



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Equalities, Human Rights and Civil Justice Committee [Draft]

Tuesday 1 April 2025

Session 6



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**EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE [DRAFT]
9th Meeting 2025, Session 6**

CONVENER

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

DEPUTY CONVENER

*Maggie Chapman (North East Scotland) (Green)

COMMITTEE MEMBERS

*Pam Gosal (West Scotland) (Con)

*Marie McNair (Clydebank and Milngavie) (SNP)

*Paul O’Kane (West Scotland) (Lab)

*Evelyn Tweed (Stirling) (SNP)

*Tess White (North East Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Cathy Asante (Scottish Human Rights Commission)

Oonagh Brown (Scottish Human Rights Commission)

Jan Savage (Scottish Human Rights Commission)

CLERK TO THE COMMITTEE

Euan Donald (Scottish Parliament)

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Equalities, Human Rights and Civil Justice Committee [Draft]

Tuesday 1 April 2025

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Karen Adam): Good morning, and welcome to the ninth meeting in 2025 of the Equalities, Human Rights and Civil Justice Committee, in session 6.

Before we begin, I would like to take a moment to pay tribute to Christina McKelvie MSP, who sadly passed away last week. As a previous convener of this committee and as an equalities minister, she was a fierce advocate for social justice and for human rights. She will be very sadly missed, but her legacy will go on, and we will always remember her, particularly through her work.

We have received no apologies today. Marie McNair will join us online.

Our first agenda item is a decision on taking business in private. Do members agree to take items 3 to 6 in private?

Members indicated agreement.

Scottish Human Rights Commission

10:01

The Convener: Our second agenda item is to take evidence from the Scottish Human Rights Commission on its report “‘Tick Tock...’ A human rights assessment of progress from institutionalisation to independent living in Scotland”, which examines Scotland’s progress on moving from institutional models of care towards independent living and how the current practices and policies uphold the rights of disabled people. Members might also wish to explore further questions on another recent SHRC report, “Economic, social and cultural rights in the Highlands and Islands” as part of their on-going interest in rurality issues. I refer members to papers 1 and 2.

From the SHRC, I welcome Jan Savage, executive director; Oonagh Brown, participation and policy officer; and, joining us online, Cathy Asante, legal officer, human rights-based approach. You are all very welcome. I invite Jan to make a short opening statement.

Jan Savage (Scottish Human Rights Commission): Good morning. Thank you for allocating committee time to consider the findings of the commission’s report examining Scotland’s progress on ending the institutionalisation of people with learning disabilities and autism in Scotland. We have undertaken this work under section 3 of the Scottish Commission for Human Rights Act 2006, and we offer our recommendations under section 4 of that act. In pursuit of our general duty to promote human rights, the commission took the decision to undertake this work in 2023, informed by the inclusion of the issue as a priority in SNAP2—Scotland’s second national human rights action plan—and our 2023 monitoring in Scotland of the United Nations Convention on the Rights of Persons with Disabilities.

In many ways, I imagine that our report is not new news to the committee. It has long been known that too many people who have a learning disability and autism are detained in institutional and medical settings when they should not be. However, what is new is a human rights-based assessment of the issue here in Scotland. Each of those people has a right, under the CRPD, to live independently in the community with the support that they need.

Progress was made in closing large-scale institutions in Scotland in the 1990s and in the 2000s through the “The same as you?” policy of the then Scottish Government. Despite that, in

2018, the Scottish Government established that a lack of progress was concerning, and it established a new policy programme through the measures in “Coming Home Implementation: report from the Working Group on Complex Care and Delayed Discharge”, to take further action to expedite progress.

Ending the use of institutional care for all disabled people is a matter of urgent priority, according to the United Nations Committee on the Rights of Persons with Disabilities, which directs that all forms of institutionalisation must be abolished and replaced with individualised support in the community. It makes clear that there is no justification for continuing with institutional models and that states should not use a lack of available community-based support or any other factor to justify the on-going maintenance of institutional settings.

Alongside that clear direction, we have the benefit of guidelines that set out, step by step, the actions that duty bearers must take to make that a reality, and that is the basis of the report that has been submitted to the Parliament. Following those guidelines is what it truly means to take a human rights-based approach to tackling the issue. There is no absence of will or policy commitment to tackling this issue, but we have found there to be a clear absence of impact of successive policies and plans and no evidence of a human rights-based approach, despite passing reference to this in the plans.

In headline terms, we find that the state in Scotland is failing to meet article 19 of the CRPD, which enshrines the right to independent living for that population of disabled people.

The starkest finding is that there has been no change in outcomes over a lengthy period. People continue to spend many years in hospital, and those numbers did not greatly reduce as the target commitment intended. Indeed, just two days before the Scottish Human Rights Commission published its “Tick Tock” report, that finding was confirmed by the Mental Welfare Commission for Scotland, which published a report that was based on a commission from the Scottish Government to establish the set of circumstances for 30 people who were known to have been detained for longer than 10 years in hospital. The Mental Welfare Commission found that that number had risen to 55 people and, until that point, those additional people had not been included in the statistics.

We also report emerging concerns that we may find evidence of violations of rights that are protected under the European convention on human rights. Those rights are protected for us all in the United Kingdom under the Human Rights Act 1998. Under article 3 of the convention, we have the right to be free from inhuman or

degrading treatment; under article 5, we have the right to liberty; and, under article 8, we have the right to family life.

Those rights are already justiciable in law, and it is possible that the Scottish Government could face legal action from an individual or family member in respect of those rights. In our view, although it is possible, it is less probable that that will happen and, indeed, it has not happened so far because of the barriers for that particular population in accessing justice and information about their rights; advocacy support services not being available; access to legal aid being a challenge; and, frankly, the emotional bandwidth that it takes to progress with action. Nonetheless, we have provided that information for rights holders in the toolkit that the commission published to accompany our findings.

Hearing directly from people who are affected by this situation has been—and continues to be—sobering and, frankly, distressing. Our report highlights that we have real concerns about whether people’s rights, which are protected under the 1998 act, are being protected when they remain in hospital long beyond the necessary point. We are concerned about the treatment that takes place while they are there. We have heard—and continue to hear—of people who are being held in isolation and are separated from their families for many years. It is important that the focus is not on justifying those continued situations—because it is too difficult and challenging to get things right—but on ending that situation and doing so urgently.

Beyond our findings, our report raises lots of questions with which we hope that this committee will engage, not only today but in any further action that you choose to take. Why does that situation keep happening? Why do various commitments and deadlines keep lapsing? Why is it this population that is involved? What is preventing urgent action? There is no lack of will, but the lack of delivery is stark.

With regard to what next, we have made a series of recommendations that we look forward to exploring with you this morning. It is clear that the Scottish Government must produce a new action plan, using our human rights indicators to guide a human rights-based approach. That now becomes a story of three things: political leadership, accountability and apology. In the absence of immediate legislative levers to achieve change, we require strong political leadership to make that happen and deliver that change.

With regard to accountability, continued and robust scrutiny of progress is essential so that inertia does not persist and we are not reviewing the same lack of progress in another four years. The Parliament has a role to play in that, as do

we, and we commit to continuing to do that through our monitoring work. We have also suggested that the Scottish Government establish an independent mechanism to ensure that accountability is built into the system from here.

The last element is apology. At the heart of our findings are at least 55 people who have been in hospital for more than 18 years. As far as I am aware, 10 of those individuals have been in hospital for more than 25 years, and many more people have been in hospital for a number of years that is fewer than 10. They have done nothing wrong, but they are there right now and they have been there for years—away from home, family and community. They have a human right to live independently, which the state is failing to provide. They and their families deserve and have a right to a process of truth, reconciliation, apology and, in time, redress.

We commend the committee's decision to allocate time to this report and its findings and we look forward to continuing to work with the committee today and beyond to ensure that progress is delivered.

The Convener: Thank you very much for that powerful opening statement.

Before we move on to questions, I advise members that, if we direct our questions to Jan Savage, she will direct us to the person that she wishes to respond.

I will start the questions. The report highlights a

“gulf between the rhetoric of taking a human rights-based approach and the reality of putting that into practice.”

It says that the coming home implementation plan fails to comply with the right to independent living. What is the consequence if the Scottish Government fails to comply with that right? Who is ultimately responsible for ensuring that the Scottish Government's commitments to deinstitutionalisation are met?

Jan Savage: I will invite Cathy Asante, our legal officer, to answer in the first instance.

Cathy Asante (Scottish Human Rights Commission): From looking at the issue through a human rights lens, that gap between rhetoric and reality is one of the report's most significant findings. When the Scottish Government makes a commitment to take a human rights-based approach, that is a first step that we welcome, but our report shows that, when it is not specific about that or does not engage with particular requirements under the CRPD, gaps emerge and the human rights-based approach is stripped of meaning. The consequence is that there are gaps in the legal framework that make it difficult to challenge when those requirements are not upheld.

As Jan Savage mentioned, in the absence of legal protections, political leadership is needed to take that forward. The Scottish Government is the primary duty bearer on this issue and it is its responsibility to comply with the CRPD and, in doing so, to follow the guidance that has been set out by the Committee on the Rights of Persons with Disabilities. There is a role for health and social care partnerships, but the Scottish Government must ensure that there is sufficient direction and monitoring when it passes on responsibility to ensure that authorities continue to comply with the CRPD guidance. That has not happened in some cases—for example, it did not happen with the spending of the community living change fund that was provided in Scotland.

On what can be done when that fails, we have highlighted the need for legal protection of the right to independent living, which we do not currently have in law. As Jan Savage pointed out, we think that there may be violations of some rights that are already protected in law under the Human Rights Act 1998. We are asking why we are not seeing those cases come through. We think that there are real access-to-justice issues that are preventing those cases from coming to court and that, if challenges were taken forward, there would be much swifter action to move people into the community.

The Convener: Given that the coming home implementation plan has now ended, what mechanisms exist to hold decision makers accountable for the lack of progress?

Jan Savage: I will start to answer and then possibly hand over to Cathy Asante. As a commission, we have taken our role seriously in relation to establishing the human rights basis and framework and to making use of our mandate to promote human rights and ensure that duty bearers are held to account. There are other mechanisms, such as through the Mental Welfare Commission for Scotland, which has a role in ensuring that progress happens for this population. However, there is clearly an accountability gap, and that is the challenge.

It would be of significant value if the committee was minded to continue to ask the questions with a view to ensuring that, first, Scottish Government action is forthcoming, and, secondly, that action is taken to create an independent mechanism that brings together the different regulatory bodies and that includes disabled people and, critically, their families to provide Scottish Parliament oversight and guidance on progress. That is critical. In essence, one of the key findings of our report is the lack of accountability at this stage.

The Convener: We will move on to questions from Pam Gosal.

Pam Gosal (West Scotland) (Con): Good morning. Thank you for your very powerful and honest statements, Jan.

The Scottish Human Rights Commission's report states that significant data gaps make it impossible to accurately measure progress. Data gathering is very important—first, to identify problems, and secondly, to come up with the right solutions. I have seen that personally while working on my proposed domestic abuse (prevention) (Scotland) bill—to prevent domestic abuse, we need to see which populations are affected more than others.

10:15

The same can be said about people moving from care settings to independent living. Jan, you said that the Government needs to produce an action plan. However, you also know that there are continuing issues of poor data collecting. Is the Scottish Government doing enough to improve data collection? If not, what else should the Scottish Government be doing?

Jan Savage: Data is absolutely critical to informing good decision making. I will hand over to Cathy Asante in a second, because she was the lead researcher on the report. The report shows that there are clear gaps in the data, which are not necessarily being used to drive decision making about targeted investment.

We may come on to the subject of how the community living change fund has or has not been used. As far as we can see, there has not been a data-driven approach to the allocation of spend. That is one example of where improved data collection would lead to better decision making about targeted investment in programmes.

Your point is fair. The level of data collection for this particular population continues to be a risk. Beyond that, the important thing is what we do with the data. In fairness, there has been a lot of progress on setting up a national register of people who are in such situations or who are at risk of such situations occurring. However, the collection of the data does not appear to have driven any substantive changes.

I hand over to Cathy to give more depth on that.

Cathy Asante: I have two points about data.

One is that the absolute minimum and most basic requirements under article 19 of the UNCRPD specify that there must be consistent quantitative and qualitative data on people with learning disabilities, and specifically on those who continue to live in institutions, so that the problem can be addressed. That is a fundamental starting point for addressing independent living. We found that it was one of the basic absences—we were

not able to find that data, despite our researchers looking at a number of data sources. We are failing on that starting point.

More broadly, the exercise that we carried out is one of human rights measurement. It is the first time that we have attempted to collect comprehensive data on human rights indicators. We wanted to learn from the project how possible it was to do that, both on this issue and in general. As we expected, we found that, based on the publicly available data, it is not possible to carry out a comprehensive exercise of human rights measurement.

One of the main problems is that the data is not collected in line with human rights standards. For example, the concept of an institution, which we need on this issue and which is defined by human rights standards, is not defined in our data. Lots of different terms are used in relation to places where people live, but they do not define what an institution is. That hampers us from the outset in relation to what we can do to establish what the situation is. Duty bearers do not have a fully informed plan for how to address institutionalisation, because we do not know the situation that we are dealing with.

We want to take forward that issue from the project. We will look at producing a fact sheet that aims to marry up the human rights requirements with what needs to be done on data to address those requirements. The lack of availability of information really hampered us in making our assessment. Having said that, using the concept of human rights indicators and the data that we had, we produced an assessment that shows that there are a lot of gaps, even though we do not have data across every single indicator.

Pam Gosal: Thank you, Cathy. It is shocking that, in some of the areas that you spoke about, there is very weak or not enough data collection. Have there been any conversations with the Scottish Government about that, especially since things are not even marrying up to the human rights duty that you have to fulfil? Will they have to fulfil that duty? I want to probe a bit more into whether there have been any talks on the matter. It is a serious matter that there is not enough data collection. How can you find solutions, and how can you create an action plan like the one that Jan Savage mentioned if there is no data—or, I should say, a lack of data?

Cathy Asante: We are at the beginning of our discussions with the Scottish Government about the steps that it will take in relation to data. We are still awaiting a full response to our nine recommendations, one of which touches on data. The Government's response so far has been to welcome the report, to undertake to take it seriously and to look at forward action, but we still

need a response that addresses each specific recommendation.

There are also areas on which we will have conversations with other scrutiny bodies that might have a role in that regard, such as the Care Inspectorate, which might be able to improve its data collection so that it marries up more closely with human rights standards. We are at the beginning of those conversations and we must not lose sight of this in the new action plan.

Pam Gosal: The report refers to hidden populations. The first of those includes those who are housed in forensic learning disability services and the second includes autistic people who are simply not identified in the data. Last week, we heard from people with learning disabilities, many of whom felt that they were let down by the system. In a previous evidence session, one witness said that they felt that they are at the “bottom of the pile” when it comes to the Scottish Government’s priorities. How do you propose that your concerns about the hidden populations should be addressed?

Jan Savage: Yes, there are hidden populations in respect of the data, which we have highlighted to the Scottish Government. As Cathy Asante said, we are at the early stages of identifying those individuals. I will hand back to Cathy to talk about the particular populations that you referred to.

Cathy Asante: We refer to two hidden populations in particular: autistic people and forensic patients. In relation to autistic people, much of the data refers to people with learning disabilities but it does not specify whether a person also has an autism diagnosis or whether they have an autism diagnosis without a learning disability. That is fundamentally important in relation to the requirement of the CRPD to properly disaggregate your data to ensure that particular disabilities are picked up. The purpose of that is to ensure that the needs that come along with those disabilities are being addressed. In that way, autistic people are largely hidden among that data. Again, that is a data improvement point.

The second population that we refer to is forensic patients. In essence, those are people with learning disabilities who are in particularly high conditions of security. Many of them are in the state hospital, although they might not have committed a crime when they were sent there. That population faces disproportionately long periods in those settings and they are sometimes placed in conditions of greater security than are necessary to manage their risks, but they were not included in the coming home implementation plan. Our recommendation is that, if specific things need to be dealt with for that population and if there is more complexity that needs to be addressed, we must have a specific action plan for that

population. We would not be content with that population just being left to continue as it is. We need to know more about their situation and we need to know what progress is being made on moving that group towards independent living. Given that they were not included in the plans, we simply do not have that information. We are really shining a light on the need for targeted action for that particular population.

I would like to bring in my colleague Oonagh Brown, because it is important to understand the situation that people in those forensic settings are in.

Oonagh Brown (Scottish Human Rights Commission): With a number of human rights defenders, we worked with a group of people across the project, many of whom were children who were in the state hospital following a period of crisis. The consistent theme that I heard was that people were told that their children would be there for six months to address the period of crisis and that they would then go home. However, one person we worked with throughout the project has not seen their child in nearly four years, so there is a considerable gap between the idea that we intervene in this way to respond to a crisis and what happens in practice.

I support Cathy Asante’s point about data disaggregation, especially in relation to autistic people. Data disaggregation in relation to disability in Scotland has been poor for a number of years, and disabled people’s organisations have consistently raised that issue. The need for improved monitoring and reporting in a number of areas to align with article 31 of the CRPD is important, given that there are no clear sole pathways for autistic people in forensic services, and given that we also know anecdotally from those who are experiencing this that they become lost in the system.

Pam Gosal: I want to ask about data collection. One issue that was brought up during a private session last week was that people from the black, Asian and minority ethnic community face much discrimination. For example, a person could be autistic and face discrimination or stigma, but they could also be a person of colour, and, as we were told last week, they would not know whether they had been discriminated against because of their colour or because of their disability. Is any data collected on that? We were told that a lot of BAME communities are more affected because of the layers of intersectionality. Do you think that there are issues with the collection of data about people from different backgrounds? Obviously, we cannot have a one-size-fits-all solution. Solutions have to be tailored to cultural backgrounds, especially if those concerned have other things going on—for example, if they are a person of colour or if they

have more than one disability. What is your view on that, Cathy?

Cathy Asante: I support what you said about there being a need for information in relation to all of those characteristics, and I agree with your point that the question of intersectionality needs to be addressed. We are looking at this through the lens of CRPD, but, more broadly, we need to know about other human rights that may be impacted because of people's characteristics.

I would not be able to answer confidently as to exactly what data is available in relation to that population, because we did not look at that specifically. Generally speaking, data in the mental health system is not necessarily disaggregated by race and BAME communities, which is an issue.

Pam Gosal: Thank you very much, Cathy. If you want to add anything later, you can send it in. That would be appreciated.

Tess White (North East Scotland) (Con): Jan, in your opinion, what barriers have prevented full implementation of the coming home implementation plan and how should accountability for the failures be enforced?

Jan Savage: It is a complex question, and there are multidisciplinary elements to it. At the heart of the plan are individuals, many of whom have required social care support for a number of years. There are known challenges in the social care system, which I am sure the committee and others have considered. They include the sustainability of good-quality, highly skilled social care professionals and communities working consistently with individuals. Those are some of the fundamental things that are required to make independent living work.

Housing provision is another element of that. We need to ensure that appropriate housing in well-connected communities is available. Community connections—the availability of softer, community-based supports—is important. There is also the healthcare element. For individuals in the healthcare system, there are two different budgets, frankly, in respect of everything that sits around an individual to empower them to live independently.

In this case, there are also the legislative levers. In a second, I will hand over to Cathy Asante, so that she can talk about the complexities of all the different legislative interactions that can affect individuals. There is the Adults with Incapacity (Scotland) Act 2000 and the Social Care (Self-directed Support) (Scotland) Act 2013, and there could be another vehicle for detention in hospital.

The complexity of that picture—the disciplines and the regulatory frameworks in each of those disciplines—contributes to a lack of progress,

which is why a nationally co-ordinated, independent mechanism that brings all of that together is the only way through this. Without that, change clearly has not happened. The complexities that have emerged clearly get in the way of what is right for a person; therefore, the CRPD approach guides us to put the person at the heart of the issue. We have heard that many times.

The coming home implementation plan talks about that. It says that it takes a human rights-based approach, but the evidence suggests that it has not done so. Our hope is that the indicators from the CRPD committee—Cathy Asante has translated them into the Scottish context—provide a consistent set of questions that can help people to navigate all the complexity of the system and guide change, but they do not guarantee change overnight.

10:30

Tess White: In relation to the 55 people who have been incarcerated for longer than 18 years and the 10 people who have been incarcerated for more than 25 years, we had a powerful witness statement, a few months ago, from an organisation called People First (Scotland). Gregor Hardie gave us each a chart that basically said "Countdown to the Scottish Government's coming home deadline". He said that

"the deadline has been and gone without the commitment being met."—[*Official Report, Equalities, Human Rights and Civil Justice Committee*, 26 November 2024; c 11.]

I have had that up on my wall as a reminder. One could say to People First (Scotland) and those families that there is a dereliction of duty by the Scottish ministers and that the issue lies at the door of the Scottish ministers.

I have a follow-up question. I was struck by the case of Linda, who appeared in the BBC documentary "Jailed: Women in Prison". Linda has been diagnosed with Gómez-López-Hernández syndrome, which is a developmental disability, and she has been placed in custody at Wintergreen Hall, which is a specialised unit in HMP Stirling. Linda said:

"I don't want to be out, it's just safer in here."

How can we ensure that women such as Linda have the support that they need when they leave an institutional setting?

Jan Savage: The first step is to understand Linda and her set of circumstances. It is about working through all the different institutions and frameworks that we spoke about earlier—whether it is health, social care, community-based supports or whatever—and ensuring that an appropriate plan is in place that is guided by what Linda needs

to ensure that she can sustain herself and live well and safely in her community. That means having the right information about Linda and what is available in her locality. It also means being able to leverage funding into her locality to provide that support if it is not already available. That is perhaps one of the tools that a national independent mechanism, if it was on a statutory footing, might be able to address.

Tess White: I previously sat on the Health, Social Care and Sport Committee, and we completed an inquiry into self-directed support last year. It is clear that the system is not working. SDS is not working, and vulnerable people are being badly let down. The SHRC report highlighted specific issues with self-directed support. What are your concerns about SDS, and how can they be remedied?

Jan Savage: I will hand over to Cathy Asante for some of the more detailed elements of what we found on self-directed support.

The challenges with the implementation of self-directed support in Scotland could be the subject of a whole different report. It is clear that there is potential, through self-directed support, to put the individual at the heart of the requirements to live well in the community and have that individual guide the use of a budget. That is what the law says should happen already. There are, however, significant barriers to making that happen, not the least of which is the fact that individuals' access to advocacy for what that support should be is a challenge. The budget can be a challenge, but, frequently, the accessibility of high-quality staff and service provision can be more of a challenge.

Perhaps it is about ensuring that, through the national framework, greater flexibility can be offered to local-level decision making where those challenges exist. That approach does not exist currently; the process is led either by the individual or by the locality, and there is not necessarily the potential for additional support from a central mechanism to make it work as is required. That is one element of it.

There has been the potential of late—although it is now not on the legislative timetable, as was planned—for a national care service. Elements of the right to independent living and the right to access independent advocacy could have been enshrined in legislation, all of which would have helped to further implement the intention of self-directed support.

It is an excellent question, and, as I said, we could do a much deeper dive into that. It is definitely a concern that the potential of self-directed support for that population is clearly not being realised.

Tess White: From my experience of being on the Health, Social Care and Sport Committee. I know that social workers are at the core of the system, but figures from the Scottish Association of Social Work paint an alarming picture. For example, 25 per cent of social workers leave the profession within six years of graduation, and 19 per cent of the profession is over the age of 55. The total vacancy rate is just under 10 per cent, and, in Angus, in my area, it is 15.7 per cent. Many of those vacancy rates are long standing. Social workers are at the core of the system, so that constant churn of social workers is alarming.

In your view, has the Scottish Government failed to follow up on the coming home implementation plan? The infrastructure, including the workforce, is simply not in place for it to do so.

Jan Savage: It certainly appears that the infrastructure is not in place, and the provision of social work and social care is part of that. As I said earlier, the provision of housing and softer, community-based support is also an element of that. I think that it requires deeper interrogation of where the challenges are in the infrastructure. It is highly likely that the particular part of that infrastructure that you have just referenced is part of the problem.

Tess White: I have a final question on this area. During the committee's evidence session on the proposed but delayed learning disabilities, autism and neurodivergence bill, we heard the alarming figures that 90 per cent of women with learning disabilities have been subjected to sexual abuse and that just under 70 per cent of them experienced sexual abuse before they turned 18. Did the SHRC's research for this report encounter safeguarding concerns in institutional settings?

Jan Savage: I am very familiar with that research, which is damning, concerning and awful. The research for this report did not encounter those concerns, because that was not the research question. That is not to say that we would not find such concerns if we were to delve a bit deeper, and that could merit further consideration. However, at this stage, the data that we were able to access—through the research question that we posed—did not show us such information, because we did not look for it.

The Convener: Cathy Asante might want to come in on this.

Cathy Asante: I will come in on the question of the various barriers and issues within the social care system and where accountability for those issues lies.

The CRPD's deinstitutionalisation guidelines set out a step-by-step process of mapping policies, budgets, formal service structures, availability of informal community-based support, and the new

elements of support and workforce that would be needed to inform an action plan towards deinstitutionalisation. That is one of the things that is missing.

That is not to say that it is easy to address those problems. We know that there is complexity in the system, and lots of people have been thinking about how to address that complexity, but that proper mapping process needs to take place, because it would allow us to identify where the barriers are and make plans to address them. Approaching it through the human rights-based approach and the steps set out by the guidelines allows us to start illuminating those problems rather than going round in circles about what seem to be intractable problems.

Tess White: I have a quick follow-up question. If part of the issue is that there are not enough—or there is a high turnover of—social workers, so they are spread too thinly, who will do the action plans?

Cathy Asante: The starting point would be for the Scottish Government to introduce comprehensive mapping across the system to identify the issues, and then the purpose of an action plan from a human rights standpoint would be to address how to improve them over time. It does not mean that there would be immediate answers, but, if we had a clear idea of exactly what the blockages are, the obligation would be to have clear actions to address them within the scope of the resources that are available to the state.

Tess White: My next question is about resources. The SHRC's findings on the community living change fund, which you referred to earlier, are startling. Significant sums have been left unspent and there has been a lack of transparency and accountability relating to the fund overall. Furthermore, money has been used to renovate institutional settings, which the SHRC says is

"in direct contravention of the requirements of the right to independent living."

That is alarming. It is absolutely shocking.

How should funding be allocated and monitored to ensure that that will not happen again? Have you raised your concerns directly with the Scottish Government? If so, what was its response?

Jan Savage: I will let Cathy Asante answer that.

Cathy Asante: That is one of the questions that the stakeholders who assisted us with the report raised with us. We had a project reference group, which included people who work in the area, many of whom have a lot of experience of institutionalisation. At the outset, they said, "But there was £20 million. Can you find out what has happened to it?"

We expected to see that the money had been invested in packages of care for individuals in the community, with clear outcomes being achieved—that is, people would be living in the community independently—and with a transparent account of how the money had been spent and how it met the CRPD requirements. We did not find any of those things.

Our findings are stark. They also pose a lot of questions. As you highlighted, one of the issues was transparency. It was incredibly difficult for our researchers to find out anything at all about what had happened to the money. Although the Scottish Government might have that information, it was not available to us. It is really important that that information is made publicly available. We want to know how the money was spent. However, just as important as explaining that is explaining how that was that done in line with the CRPD and saying whether it delivered independent living.

There is a transparency issue, which makes it difficult for either us or rights holders to hold duty bearers to account on that spend. One of our recommendations is that the Scottish Government should publish an account of the spending in line with the CRPD requirements.

You also highlighted the question of how the money was spent. There was even less information to be found on that. Some of the examples that we found from what was published indicated that money was spent on things that would be prevented by the CRPD.

The CRPD explicitly requires no spending on institutions and for spending to be diverted towards community living. Some of the spend that we were able to find out about raised questions as to whether it complied with that. That highlights one of the gaps between rhetoric and reality, because the guidance on spending the fund did not set out that information. It did not say that the fund must be spent on community living and that nothing should be spent on anything that relates to institutional settings.

There was an absence of direction from the Government setting out what is required under human rights and how the money must be spent, and then of checking to make sure that that had happened.

There were many parts to your question. I am not sure whether I have answered all of them, but those were the issues that came through for us.

Tess White: You have, Cathy. The buck stops with the Scottish Government and Scottish ministers.

My final question is, what communication have you had with Audit Scotland on that? Are you aware of whether it intends to undertake work on

this area following your report? As you say, questions need to be asked.

Jan Savage: Indeed, they do. We have shared the report with Audit Scotland. There was a general introductory meeting between the Auditor General and the new chair of the Scottish Human Rights Commission at the start of their tenure. We hope that relationships have been established in time for the Scottish Human Rights Commission's findings to inform the work programme of Audit Scotland.

At this stage, we are not in a position to say what Audit Scotland would like to do with the findings, but continuing to push the matter with them is certainly on our radar. We are also mindful that we have recommended that the Scottish Parliament's Finance and Public Administration Committee might wish to take a look at the issue. We hope that scrutiny will happen through the appropriate channels, because, ultimately, we are not auditors.

We go on the basis of the best available public information. Our researchers conducted a trawl of the health and social care partnership budgets. As Cathy Asante said, it was extremely difficult to establish the limited information that we have been able to establish. We cannot compel duty bearers to provide information in that respect, so deeper interrogation is required. Those questions need to be asked, but we do not pretend that we are the correct organisation to ask them, so it would be helpful if Audit Scotland and/or the Finance and Public Administration Committee did that deeper dive.

10:45

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

Paul O'Kane (West Scotland) (Lab): I will follow-up on Tess White's question and ask about the pattern of challenges that exist for people who have a learning disability and the commitments that have been made to them on their human rights. We discussed the £20 million and the lack of accountability on that. We know that £2 million was allocated for health checks for those with learning disabilities and that a pledge was made that every person with a learning disability would have one. We know that that target is not being met, and analysis by the Fraser of Allander Institute shows that, in some health board areas, no health checks have been offered.

We hear consistently from people who have a learning disability that they feel forgotten and that their human rights are forgotten. Do you think that there is a pattern here in what the Government is doing? What can be done to interrogate that?

Oonagh Brown: It is probably the case that people with learning disabilities and autistic people consistently feel forgotten, not heard and not listened to. When we worked with People First on the institutionalisation project, that feeling came through regularly—people felt that, when they raised issues, they were not heard or listened to. Across the policy and legislative landscape, there have been opportunities to progress the rights of people with learning disabilities and autistic people in Scotland that have not been taken, such as the proposed LDAN bill and other bits of policy work not being moved forward, so that is a fair statement for people with learning disabilities and autistic people to make. That is reflected in the pattern that we have seen of resource allocation and commitments being made and not being followed through.

Jan Savage: The commission respects that view, which is in no small way why we have taken forward the programme of work that we have. It is our job—our statutory duty—to protect and promote everyone's human rights in Scotland. Where we have evidence that human rights are not being met, as we clearly do through the reporting—indeed, those rights might well be being violated in a number of cases—that matters to us, and it matters to people with learning disabilities and autism that they see the Scottish Human Rights Commission and their Parliament addressing that. The view that you mentioned is a fair statement, and our evidence bears that out.

That connects to the point about following the money. We have spoken today about the £20 million community living change fund, but, as has rightly been identified, a lot of money is being spent in lots of different parts of the system around individuals who have learning disabilities and autism. It would be interesting to take a deeper look at that, because the issue is not necessarily whether more money is needed in the system; it is perhaps more a case of taking a human rights-based approach to securing the best outcomes with the funding that is already there. The community living change fund is there to plug the gap when there is genuinely no such funding available.

Paul O'Kane: What engagement have you had with local authorities on that work? We know that local authorities face a significant challenge in delivering on a range of issues, such as housing, supporting people through their local health and social care partnership, and non-residential care charges, which are still seen as a significant breach of human rights for many people with a learning disability. Have you engaged broadly with local authorities on that?

Jan Savage: I will hand over to Cathy Asante to outline how local authorities were engaged in the

research. We have a meeting with the Convention of Scottish Local Authorities scheduled for next week to explore the findings in more detail. The Scottish Government and COSLA also invited us to the meeting of the collaborative response and assurance group last week, or the week before last, at which Cathy and I shared our findings. We got some reflections back from health and social care partnerships, which I have to say were generally accepting of the findings and of the fact that it can be a complex area. There is a lot of work going on at local level on what is a known problem—it is not an ignored problem—but there is a shared acknowledgement that progress has not been made quickly enough.

Cathy will be able to describe how local authorities and health and social care partnerships were engaged in the research.

Cathy Asante: In the research, we were trying to assess what had been done. That required us to find out information about what had happened at the local level, particularly how the money had been spent. Our researchers approached each of the health and social care partnerships to request information, but only five responded. As Jan Savage highlighted, we do not have the power to compel them to provide information. It was a disappointing response rate, and it would be helpful if information was volunteered to us to enable us to give the fullest and fairest assessment of what has been going on.

However, the issues that you mentioned in relation to the complexities and difficulties that local authorities face are no doubt real. We acknowledge that there are many barriers and that it is not easy for anybody to simply magic up a solution to this. We are asking the Scottish Government to do that mapping exercise in partnership with local authorities to identify exactly what the issues are and to have a plan going forward. It will be important for them to have that discussion about the issues that they are facing and to work out how they would address them going forward.

Paul O’Kane: That was useful. We look forward to hearing the outcome of your discussions with COSLA—that will be helpful to the committee.

I will broaden my questions. The report looked at the challenge of people continuing to be admitted to institutions on the basis of their learning disability. How we define “learning disability” remains a significant challenge more broadly. For example, the Scottish mental health law review has been considering the definition of learning disability as a mental health issue for some time, and we are expecting legislation on a range of those issues. Admitting someone to an institutional setting due to their learning disability is a contravention of the European convention on

human rights, so I am keen to understand what particular concerns you have identified around that in the report.

Jan Savage: I will briefly outline them. One of our main recommendations in the report is to reform the law, which is long overdue. The harsh reality of what we have uncovered is that the current legal framework permits such admissions. It is acknowledged that the legal framework is resulting in violations of human rights and does not present compliance with the CRPD and the right to independent living. That cannot be okay.

Law reform is overdue. That could be done through the Mental Health (Care and Treatment) (Scotland) Act 2003, the Adults with Incapacity (Scotland) Act 2000, the proposed LDAN bill or a human rights bill, which could give legislative grounding to the right to independent living through the CRPD. It could have been done through the then National Care Service (Scotland) Bill.

It is probably better if I now hand over to the lawyer to talk about law reform. Cathy Asante has done a lot of work on the legal framework that permits the admission and detention of people with learning disabilities into institutional care. Cathy will have further insight to offer.

Cathy Asante: First, I will explain the point that we made about detention on the basis of learning disability. The requirement under the European convention on human rights is that there has to be a genuine therapeutic purpose to justify somebody’s detention. That would be a concern for anybody who is detained beyond the point of medical need, which is the group that the coming home implementation plan is concerned with. A case in 2024 made it clear that, unless there is a clear therapeutic purpose, learning disability on its own is not a sufficient basis for being detained. We said that that was not evident in the way that detention was being recorded.

We have real questions about whether people are being detained on the basis of learning disability alone. That would be a violation of their rights under the European convention on human rights. It takes time for such cases to be picked up from the European Court of Human Rights and to be translated into domestic litigation as one would hope. We have not seen that take place. We would really like that to happen if such situations are occurring, and we think that they are.

There is potential for legal challenge, but there is also the requirement to reform the law to make sure, in a more proactive sense, that such detentions are not happening.

There are three areas in which we think that law reform is necessary. One of those is protection of the right to independent living, which would have

happened through the human rights bill, if that had been taken forward.

Another area is in relation to the circumstances under which people can be detained and whether they can be detained because of a learning disability. That relates to the mental health law reform programme.

At this point, in our view, we have strong recommendations to transform mental health and incapacity law into a model that is much more compliant with the CRPD. However, that exercise is conceived of as a long-term programme of reform. We are really concerned about the pace of change. Although addressing the question of whether learning disability should be defined as a mental disorder is one of the Scottish Government's priorities, its timelines for proposals to change that have already passed. Therefore, we really want to inject urgency into the need for law reform.

At the moment, the system continues to allow such detentions. I have spoken to many mental health tribunal members who sit on those cases and express frustration at the fact that they have no choice but to continue to detain someone if no appropriate alternative is available. They are simply applying the law, but the law is allowing the situation to continue. For us, it is a very urgent issue, but that is not necessarily reflected in the pace of action so far in the mental health law reform programme.

The final area of law is the proposals in the proposed LDAN bill for a national support panel, which could have been a vehicle for individual accountability, where people want to challenge their personal detention in those situations.

Paul O'Kane: Thank you, Cathy—that was a helpful and comprehensive overview. What I would take from those final comments—I might ask Jan Savage for her reflection on this—is that the work to bring people out of long-stay institutions has been on-going for decades. It feels as though we are no closer to having people not live in the state hospital, for example, than we were all those decades ago.

Jan, are there immediate actions that could be taken to stop that inappropriate placement of people? The recommendations are there, but how do we get that sense of pace that Cathy Asante referred to?

Jan Savage: We have also reflected that in our recommendations. In respect of the legal framework, those things will take time and might not have taken as much time had the legislative programme proceeded as was planned.

Regardless, the commission urgently advocates for the creation of a national independent

mechanism to bring together those regulatory bodies—including the commission, if necessary—that have a statutory footing and powers to compel information where required, or to shift the narrative in respect of regulatory powers. That should be possible. That is a political will gesture, and I am sure that those agencies, including the commission, would be willing to be part of that. That does not require legislation, but part of the process of establishing such a national independent mechanism could be tasked with scoping out a legislative mechanism to give further security on an on-going basis. That could—and we believe that it should—be done quickly.

Paul O'Kane: Colleagues will have other areas of recommendations to cover, and I do not want to intrude on anyone's area of interest, so I will hand back to the convener.

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

Maggie Chapman (North East Scotland) (Green): Good morning to the witnesses and thank you for joining us. I echo the apology that Jan Savage gave at the start—none of us wants to be in this situation, and it is right that we acknowledge that the people who are most directly affected should not be in such a situation.

To follow on from the responses to Paul O'Kane's questions, there was that case last year that made it clear that detention that was based on learning disability alone was not lawful. Obviously, that was without the legal mechanisms. Cathy Asante, you said that no such case has been brought into domestic law along the same lines. Are you aware of conversations between ministers and local authorities or local authorities and care providers about the legal risk that Paul O'Kane spoke about? It should not take the threat of legal action to change the situation.

It seems as though there is something lacking in the care or support that would enable people to become de-institutionalised: we know that what is happening is technically legal, but it should not be, and we know that we should be able to provide the support in communities. Is it a question of resourcing or the lack of availability of care workers, or is it due to something more fundamental than that?

11:00

Jan Savage: I am not sure that it is possible to answer that question definitively. It is likely that it is due to a combination of all those things, which merits further consideration. You are right that the threat of legal action should always be a last resort. No one wants to be in those circumstances and no one should have to rely on legal action as a remedy. Certainly, this is the first time that the

Scottish Human Rights Commission has explored or expressed publicly, foremost to the people who have been affected, but also the duty bearers and the state, that there is a risk of non-compliance with legal obligations and that, were families better supported and aware of their rights, had access to legal aid and all the other things, there could be a risk of legal action. I hope that that is helping to start different sorts of conversations about priority action.

On what has got in the way of progress, the simple fact is that this is now the fourth iteration of a Government plan to tackle the issues—there have been at least three different versions of our review, going back to the 1990s and 2000s. The plans have all said that they are rooted in human rights, and yet deadlines have come and gone. I am not sure that there has been sufficient outrage about that. There has certainly been acceptance that the lack of progress has been permitted and continues to be permissible. There is an uncomfortable truth in that, which is part of the commission's final recommendations on truth, reconciliation and apology. The first step would be to resolve the issues and move forward with an urgent action plan. We would then need to look at the whys and wherefores and at what has not happened, in order to inform justice for people who are detained and have been deprived of their liberty for decades. Cathy Asante, as the lead researcher, do you want to add anything?

Cathy Asante: No, I do not think that I do.

Oonagh Brown: I will add something about what is missing. If we look at the participation aspect of a human rights-based approach, we see that there is sometimes a risk that we can overcomplicate what it takes to ensure that people with learning disabilities and autistic people can live in the community, when there are ways that that can be made more straightforward. One of the gaps that came across in our work that relates to engaging with people who have been directly affected and their family members is that nobody has really asked what a person who is currently living in an institutional setting needs in order to live in the community, or how we can work in such a way that does not continue to traumatise someone in the first instance or retraumatise them. That is an area where there are gaps. If we take a human rights-based approach, that could be built on.

Maggie Chapman: That is really helpful. In some ways, that leads me nicely on to my next couple of questions, which are also about some of the key findings of your report.

Your report said that you

“found little meaningful engagement with human rights standards.”

Do people know that those standards are in place? Is it a question of awareness and understanding, or is that awareness and understanding there and what we are lacking is oversight? Or is it, as you suggested in answer to another question, all of the above? We sitting around this table might think that we have an understanding of those human rights standards, but are you convinced that there is awareness and understanding among the people who are out there providing the support and the institutionalisation, before we even get to oversight?

Jan Savage: That is a really good question. I will let Cathy Asante, as the lead, answer.

Cathy Asante: The simple answer is no—I do not think that there is an awareness and understanding. One of the reasons why we think that this highlights particularly well the issues with the human rights-based approach is that there is really clear guidance. We have the deinstitutionalisation guidelines from the Committee on the Rights of Persons with Disabilities, and you do not necessarily find that in other areas—you might have to piece together guidance from all sorts of human rights sources. Here, we have one document that sets it out step by step. Theoretically, it should be easy to simply apply and follow those guidelines; however, it is fair to say that, when the plan was commenced, there was not an awareness that those guidelines existed and that that exercise needed to be undertaken.

Although we have a commitment to a human rights-based approach, we do not even have an identification of which human rights we are talking about, let alone what the guidance is in relation to those rights. That is a very common issue with a rights-based approach, but, here, it really highlights how stark the gaps are between what the guidelines set out and the actions that take place. Therefore, one of the goals of the report is to be an educational tool to help people to understand that they have clear guidance from the Committee on the Rights of Persons with Disabilities and an assessment from us of what is and is not happening and the gaps that need to be filled.

There is a significant awareness-raising and educational component here, and the important thing for us is that when any further action planning takes place, it engages with those guidelines. We would not want to see an action plan that makes some vague commitment to human rights in the future; we would want to see it explicitly engage with what the Committee on the Rights of Persons with Disabilities has said and for the plan to say how will be taken forward, step by step.

Maggie Chapman: Thanks, Cathy. In different ways, you have all alluded to the idea that, although we talk about having a human rights-based approach or a human rights-centred approach to service provision, that is just talk. I think that that is the case, from what we are hearing this morning. Would you agree?

Jan Savage: Yes, I think that we would. As Cathy Asante said, the outputs from the commission are now very deliberate by design. We have that dual mandate: to identify where there are violations for groups of rights holders whom we think are most at risk—it is right that we use more of the accountability mechanisms of our mandate to step into that space—and an education mandate. With the design of those reports and the approach that we are taking through them, our hope is that we are demonstrating that and delivering the mechanism to take a human rights-based approach. We are using that approach as the basis for our own assessment, but we are then offering it up as a toolkit to duty bearers.

As Cathy Asante said, any action plan that the Scottish Government now produces must, as a starting point, take those indicators and specify that the aim and the objective of the coming home implementation plan mark 2, or whatever the plan is called, is to achieve article 19, to facilitate independent living. It should show the indicators that must be considered and the duty bearer should demonstrate progress along the way. Even if it does not demonstrate the ultimate outcome immediately, it still gives duty bearers the opportunity to demonstrate a human rights-based approach and to be guided in the right direction.

That approach can then be applied at local level, so that there is a consistent framework that is monitored nationally but applied locally. That helps everybody with accountability and, critically, with respect to our families. Oonagh Brown has led on that work through this process to inform the toolkit so that families and individuals are aware of their rights through that framework.

Maggie Chapman: Oonagh, you talked earlier about the failure to include that in conversation. I am thinking about how we solve this knotty problem. Maybe we do overcomplicate things. I also think that, if we want to get to over there, we probably should not be starting from here. Is there something fundamentally wrong with the structures that we have in Government, in local authorities, and in the relationships between national and local government and governance, even before we start bringing in integration joint boards?

Are there structural barriers here that, with the best will in the world—I think that you have all

acknowledged that there is will here—are preventing us from tackling the problem?

Oonagh Brown: There is something about the structure in relation to the involvement of disabled people and their families on institutionalisation. The systems and structures are not established in a way that proactively involves people. How that is addressed will be critical to the creation of plans to move people back into the community.

Jan Savage: That was an important point. The CRPD guides the involvement of disabled people in the mechanisms of change and decision making, but we do not see that in a particularly meaningful way in this area.

The systems and structures are clearly getting in the way of progress, and the data shows us that too; people are getting lost. Working across available data—data from the NHS, social care, social work and SCS, and forensic and mental health data—is a significant exercise, because there is so much to work through and there are so many layers of complexity. We have a systemic problem.

There is a lot of intention in the coming home implementation plan to work towards a national approach, which was probably the right approach, and it still is, but the labour required to make that happen means that it has not worked. That is why law reform is important. It gives a statutory footing for an independent mechanism that can step in.

However, the answer to an earlier question from Tess White—who asked what is done if a social worker is not available to do the required assessment—is that we need something else. That could be a national network of specialists who would assist in the design of a complex and specialist social care support system that needs to be provided at the local level but commissioned nationally.

Those areas start to stray outwith the remit of the Scottish Human Rights Commission, but they definitely merit further consideration by commissioners of social care.

Maggie Chapman: That was helpful. Jan, you said that there has not been more focus on that issue—deadlines come and go, et cetera—and there is a lack of outrage about it. Is there underlying cultural prejudice in society and all of the institutions that are supposed to support the transition away from institutionalisation? Are people with learning disabilities not taken seriously or considered to be of as much importance as they should be?

Jan Savage: There are two elements to the answer to that. It is highly probable that that is the case, which should certainly be a matter of concern, and we should interrogate it further.

The other element is that the people whom we are speaking about have a lack of agency. By and large, it is a voiceless community. A delve into the data—particularly from the mental welfare commission's report—shows that a number of individuals do not have any form of guardianship in place and do not have any individuals around them advocating for change. Therefore, part of the issue is that this is a community of people who, by nature of who they are, require extra help, allies and people beside them. They also require investment in advocacy, and their families require investment in their skills, to allow them to advocate for change.

Those disadvantages are baked into the system while those things are not in place. As we know, constituents advocate for change in their own lives, and they use all of the resources that they have available to them. I am sure that MSPs will be familiar with that, as they will be contacted every week by their constituents. A need for investment in infrastructure for the population who have learning disabilities is part of the problem, and a deeper look is required.

The Convener: Cathy would like to come in.

11:15

Cathy Asante: We saw some evidence of those entrenched attitudes through our work. Some of the people who worked with us on the project advocate for people daily in order to help them get out of institutions. When we initially discussed the project with them, they said that they were still trying to make the case that it was possible for everybody to live in the community and that they were stuck on that conversation. One thing that we wanted to highlight with the report is that it is not a matter of opinion but a matter of human rights that everybody should be able to live independently in the community, and so that should no longer be up for discussion. It certainly should not be where the conversation is stuck.

In the Mental Welfare Commission's report, there are examples of people having the attitude that the hospital was simply the person's home now, as they had lived there for 18 or 25 years. There was not even evidence of discharge planning going on, because it was assumed that the person would continue to live there and that that was the only place where it was possible for them to live. That points to entrenched attitudes, where it is still not necessarily believed that it is possible for everybody to live independently in the community, despite that being their human right.

Maggie Chapman: Thanks. Oonagh, you wanted to come in.

Oonagh Brown: Attitudes can also be demonstrated through actions. Our research and

the people who we worked with throughout the project highlighted to us experiences of restraint and seclusion of people who are living in hospitals. That included repeated restraint, sedation and overmedication of people with learning disabilities and autistic people, and restrictions on food. One person told us about their family member being placed on a liquid-based diet and said that they were not able to give them access to what they wanted to eat when they wanted to eat it, despite there being no real clinical need for that measure. People have also been cut off from their wider support networks.

Through a collective story from people living in institutions, which People First shared with us, we heard about them not being able to form relationships, not being able to choose who they live with, having no education opportunities and feeling fundamentally that they had no human rights.

Even though the research did not look at attitudes in particular, a connection can be drawn between actions and attitudes.

Maggie Chapman: That is really helpful and powerful.

The Convener: We move to questions from Marie McNair.

Marie McNair (Clydebank and Milngavie) (SNP): Good morning. Going back to the comments from Maggie Chapman, I totally agree that it is of paramount importance that disabled people are at the heart of shaping policies. We need to make sure that that happens if we are to bring about the change that is required.

Jan, can you talk us through what the response has been from the Scottish Government to the recommendations?

Jan Savage: The Scottish Government has been engaged in the report and our recommendations. It has welcomed the report and acknowledged that what we have found reflects the current situation.

Cathy and I were invited to the collaborative response and assurance group by the lead directorate that has been tasked with addressing delayed discharge—the group was formed as a subset of that work. We got a real sense from the minister that she was personally vexed by the findings and was keen to find a way forward. There has definitely been positive engagement with the report.

We have not yet had a detailed response outlining the Government's reaction and response to the specific recommendations in the report. There are some time-bound recommendations in the report on the need for an urgent action plan and the need for a redress scheme to be scoped

by 2026. We made some very specific recommendations that we look forward to a more detailed Government response on.

We have a meeting outstanding with the minister. That was offered and sought, and we are working through diaries to make it happen. There has been engagement by the Government, but we are certainly looking for a more detailed set of commitments on what happens next.

Marie McNair: That is certainly something that we will take back when we approach the Scottish Government. It is really important that we move on this as quickly as possible.

Convener, I do not have any more questions. What I was going to cover has already been covered, so I hand back to you in the interests of time.

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

Evelyn Tweed (Stirling) (SNP): Thank you, convener, and good morning to the witnesses. Thank you for your answers so far.

The SHRC report, “Economic, Social and Cultural Rights in the Highlands and Islands”—that is a bit of a mouthful—found serious gaps in the realisation of human rights across the region, such as a lack of affordable housing and issues with the affordability of essential goods and services. How should those gaps be addressed? Are the gaps and the issues specific to rural areas?

Jan Savage: I will happily answer that question. It might be helpful to reiterate why the SHRC did the work in the first place. The commission sought to establish a baseline over the four years of its current strategic plan around the enjoyment of economic, social and cultural rights across Scotland. The Highlands and Islands is the first region of Scotland that the commission decided was a priority. That decision was informed by engagement with a lot of community interest groups from areas that had already expressed concerns about access to local services—healthcare in particular, together with, as we established, housing and other goods and services.

The first thing that we set out to do was achieve a baseline, and that baseline has now been arrived at. Our baseline assessment against those economic, social and cultural rights is that there are gaps. How those gaps should be filled and how those rights should be realised will be for the local duty bearers to take forward. However, as with the conversation that we have just had about the deinstitutionalisation report and the commission’s education mandate, it became apparent that conversations about housing, clothing, food, transport and healthcare were not

necessarily happening within the framing of human rights and with an awareness at the duty bearer level that they are fundamental human rights. They are economic, social and cultural rights, and they are requirements and obligations.

A framework is in place that can guide people to taking a human rights-based approach to designing services, and to making decisions about budget allocation, local policies and so on. We leave the Highlands and Islands decision makers and duty bearers with that framework and approach to guide on-going decisions from here. We will return to the Highlands and Islands in a number of years to look at what progress has been made. The baseline there is established.

Are those issues common to other areas, or are they unique to the rural communities of the Highlands and Islands? That is the next question that we will look to answer, and the next part of the research is to go to the south of Scotland to conduct exactly the same assessment against exactly the same set of indicators, and then we will have a comparator. Thereafter, the plan is to move into the more urban parts of the country in years 3 and 4, and we will conduct the assessment there.

Over a four-year period, we will have, for the first time, a baseline of ESC rights enjoyment in Scotland. We hope that we will also be able to work with the duty bearers in the Highlands and Islands to get a sense of how the toolkit that was provided by the commission has informed change.

Evelyn Tweed: What is the timescale for the south of Scotland research?

Jan Savage: The south of Scotland research will be concluded in the 2025-26 financial year. We are just closing out the Highlands and Islands work. The team was back up with the communities last week to conclude that. We will reflect on the learning going into the next stage and then we will conclude the fieldwork in the south of Scotland. The final report will be produced by the end of the next delivery year, which starts today. We are in 2025-26, as of 1 April, so it will be produced by 31 March.

Evelyn Tweed: Thanks for that. What response have you had so far from the Scottish Government to your research?

Jan Savage: Are you asking about our research on the Highlands and Islands?

Evelyn Tweed: Yes.

Jan Savage: We have been positively engaged at Scottish Government level. It has welcomed the research privately and publicly, including in the Parliament’s debating chamber. Rhoda Grant MSP led a members’ business debate on the findings, which achieved that response.

With regard to the Scottish Government, there is an acknowledgement that a human rights-based approach has not necessarily been evidenced in decision making so far. From what we can gather, the Government has welcomed our attempts to embed that approach into local decision making.

The Government is aware of the programme and that it is a four-year programme of work. It is also aware that the commission's decision making on the programme was based on the intention to legislate for the incorporation of ESC rights through the human rights (Scotland) bill. Such a bill might continue to be in the Scottish Government's plan for a future session of Parliament. If it is, we will have a baseline from which we can monitor the impact of that legislative change. Government is aware of all that intention and has welcomed our work.

Evelyn Tweed: Do you think that decision makers have sufficient understanding of rural and island issues? If not, what can be done to remedy that?

Jan Savage: The short answer is that it depends. The colleagues who have been leading on this research would be better placed than I am to answer with specifics, and I can follow up with you on that.

However, one of the recommendations in the report indicates that that understanding does not appear to be there, and that a one-size-fits-all approach to policy making does not work and does not necessarily result in all human rights obligations being met at the local level.

Evelyn Tweed: It would be good if you could follow up on that. That would be appreciated.

How has your work on deinstitutionalisation considered the impact on people with learning disabilities and/or those who are autistic with regard to regional differences across Scotland? What did you find?

Jan Savage: The research has looked at the position across every health and social care partnership in Scotland. I will hand over to Cathy for the detail on regional differences. I am sure that the data is in the research somewhere, but I am not sure that it is surfaced in our final report.

Cathy Asante: I do not think that we have the level of data that would allow us to answer that question. We know that one of the populations that the coming home implementation plan will address is people who are placed not just away from home but out of area. That factor would be likely to impact particularly on people from rural and island communities. However, I would not be able to provide the data that could give an analysis of that at this point. It might be possible to go back and

identify it from the available data, or it might be one of the data gaps; I am not certain.

Evelyn Tweed: Could you have a look at that and get back to us?

Jan Savage: We definitely could. As Cathy said, there is likely to be a large population of individuals who are out of area, and that merits further interrogation. We will be able to establish whether that data is in our data set or whether there is a gap, and we will come back to the committee and confirm either way.

Evelyn Tweed: That is great.

The Convener: We have another question from Tess White.

Tess White: Jan, my colleague Evelyn Tweed asked about "serious gaps" in the Highlands and Islands. In the north-east of Scotland, there seem to be huge issues with rural proofing, including problems with access to healthcare and the centralisation of other services, and a lack of efficient, effective public transport. For example, the X7 bus service has been reduced, which has had huge impacts on the population, including severely negative impacts on people with learning difficulties. General practices are closing at twice the rate in rural areas as they are in the central belt, which is also a huge issue. Practices are in crisis because they are struggling to cope and survive.

That lack of rural proofing by the Scottish Government is a massive problem. In your view, what can the Scottish Government do to address it? Do you believe that Scottish ministers understand the significant impact on rural and remote communities?

Jan Savage: Through our research, there is undeniable evidence of the impact that decisions are having on the realisation of human rights in local communities. That is incontrovertible: the evidence is there, the obligations are there, and the assessment suggests that there is a gap between the obligations and how rights are being met. Again, that provides a different lens through which to have conversations with the Government.

11:30

Everything that you said has been borne out by the commission's research. The lack of rural proofing is a problem. We talked about that with the Rural Affairs and Islands Committee during our evidence session on our report on the Highlands and Islands, when we also discussed our report on deinstitutionalisation. We have made recommendations to the Scottish Government about specific and targeted action that it could take to adopt a rural-proofed approach to national

policy making, and we look forward to working with the committee to ensure that that happens.

As yet, we have not had specific feedback from the Government on our recommendations, which the commission will continue to push the Government on. Certainly, there is incontrovertible evidence that the lack of a rural-proofed approach to decision making is having an impact on the realisation of human rights locally. An approach that gives specific consideration to the needs of local communities in rural areas is clearly lacking, and it is required.

Tess White: The Scottish Government has not changed direction and it seems to be focusing on centralisation. Do you think that you have been heard by the Scottish Government?

Jan Savage: We have met the Scottish Government and delivered our report, but we have not yet had a formal response to the specific recommendations that we have made. Clearly, we need to speak a bit more loudly.

Tess White: Do you believe that the onus is on you to speak a bit more loudly, rather than the onus being on the Scottish Government to say, "We have heard you, and we are now going to take action"?

Jan Savage: I think that the Scottish Government has said that it has heard us, but we have to ensure that it has. The onus is on the Scottish Government. We will continue to assess the progress that it has made, and we will be going to the south of Scotland to establish the situation in that area. At this stage, we have not had a line-by-line response to the recommendations in our Highlands and Islands report.

Tess White: So you will keep at it, but the jury is out.

Jan Savage: Yes.

The Convener: We have come to the end of our public session as members have asked the questions that they wanted to ask. I thank our witnesses. We have had a powerful evidence session, and I assure them that the strength of their message and the urgency of their advocacy has come across.

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

11:32

Meeting continued in private until 12:34.

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