish Parliament and (ii) administration and expenditure of the offices of the Advocate General for Scotland (but excluding individual cases and advice given within government by the Advocate General))

Current membership

Mr Mohammad Sarwar MP (*Labour, Glasgow Central*) (Chairman)
Mr Alistair Carmichael MP (*Liberal Democrat, Orkney and Shetland*)
Ms Katy Clark MP (*Labour, North Ayrshire & Arran*)
Mr Ian Davidson MP (*Labour, Glasgow South West*)
Mr Jim Devine MP (*Labour, Livingston*)
Mr Jim McGovern MP (*Labour, Dundee West*)
David Mundell MP (*Conservative, Dumfriesshire, Clydesdale and Tweeddale*)
Lindsay Roy MP (*Labour, Glenrothes*)
Mr Charles Walker MP (*Conservative, Broxbourne*)
Mr Ben Wallace MP (*Conservative, Lancaster & Wyre*)
Pete Wishart MP (*Scottish National, Perth and North Perthshire*)

The following members were also members of the Committee during the parliament.

Danny Alexander MP (*Liberal Democrat, Inverness, Nairn, Badenoch and Strathspey*)
Gordon Banks MP (*Labour, Ochil and South Perthshire*)
Mr David Hamilton MP (*Labour, Midlothian*)
Mr John MacDougall MP (*Labour, Glenrothes*)
Mr Angus MacNeil MP (*Scottish National, Na h-Eileanan an Iar*)

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk.

Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee are on the Internet at www.parliament.uk/scotaffcom. A list of Reports of the Committee in the present Parliament is at the back of this volume.

Committee staff

The current staff of the Committee are Nerys Welfoot (Clerk), Georgina Holmes-Skelton (Assistant Clerk), James Bowman (Committee Assistant), Becky Crew (Committee Assistant), Karen Watling (Committee Assistant) and Tes Stranger (Committee Support Assistant).

Contacts

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1 Introduction

1. The Equality and Human Rights Commission (EHRC) was established by the Equality Act 2006 and came into being on 1st of October 2007. The Act dissolved the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission, bringing them all together in the new single body and adding responsibilities for additional “strands” of equalities (age, sexual orientation and religion or belief) and for the promotion and protection of human rights. The remit of the new Commission covers the whole of Great Britain (that is the UK less Northern Ireland—for which special arrangements were agreed under the Good Friday Agreement). It is a non-departmental public body sponsored by the Government’s Equalities Office.

2. The EHRC has directorates in Scotland and Wales and has a presence across the English regions. The purpose of our brief inquiry was to examine the role of the Commission in Scotland and how its work relates to other Scottish and UK bodies. We also sought to examine its performance over the 15 months since it was established. The Scottish Directorate of the Commission submitted written evidence at our request,¹ and gave oral evidence on 21 January 2009. We are grateful to those who gave evidence to us.

2 The work of the Scottish Directorate

3. Equalities legislation is a reserved matter. The Commissioners are responsible for policy and operational matters and the strategic direction of the Commission including Scotland. There is a Commissioner with particular responsibility for Scotland, Morag Alexander, appointed with the consent of the relevant Scottish Ministers.² Ms Alexander also chairs the Scotland Committee of the Commission, a body which is required to be established under the 2006 Act.³ The Scotland Committee is required to “advise the Commission about the exercise of the Commission’s functions in so far as they affect Scotland”⁴ and we were told “debates the issues, forms a view and feeds through its comments and recommendations to the main Commission board. This is at strategic level.”⁵

4. The human rights aspects of the Commission are more complicated in the Scottish context. The 2006 Act states that the EHRC “shall not take human rights action in relation to a matter if the Scottish Parliament has legislative competence to enable a person to take action of that kind in relation to that matter”.⁶ The Scottish Commission for Human Rights (SCHR), established by the Scottish Parliament, has been given responsibility for such matters. Its aims are to identify and advocate best practice within public authorities, monitor law and policy in Scotland and, where necessary, recommend changes. The SCHR may conduct legal inquiries, enter places of detention and intervene in legal proceedings.

¹ Ev 17–22

² Equality Act 2006, Schedule 1, paragraph 2(3)(b)

³ Equality Act 2006, Schedule 1, paragraph 16

⁴ Equality Act 2006, Schedule 1, paragraph 19

⁵ Q 3

⁶ Equality Act 2006, s.7

The work of the EHRC involves engagement with both the UK and Scottish parliaments and governments and with other public bodies established under both reserved and devolved powers. We were reassured to hear that:

[the EHRC's] relationship with the Scottish Government is different in that we are not funded by them, so our independence from them is, in a sense, more clear-cut. We are cultivating a relationship of critical friends—so we work closely on some issues but we keep our distance and we do criticise when we need to.⁷

5. Although there are complexities to the inter-relationship between human rights and equalities (and indeed, one of the principal arguments for establishing the EHRC was to address these inter-relationships more effectively),⁸ we did not hear evidence of any clash between the two organisations. In Scotland the EHRC is co-located and works in partnership with the SCHR, and so in effect the two organisations have created a one-stop shop for all matters of equality and human rights in Scotland. They are currently developing a memorandum of understanding to govern their relationship.

6. The 2006 Act states that “In allocating its resources the Commission shall ensure that the Scotland Committee receives a share sufficient to enable it to exercise its functions.”⁹ The Scottish Directorate of the EHRC has an autonomous budget of around £3.6 million compared to an overall budget for the Commission of around £63 million.¹⁰ Although there is some difficulty in apportioning costs between central and local functions, our witnesses felt unable to assert unequivocally that Scotland was receiving a fair share overall.¹¹

7. The main thrust of our examination of the witnesses was to consider the extent to which they were applying the resources available to bringing a specifically Scottish dimension to the work of the Commission. We examine some of their current projects below.

The Scottish context

8. Our witnesses told us that the work of the Scottish Directorate was to:

[...] inform the thinking of the GB-wide Commission and make sure that its approaches and strategies are appropriate for Scotland as well as for the rest of Britain but also, in delivering in Scotland, to interpret those strategies and make sure that the delivery is fitting for the Scottish context.¹²

Asked to give some examples of specifically Scottish equality issues, our witnesses identified:

⁷ Q 109

⁸ See for example the Sixth Report from the Joint Committee on Human Rights, Session 2002–03, *The case for a Human Rights Commission*, HC 489–I, HL 67–I.

⁹ Equality Act 2006, Schedule 1, paragraph 23

¹⁰ Q 47

¹¹ Q 48

¹² Q 2

[...] particular issues about long-term debilitating conditions in Scotland, multiple sclerosis being one, where we have higher incidences in Scotland. We know that we have particular issues around cancer in Scotland, which is covered by the Disability Discrimination Act. So we want to look at these issues because it has a different impact in Scotland. One area which, again, has a similar tone to the migration debate is around independent living. The Westminster Government has committed itself to full choice and autonomy for disabled people by 2025. In developing that report in 2005 when it came out, they recognised that the majority of the powers around this could be devolved to the Scottish Parliament; so a lot of the work we have been doing with the Scottish Government is to try to get them to, if not sign up to the Life Chances Report, to work in parallel with it, but there are different circumstances in Scotland around our transport infrastructure, the issues of rurality, the issue of Scotland's particular health profiles.¹³

9. In this context we raised with our witnesses a number of their current projects.

Immigration policy

10. Responding to questions about their intervention in the debate on immigration in Scotland, Mr Chris Oswald, the directorate's head of policy and parliamentary affairs, explained that:

We are interested in exploring the issue of whether or not [current immigration patterns] will meet Scotland's future population needs, particularly as we are moving towards a closer, a sharper ratio between dependants and workers, and what we feel is that we need to certainly have a debate in Scotland about will there be sufficient younger people, people of working age to support the economy [...].¹⁴

11. When challenged on the appropriateness of finding a Scottish dimension to a reserved matter (immigration policy), the witnesses responded that "The comments were raised very much in response to the National Conversation which the [Scottish] Government has opened, and one of the issues in that is whether or not there should be a more nuanced migration policy, or immigration policy, which takes account of the specific needs of Scotland"¹⁵ and that:

[the wider EHRC is] quite comfortable with us having that debate in a Scotland context, in the same way as Wales would have a debate about issues that affect Wales in a different way, and that is part of how we are committed to operating as a three-country organisation. We do not all have to have exactly the same angle on every issue, but our contribution is part of a commission-wide debate about migration and its impact on society in Britain.¹⁶

¹³ Q 40

¹⁴ Q 13

¹⁵ Q 14

¹⁶ Q 15

12. While we have no wish to close down the debate on immigration, and although the cost of the research underpinning this work is modest—about £4,000¹⁷—we are concerned that the Scotland Committee of the Commission is seeking to influence immigration policy on the basis of economic analysis and workforce needs assessment which are outside its remit. The Commission defended its position:

We do not have a fixed position on what migration policy should be for Scotland. We do have a fixed position on good relations, in the sense that we know our remit is to promote good relations, and we believe that good relations are a prerequisite to migration policy of whatever sort actually working. We need to have a society that is able to plan and accommodate and adapt to people coming in and out from different places, and that is the heart of our remit, but we think the debate about migration is a really important one to be having for the future of Scotland.¹⁸

13. We agree that the Commission is best occupied focussing on dealing with the consequences of immigration for community cohesion and good relations, which is its central task, rather than seeking to influence the nature of that immigration. There are many other forums in which that conversation can take place. It should be careful to maintain its neutrality on issues outside its remit. We draw this matter to the attention of the GB Commission and the Government Equalities Office. We will also invite our colleagues in the Joint Committee on Human Rights and the Communities and Local Government Committee to note this in their monitoring of the EHRC's GB-wide work.

Impact of further devolution

14. The Scottish Executive's "National Conversation" is also looking at the topic of equality legislation in the context of further devolution or independence, a topic also touched on by the Commission on Scottish Devolution (the Calman Commission). The EHRC has submitted evidence to both inquiries.¹⁹ Our witnesses from the EHRC told us:

[...] what we are doing is producing a discussion paper looking at the options for equality in a more autonomous Scotland, and what we will be doing is looking at the options under the current arrangements, under further devolution and under independence.²⁰

15. We challenged our witnesses as to why they were doing work based on assumptions about further devolution or independence, when there were many apparently more pressing issues with which they could be concerned. Mr Oswald responded:

I think it is something we simply cannot ignore. Obviously we work in a Scottish context, we have to respond to the concerns of the Scottish Government, and we felt it was legitimate. The two areas that we have particularly focused on are the proposals around the potential for devolution of equality powers, which clearly has a very strong interest for us, and then the good relations aspect of our proposed

¹⁷ Q 44

¹⁸ Q 19

¹⁹ Qq 30-1

²⁰ Q 21

nuancing of immigration policy to suit Scotland’s labour needs better. It was on those bases that we approached those aspects of the National Conversation. I would stress that they are not taking up significant amounts of resource inside the organisation, but it is important that we are involved in debates about the future of Scotland.²¹

16. When challenged about whether the Commission had been advocating devolution of equality matters, Ros Micklem, National Director for Scotland, argued that:

No, we did not say that. I was questioned very hard on this and my response was that unless there is an area like employment, for example, which rests with Westminster—unless employment policy was devolved to Scotland, I saw no reason to devolve the equality aspects of employment to the Scottish Parliament either. So we are not taking strong fixed positions on that.²²

17. We welcome the confirmation that the Commission is not advocating any particular form of further devolution. We would encourage it to be cautious about ensuring that it works within the current settlement, and that its interventions in the debate about future further devolution are confined to examining the technical issues which would flow from different scenarios.

Sectarianism

18. We questioned the witnesses about the distinctively Scottish problem of sectarianism and what plans they had to address this issue. They told us that “in recent months the amount of time that we have been spending on issues of sectarianism has gone up significantly, and it is something which we are looking at very seriously as a major component of the next three-year strategy that we are developing.”²³ They estimated that around 10% of their effort was devoted to this issue currently.²⁴

19. Sectarianism is a distinctively Scottish issue in terms of equality. It should certainly form part of the Commission’s strategic plan over the next three years.

Discrimination in Scotland

20. We engaged in a lengthy exchange with the EHRC over the Commission’s work in relation to discrimination generally.²⁵ A key issue which emerged is a lack of data from which to compare the position of Scotland against the rest of the UK in relation to discrimination in society. Morag Patrick, Head of Research and Foresight for Scotland, explained “we have completed a piece of research where we reviewed all the research that had been done on equality in Scotland and identified where the data gaps are [...] the most significant gaps are in sexual orientation and ethnicity, religion or belief as well.”²⁶ The

²¹ Q 30

²² Q 33

²³ Q 42

²⁴ Q 43

²⁵ Qq 45–6, 73–6, 84–5, 93–7

²⁶ Q 45

Scottish Directorate is looking at other methods of compiling data than using national surveys and the Census, which give limited information on certain groups, and Ms Patrick told us that they were working closely with the Scottish Executive in an effort to standardise data collection.²⁷

21. Given that tackling discrimination is central to the Commission's mission, we certainly agree that improving data collection both to identify problems and measure outcomes must be a key priority to inform its strategic planning.

Poverty in Scotland

22. In the EHRC business plan one of the themes and work programmes for 2008/9 is "narrowing the poverty gap and realising social inclusion".²⁸ The Commission's written submission made extensive reference to our recent report on Poverty in Scotland.²⁹ The Scottish Directorate is currently trying to ascertain what it is they will do between 2009-12 on poverty and social inclusion.³⁰ They have identified that there are clear links between belonging to some groups and living in poverty, for example, lone mothers, pensioners and disabled people. They are developing a new way to measure equality, which they say will pick up the issue of social inclusion.³¹

23. We recognise that the aims of the Scottish Directorate in regard to poverty reduction and social inclusion are laudable but we were concerned that they were not applying resources where they would have most effect, since there are many agencies operating in this field. Ms Patrick assured us that:

The first thing that we have been doing is we have been listening to the people at the sharp end of poverty and inequality, and what they have been telling us is that the Commission should be cautious about where it intervenes. One of the things that they have said to us is that addressing poverty in itself is perhaps beyond our role and that what we should be focusing on are the social inequalities that arise as a result of poverty. It is interesting, I think, that when we ask people what were the top three areas that they thought the Commission should focus its resources on, poverty came sixth on the list. Top of the list was legislation, enforcement and compliance and second on the list was education. So we are taking that on board, and this takes me to the second thing we are doing. We will deliver an expert seminar to try to understand how we can intervene most effectively to break those links between poverty and group-based inequality but, importantly, working with others who are already experts in the poverty field. We do not want to be duplicating the effort of experts who are already out there.³²

²⁷ Q 45

²⁸ Equality and Human Rights Commission Business Plan 2008/09, p 19

²⁹ Ev 21-3

³⁰ Q 105

³¹ Q 106

³² Q 106

24. Ms Micklem confirmed that they were conscious of the risk of duplication of effort and were focusing on the combined effect of poverty and discrimination.³³ We agree strongly with the Commission that it should continue to focus on dealing with the inequalities that arise from poverty and allow other agencies to focus on tackling the causes of poverty.

Enforcement powers

25. The EHRC has various enforcement powers under the 2006 Act. It can enter into binding agreements with a person to ensure that person commits to equality best practice audits or avoid discriminatory practices; conduct investigations when it forms a suspicion that unlawful discrimination has taken place; provide assistance to an individual who alleges that he/she is a victim of behaviour contrary to the equality enactments and who is or may become a party to legal proceedings which relate to the alleged breach of the equality enactments; and assess compliance with public sector duties to ensure that public authorities comply with the duties to eliminate discrimination under the main anti-discrimination legislation.³⁴

26. In terms of the provision of legal assistance, the Scotland Directorate intend their primary focus to be strategic litigation where there is some substantive point that would help develop the law.³⁵ We discussed the concept of “strategic litigation” with our witnesses at some length and in particular in respect of what appeared to be something of an exception to that general policy, the case of *Ahsan Khan v Angus Council* [2008].³⁶ This was inherited from the Commission for Racial Equality where Edinburgh Employment Tribunal had found that Angus Council had been guilty of a catalogue of failures in relation to the race relations legislation in dealing with Mr Khan’s application for a post.

27. We used this example to see how the Commission followed up with a public authority which appeared to be showing such flagrant disregard for its statutory duties. The legal team are currently working with Angus Council to ensure that their practices in equality meet those that are required for a public body. Lynn Welsh, Head of Strategic Litigation for the Commission in Scotland, explained:

[...] we are still investigating to what extent Angus [Council] are awful and to what extent this case was awful, because it is not always completely clear, but yes, our follow-up and enforcement officer also does keep records, not only for local authorities but for all public bodies and, indeed, private bodies[...].³⁷

We hope that the Commission will follow a practice of monitoring those organisations that have had cases taken against them to ensure that they have learned their lessons and made the necessary improvements.

28. We were pleased to hear that the EHRC is looking at developing a web-based monitoring system across Britain, which would be publicly available for people to look at

³³ Q 107

³⁴ Equality Act 2006, s. 20–32

³⁵ Qq 77–88

³⁶ Ev 18

³⁷ Q 99

the equality performance of organisations.³⁸ We were told that this was likely to take some time, but we would encourage EHRC to develop a system where the performance of organisations in relation to their equality practices is made public so that a sort of “red list” of organisations whose record of performance is consistently poor can be drawn up.

29. We examined the extent to which the Directorate had a sufficient budget to pursue litigation where that seemed necessary. Ms Welsh told us:

We would like to take more. I think as a new organisation people still have to become aware of the fact that we are there and bring cases to us. We cannot create them; we rely on people bringing cases to us, and part of our work going out and trying to get expertise and contacting other organisations is to pool that intellect so they know we are interested and letting them know that there is a service there. I would say actually taking strategic cases, we probably take proportionately the same across GB. I do not think we take any less cases in Scotland. We get problems with interventions, but not supporting cases. That is probably the equivalent to across GB. We have a number of cases now that are on-going that we ought briefly to discuss here now, having come to completion. I would say our casework to that extent is growing and we are working very hard to grow more.³⁹

The Scottish directorate intend to help individual cases which do not have such strategic merit in a variety of ways but mostly through providing support to partner organisations.⁴⁰ When we asked if they would pursue another *Khan*-style case we were told:

Yes, for the very reason that the kind of discrimination that was involved was very high level and very endemic and the response of the organisation was excessively dismissive with regard to answering questionnaires [...] given that it was a local authority from whom, as a public body, we would expect better, then, yes, we probably would.⁴¹

30. The Scottish Directorate is currently looking into its grant powers to consider how it could build on its work of assisting different partner organisations in providing legal advice and assistance in the equality field.⁴² Ms Welsh explained the partner organisations they have in mind as being:

[...M]ainly [...] people like the CABs. We would also assist and advise some union reps if they are looking at taking equality cases. There are other advice agencies. There are also, obviously, voluntary organisations who support the groupings, if you like, the strands that we work in, and we would also try to go out and assist them to assist others, so it is trying to build on that.⁴³

³⁸ Q 101

³⁹ Q 102

⁴⁰ Q 55

⁴¹ Q 79

⁴² Q 59

⁴³ Q 56

31. **We recommend that the Scottish Directorate of the Commission for Equality and Human Rights use their position as a UK body having a specific remit for Scotland to take up with the Scottish Executive the provision of legal advice and assistance in the equality field.**

Performance

32. No separate annual report or business plan has been published for the Scottish Directorate—there is a GB-wide business plan. This makes it more difficult to measure the extent to which they have met their priorities and other goals over the past 15 months. Though some detail was given in the Commission’s written submission.⁴⁴ The EHRC’s own annual report has been much delayed. We were pleased, therefore, to hear from the Scottish Directorate that “We have actually got our own internal plan that we have been working to, and we have it in mind to publish that next time around.”⁴⁵

3 Conclusion

33. The Commission for Equality and Human Rights in Scotland has a key role in both developing the law and in providing legal advice and assistance in cases involving equality issues. **We recommend that the Scottish Directorate of the Commission take up the need for developing and funding legal advice and assistance in the equality field with the Scottish Government.**

34. In its wider field of operation, the evidence we heard suggests that the Commission is still trying to find its feet in Scotland and carve out its distinctive role cutting across both reserved and devolved responsibilities. We are concerned that in doing so it may be tempted in directions that leads it outside of the purpose for which it was established. We recommend that this aspect of its remit be reviewed in a year’s time by the GB Commissioners, to whom we will refer this Report.

35. The public expect the Commission to be the main organisation in Scotland to take problems they face with gender discrimination, race discrimination, disability discrimination and other forms of discrimination forward.

36. **We recommend that the Scottish Directorate of the Equality and Human Rights Commission takes forward its plan to publish its own Scottish strategic plan, setting out how it intends to prioritise and resource its work in tackling both Scottish aspects of the Commission’s Britain-wide goals and the specifically Scottish issues relevant to its remit which it has identified.** We, for our part, intend to continue to monitor the development and implementation of its strategy within Scotland.

⁴⁴ Ev 18–23

⁴⁵ Q 104

Conclusions and recommendations

Enforcement powers

1. We recommend that the Scottish Directorate of the Commission for Equality and Human Rights use their position as a UK body having a specific remit for Scotland to take up with the Scottish Executive the provision of legal advice and assistance in the equality field. (Paragraph 31)

Conclusion

2. We recommend that the Scottish Directorate of the Commission take up the need for developing and funding legal advice and assistance in the equality field with the Scottish Government. (Paragraph 33)
3. We recommend that the Scottish Directorate of the Equality and Human Rights Commission takes forward its plan to publish its own Scottish strategic plan, setting out how it intends to prioritise and resource its work in tackling both Scottish aspects of the Commission's Britain-wide goals and the specifically Scottish issues relevant to its remit which it has identified. (Paragraph 36)

Formal Minutes

Wednesday 17 June 2009

Members present:

Mr Mohammad Sarwar, in the Chair

Mr Ian Davidson
David Mundell
Lindsay Roy

Mr Ben Wallace
Pete Wishart

Draft Report (*Work of the Equality and Human Rights Commission, Scotland*), proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 36 read and agreed to.

Resolved, That the Report be the Third Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report.

[Adjourned till Wednesday 24 June at 2.00 p.m.]

Witnesses

Wednesday 21 January 2009

Page

Ms Ros Micklem, National Director, **Mr Chris Oswald**, Head of Policy and Parliamentary Affairs, **Ms Morag Patrick**, Head of Research and Foresight, and **Ms Lynn Welsh**, Head of Strategic Litigation

Ev 1

List of written evidence

1 Memorandum from the Equality and Human Rights Commission, Scotland

Ev 17

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2008–09

First Report	Work of the Committee in 2007–08	HC 55
Second Report	Credit Unions in Scotland	HC 218

Session 2007–08

First Report	Effects of tax increases on the oil industry	HC 35 (HC 376)
Second Report	Poverty in Scotland	HC 128 (HC 525)
Third Report	Child Poverty in Scotland	HC 277 (HC 525)
Fourth Report	Work of the Committee in 2007	HC 278
Fifth Report	Experience of the Scottish Elections	HC 78 (HC 1098)
Sixth Report	Employment and Skills for the Defence Industry in Scotland	HC 305 (HC 830)

Session 2006–07

First Report	Work of the Committee in 2006	HC 308
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Session 2005–06

First Report	Work of the Committee in 2005	HC 836
Second Report	Meeting Scotland's Future Energy Needs: the Westfield Development Centre	HC 1010 (HC 579)
Third Report	<i>Putting Citizens First</i> : the Report from the Commission on Boundary Differences and Voting Systems	HC 924
Fourth Report	The Sewel Convention: the Westminster perspective	HC 983 (HC 1634)

Oral evidence

Taken before the Scottish Affairs Committee

on Wednesday 21 January 2009

Members present

Mr Mohammad Sarwar, in the Chair

Mr Alistair Carmichael
Ms Katy Clark
Mr Ian Davidson
Mr Jim Devine

Mr Jim McGovern
Mr Charles Walker
Pete Wishart

Witnesses: **Ms Ros Micklem**, National Director, **Mr Chris Oswald**, Head of Policy and Parliamentary Affairs, **Ms Morag Patrick**, Head of Research and Foresight, **Ms Lynn Welsh**, Head of Strategic Litigation, gave evidence.

Q1 Chairman: Good afternoon, I would like to welcome the witnesses to our session this afternoon. Can you, please, introduce yourselves for the record?

Ms Micklem: I am Ros Micklem; I am the National Director for Scotland for the Equality and Human Rights Commission.

Ms Welsh: Lynn Welsh; I am Head of Strategic Litigation for the Commission in Scotland.

Ms Patrick: Morag Patrick, Head of Research and Foresight for Scotland.

Mr Oswald: Chris Oswald, Head of Policy and Parliamentary Affairs.

Q2 Chairman: Before we ask detailed questions, would you like to say anything?

Ms Micklem: I will just say a brief word of introduction. We are very pleased to have the opportunity to be here and to update you on the work that we are doing and to start a conversation with you about our future priorities; so thank you very much for the invitation. I hope you have seen, from the evidence that we have submitted, that the Scotland Directorate of the Commission is very much part of a Britain-wide organisation and our role is partly to inform the thinking of the GB-wide Commission and make sure that its approaches and strategies are appropriate for Scotland as well as for the rest of Britain but also, in delivering in Scotland, to interpret those strategies and make sure that the delivery is fitting for the Scottish context. We have been very active over our first 15 months. We are a small and still growing team, and a fairly new team, but we have inherited a lot of expertise and a very strong track record from the three legacy commissions. We have been working really in three functions: enabling—in terms of enabling people to do the right thing in terms of equality and human rights, enabling individuals to understand their rights and take action when those rights are not being upheld—persuading and trying to influence decision-makers and practitioners to improve their practices and enforcing where we need to. We think that we have, within the limits of our capacity, made a real effort to be visible in Scotland. We have been out and about with roadshows, visits to a wide range

of public bodies right across Scotland, and we have done a lot of work in rural areas, which has been particularly enriching for us and our learning. We look forward to hearing from you the areas that you are most interested in discussing and it is a very opportune moment, because we are just in the process of formulating our thinking about the next three-year strategy and your comments will be really helpful in enabling us to shape that appropriately, so thank you.

Q3 Chairman: Does anybody else want to say anything? Can you tell us who makes the decisions on policy and operational matters affecting Scotland?

Ms Micklem: In terms of the strategic direction and the overall policy and direction of the Commission, the Commission Board makes the over-arching decisions for the whole of the Commission, and that is a GB-wide commission which includes the Scotland Commissioner, Morag Alexander. She also chairs the Scotland Committee, which is a statutory committee with a legal obligation to make sure that the overall strategy does take account of the impact on Scotland. The Scotland Committee debates the issues, forms a view and feeds through its comments and recommendation to the main commission board. That is at the strategic level. Operationally, on day-to-day matters, I and my team of heads of functions in the Scotland Directorate make the decisions, but I am a member of the senior management team of the wider commission and the wider decisions are taken by the senior management team.

Q4 Chairman: You have mentioned the statutory committee for Scotland. Can you expand on the role of the statutory committee for Scotland and what proportion of its members are Scottish?

Ms Micklem: There are eight members of the committee. All of them are based in Scotland. I cannot vouch for how they would all describe their nationality, but they are all appointed as members of

the Scotland Committee specifically and they are based in Scotland, they work in Scotland and they are there to represent the interests of Scotland.

Q5 Mr Davidson: Can I just ask about the socio-economic background of the people involved. Are they all public school, for example?

Ms Micklem: No, I am sure they are not. I have not asked to them.

Q6 Mr Davidson: What is the proportion?

Ms Micklem: I have no idea what schools they went to.

Q7 Mr Davidson: Is that not something that is valid to take into account?

Ms Micklem: We do not appoint our statutory committee, that is appointed—

Q8 Mr Davidson: You are a member of the staff and you are here. Maybe I ought to declare that when Ros was Principal of Cardonald we worked together and she got the award for being best employer in the world! Since we are discussing the structure, I am interested to clarify the extent to which your board is representative of Scotland as a whole. Are they all white, middle-class males, are they all lawyers, are they all public school? What are they?

Ms Micklem: We could write to you with a breakdown of who they are. Two of them are visibly minority ethnic, I think there are three men, of whom one is visibly disabled, one is a gay activist, so there is a wide range of representation of different groups. I do not know about their schooling background. I can find that out for you and give you a written account.¹

Q9 Mr Devine: How is the structure and how do you relate to the British part of the body?

Ms Micklem: The structure is that I lead the Scotland team and we have functions within the Scotland Directorate which mirror the structure of the Commission as a whole; so there is a legal function, a policy function—

Q10 Mr Devine: You sit on the national body? Who sits in Scotland on the national body?

Ms Micklem: The Scotland Commissioner, Morag Alexander, sits on the Commission and I sit on the senior management team for the wider body.

Q11 Mr Devine: She is the lady who we just heard of?

Ms Micklem: That is right, yes.

Q12 Mr Davidson: Given that there have been comments about the danger of Scotland becoming a retirement home sitting on the edge of Europe, it is a bit pejorative towards the elderly, is it not? Does that reflect the view that your organisation has?

Ms Micklem: It was not intended to be pejorative, but I think maybe Chris could comment about that interview.

Mr Oswald: I think it is a concern which, I think, is widely recognised that Scotland has an aging population. We were not suggesting for a minute that the entire population of Scotland is going to end up in a retirement home; that is just the way it came out in the headline.

Q13 Mr Davidson: It is in the text as well actually. It is a direct quote. I understand the difference between headlines and quotes, but the quote was “Retirement home sitting on the edge of Europe . . . whether Scotland can implement the changes required where immigration remains a reserved matter.” Is it the organisation’s policy that immigration has got to be devolved?

Mr Oswald: What we wanted to do is to open a debate around what Scotland’s future population needs are. One of the areas that we are concerned about is whether or not we pursue the current situation, which is a circular migration pattern where we have workers coming in, particularly from the A8 countries, who may or may not stay in Scotland. They may put down roots; they may have children. So that is very much an economically driven policy. We are interested in exploring the issue of whether or not that will meet Scotland’s future population needs, particularly as we are moving towards a closer, a sharper ratio between dependents and workers, and what we feel is that we need to certainly have a debate in Scotland about will there be sufficient younger people, people of working age, to support the Scottish economy, and so we are simply saying this is an option which we would like to explore.

Q14 Mr Davidson: That raises a number of issues about what your job actually is. Is it your job to decide or put forward views about the future of the Scottish economy and whether or not immigration policy should be relaxed or tightened? I do not quite see that that relates directly to your remit relating to equality and human rights. If that is within your remit, surely you are free to comment on anything in the world and the danger is then that you lose your focus?

Mr Oswald: The comments were raised very much in response to the National Conversation which the Government has opened, and one of the issues in that is whether or not there should be a more nuanced migration policy, or immigration policy, which takes account of the specific needs of Scotland. So this is simply responding to that debate which has been opened by the Scottish Government and putting forward views which we hope will then stimulate greater debate. We are not in a fixed position.

Q15 Mr Devine: When we are asking about the structure, what is the level of accountability, because its sounds as if you are paddling your own canoe in this. You in Scotland are part of the national structure, you are on the board of management, Morag is on the UK-wide but there seems to be a contrary policy coming out from the Scottish position.

¹ After consideration, the witness decided that it would not be appropriate to require board members to disclose this information to the Committee.

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Ms Micklem: We have been developing this thinking in collaboration with our colleagues in London and Manchester right the way through, and they have been organising summits and debates on the whole issue of migration and good relations, what kind of community we want and how to make sure that that is planned in a way which enables people to live together harmoniously. They know that our suggestion is that there may be a need for a more nuanced approach in Scotland and they are quite comfortable with us having that debate in a Scotland context, in the same way as Wales would have a debate about issues that affect Wales in a different way, and that is part of how we are committed to operating as a three-country organisation. We do not all have to have exactly the same angle on every issue, but our contribution is part of a commission-wide debate about migration and its impact on society in Britain.

Q16 Mr Davidson: You seem to have answered the question, as it were, before you have closed it by determining what the solution is, but can I further turn to related other comments that were made on behalf of the organisation? It says here, “The day before Barrack Obama’s inauguration, she also questioned how Scotland could ever have a first minister from a black or minority ethnic background when there is only one MSP from an ethnic minority background.” I am not quite clear what proportion of MSPs you believe should be from an ethnic minority background and whether or not you are arousing false expectations in terms of suggesting that we should be looking for a first minister from a black or minority ethnic background. The last figures I got from the House of Commons library were that there was, I think, 2% of ethnic minorities in Scotland. If they got their fair share, as it were, it would be one in 25 first ministers were from a black or ethnic minority background, so we have got a fair bit to go. I would like to see it turn over faster, but if we did have that we have still got a fair way to go. Do you have a view about what the appropriate ratio in elected positions ought to be?

Ms Micklem: I think what we were trying to do in that interview is provoke a debate about whether our institutions and systems in Scotland and in Britain are open and receptive to engagement through all the different groups in society. I do not think we are promoting a quota, or a target, or even trying to suggest a conclusion and answer to the question. What we are doing is posing questions to get people discussing those issues.

Mr Devine: It is not posing a question. It is posed in a way that questions “how Scotland could ever hope to have a first minister.” That does not seem to be an open question to me.

Chairman: It is a real possibility developing.

Mr Davidson: Indeed.

Q17 Pete Wishart: Could I start by welcoming the Commission’s contribution to this very important debate. Certainly immigration is something that I have been very much concerned about in the course of the past few years, especially if we reach a

situation where Scotland’s population may go below five million, as I think is pointed out in that article too, but I understand that you are going to be presenting a paper on immigration and your views on possibly how we start to address this and the issues. Who will that be presented to—the Scottish Government or the Westminster Government or does it go to the UK Commission?

Mr Oswald: The paper has been commissioned from a researcher called Sarah Kyambi. We are looking to publish the paper in February or early March, which considerably narrows the case of the production, dependent on the lead time. The actual presentation of that paper, it is primarily aimed at informing the National Conversation in Scotland but I am sure we would be more than happy and would be sharing that with Westminster.

Q18 Pete Wishart: The sort of things you will be looking at in your paper. The UK Commission Chair, Trevor Phillips, suggested that one of the ways that we could address some of the immigration difficulties that we do have in Scotland is perhaps awarding extra points in the points-based system for people to settle in Scotland. Is that the sort of thing you are looking at in the course of your inquiry?

Mr Oswald: Certainly it is one option, amongst others. Obviously there is an issue about whether or not we can have greater inward migration across Great Britain. I think the point which Ros was raising is very pertinent. It is about how does Scotland absorb the new people that it will need to bolster the economy, whether they are coming from England, Wales, Northern Ireland or, as part of the home-coming exercise, from America or Canada, or if they are primary migrants from countries outside the European Union. What we are particularly interested in this issue is the issue of good relations and how do we absorb new people coming into the country.

Q19 Mr McGovern: I would like to welcome your group to the Scottish Select Committee. I have to say I tend to agree with the two colleagues here that if you are going to try and provoke or instigate a debate, normally you would set down a number of questions and let people debate them; whereas you seem to have set out prior to any debate what your preferred outcome would be. Do Morag Alexander’s feelings, i.e. what was said in the press, reflect fairly the view of the EHRC Scotland?

Ms Micklem: Yes, Morag was speaking on behalf of the Commission, but I do not think that she was firmly stating a policy position. I think what she was doing was throwing suggestions into the debate to be taken forward in this kind of discussion. We do not have a fixed position on what migration policy should be for Scotland. We do have a fixed position on good relations, in the sense that we know our remit is to promote good relations, and we believe that good relations are a prerequisite to migration policy of whatever sort actually working. We need to have a society that is able to plan and accommodate and adapt to people coming in and out from different places, and that is the heart of our remit, but we

think the debate about migration is a really important one to be having for the future of Scotland.

Q20 Mr McGovern: I noted your remarks. I think you said that you regarded that your organisation is very much part of a GB, UK organisation. Are there any other genies going to be coming out of the bottle or any other suggestions for added powers to be devolved to Scotland that you have, or just this one?

Ms Micklem: What we are interested in is the ability to deliver on equality, human rights and good relations wherever the powers sit to do that. In our view much better use could be made of the powers that already exist at every level of government. We are actually doing some research and thinking about that and what the options might be for changes in terms of equality powers which, I think, Morag is leading in on, if you want to hear a bit more about those.

Q21 Mr Walker: Let us hear what Morag has to say.

Ms Patrick: As a committee you will be aware that one of the options that is looked at in the National Conversation is giving Scotland the power to decide on equal opportunities legislation and enforcement agencies. So what we are doing is producing a discussion paper looking at the options for equality in a more autonomous Scotland, and what we will be doing is looking at the options under the current arrangements, under further devolution and under independence.

Q22 Mr McGovern: You have a firm view that it is going that one way. Part of the debate is that power is being taken away from Scotland. You are quite certain, in your view, that it is either more devolution or independence?

Ms Patrick: No, I said there are three options that we looking at: continuing with the current arrangements, further devolution or independence.

Q23 Mr Walker: Immigration into Scotland. It would be difficult to achieve that, would it not, if Scotland has a different immigration system to the United Kingdom as a whole, because people may find it easier to enter Scotland and then enter into England from Scotland? How would you propose managing that? We would not want the state—even if Scotland went in its own direction and became an independent country—to have very strict borders, but we may well have to have very strict borders to stop that type of abuse of the immigration system.

Mr Oswald: I think we would be looking. This is a debate which we are opening. We are not coming in with firm policy positions at this point; we are simply responding to suggestions which are being put forward by the Government in Scotland. If it were to come about, then I think that we would be looking at the existing arrangements of work permits being adapted slightly to say that, if you were to be allowed to work in Scotland, then it would be on your work permit that you would be working in Scotland. There are legal sanctions already in place for employers who would be—

Pete Wishart: Perhaps to be helpful, this does happen in Australia with the point-based system that culminates in different immigration requirements for the different states that are experiencing difficulties like Scotland's. So it is very practical.

Q24 Mr Walker: Again, I am not quite sure what difficulties Scotland is experiencing, because we take a lot of evidence from a lot of really quite committed people—from the trade union movement, from the education establishment—who are terribly concerned about the fact that there are not enough jobs in Scotland for young Scottish people and that they are living lives of hopeless destitution in many cases. We have been to see some communities where we have been told by community leaders the greatest hope for these youngsters is to get a council house; that work is so far removed from them. So I am not quite sure why there is this emphasis on immigration into Scotland because I am not sure what jobs exist there that need to be filled that should not be filled by young Scots who perhaps need to be better trained and looked after to fill those jobs, to end that social exclusion that we know exists in Glasgow and many of the cities and communities.

Mr Oswald: I completely agree with you. One of the balancing aspects of the proposals that we have, not proposals but areas we are seeking to discuss, would be around maximising the employment opportunities particularly for lone parents returning to work, for disabled people, for young people who are looking for work now. What we are interested in is what happens in 15 or 20 years when Scotland's population ages increasingly and there will be fewer young people around to fill those posts. So it is not a solution we are proposing today but we are looking forward 20 years.

Q25 Mr Walker: That is always going to be a problem. It is exponential, is it not? The more people you have at the bottom, they are going to get older, so the more you have got to bring in, the more you have got to bring in, the more you have got to bring in. We have just realised in England that actually sooner or later we are going to have to take the pain in the population growth and accept that we are going to have a stable, shrinking population, because we are always growing the population at the base to support the top. Is that a discussion that is not happening in Scotland? I know you have more space up there.

Mr Oswald: It is part of the contribution to the debate. These are areas that we would want to see opened up for public discourse in Scotland, particularly, as Ros has said, what the implications are. Scotland, I think, will need more people to come into it. As I say, whether that is inward migration in the UK or from other areas, it is what the impact of that is on Scottish civic life and how do we ensure that we are able to—

Q26 Chairman: I am only taking two more questions on this issue. I think this debate is now about immigration, and I think there are other areas to

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comment on as well. One thing I want to ask about is the credit crunch. When more and more people are becoming unemployed, do you still think that we should have more English into Scotland?

Mr Oswald: I think we would have no objection to having that, but we are focusing very much on the future rather than the current situation.

Q27 Chairman: I do not think the population is decreasing now. The latest figures show that the population is going to increase in Scotland.

Mr Oswald: The population has increased, I think, by something like 1.6% in the last years' figures, and there is no strong evidence that we have seen that this is a trend that is going to continue.² So it is an issue about looking forward 15 or 20 years and planning Scotland's population for the future.

Q28 Mr Carmichael: I will fess up now; I have not read this article which has been cited, but you have engaged my interest here with what you have said. Ros takes as our starting point that your work concerns vocation and maintenance of good relations. I think that is a perfectly reasonable starting point. The means by which people come to be part of Scotland, to be domiciled there, is clearly relevant to that, but I think you would have to say that it is not central to it. The concern that I have had in listening to what you have said is the one that Mr Davidson identified in the first instance, and that is the danger of you losing focus on your primary responsibility, which is the creation which has a great impact for yourself of good relations. Can you put this work that you are doing on immigration, in its wider sense, in the context of your overall resource base? How much time, how much resource, how many staff is it taking up?

Ms Micklem: It is a very, very small part of what we are doing. It has had a high profile this week, because the theme of that particular bit of publicity was around the tenth anniversary of the Macpherson Report—Stephen Lawrence, racism in society, changing demographics of society—and that gave prominence to that particular theme, which has been a small piece of work going on linked to good relations and the National Conversation but I would not say it was a major project area. Chris, do you want to comment on that?

Mr Oswald: No, I am leading on this and it is a fifth of my working time which is going into this.³ If I can maybe place it in a slightly broader context, there was an interesting piece of research which was published last week from a Polish organisation looking at attacks and incidents of anti-Polish racism in Scotland, or in Britain but a significant number were cited in Scotland, and that is an issue which is about unplanned migration. There was no way of planning Polish migration, or Eastern European migration into Scotland, and there have been unfortunate consequences. Largely the

migration patterns have been successful, but there have been some unfortunate and nasty incidents. What we are looking at is trying to plan these things better for the future, looking ahead and saying that, if we are going to have them coming into Scotland, then Scotland needs to be in a position where it is receptive and there are not those kind of tensions you have been raising about jobs or housing. We have to have a more thought through policy rather than just a simple responsive policy.

Q29 Mr Carmichael: If I understand what you have been telling us, Chris, the catalyst for this work was the National Conversation. Is that right?

Mr Oswald: Yes.

Q30 Mr Carmichael: Can you talk me through the decision process that led to you taking part in the National Conversation?

Mr Oswald: I think it is something we simply cannot ignore. Obviously we work in a Scottish context, we have to respond to the concerns of the Scottish Government, and we felt it was legitimate. The two areas that we have particularly focused on are the proposals around the potential for devolution of equality powers, which clearly has a very strong interest for us, and then the good relations aspect of our proposed nuancing of immigration policy to suit Scotland's labour needs better. It was on those bases that we approached those aspects of the National Conversation. I would stress that they are not taking up significant amounts of resource inside the organisation, but it is important that we are involved in debates about the future of Scotland.

Q31 Mr Carmichael: Have you made the same submissions to the Calman Commission?

Mr Oswald: I gave evidence to the Calman Commission on the proposals about devolving greater power and equal opportunities, and we also suggested we talk about immigration, but that was not something which the Calman Commission chose to focus on in the evidence.

Q32 Mr Carmichael: Did you make the same submission?

Mr Oswald: We made a submission, we made an oral submission to the Calman Commission which was based around the devolution of equal opportunity powers.

Q33 Mr Devine: Can I take you up on that? Going back to Alistair, you made a submission to the Calman Commission which says, "We want to devolve more decision-making powers on equality issues"?

Ms Micklem: No, we did not.

Mr Oswald: No, we did not say that. I was questioned very hard on this and my response was that unless there is an area like employment, for example, which rests with Westminster—unless employment policy was devolved to Scotland, I saw no reason to devolve the equality aspects of employment to the Scottish Parliament either. So we are not taking strong fixed positions on that.

² *Correction by witness:* The birth rate rather than the population increased by approximately 1.6% in last year's figures.

³ *Correction by witness:* Five per cent rather than one fifth of my working time is taken up by immigration issues.

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Mr Carmichael: Could we follow this up by getting the respective submissions forwarded to us at the conclusion of the evidence before we produce our report. That would be helpful, would it not?

Q34 Chairman: Could you do that?

Mr Oswald: Our submission to the Calman Commission and to the National Conversation?

Q35 Mr Carmichael: And the National Conversation.

Mr Oswald: Certainly.

Q36 Mr Davidson: Chairman, can I finish this point. The headline in the paper was, “Scotland will be retirement home without new migrants.” Leaving aside the pejorative element about the retirement home, this assumes that you are looking at Scotland in isolation and that Scotland’s elderly in an independent Scotland could not be supported without a mass influx of migrants, but it does not account for the economics of the United Kingdom. There is no reason to believe that an increased proportion of migrants in Scotland is not supportable within a developing and growing UK economy as a whole, and it does, therefore, raise issues in my mind about the extent to which you are myopic in your view, only looking at a Scottish dimension alone, whereas it would be more appropriate to look at Scotland within the United Kingdom. I find it difficult to understand how, at a time of economic crisis, jobs in areas like my constituency—and you know this as well, Ros—we have had great struggles in my constituency to get jobs that are available for local people because they are competing and losing out in competition from migrants. To say that one of the answers to the economic crisis that we have is more migration does seem to me to be a bit out of touch with reality and likely to exacerbate community tensions rather than diminish them. Can you clarify the position for me?

Mr Oswald: What we are looking at is a situation 15 or 20 years from now. We are not suggesting that there is a great need at this point for increased external migration from outside Great Britain. We are also contextualising this, as I said earlier, in terms of this is one of a number of solutions which would need to be looked at, with the result, as I said, of the potential for greater inward migration from England, from Ireland and from Wales to resolve these issues. What we are saying is very much in response to the National Conversation, which I think we have a legitimate duty to respond to in Scotland, in fact a need to respond to, by informing, questioning and refining the debate.

Q37 Mr Davidson: I am sorry; can I just clarify this. If you are responding to the National Conversation about immigration in the context of an independent and separate Scotland, then I can understand, in those circumstances, you would say that the solution would be different perhaps to Scotland remaining within the UK, because it might very well be that an independent Scotland would not financially be able to support the number of pensioners that we are

likely to have, yet that would not apply within the UK where there is cross subsidy. Am I picking up that really the answer we have here is to a question we would not ask and, therefore, is perhaps a misleading perspective in your position?

Ms Micklem: Can I may be suggest it might be helpful for us to put this in the context of our other thinking about the labour market, which does go much wider than the migration question, and also that our thinking about migration is in its very early stages and we have commissioned this paper, which is a contribution to debate, we will be organising events around that, encouraging a wide range of contributions and developing our own thinking and that it may be one that you would want to revisit with us at a later stage.

Q38 Mr Davidson: Is it your role to promote a discussion about migration in Scotland when your focus ought to be on equality and human rights? Is your role not about what we ought to be doing now to make sure that we are moving towards more equality rather than flying kites about how Scotland should look in 15, 20 years when there are scores of other people doing that? It comes back to the point that Alistair picked up about simply diluting the influence that you have; that you simply arouse reservations and opposition and devalue the brand completely?

Ms Micklem: I think we have a very strong interest in what kind of society Scotland and Britain should be, both now and in 15, 20 years time, in terms of how people will relate to each other and good relations—how people will get on, how cohesive society will be—and to be able to work on that we need to understand what the demographics are going to look like.

Q39 Mr Devine: What are the equality issues that make Scotland distinctive from the UK as a whole?

Ms Micklem: The equality issues?

Q40 Mr Devine: Yes.

Ms Micklem: There is a range which are. There is nothing where you can say it is completely different, but the dynamics play out slightly differently in some areas so the racial mix is different; the age profile is different. Chris, again, you might want to say a bit more about ways in which, in a policy context, the Scottish situation is just—we have to look at it from a different angle.

Mr Oswald: There are particular issues about long-term debilitating conditions in Scotland, multiple sclerosis being one, where we have higher incidences in Scotland. We know that we have particular issues around cancer in Scotland, which is covered by the Disability Discrimination Act. So we want to look at these issues because it has a different impact in Scotland. One area which, again, has a similar tone to the migration debate is around independent living. The Westminster Government has committed itself to full choice and autonomy for disabled people by 2025. In developing that report in 2005 when it came out, they recognised that the majority of the powers around this could be devolved to the

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Scottish Parliament; so a lot of the work we have been doing with the Scottish Government is to try to get them to, if not sign up to the Life Chances Report, to work in parallel with it, but there are different circumstances in Scotland around our transport infrastructure, the issues of rurality, the issue of Scotland's particular health profiles.

Q41 Mr Devine: That is what were you doing on sectarianism; the last administration under Jack McConnell. I was at a dinner on Sunday night for the victims of Gaza that was organised by the Muslim community in my constituency. I was abused because of my religion as I walked in and they were abused racially, and to pretend it is sectarianism is not an issue. It is a distinctive issue in Scotland from the UK. What are you doing to tackle that? The things that you have talked about, with all due respect, are matters for Unison. Are you going to deal with issues that we dealt with in the health department looking at health policy?

Mr Oswald: I think sectarianism is an issue which has been a very wide one for us, particularly recently with the upsurge of the new chants which have been coming out. We are on record as condemning that. We have met with ACPOS to discuss it; we have discussed it with the Crown Office. We are looking at what we can bring which is new and different to that. There are a number of excellent anti-sectarian organisations in Scotland, Nil by Mouth is one. We do not want to tread on their toes. We are looking at the moment at what our good relations powers are and whether we can add value to this debate rather than simply wading in.

Q42 Mr Devine: Would that not be very distinctive in Scotland? I know there is a problem with Charles' constituency, I know it is a problem in a lot of our constituencies, but would that not be something very distinctive off your budget, off your time? How much you spend, how much of your time do you give to challenging sectarianism?

Mr Oswald: Certainly in recent months the amount of time that we have been spending on issues of sectarianism has gone up significantly, and it is something which we are looking at very seriously as a major component of the next three-year strategy that we are developing.

Ms Micklem: We are feeding that in as one of our contributions to thinking about the GB-wide strategy to make sure that it is not just an add-on, which we do in Scotland, but that actually it is reflected in what the Commission is thinking about overall and that they recognise that as part of the picture in terms of the situation in Britain as a whole.

Q43 Mr McGovern: My friend here just asked how much time, effort, budget you spend on challenging sectarianism. Mr Oswald said it has gone up significantly, but from what to what?

Mr Oswald: At the moment it is in terms of time. I can only guess at this—I have not done an analysis of the time that I have spent, or a couple of my colleagues have spent—but it is probably taking up about 10% of our working time. At the moment we

have not commissioned any specific work around sectarianism, but this is something which is in the process of being developed and wish to integrate it into the strategic plan for the next three years.

Q44 Mr Davidson: You have commissioned work on immigration?

Mr Oswald: We have commissioned a small study on migration which cost us £4,000.

Q45 Ms Clark: To go back to a more traditional view of what your role might be, when my constituents come to see me when they are facing problems with gender discrimination, race discrimination, disability discrimination and other forms of discrimination, they do see your body as being one of the main organisations in Scotland that are going to be a resource that can help them fight their corner and take things forward. You were asked what you see as the equality issues that make Scotland distinctive from the rest of the United Kingdom. Looking at some of the main forms of discrimination that take place in society, how do you think Scotland fares compared with other parts of the United Kingdom? In particular, when you look at the position of women in society and the levels of sexism against women and you look at the position in terms of race discrimination and disability discrimination, is there anything you would say from a Scottish perspective about particular areas where Scotland is doing well compared with other parts of Britain or areas of high need?

Ms Micklem: That is an interesting one. I think we are still short of detailed data on some of those questions, which Morag may be able to speak about in a moment. I think it is a mixed picture. In some ways I think we can be quite proud of the record of Scotland. When we have been looking, for example, at racism in the Police Force and looking at the work that was done as a result of the Lawrence murder and the Macpherson Report, it was a very different picture in Scotland, and it still is, and things have continued to develop very positively there and, in terms of the pay gap, there is some evidence that the gender pay gap is a little bit less in Scotland than it is in England. There are other areas where I do not think we would compare so well at all, but we are trying to develop a set of indicators which will enable us to make those comparisons in a more rigorous way. Obviously, for an individual who is experiencing discrimination, they do not mind whether it is in Scotland or England, it is still discrimination, and we will still give them advice, support and information to enable them to do something about it.

Ms Patrick: On the data issue, in particular, we have completed a piece of research where we reviewed all the research that had been done on equality in Scotland and identified where the data gaps are. It will be no surprise to you to know that the most significant gaps are in sexual orientation and ethnicity, religion or belief as well. In some of these instances, for very good methodological reasons, it is going to be very difficult to fill those gaps given the size of population. For example, the ethnic minority

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population in Scotland, at the last census was estimated at 2%. No actual survey is going to give us sufficient written data on ethnicity in Scotland for us to be able to develop suitably targeted policies, so what we need to do is to be a bit more creative, I think, in Scotland, and the way that we are thinking about that at the moment is to look at what might be the other options for collecting data other than national surveys and the Census, which are always going to give us limited or infrequent information on some groups. One of the things we are discussing with the Scottish Government at the moment is how we can try to introduce common measures and common reporting frameworks amongst local authorities which may assist the Scottish Government and local authorities to report on how they are meeting their national outcome to tackle significant inequalities. At the moment everybody is using different frameworks for reporting on equality, and this ties in very closely with the work that we are doing to develop an equality measurement framework, which will form the basis of our report, which will assess equality, and we will publish that every three years. I can talk more about that if it is of interest.

Q46 Ms Clark: Given the roots of your organisation and given that you are part of a British organisation, as a matter of priorities and resources, do you not think one of the things you should be trying to do is looking at what works in different parts of the country? Presumably one of your core goals is the elimination of discrimination of the types that we have been talking about. To what extent is that something that you are looking at: because there are different policy agendas and policy initiatives in Scotland; some of them will be successful, some of them will be less successful. To what extent does that provide the focus for work? How much of your time is spent on that?

Ms Patrick: I think it would be fair to say that the focus on capturing what works is very much sitting with the colleagues in the policy part of the organisation. The team that I am part of, research and foresight, is very much focused on taking a longer-term view and trying to ensure that we have a robust evidence base to justify the interventions that we do make. One of most important lessons, I think, that we need to attend to is the recommendations that come from the Equality Review which was published in 2007, and the Equality Review found that amongst the main reasons that inequalities persist after more than 30 years of legislation to eradicate them is a lack of understanding and awareness of what we mean by equality and poor measurement. So that is the focus from my team, but, Chris, I know you are working on the good practice side as well.

Mr Oswald: Let me give you one example which particularly addresses the question which you are asking. Last year we published the first Maps of Gaps, which is a survey of support for victims of domestic abuse, and this is something which has carried on from the Equal Opportunities Commission, and that showed that Scotland had

better provision than many parts of England or Wales, and I think Northern Ireland is also included in that. I am not suggesting for a minute that the provision in Scotland is perfect in any sense, but it is proportionately better, and a lot of the reasoning for that is because the Scottish Government has taken a more gendered approach to these areas, looking at the implications of national policy in terms of criminal justice from a gender perspective. We are about to publish the follow-up to that in the next couple of months and, again, we are sure that Scotland is proportionately better served in terms of projects which support women who are subjected to domestic abuse or women who have been trafficked. There is a number of projects in Scotland that are doing that, but one of the concerns that we have is that with the loosening of ring-fencing around domestic abuse, some of these projects could be at great risk. So one of the issues which is discussed in the draft paper which I have been looking at recently is precisely that; that Scotland has been a better model of practice than many other parts of the world but that model of practice is potentially under threat. We are not sure that simply removing ring-fencing in itself will provide a worse service, it could be that local authorities find creative ways of filling those gaps, but we have very strong concerns that that may not happen. We cannot pre-judge it, but we have very strong concerns on that issue.

Ms Micklem: We have also, in terms of devoting resource to finding good practice, had a major project looking for examples of where public authorities are using their equality duties effectively to bring about real change in outcomes. We have had somebody devoting a substantial amount of her time to that work and we have commissioned researchers to work on that as well. We are about to publish a report with 20 to 30 examples of where public bodies have implemented change as part of the public duties, where you can see visible differences to people's lives at the end of it, and we will be organising a conference around that: because what we are hearing from public bodies is that they know what their duties are but they really want more inspiring examples of how you can make a difference in reality; so we are spending a lot of our time and attention on that.

Q47 Chairman: Can you tell us what proportion of the CEHR's budget is allocated to EHRC and do you have the whole autonomy to spend this budget in Scotland?

Ms Micklem: Our budget is a mixed picture. The revenue budget for the Commission as a whole is, this year, 63 million. In terms of actual cash that we have been able to spend in Scotland, the amount that has come to us is something like 3.6, 3.7 million, and that includes our staff costs, it includes a small budget of £200,000 which is directly under the control of the Scotland Committee and it also includes the elements of Britain-wide projects which we are delivering in Scotland, where we have been given a resource to deliver our bit of that wider project, and it includes over a million pounds worth of grants that have been allocated to projects and

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advice agencies in Scotland. On top of that, we are also getting access to a wide range of central services, so all the corporate management services, the personnel support, the financial support, the estate's costs and quite a lot of the research projects, the publications work, and so on, are covered. We benefit from them but they are covered from the central budgets. The actual cash we have had to spend in Scotland, including salaries, is about 3.6, 3.7 million.

Q48 Chairman: If you take into consideration what is spent on publication and who is served and who is responding in kind, do you think you are getting a fair share of the 63 million in Scotland?

Ms Micklem: I think we are, but I would not say that we had full autonomy with that. We are in a fairly complex process of negotiation over making sure that we get access to our share of that.

Q49 Mr Carmichael: This is probably for you, Lynn. Can you talk me through just how you as a body use your powers of investigation where you suspect that a person has committed an unlawful act?

Ms Welsh: There are various powers that we have that we can use depending on what the circumstances are. Some of them are new to this Commission, some the other Commission had previously. So it would depend whether someone was coming to us as an individual saying they had been discriminated against. Obviously, if that case is strategic, we will take the law forward in some where we can support an individual case for an individual person. If we see more of a systemic problem across an area or within a body, and we do have a member of staff who particularly is looking at where there are trends in areas or individual organisations, we can look at whether we would want to carry out an investigation, but if it was actually an unlawful act or we can carry out an inquiry for a particular concern across an area or a subject matter, we can carry out an assessment to see whether they are meeting their public sector duties if we are concerned that there might be a problem.

Q50 Mr Carmichael: One of the issues that was highlighted for us—and you can tell me whether this was a real issue or not—was the change to suspicion from reasonable suspicion. Does that really make a big difference to your likelihood to act?

Ms Welsh: Not at the minute. We as a public body have to always act reasonably.

Q51 Mr Carmichael: Of course, I just do not see what the difference is, because what do you do that is not reasonable suspicion? Do you now act on unreasonable suspicion?

Ms Welsh: No, we do not. Yes, we are always as a body obliged to act reasonably. We could be held to account to ensure that we are acting reasonably, so, no, I do not think so.

Q52 Mr Carmichael: So that actual change in the 2006 Act, was it of any significance at all? **Ms Welsh:** No.

Q53 Mr Carmichael: I am glad to hear that, I have to say. How do you envisage using your powers to intervene, because that does seem to be a fairly novel departure?

Ms Welsh: Yes, the DRC did a bit of intervention previously, although we did not have a specific power, which we now do, which is good, especially for Scotland. In England the intervention power is used quite extensively because it is a very good way of us getting courts to look at what the issues are that we are particularly interested in without necessarily expending substantial funds in supporting a case which we might not otherwise wish to do. The slight difficulty, I would say, in Scotland is, however, that there are perhaps less of these kind of social justice cases brought to court in the first place. We can only intervene where there is a case already running that someone else is going to be pursuing, and in Scotland that has been rare and, therefore, we have tended not to have an opportunity to use our intervention powers in a way that we otherwise would.

Q54 Mr Carmichael: Do I take it from what you are saying that what you regard as strategic litigation, which I understand now to mean that there is some substantive point where you think there is an opportunity to develop the law in a way that would be helpful, is your primary focus?

Ms Welsh: Yes.

Q55 Mr Carmichael: To what extent are you able to help people who are not really in the situation of having a strategic point but who, for whatever reason, are not able to enforce their rights which palpably exist?

Ms Welsh: It has always been a real concern for the Commission: how do you strike that balance? We do that in a variety of ways. We will occasionally support cases where there is individual need—perhaps somebody who has a very severe disability, for example—so that will happen occasionally. We have a casework service and a helpline service that will provide free advice; casework will also assist to some extent in running a case. The three commissions together in Scotland actually worked very well together to try and develop partner organisations outwith the Commission to whom we can refer people on and then support cases within those organisations, and we are very much building on that area. We have the helpline but we also have a second-tier advice support system.

Q56 Mr Carmichael: What partner organisations are you talking about here?

Ms Welsh: That part, again, I suppose is the issue for Scotland. Mainly they are people like CABs. We would also assist and advise some union reps if they are looking at taking equality cases. There are other advice agencies. There are, obviously, voluntary organisations who support the groupings, if you like, the strands that we work in, and we would also try and go out and assist them to assist others, so it is trying to build on that. We are looking at the

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moment to carry out some consultation exercises on how we use our grants powers to build that even more in Scotland.

Q57 Mr Carmichael: You do not see a role for yourself as being a primary provider in this?

Ms Welsh: At a strategic level; absolutely. I think you should always have that service.

Q58 Mr Carmichael: At a non-strategic level, you are looking at supporting others in providing these cases?

Ms Welsh: Yes.

Q59 Mr Carmichael: Have you done any assessment of what the availability of legal advice and assistance is in different parts of Scotland; what sort of gap map?

Ms Welsh: Yes, we are actually doing that now. It has been done in the past and it is known that the answer to that is not very little, especially in the equality area. A lot of the advice agencies out there do not touch equality legislation, for various reasons, so we know that there are gaps, we know that it is not good and so we are looking, as well as the consultation on how should we use our grant powers, what actually is there? Are we looking at building something new or looking at putting money into stuff that is already there and building up from grass roots? I think having more advice and representation out in the country as a whole is actually the best way forward rather than pulling it all in towards the Commission. I think it will serve people better.

Q60 Mr Carmichael: When you are doing that work looking at this sort of secondary tier, have you made any assessment on the impact of availability of legal aid and the availability of advice at community level?

Ms Welsh: Not in any kind of detail, no, I do not think we have. Having said that, we have recently had two or three meetings with the Legal Aid Board, because obviously they also have their own powers, indeed, they have got more recent powers although they are not yet triggered to use those. So we do work quite closely with them to see how we can use our powers and our money together.

Q61 Mr Carmichael: Can I declare an interest as a recovering solicitor here. I think that is an area of work that your organisation could quite legitimately and effectively carry out. I think that is a very useful interface between you as the UK body and the Scottish Government?

Ms Welsh: Yes.

Q62 Mr Carmichael: Because I am struck constantly at the amount of approaches I get from constituents who are effectively coming to me—not just on your type of issues, but increasingly on your type of issues—on stuff that I would have done eight years ago and given advice and assistance for, and that

work just is not being done, for a whole variety of reasons, but the amount of that work is quite alarming.

Ms Welsh: The Legal Aid Board are going to set up a quite innovative project in Inverness to offer mainstream legal services that would otherwise be done, because, as you say, there is a concern there were not enough lawyers doing that. We are in discussions with them about how we can build into that and perhaps extend that kind of model.

Q63 Mr Carmichael: Inverness is good, but it is still 120 miles south of thousands of the southern most part of my constituency.

Ms Welsh: I know; absolutely.

Q64 Ms Clark: You will be aware that it is likely that in the Equality Bill there will be a provision to put an equality duty on public bodies. I understand that your position is that you would like other public sector inspectorates other than yourself to help in the monitoring and implementation of this equality duty. Could you maybe explain why it is that you want other organisations to be involved? Is it something that you have found difficult to perform in the past or why is it that you want other organisations to also have that responsibility?

Ms Micklem: I think it is not one or the other, it is that we want that responsibility to be shared, and to some extent already is. We have got some good examples of other scrutiny bodies actually doing some interesting work on equality duties, but Chris might want to elaborate on that.

Mr Oswald: I think it is one of these issues where Scotland has actually led the way and it is more of an issue for England and Wales in terms of the scrutiny bodies listing under the duties. Historically the Commission for Racial Equality, the DRC and the EOC worked very closely with a group of audit inspection bodies to nuance their policies, to inform, to train a lot of the time as well, to get them to start to identify what it is. I myself, when I worked for the Commission for Racial Equality, went out on inspections and, effectively, inspected the inspection, if that makes sense, to see if they are asking the right type of questions and drawing the right type of conclusions. This is work which we are now continuing in the EHRC and we are now re-establishing that group of audit inspection bodies. I think we are pushing much more at an open door in Scotland on those issues, and I think my colleagues in England and Wales, particularly England, I think, have found it much more difficult to engage with inspection bodies than perhaps we have in Scotland.

Ms Micklem: Part of the advantage of that is that it reduces the burden on the bodies that are being inspected if they do not have lots of different bodies all descending on them and asking them slightly related questions but from a different angle. We have had very strong feedback from people we have spoken to that if they are going to have Audit Scotland coming in one day and then they are going to have HMI the next day and us on the third day, they really do not want to be having to answer all those sets of questions and they would rather have

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an integrated scrutiny approach. If we can move towards that it helps us and helps them. Also, the scrutiny bodies are public bodies themselves and they have equality duties, and we think they should be promoting equality in their inspection work.

Q65 Ms Clark: Picking up on some of the points that you have made, what part of your organisation's strategy that determines priorities for enforcement action are likely to be controversial or maybe other people would disagree with?

Ms Micklem: There are always going to be disagreements because everybody thinks that their case is the one where we ought to be taking enforcement action, and we are already encountering a number of people who think that we should have picked their one, but we have got quite a rigorous assessment process to put everything that is brought to our attention on the table and review it from a policy point of view and a legal point of view whether it fits the strategy. Chris, again, can explain how that works.

Mr Oswald: What we do on a monthly basis, a staff team sit down on a range of disciplines inside the organisation and look at the types of allegations or information that is coming in. It could be an individual's complaint to the helpline, it could be a report which has come in from an audit inspection body, it could be research which has been carried out that throws up some issues. What we are doing is we have a fairly sophisticated tool which tries to balance both the risk which we taking involved in this but also the potential good that will come out of that. So we are looking at things like what is the potential impact of an intervention here? What is the impact of the alleged discrimination that is on the table? Have the organisation mitigated it? Are they looking to mitigate that? Have they got alternative ways of providing services? I think to some extent, from the numbers of people involved in this, if this is something that is affecting a small number of people, obviously balancing that against the potentially large impact on that small number, or is this a policy which has implications for thousands of people in Scotland? Is it part of our strategic priorities? Are we likely to succeed? Is the case strong enough to be able to sustain all the way through and to make the points that we want to make? So it is a balancing act and, as Ros said, we will always have far more complaints coming to us than we will be ever be able to forward or process, so we are trying take a very strategic approach and intervene on those cases where there is no other option but intervention that will make that change.

Ms Micklem: What we are also doing is collating the intelligence and looking for themes and emerging patterns so that, when we are doing more active development work, we can say there is a theme here coming through from the whole range of complaints that, I do not know, access to services for people with mental health problems is a big issue out there, just to pluck one out of the air; therefore we are going to take that as one of the areas that we are going to probe when we go and talk to local authorities and when we are doing more in-depth research work. So

we might not take up the individual cases but we would use the evidence in terms of our priorities for development work.

Q66 Mr Walker: What inspection bodies do you inspect?

Ms Micklem: We do not.

Q67 Mr Walker: I thought you said you inspect the inspectors.

Mr Oswald: I am sorry; it was an ad hoc arrangement which I developed when I was working for the Commission for Racial Equality. It was HMIC invited us, as did the prison inspectorate, to say, "We would like your opinion on how we are going about this." We do not have any formal powers of inspection of inspectorates.

Q68 Mr Walker: Over the last however many years, say two years, what has been your greatest success, would you say, and what has been your greatest disappointment?

Ms Micklem: We have existed for 15 months, so let us stick to that. I suppose our most notable successes that we could point to and say that was an achievement have been the legal cases that we have won, which Lynn can explain. I think they are set out in your briefing, but those, we think, are very significant in the precedents that they have set. Do you want to elaborate?

Ms Welsh: I think they are there.

Q69 Mr Walker: What disappointments have you had? Where have you felt thwarted?

Ms Micklem: I think there have been one or two areas where we have felt progress has been slower than we would have liked. We may all have different views on what those would be. I will come up with mine, which might be to do with national performance indicators. We think there was a missed opportunity to build equality into the Government's national performance indicators in a very explicit way, and we are still working with them on how we might compensate for that through guidance and through other work that we are doing with them on equality impact assessment, but we felt there was a missed opportunity there, which was very early in our life. We would have liked to see better progress on that in the earlier stages of the new concordat and the single outcome agreements and the performance framework.

Q70 Mr Davidson: Can I follow up this point about your greatest successes. I identified as well the *Khan* case and the *Logue* case as being clearly things on which law came about; there was clearly ground broken there. There was a dinner last night with people from the Health and Safety Executive who to some extent have the same issues as yourselves about pursuing people, and they are very easily characterised as the "fun police" and they are against things, and so on. How do you manage to strike a balance between, on the one hand, identifying big issues that are significant and, on the

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other hand, being seen to be petty-fogging and nit-picking and pedantic and all the rest of it? Is there so much work out there that by picking priorities you have no problem in identifying the big things?

Ms Micklem: I think that we are putting a lot of energy into the enabling bit of our role. Chris and I between us, for example, have now visited almost every local authority in Scotland and we have met with council leaders, chief executives, senior officers, as well as community groups, and we have been going in there, not with a view to finding fault or catching them out, but with a view to adding value to what they are already doing. I think that is one of our big successes and it has been really welcomed. I had a wonderful email the other day from someone who said the experience had been uplifting.

Q71 Mr Davidson: They do not get out much!

Ms Micklem: So I think there are a lot of positives, and it is not always about finding things to hammer people for, it is just that that kind of work has less immediate, visible tick-the-box outcomes where you can say there is a success story, but I think it builds up long-term success.

Q72 Mr Davidson: That comes back really to the initial points that you were making in this discussion. To what extent do comments about retirement homes and pursuing issues relating to migration and all the rest of it diminish the credibility of the brand? You are, as it were, the main people dealing with some areas of work but you are only bit players in some others. Why are you not sticking to that to a much greater extent and not giving interviews that allow people to identify yourselves in a way that is unhelpful to your main purpose?

Ms Micklem: I think we have to note your view on that, Ian. I think we have said all that we can say on that subject.

Q73 Pete Wishart: We touched briefly on the Equality Bill that is going to be in front of Parliament in the spring. It is starting to emerge there is going to be stuff on gender pay and even issues to do with class and social and educational background in that. Are there any particular issues that affect Scotland particularly in this? Is there anything that we should be looking at, as Scottish Members of Parliament, to pursue in the course of the next few months?

Ms Micklem: Yes, I think there are a number of Scotland-specific angles. Maybe, Lynn, you could mention one or two.

Ms Welsh: Yes. They range from the small to the very large, I suppose. There are issues around housing, for example, that will need to be dealt with specifically through the Scottish system, there are issues about how court cases will proceed, but I suppose the big issue more is about the public sector duty, where the Scottish Government will decide what will be in the specific duty, how will the public authorities actually do this, and it is for the Scottish Government to decide what those will look like and what would be the best specific duty, if you like, for

Scotland; so that needs to be high up on the Scottish Government's agenda. There are also issues around education tribunals that I know the Scottish Government are already committed to taking forward; so that is already on their agenda.

Q74 Pete Wishart: Are there any of the bigger themes that have been brought forward perhaps over the past few weeks that you are particularly interested in, concerned about or at least are the bottom to the core process of making sure that all equality legislation is streamlined in the way suggested?

Ms Micklem: There are some issues that we are concerned about, but I do not think they are unique to Scotland. For example, we would really like to see under-eighteens included in the provisions on age, but in terms of the bill as a whole and its impact on Scotland, other than the bits that will be considered by the Scottish Government, I think most of the concerns would be across the board.

Q75 Pete Wishart: How much of this bill will impact on Scotland? I am struggling to see what the responsibility of the Scottish Government is in concern to the UK Government. All of this bill will affect Scotland, the Equality Bill; all measures will impact on Scotland. Is that right?

Ms Welsh: Yes.

Ms Micklem: Yes.

Q76 Pete Wishart: How does that work with the Scottish Parliament? Does it tie in with, is it complementary to, what has been suggested?

Ms Micklem: I suppose because the institutions through which a lot of these bits of legislation will have to play out are devolved to the Scottish Government, although the requirements are there, how they are actually interpreted in practice is a matter for the Scottish Government. So the equality duty, because it is a duty that applies to Scottish public bodies, will have to be customised by the Scottish Government.

Ms Welsh: I suppose for things like age discrimination we really get into the goods and services area, building health and social care, so Scottish organisations will have to look at their policies and other legislation that is non-discriminatory.

Q77 Mr Carmichael: Ros mentioned the leading casework aspect of your work and there was reference to it in your memorandum. The *Khan* case and the *Logue* case both obviously, on their own facts, are very strong cases. It is absolutely right that these cases should be taken. I am struggling, particularly reading the *Khan* case, to see why you would regard them as being strategic if your definition of a strategic case is one which seeks to advance the law rather than just punish publicly clement cases on their facts. What were the points of law in *Khan* and *Logue*?

Ms Welsh: I would not necessarily disagree with you. *Logue* came in from the CRE originally, but I think it is strategic in that it does show that there is

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still an endemic issue in some areas that we have to still address.⁴ I think sometimes it is not just about proving the law, or making something in point with regard to the law, it can also be about reminding organisations that this legislation is there. I think in the *Khan* case, particularly the evidence that the CRE had, when they first took it on it was very clear that the local authority in question was so dismissive of the legislation that it was supposed to be using that a point had to be made, that they could not simply continue in their practices.

Q78 Mr Carmichael: That was a case that was started by the CRE.

Ms Welsh: Yes.

Q79 Mr Carmichael: If Mr Khan came through your door today, do you think you would apply your own criteria and still take his case?

Ms Welsh: Yes, for the very reason that the kind of discrimination that was involved was very high level and very endemic and the response of the organisation was excessively dismissive with regard to answering questionnaires, for example—they did not matter—and, given that it was a local authority from whom, as a public body, we would expect better, then, yes, we probably would.

Q80 Mr Carmichael: Does that not really blur your own distinction between the primary and secondary provision that we discussed earlier?

Ms Welsh: Yes.

Q81 Mr Carmichael: You will take on secondary cases—that is non-strategic in the legal sense—they just have to be very, very bad ones.

Ms Welsh: As long as the outcome, I suppose, is strategic it makes a very firm point about what is not acceptable in a public body, for example.

Q82 Mr Carmichael: But that was not a difficult case really in that respect?

Ms Welsh: It sort of proves at the end of the day. Once you have all the proof and you have all the evidence, then that is one of the easier things to say in hindsight.

Q83 Mr Carmichael: The point I am making is that for the individuals who feel they have a grievance, they all feel that they have a very serious case?

Ms Welsh: Yes, they do.

Q84 Mr Carmichael: You might say it has got to be very bad, but where does the line get drawn and how do you draw that line between bad and very bad?

Ms Welsh: I agree, that is very true, and I suppose now for the new Commission we have to look at a balance across all the strands of inequality, if you like, that we look at. We may take a case, for example, one of the newer strands. Because there are so few cases it might not be earth shattering in regard to the legislation, but it is very new and it is not—

Q85 Mr Carmichael: So you can have a very bad disability case which might get taken, whereas a very bad sexual orientation case might not because you have already had four very bad sexual orientation cases and you have not had any bad disability cases?

Ms Welsh: We try and balance what we represent. I think we have a duty to do that. We cannot end up with all our cases being race, disability, sexual orientation, or whatever, but we took a very bad disability case of getting into a bank, so about access. The outcome of that was quite ground breaking, although you could say, yes, you should have had access to banks for some years. It was the first case ever to force a bank to put in a ramp, for example, at substantial cost; so it depends on the issues.

Q86 Mr Davidson: Can I follow up on this particular point? Would one of the reasons why you wanted to take this particular case of *Khan* be the dismissive attitude of the particular council?

Ms Welsh: Yes.

Q87 Mr Davidson: It was not just the individual; it was actually the council, which is Angus, and I do not know Angus Council particularly, but that would be quite legitimate. Angus Council seemed to be a thoroughly bad lot.

Ms Welsh: They were in that case, yes.

Q88 Mr Carmichael: Just to finish up this point, what is your budget for taking direct action yourself and what do you regard as strategic litigation and what is your budget for the seed-corn development you are doing with CABs, law centres and the rest of it?

Ms Welsh: We have no limited budget, if you like, within Scotland, which I think was very much a decision that we wanted. We want to be able to take all cases that might be necessary, so we do not have a discrete Scottish budget in regard to that.

Q89 Mr Carmichael: What was your spend in the first financial year then? Do you know?

Ms Welsh: I do not. I could find out.

Q90 Mr Carmichael: Could you find out that information?

Ms Welsh: Yes.

Mr Carmichael: It would be interesting to see that.

Q91 Mr Devine: Just on the meetings you had with local authorities, I am interested to raise the issue of single status, because it is about equality of pay for women—

Ms Micklem: We have actually been pursuing that one through other channels, because it is still the subject of an inquiry that we have inherited. Chris, do you want to pick up on that?

Mr Oswald: Yes, there are potential actions in the pipeline on that, so it is not the easiest conversation to have because we are shifting from perhaps the enabling and persuading aspect potentially to enforcement action. It does come up quite regularly in the meetings that we have. In South Lanarkshire

⁴ Note by witness: The reference should be to the *Khan* case rather than the *Logue* case.

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on Friday it was one of the issues which they raised specifically. I have to be very careful in that situation that I cannot actually guide them too far at that point because we have passed that point, but I think at the first meetings that we had in Mid Lothian it was an issue very much for them on the table and they felt that the potential costs which they could incur on this were going to hold them back on a range of other developments.

Ms Micklem: In terms of the classroom assistance investigation that we have inherited, we are still working very closely with four authorities that emerged from that as being particularly problematic, but we are also in dialogue with COSLA about the job evaluation scheme that all authorities have used, and we still think there is a way to go, so it is more on the enforcement side.

Q92 Mr Devine: Have you spoken to the trade unions?

Ms Micklem: Yes, the trade unions have been part of that discussion.

Mr Oswald: I chair Close the Gap, which is an STUC initiative, so we work very closely with them. Again, a lot of the work, the entire work of Close the Gap is about that enabling and persuading aspect of the work, and we see them as being a very useful adjunct to the work which we are doing.

Q93 Mr McGovern: Can I take you back to the point that Pete raised in the Equality Bill, and Ros actually touched upon the point I want to make in her answer when she said she was disappointed with the under eighteens part of it. I attended a high school on Friday just for the question and answer session and one of the pupils, who happens to be a local member of the Scottish Youth Parliament, put me right on the spot and I did not have an answer for him just on the point you have made. She said, "Why does the Equality Bill cover discrimination against elderly people, against disabled people, on the basis of gender, on the basis of race, but nothing to protect young people?" My researcher is currently looking into this so we can write a letter to the pupil, because I did not have an answer for her. I just wondered if you could assist me, even to give me an opinion as to why you think young people are not covered there. Even if you are disappointed, what is the logic, what is the rationale behind it?

Ms Welsh: They are covered in everything apart from in regard to their age, simply in regard to their age. Young disabled people, or young black people, or young women are covered, they do get protection around those areas, but specifically in regard to discrimination on the grounds of their age, I understand the Westminster Government's position to be that there is enough other legislation in effect that protects those children; whether it is education legislation itself, for example, or social work legislation of various types, that that is sufficient to cover the issues that young children and young people might well have. It is not necessarily a view that everyone would share. The Commission will very soon be publishing his own view in regard to age.

Q94 Mr Walker: Following up on this point, I discriminate against my children because I tell them when it is time for them to go to bed. I do not want to be flippant about this but what specific areas of discrimination that you think youngsters could be subjected to are you concerned about? You mentioned that you were concerned that the bill had gaps in it in relation to young people. What specifically are those gaps?

Ms Welsh: That is what we are looking at for our research paper now which will be being published hopefully in the next month, I understand. It is issues around how they are treated in schools and bullying. That, I think, is all, but we can certainly send you a copy of the paper because we have done quite a substantial amount of research in regard to it, so we will be able to send that on to you.

Ms Micklem: I think that would be the best. There are quite a number of examples, but we do not have those to hand.

Q95 Mr Walker: You have not got any headlines: bullying is one, workplace discrimination?

Ms Micklem: In the criminal justice system we think there are anomalies in terms of people's entitlements at different ages.

Q96 Mr Walker: You mention mental health earlier. Would you be concerned by the fact that perhaps we still have children being placed in adult mental health wards?

Ms Micklem: Yes.

Q97 Mr Walker: I think that is something that concerns a lot of people. Would that be covered in your research?

Ms Micklem: There are discrimination issues but there are also issues about the rights of the child which go alongside those, and we will be looking at both of those, and some things like that might not be discrimination but they might be contrary to a child's human rights.

Q98 Mr Davidson: Can I come back to the point about Angus Council? You agreed, as it were, that Angus were a thoroughly bad lot. What I am interested in clarifying is how is that then followed up? It is a one-off, which maybe has been for the council a valuable learning experience, as the social work department used to say whenever they made a mess of something, but maybe it was not. Do you now have a regular part of going back to somebody who is obviously a sinner and checking whether or not. What is the mechanism for that? How do I know what other councils, since we are on councils, are particularly poor in these sorts of areas? Is there a website? Is there a mechanism? How do we know who are the worst at these sorts of things?

Ms Micklem: I think there are two elements of that. There is the follow-up where there have been cases, which maybe Lynn can talk about because our legal people do follow those up, but in terms of monitoring performance overall in terms of equalities, Chris might want to say something on how that is being developed as a GB project.

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Ms Welsh: Certainly if it is a follow-up, yes, we have a member of our team who is, in fact, already in discussions with Angus Council about whether the issues that were raised in this particular case are more endemic to the council, and she does that on a number of cases, not only cases that the Commission circle but cases that are brought to our attention through employment tribunals, for example, where we think that further action needs to be done to ensure that change is made because there seems to be more of an endemic problem.

Q99 Mr Davidson: Angus Council are on what we would see as a sort of red list, in a sense. Are there any other Scottish local authorities who are as bad as Angus, or are they in a league of their own, as it were?

Ms Welsh: We are still investigating to what extent Angus are awful and to what extent this case was awful, because it is not always completely clear, but yes, our follow-up and enforcement officer also does keep records, not only for local authorities, but for all public bodies and, indeed, private bodies about what sort of cases are being brought in regard to this particular case.

Q100 Mr Davidson: Who else would be on the red list? Which other public or private bodies would be on your red list? Who else would there be that would cause you concern in the same way that Angus would?

Ms Micklem: I think that we may be giving the impression that we have a view of Angus Council as a whole which is, you know, disastrous. I think that that council's response on that particular issue was a bit obdurate, and that was part of the reason that we needed to make a point about that case. We are looking at whether their performance on other equality issues also gives cause for concern and we will be looking in some depth at other councils on other particular issues. Very often it is not across the board that a council is performing badly; it may be on a particular kind of employment issue, it may be on a particular aspect of service delivery where they have a blind spot about something. So I do not think we could give you a list of the terrible ones and a list of the virtuous ones; I think most of them are a mixed picture.

Q101 Mr Davidson: The only one you have mentioned is Angus.

Ms Micklem: That is because there was the *Khan* case, but there are others where there have been difficulties. On equal pay, you might have a different list of people whose single status agreement and equal pay has caused huge difficulty, so I do not think it would be right to say: here are the sheep and here are the goats, but what we are doing across Britain is trying to develop a monitoring system for public bodies which would actually be web-based and would be publicly available for people to look at equality performance and make those comparisons for themselves. I think that would take a while to

develop, but that is what we are working towards, and then you will be able to put together your own red list.

Q102 Ms Clark: From what you have said it sounds like you actually do not take that many individual cases, you do not do that many strategic cases in Scotland. Is it the case that a lot of these cases get taken from England and Wales or from other parts of GB and that really it is because you have got too small a pool and Scotland is quite a small country so, if you are looking at strategic ways to develop how legislation is interpreted, you need a bigger pool? Is there a lot of strategic litigation going on in other parts of the UK or is it just as an organisation nationally you do not take many cases?

Ms Welsh: We would like to take more. I think as a new organisation people still have to become aware of the fact that we are there and bring cases to us. We cannot create them; we rely on people bringing cases to us, and part of our work going out and trying to get expertise and contacting other organisations is to pool that intellect so they know we are interested and letting them know that there is a service there. I would say actually taking strategic cases, we probably take proportionately the same across GB. I do not think we take any less cases in Scotland. We get problems with interventions, but not supporting cases. That is probably the equivalent to across GB. We have a number of cases now that are on-going that we ought briefly to discuss here now, having come to completion. I would say our casework to that extent is growing and we are working very hard to grow more.

Q103 Chairman: Can you tell us when will you be publishing your annual report?

Ms Micklem: Yes, we are hoping that the annual report for last year will be published early summer, which is very late. It is a long and complex process, resolving issues to do with the transition to the new Commission and resolving the accounts, but we are nearly there and we should be publishing early summer.

Q104 Mr McGovern: It is my understanding that there is no set business plan for Scotland. Do you envisage that will change in the future in years to come, or do we take this as an implication that Scotland will not have autonomy and continue to work within the GB EC organisation?

Ms Micklem: We did not publish a business plan. We have actually got our own internal plan that we have been working to, and we have it in mind to publish that next time around. I think we have been in a transition year, but we will not be completely autonomous. A lot of our business plan will be about Scotland delivery of Britain-wide priorities, but we will be able to publish what that activity, broadly, is going to be in the coming year.

Q105 Mr McGovern: In the business plan, which I assume is the UK business plan, one of the themes and work programmes for 2008–09 is called “narrowing the poverty gap and realising social

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inclusion". Could you just flesh that out a little bit and let us know what it entails and what is your plan in that particular part of the Commission?

Ms Micklem: We have done some work around poverty, and I think Morag can say a bit more about how we have approached that, although I would have to say that in terms of actual projects to narrow the gap in terms of poverty that is probably an area where the Commission's activities are still embryonic.

Q106 Mr McGovern: Perhaps Morag can also tell us: social inclusion has almost become a cliché or a buzz expression, but for me I think it means the right of every member of society to contribute to, and benefit from, society, from the economy. I do not know whether you would concur with that?

Ms Patrick: I think the way I would answer that question is by telling you the three things that I think it is important to share with you that we have been doing on poverty, and the last one maybe answers that point about social inclusion. As you know, there are clear links between belonging to some groups and living in poverty. Lone mothers and their young children are the group who are most likely to be at risk of poverty in Scotland; pensioners, disabled people are also more likely to be at risk of poverty. What the Commission is looking at is how we can break the link between poverty and those group-based inequalities. We have essentially been doing three things to try to ascertain what it is that we will do in 2009 through to 2012. The first thing that we have been doing is we have been listening to the people at the sharp end of poverty and inequality, and what they have been telling us is that the Commission should be cautious about where it intervenes. One of the things that they have said to us is that addressing poverty in itself is perhaps beyond our role and that what we should be focusing on are the social inequalities that arise as a result of poverty. It is interesting, I think, that when we ask people what were the top three areas that they thought the Commission should focus its resources on, poverty came sixth on the list. Top of the list was legislation, enforcement and compliance and second on the list was education. So we are taking that on board, and this takes me to the second thing we are doing. We will deliver an expert seminar to try to understand how we can intervene most effectively to break those links between poverty and group-based inequality but, importantly, working with others who are already experts in the poverty field. We do not want to be duplicating the effort of experts who are already out there. So that is something that we will be taking forward, but, just to give you an idea, some of the themes which we are particularly interested in exploring in that seminar are things like the standard ways in which we currently measure poverty. As you know, there is reliance upon measuring household income rather than individual incomes, and that can mask the real experience of poverty that particularly women have and particularly disabled people have, so we are interested in the measures. The other thing, of course, that we are interested in, which was picked

up in your reports, which will be very helpful to us as we prepare for that seminar, is the policy approach to poverty that says that work is a route out of poverty when, of course, the reality for many people is that they can only secure low-paid dead-end jobs. Again, this particularly affects women and this links to some of the work that has already been discussed that we have been doing on occupational segregation and equal pay. Another couple of areas that we are particularly interested in, because there are significant data gaps in Scotland compared to the rest of Britain, is the provision of flexible working in Scotland and the uptake of that and childcare and parental use of childcare in Scotland. Again, we have data gaps in these areas, so that is something we are looking at now. That brings me to the third thing that we are doing, which I think may help answer your question about social inclusion. We are developing a new way of measuring equality. This was a recommendation that came from the Equalities Review 2007 and within that we hope we will be able to develop a more useful way of measuring poverty. This new equality measurement framework that we are developing actually measures three aspects of equality, and it measures those aspects of equality in the 10 areas of life that people told us were the most important areas in which they needed to be enabled to do things. So that is the framework that we are looking at the moment, and I think the issue of social inclusion is picked up here because the three aspects of equality that we are looking at are equality of outcome, equality of process—the extent to which somebody experiences discrimination in any process—and equality of autonomy (in other words, to what extent do people feel that they have choice and control in their lives) and, I think, with that more rounded approach to equality, we can actually pick up on some of these issues of social inclusion, because to the extent that some people do not have choice and control over what schools they attend, what subjects they may choose to study at university, their employment outcomes as a result of that, then I think just looking at outcomes is a very narrow way of measuring equality.

Q107 Mr Walker: There is a significant number of organisations that we have seen who are already doing the things you are discussing and there are experts in their own specific fields. You have put on page two of your memorandum, "Breaking the complex interplay of deprivation, poverty of aspiration, drink and drug abuse, gang culture and violent crime in parts of Scotland remains one of the most pressing public policy challenges for the country." Agreed. I am still struggling to see what you need add to the approach you bring. As we have seen, there are many organisations who are well aware of the problems. All the major political parties in Scotland are well aware of the problems. Your aims are wholly laudable, but what is it unique that you bring that is not already being done? Are you just not getting in the way of other organisations doing very good things at the moment?

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Ms Micklem: I think we are very conscious of that risk, and that is why we are focusing on the interaction of poverty with other kinds of inequality. As Morag said, we are not at the Commission thinking at the moment about how we can help tackle poverty as such. What we are trying to do is feed into that strategy an understanding of how poverty interacts with being black or being a woman or being disabled or being a rural person to create that multi-layered disadvantage so that the strategy to tackle poverty actually takes those interactions into account, which perhaps we think at the moment it does not always and it tends to be too undifferentiated.

Q108 Pete Wishart: Just a quick word about your relationship with other UK and Scottish institutions and the fears about independence. Given that all commissioners are appointed by ministers and you are set up by act of Parliament, how confident should the public feel that you can act independently, given that you serve so many political masters?

Ms Micklem: We have various examples that we can demonstrate to the public that we are independent, but we can also turn to an external monitoring process. We have got the status of a national human rights institution, and to be a national human rights institution you have to be able to demonstrate to the accrediting body that you are independent of government. So every year they will be checking that the Commission is operating independently, but, I think, in the way that we have attempted to influence the Equality Bill and in a number of other activities and in specific cases we can show that we have clearly not been afraid to address things where it might have been a little bit uncomfortable for government. Lynn, I think you can talk a little bit about the Coleman case and how that showed that independence.

Ms Welsh: Yes. The DRC and the EHRC have both agreed that disability discrimination be extended to those who are excluded by social association with disabled persons. The Westminster Government did not agree and did not put that into the legislation.

Specifically we supported Mrs Coleman, who was being discriminated against because of her disabled son and her requirement to take time off work. We supported her case all the way through to Europe, which showed that the Westminster Government had, indeed, been incorrect in not including association in the first place.

Q109 Pete Wishart: How would you summarise your relationship with government departments? Would you call it helpful, useful? Is it prickly? How do you get on with the different government departments when you are serving both parliaments?

Ms Micklem: Our relationship with the Scottish Government is different in that we are not funded by them, so our independence from them is, in a sense, more clear-cut. We are cultivating a relationship of critical friends—so we work closely on some issues but we keep our distance and we do criticise when we need to. In terms of the UK Government departments, we are, on the whole, not directly engaged as a Scotland directorate in those relationships, but I do know that there has been very close working around public sector duties and working with ministers on how they are taking those forward in their departments; and, again, I think that is as critical friends but keeping an appropriate distance so that we can comment when we want to.

Q110 Chairman: Could I thank you for your attendance today. Before I declare the meeting closed, would you like to say anything in conclusion—perhaps on areas which we have not covered properly in our questions?

Ms Micklem: I think your questions have been very wide-ranging and we have had plenty of opportunity to talk about our work. I hope that you will want to be kept informed as it develops. We are shortly going to publish an impact report about our work in Scotland over our first year, which will come ahead of the annual report that you have mentioned. We will make sure that you get copies of that, and we hope that you will invite us back in due course and we can tell you how we have progressed after today.

Chairman: Thank you.

Memorandum from the Equality and Human Rights Commission, Scotland

INTRODUCTION

1. The Equality and Human Rights Commission welcomes the opportunity to brief the Scottish Affairs Committee on our work in Scotland, and to invite committee members to help shape our vision of a Scotland built on fairness, equality and dignity.

2. The Commission's evidence session with the committee takes place at the start of an important year in what is a pivotal period for equality and human rights in Scotland and the UK. In this written submission, we set out some of the policy, legislative, economic and institutional reasons why this evidence session is so timely. We look at our first year, and consider some of the challenges and issues which impact on our work in Scotland, and highlight some of our more significant achievements and milestones. We also look at our emerging strategy for the use of our public sector duty enforcement powers, and the ongoing consultation work which is shaping the Commission's first three-year strategic plan.

3. The forthcoming Equality Bill will herald a fundamental shift in the legal framework underpinning equality in the UK: we look at some of the areas the bill covers, as well as some of the Scotland-specific issues it raises.

4. Finally, we consider the recommendations of the committee's two reports from 2007 and 2008 on poverty and child poverty in Scotland, and suggest areas where the committee's valuable work in this area fits with work we are either planning or already undertaking.

THE COMMISSION IN SCOTLAND: CONTEXT AND YEAR ONE MILESTONES

5. The Commission has been operational now since 1 October 2007, and works across the three nations of Scotland, England and Wales. We strive to be a public body which reflects the realities of a devolved UK, with statutory Scotland and Wales committees chaired by the GB Scotland and Wales Commissioners, and a presence across the English regions.

6. The Commission operates in a very distinctive environment, working to a reserved agenda (ie implementation of equality legislation) in a devolved context, and with different parties in power in London and Edinburgh. Scotland also has a unique equality and human rights framework, with our organisation co-locating and working closely with the Scottish Human Rights Commission. We are currently drafting a memorandum of understanding with our partner commission, and already share facilities such as our Scotland helpline, so that there is a one-stop shop for members of the public who wish to raise equality and human rights issues.

7. Scotland of course also represents a distinctive policy, economic and social environment for the Commission. To take a few examples from many, politically there is ongoing debate on the new concordat with local government and the arrival of Single Outcome Agreements (SOAs). While we see many benefits in a more streamlined and outcome-based approach to policy making and resource allocation, there remain concerns over the focus on equality outcomes in the implementation of the concordat on the part of national or (in many cases) local government. Meaningful equality impact assessment would go a long way towards addressing this weakness. As well as being a statutory requirement for race, gender and disability, equality impact assessment is central to the design and delivery of better policy and is a necessary aspect of the wider agenda to mainstream equality in our public services.

8. There are other social and demographic trends which play out more starkly in Scotland—these again are likely to impact increasingly on the Commission's work in Scotland. This can be seen illustrated in the examples of violent crime and age. Glasgow has the highest rate of murder in Europe per head of population and the rate of murder committed with a knife is 3.5 times higher in Scotland than in England and Wales. Breaking the complex interplay of deprivation, poverty of aspiration, drink and drug abuse, gang culture and violent crime in parts of Scotland remains one of the most pressing public policy challenges for the country. These challenges are likely to be all the more evident during an economic downturn.

9. Scotland also has a rapidly ageing population, even by the standards of Western Europe, and the Commission is very interested in exploring further how we harness and maximise the potential of all Scotland's people—this feeds into a related piece of work we are undertaking on behalf of the Scottish Government which will identify the barriers to independent living for disabled people in Scotland¹.

10. Some milestones and achievements include:

11. Legal & Casework: Khan Case: In April 2006 Mr Khan applied for the job of Head of Housing at Angus Council. The CRE and subsequently the Commission supported the case. The Council were unable to explain why Mr Khan was not short listed. The Tribunal said that the explanation they attempted to give "did not bear proper examination" and it therefore found that there had been discrimination on the grounds of race. Mr Khan was awarded £26,000 after the Tribunal found that Angus Council had refused to follow the Commission's Statutory Code of Practice and had a "contempt for such matters".

12. Logue Case: This was the first successful case the Commission supported. Mr Logue, who is blind, successfully applied for a post as a social worker with Argyll and Bute Council. The Council refused to allow him to start work on the agreed date as adjustments to enable him to carry out his duties were not in place. While it was making adjustments, the Council did not pay Mr Logue wages or put him in post. Mr Logue's claims of failure to make reasonable adjustments and disability-related discrimination under the Disability Discrimination Act 1995 were successful in the employment tribunal.

13. Transfer of expertise: Transfer of expertise is a programme of work to upskill and provide expert support to other advisors across Scotland. This assists partner organisations to provide locally available advice on equality and human rights issues and supports them to provide assistance and representation.

14. Second tier advice line: The Scotland Directorate caseworkers and lawyers provide in-depth advice by phone and email to other advisors across the country.

15. Advisors Roadshows: The Commission's casework and Litigation team in Scotland are also organising a series of five roadshows across Scotland, to introduce the team and the Commission's Helpline to advisors and voluntary organisations. We expect over 200 organisations to attend across the country.

¹ www.scotland.gov.uk/News/Releases/2008/06/24132802

16. First Commission legal conference: Over 100 delegates attended our conference on 1 May 2008 looking at the future for equality and human rights law in Scotland. It was organised jointly by the Commission with the Employment Law Association in Scotland and the Scottish Discrimination Law Association. As a joint event, the conference was able to attract a panel of expert speakers, such as The Hon Mr Justice Patrick Elias, President of the EAT and Shona Simon, Vice President of Employment Tribunals (Scotland).

17. Helpline: Our Glasgow-based Scotland helpline staff have handled nearly 5000 enquiries from across the country.

18. Grants: We have awarded nearly £1 million of funding to 27 Scottish organisations working to deliver change in their local communities, for example:

19. The EHRC Scotland's capacity-building work with the voluntary sector in Scotland primary focus in 2008–09 is to establish the Scottish Rural Equalities Network (SREN). Through this network we enable and empower local equalities organisations/communities, both voluntary and public sector, to form networks that encourage partnership approaches to tackling some of the specific equality challenges faced by individuals and communities in rural Scotland.

20. We fund Dundee international women's centre's project to increase the confidence, sense of pride and belonging of 200 women from diverse BME, cultural and/or religious communities living within Scotland, and the Scottish Refugee Council in Glasgow in a project too achieve good relations, more effective integration and better services for refugees in Glasgow and across Scotland through the development of the National Refugee Community Development Strategy (NRCDS).

21. Policy: Independent Living in Scotland: The Commission, following on from work started by the Disability Rights Commission, has secured a commitment from the Scottish Government to develop the Prime Minister's Strategy Unit "Life Chances" report² which aims to secure full independent living for disabled people in Scotland by 2025. To develop this the Commission has accepted funding from the Scottish Government to develop a capacity-building project which aims to support disabled people in their negotiations with Government about the refining of Government policy to meet the needs and aspirations of disabled people, including the possibility of bidding through the CSR process for the necessary funds to realise the full accessibility of Scotland's housing, transport and built environment.

22. Public Sector Duties: The policy team continue to monitor and ensure public sector duties are met. An approach to enforcement has been adopted which aims to ensure that the Commission's legal responses to allegations of breaches of the Equality Duties are proportionate (see below). Guidance is also being prepared for public authorities to ensure that they are fully aware of their responsibilities under each of three current duties for publication in early 2009.

23. Statutory Equality Duties: the Commission worked closely with Audit Scotland on its report on the impact of the race equality duty on council services³. The report is critical of council services for failing to carry through on their commitments on reporting on race duties and focussing on process issues rather than demonstrating outcomes. The Commission is also funding a separate project to look at the impact of the removal of ring fencing from local government funding for services for domestic abuse, non-statutory services for disabled people and other areas.

24. Domestic Abuse campaign: Scotland policy staff have worked with GB Commission colleagues to develop a website to bring the "Maps of Gaps" campaign to life. The purpose of this work is to highlight the large gaps in service provision for women victims of violence, to educate the public about violence against women and to call on communities to put pressure of UK and devolved Governments and local authorities to provide better services.

25. Employment: The Scotland Policy team has led on the Equality Exchange Events which brings business leaders from public and private sectors together. So far two successful events have taken place in Edinburgh and Inverness with around 100 people in attendance; two further events for employers are planned within this financial year.

26. Good Relations: The Scotland policy team have chaired and delivered roundtable events as part of the Commission's good relations mandate on LGBT, faith/religion and belief, age, Scottish Gypsy Travellers, and rural equality issues. As a result of the roundtable, Commission now seen as a valued partner, and feedback from across the groups has been positive.

27. Migration: the Scotland policy team is developing a migration paper for the Commission's GB summits on international perspectives on managed migration in December 2008 and March 2009. The Commission has delivered a series of speeches on the possibility of greater flexibility in immigration policy for Scotland, to better meet the country's population growth needs.

28. LGBT Equality: the Commission responded positively to the LGBT working group "Hearts and Minds"⁴ publication, which set out aspirations of Good Relations Work across public policy aimed at reducing homophobia. The Commission is meeting regularly with the Scottish Government to take forward

² Prime Minister's Strategy Unit, *Improving the Life Chances of Disabled People: Final Report*, January 2005, www.cabinetoffice.gov.uk/media/cabinetoffice/strategy/assets/disability.pdf

³ Audit Scotland, *The impact of the race equality duty on council services*, December 2008 www.audit-scotland.gov.uk/docs/local/2008/nr_081113_equalities_km.pdf

⁴ www.equalityhumanrights.com/en/newsandcomment/Pages/Scotlandheartsandminds.aspx

both the Commission and Government's obligations and are jointly developing a strategy aimed at creating greater dialogue between faith and LGBT communities. Scotland Commissioner Morag Alexander has pledged that the Commission "will lead the way in winning hearts and minds".

29. Research and Foresight: Equality Measurement Framework: The establishment of the Commission provides an opportunity to develop a new way of measuring equality that is appropriate to the needs of a diverse democracy in the twenty-first century.

30. The Commission has a legal duty to monitor and evaluate progress towards equality, taking account of age, disability, ethnicity, gender, religion or belief, and sexual orientation, and the perspective of human rights. To this end it has been developing the Equality Measurement Framework (EMF), with the Government Equality Office (GEO), the academic, policy and research community and others, as recommended by the Equalities Review (2007).

31. Attitudes to Equality: It is known that one of the main reasons why inequality persists in Britain today is a lack of awareness and shared understanding of what equality means. In November 2007 we published a report on the most effective ways of measuring public attitudes to equality. Building on the findings of this report, we have now commissioned the National Centre for Social Research and the Scottish Centre for Social Research to develop a bank of survey questions that can be used for measuring public understanding and attitudes towards equality and fairness in the future.

32. Devolution and Equality: We are preparing a discussion paper on options for equality in a more autonomous Scotland. This will play a major part in the Commission's response to the Scottish Government's National Conversation, and has informed our approach to the Calman review of devolution.

33. Parliamentary: we have worked with parliamentarians, Ministers and officials on legislation ranging from disabled parking and hate crime to sexual offences and additional learning needs. Central to our work in developing policy stances on draft legislation has been building dialogue with partner organisations from across our equality and good relations remit. We believe that this has allowed us to develop policy positions on contentious and complex areas which have helped move debates beyond potential impasses and, as a result, contribute to better laws. For example, our work with partners in the LGBT, disability and religion and belief sectors on the Offences (Aggravation by Prejudice) (Scotland) Bill has, we believe, meant that we have been able to foster greater compromise and more areas of shared concern than was previously the case on the question of statutory aggravations for crimes motivated by prejudice towards different social groups. Our parliamentary work also extends to a rolling programme of presentations to cross-party groups, and a growing presence at party conferences.

THE EQUALITY BILL

34. The Commission welcomes the Equality Bill and will be working with ministers and parliamentarians in London and Edinburgh, among other stakeholders to make sure we get the best possible bill and simplified laws which reflect the needs of modern Britain. We see the Bill as an opportunity to do much more than simply update our anti-discrimination laws. We welcome the proposals in the Bill and believe the time is right for a more ambitious approach to tackling the systematic inequalities in our society.

35. The Commission in Scotland is planning a number of events and meetings with parliamentarians, ministers and officials in London and Edinburgh in 2009 to discuss the bill and its implications for Scotland. Among these will be a briefing session for Scottish MPs hosted by the Scotland Office later in the spring.

36. One of the policy challenges in this area is how to address "vertical" inequalities—such as income, wealth and power as well as "horizontal" inequalities—such as disability, race, gender and age. The Commission wants the bill to be one part of a wider programme to make Scotland and Britain a fairer place for all its citizens.

37. The current economic climate means that a focus on reducing inequality is more important than ever. We need to address the effects that social and economic disadvantage, as well as group characteristics, have in entrenching inequalities. This point is developed in our response below to the committee's 2007 and 2008 reports on poverty.

38. The Commission believes that the Equality Bill should contain a single, outcome-focused public duty requiring public authorities to promote equality of opportunity and good relations between different groups, and to eliminate unlawful discrimination and harassment.

39. We would like the existing public sector inspectorates—bodies such as Audit Scotland, HMIE and HMICS—to monitor the way in which the duty is implemented by all public authorities in Scotland. The Commission alone can't achieve equality: the whole of the public sector must be united in seeking to eliminate discrimination.

40. To increase transparency, new legislative and voluntary measures are needed to enable shareholders, consumers, prospective employees and the Commission to tell if companies are doing the right thing and what difference it is making. We currently have powers to hold detailed investigations and formal inquiries; we also need the ability to take more proportionate action to promote quality and transparency in the private sector without lengthy or bureaucratic investigations.

41. There are a number of Scottish dimensions to the Bill which will be of interest to the committee:

42. An Equality Duty for Scottish Public Bodies: this is likely to be introduced in a manner similar to that used to introduce the existing equality duties, that is a legislative consent motion will allow UK ministers to place a general duty on Scottish public bodies, and in relation to specific duties, along with a clause giving Scottish Ministers the power to impose specific duties for the better performance of the general duty.

43. Procurement: Public procurement comes not only from central Government, but from the Scottish Government, devolved agencies and local authorities. In light of the forthcoming public sector reform bill in Scotland, it is important that the implications for Scotland are thought through.

44. Transferring powers to hear DDA education cases to the Additional Support Needs Tribunal for Scotland: this has been a long held goal since the introduction of the Education (Additional Support for Learning) (Scotland) Act 2004. Unlike England and Wales, in Scotland, matters relating to additional support needs are heard at tribunal, but discrimination cases must be heard at the Sherriff Court. This can create an arbitrary distinction in cases where there may be relevant ASN and discrimination aspects to a child's case, and require parents to take the costly and daunting Sherriff Court route when seeking redress.

45. Duty on landlords to make disability-related alterations: When amendments were made to the DDA by the DDA 2005 to extend rights in relation to housing and in particular alterations to premises to accommodate disability, those amendments extended only to England and Wales. This was because the subject matter of the amendments was housing, a devolved matter, rather than discrimination. At that time in 2005, a Housing Bill was about to be introduced into the Scottish Parliament which afforded the opportunity for the Scottish Parliament to legislate to bring the position in Scotland essentially in line with that in England through the Housing (Scotland) Act 2006.

ENFORCING THE PUBLIC SECTOR DUTIES

46. The Commission Business Plan for 2008/2009 states that we aim to ensure the most effective use of the existing public sector duties and that this includes the strategic use of our public sector duty enforcement powers.

47. The Scotland Directorate is keen to use the public sector duty enforcement powers in the most strategic way possible, maximising the long-term impact of our deployment of our limited resources in terms of time, budget and personnel. It is therefore important that a strategy is devised to evaluate and determine which issues will be a priority for enforcement action. To this end, the legal enforcement team has commissioned research to identify the most persistent and systemic issues of discrimination currently affecting Scotland which will inform the future strategic use of our enforcement powers.

48. The Commission recognises that, in determining when to make strategic use of our enforcement powers, there will be times when individuals or organisations disagree strongly with the agreed approach. We are therefore developing an evaluation tool which is intended to ensure a robust process to determine which issues will be deemed a priority for action in Scotland.

THE COMMISSION'S STRATEGIC PLAN 2009–12

49. We are currently half way through a two-stage involvement and consultation process to help us shape our future strategy. For the first stage regional and national events have been held across England, Scotland and Wales over the autumn and winter. These provided an opportunity for stakeholders to engage with a diverse range of organisations from the private, public, voluntary and community sectors who share our commitment and vision for achieving social change.

50. In January 2009 we started the second stage of involvement and consultation where we seek feedback on our emerging priorities. This involves focus groups and again an opportunity to comment online. This feedback will shape our three-year strategy that will be published in April 2009. We are endeavouring to make this consultation and engagement process as transparent as possible. The outputs of the meetings and all comments and submissions to the online consultation are being made available via our web site.

51. There are parallel consultation programmes on the equality scheme and the grants programme to take into account stakeholders' views for both of these important areas of our work.

52. The complex interplay of social class, inequality and poverty has been one of the themes which emerged strongly from the first consultation stage: we will look at the implications of this for our work in Scotland in light of the committee's own findings on poverty and child poverty in Scotland.

RESPONSE TO THE COMMITTEE'S 2008–09 COMMITTEE REPORTS AND RECOMMENDATIONS ON POVERTY AND CHILD POVERTY IN SCOTLAND

53. As well as highlighting the links between poverty and inequality, feedback from the first stage of consultation on the Commission's strategic plan also pointed to the need for a debate on the importance of addressing poverty of aspiration, and the effect this can have on the life chances of individuals growing up in deprived communities.

54. This is clearly an argument which chimes with some of the findings of your committee's inquiries, particularly those on the life chances of children born into second or third-generation poverty. In order to explore some of these links further, the Commission is taking forward a programme of work that will help us to draw together debates on poverty and income inequality in order to explore current knowledge and the unique perspective the Commission can bring, given its mandate covering equality, human rights and good relations.

55. The Commission believes that access to an adequate income is intertwined with fair life chances and our vision cannot be realised whilst the current levels of poverty and inequality persist. Poverty acts as both a cause and a consequence of disadvantage and inequality in life chances; and by taking a cross-strand analysis (for example focusing on ethnic minority women or disabled pensioners) we can begin to identify the layers of disadvantage with which those living in poverty have to contend.

56. From looking at the limited data that is available in Scotland clear links can be traced between belonging to certain social groups and living in poverty. For example, in Scotland around 17% of the overall population live in poverty, but this increases to 20% when looking at poverty rates for pensioners.⁵ In 2004–05, 22% of all individuals in households with at least one disabled adult or child were living in relative low income, compared to 14% for households containing no disabled people.⁶

57. As a first step, we will deliver an expert seminar to explore the overlaps between equality and poverty, and in particular how equality can be used as a lens to analyse poverty and the reasons for low income. The other parts of the Commission's mandate—human rights and good relations—are important factors to consider but the main focus of this event will be on equality. The seminar will bring together various stakeholders with expertise in poverty and inequality to identify current practice and areas for future activity that the Commission might feed into. It will also help the Commission identify, through stakeholder discussion, approaches that we could take to support current anti-poverty work in Scotland, taking a specific equalities focus, and explore potential research activities needed to fill gaps in knowledge in this area.

58. Measuring poverty and inequality: another area where there is a clear overlap between the committee's recommendations and the Commission's priorities is on the question of how to measure poverty and deprivation more accurately. To take one example: household income is the standard method for measuring poverty but a central assumption of this measurement is that each member of a household receives equal benefit from household income. This tends to mask the true experience of women's poverty.

59. There is also an issue around using household income as a proxy for standard of living, for example when looking at disability and poverty. As a result of this disabled people are under-represented in the poverty statistics as they often receive higher benefits to cover their increased costs of living due to their disability.

60. There is also a data shortage in Scotland for other equalities groups. Poverty data can only be disaggregated meaningfully in Scotland by age and disability. But the Commission recognises that there are challenges associated with improving this data, which is why listening to people's true experience of poverty and working with people on the ground at a local level is so valuable. Poverty interventions can be designed using a mixture of qualitative and quantitative data rather than simply relying on the incomplete quantitative data that is currently available. The Commission wholeheartedly endorses the committee's recommendation that a starting point for designing more effective policy interventions to eradicate poverty is to listen to people living in poverty.

61. Related to the question of identifying more accurate and useful ways of measuring poverty and deprivation, we are developing a new way of measuring equality and of monitoring and evaluating progress towards equality. Drawing on the so-called "capability approach" of development theorists and the findings of the 2007 Equalities Review⁷, the Commission is developing a new framework that will be used to "map" the extent of inequality between individuals and groups in twenty-first century Britain.

62. We held expert consultations on the selection of indicators for the equality measurement framework in autumn 2008, including a well-attended and well received event in Scotland. The purpose of the consultation was to:

- select three to five spotlight indicators under each of the domains of life; and
- provide opportunities for making links between the framework, the Scottish Government's national performance framework and Single Outcome Agreements, and exploring how these frameworks could support each other.

The final report for this project is due in February 2009.

63. There are a number of other recommendations made by the committee which the Commission feels are important. We agree for example that there is a case for greater local authority flexibility in tackling poverty. However, we feel that, not least for some of the reasons outlined above, local flexibility must go hand in hand with adequate impact assessment of how local policies may impact more or less favourably on different equality strands.

⁵ Achieving Our Potential, 2008 <http://www.scotland.gov.uk/Publications/2008/11/20103815/6>

⁶ Social Focus on Disability 2004 <http://www.scotland.gov.uk/Publications/2004/08/19818/41697>

⁷ Fairness and Freedom: The Final Report of the Equalities Review, February 2007, <http://archive.cabinetoffice.gov.uk/equalitiesreview/>

64. This is particularly relevant in Scotland at the moment, where the removal of most ring-fencing for local government funding has led to concerns that budget and policy decisions are being made without adequate consideration of the differential effect decisions may have on different groups. In an increasingly straitened financial climate, with unavoidably tough decisions on where to spend public money, it is vital that local flexibility does not entail those least able to make their case being the first to have their concerns and priorities disregarded.

65. Regarding concerns raised by the committee about employers' negative attitudes to disabled people and people with childcare needs, the Commission agrees that attitudinal barriers remain one of the most implacable obstacles to some groups' access to the labour market. The Commission also agrees that work can be a route out of poverty, but not if all that people can secure are low-pay, no-future jobs.

66. In Scotland, the STUC and the Poverty Alliance are working together to come up with a rate of pay that could be considered a "living wage" in Scotland: there may be useful learning for Scotland from the work done in London on developing an agreed approach to what constitutes a living wage, and we will continue to work with our partners to identify ways of better embedding this concept in the policy debate in Scotland.

67. Regarding pay discrimination and younger workers and the related issue of apprenticeships, the Commission agrees strongly that pay discrimination is apparent to an unacceptable degree for far too many groups in Scotland. We are carrying forward work on low pay and occupational segregation in different sectors, for example classroom assistants, who are overwhelmingly younger women.

68. Poverty and rural Scotland: we agree with the committee that there is a range of complex factors which contribute to rural poverty, and that the causes and consequences of rural poverty may be qualitatively and quantitatively distinct from urban poverty. Similarly, the distinct issues around the equalities agenda in rural Scotland were identified early on by the Commission as an area for further exploration.

69. To take one example, Scotland may, overall, provide a higher level of service for women affected by domestic violence than other parts of the UK; there nevertheless remain huge challenges in delivering an appropriate level of service to women in very remote rural areas: excellent support and refuge services in Inverness are of limited use to women in Assynt or Glenelg. The Commission hopes to develop its responses to these issues through its grants programme, legal and casework services and policy work in the coming years, and will continue to highlight regional disparities in domestic violence services through our work on Map of Gaps⁸.

January 2009

⁸ End Violence Against Women/Equality and Human Rights Commission, *Map of gaps: the postcode lottery of violence against women support services*, November 2007
www.equalityhumanrights.com/en/publicationsandresources/Pages/Mapofgapsfullreport.aspx