



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EQUAL OPPORTUNITIES COMMITTEE

Thursday 26 September 2013

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CONTENTS

MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) BILL: STAGE 1	Col. 1533
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EQUAL OPPORTUNITIES COMMITTEE
24th Meeting 2013, Session 4

CONVENER

*Margaret McCulloch (Central Scotland) (Lab)

DEPUTY CONVENER

*Marco Biagi (Edinburgh Central) (SNP)

COMMITTEE MEMBERS

*Christian Allard (North East Scotland) (SNP)

*John Finnie (Highlands and Islands) (Ind)

*Alex Johnstone (North East Scotland) (Con)

*John Mason (Glasgow Shettleston) (SNP)

*Siobhan McMahon (Central Scotland) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

John Brown (Scottish Catholic Education Service)

Michael Calwell (Family Education Trust)

Ruth Hunt (Stonewall)

Chief Superintendent Grant Manders (Police Scotland)

Stephen McCrossan (Educational Institute of Scotland)

The Rev Blair Robertson (Healthcare Chaplaincy (NHS Scotland))

Cara Spence (LGBT Youth Scotland)

CLERK TO THE COMMITTEE

Douglas Thornton

LOCATION

Committee Room 2

Scottish Parliament

Equal Opportunities Committee

Thursday 26 September 2013

[The Convener *opened the meeting at 09:30*]

Marriage and Civil Partnership (Scotland) Bill: Stage 1

The Convener (Margaret McCulloch): Welcome to the 24th meeting in 2013 of the Equal Opportunities Committee. Please set any electronic devices to flight mode or switch them off.

Our clerking and research teams and official reporters are here. Around the room, we are supported by broadcasting services and security officers. I welcome the observers in the gallery.

I am the committee's convener. I invite members and witnesses to introduce themselves in turn.

Marco Biagi (Edinburgh Central) (SNP): I am the member of the Scottish Parliament for Edinburgh Central and the deputy convener of the committee.

John Mason (Glasgow Shettleston) (SNP): I am the MSP for Glasgow Shettleston.

Alex Johnstone (North East Scotland) (Con): I am a member for North East Scotland.

Christian Allard (North East Scotland) (SNP): Good morning. I am also a member for North East Scotland.

John Finnie (Highlands and Islands) (Ind): Madainn mhath—good morning. I am an MSP for the Highlands and Islands.

Siobhan McMahon (Central Scotland) (Lab): I am an MSP for Central Scotland.

Cara Spence (LGBT Youth Scotland): I am from LGBT Youth Scotland.

The Rev Blair Robertson (Healthcare Chaplaincy (NHS Scotland)): I am head of chaplaincy and spiritual care for NHS Greater Glasgow and Clyde and represent healthcare chaplaincy in the national health service.

Stephen McCrossan (Educational Institute of Scotland): I am national officer for education and equality in the Educational Institute of Scotland.

Chief Superintendent Grant Manders (Police Scotland): I am head of safer communities in Police Scotland.

Ruth Hunt (Stonewall): I am deputy chief executive of Stonewall and oversee Stonewall Scotland's work.

Michael Calwell (Family Education Trust): I represent the Family Education Trust.

John Brown (Scottish Catholic Education Service): I represent the Catholic Education Commission.

The Convener: Thank you very much.

The only item on the agenda is an evidence session on the Marriage and Civil Partnership (Scotland) Bill at stage 1. Witnesses should indicate to me or to the clerk on my left when or if they wish to speak. John Mason will start the questions.

John Mason: I will start with education. I will aim my questions at Mr McCrossan, but others might want to come in. Can you give us a general picture of how teachers deal with equality issues and, in particular, say whether you think that the bill will have an impact on how teachers teach in the classroom?

Stephen McCrossan: I do not think that the bill will have a significant impact on the way in which teachers teach in the classroom. We simply see the bill as another strand in equality and diversity, promoting equal opportunities and challenging discrimination. I do not think that it will make a significant difference to classroom practices and how teachers teach in the classroom.

John Mason: What a school, the Government, an education authority and everybody else would say about some equalities issues is quite clear. For example, they would say, "You should treat a black person and a white person exactly the same." The same would be true in relation to bullying or whatever. Do you accept that we are discussing a quite controversial issue and that teachers might have views either for or against same-sex marriage?

Stephen McCrossan: Yes, they will have their personal views on that, but they adhere to a code of professionalism and conduct through the General Teaching Council for Scotland. Their role in the classroom is clearly defined as non-judgmental. The responsibility and onus would therefore be on the teacher to devise appropriate classroom activities to allow the children and young people to look at and explore the issues in the bill on their own and make up their own minds about it. Essentially, it is the responsibility of the teacher to be inclusive and non-judgmental in how they operate in the classroom.

John Mason: Would a teacher ever say what their personal views are, or should they never do so? I am thinking of political issues such as the one that we are discussing.

Stephen McCrossan: Teachers are often asked what their own views are, but in my experience, they set down the parameters right at the beginning of the year with the class on what is expected in the classroom. The teacher's views and opinions would certainly not matter; it is all about the children exploring and expressing their own views. That would be established as a basic classroom rule.

John Mason: I imagine that, on issues such as this one, a teacher's interaction with, say, a primary 4 class will be quite different from their interaction with a secondary 4 class, where there will be more of a discussion.

Stephen McCrossan: I have no experience of the primary sector, but I can say that classroom practice and teaching methodologies have opened up as a result of curriculum for excellence, and teachers are now being encouraged to explore and use many more new teaching methodologies such as collaborative learning, the use of information and communication technologies for research purposes, active learning and peer learning. People's views of traditional teaching approaches have changed and teachers are now able to pick and choose from the approaches that I mentioned, depending on their audience.

John Mason: Do any of the other witnesses have views on whether the bill will make any difference in schools?

Cara Spence: I do not necessarily think that the issue is as controversial as people perceive it to be. LGBT Youth Scotland has just completed a three-year project in which we worked with more than 9,000 pupils in 47 schools across Scotland and trained 350 school staff. There is a fear that this is a controversial issue and when teachers hear such language they get alarmed. However, when you unpick the issue and show that it is okay to talk about, say, love, bullying and anti-bullying approaches, teachers are okay with it. Our work with teachers was fantastic and positive; those teachers are leading the way in Scotland and particularly think that issues such as prejudice-based bullying need to be challenged in schools.

John Mason: I agree that issues such as tackling bullying should not be controversial in any way. However, given the public reaction, do you not accept that this is quite a controversial topic?

Cara Spence: I suppose that it has been controversial as far as the media reaction is concerned but I think that a strong majority of public opinion supports the bill.

John Brown: I do not think that the bill will make very much difference to teaching in the classroom about respect for the individual, which is important and ensures that bullying is not accepted. However, the strongly controversial

aspect of the bill is its redefinition of marriage and, in Catholic schools, such a redefinition will come into conflict with the belief held in Catholic schools and by the Catholic church about the sanctity and dignity of marriage as being between a man and a woman. Teaching in those schools would have to represent marriage by saying what it is, in view of that religious stance. That is why we are concerned that the bill might have particular consequences for teaching and teachers in our schools, and we are looking for an assurance that it will not change or challenge the faith curriculum in Catholic schools.

John Mason: Can you set out your concerns in a little more detail?

John Brown: For a start, we teach the current understanding of marriage as a lifelong and exclusive commitment between one man and one woman, and controversy will arise with regard to what teachers will say about equal marriage as defined in the bill.

Michael Calwell: The problem is that you cannot teach children, particularly young children, two conflicting normative views of marriage at the same time.

Ultimately, there is an understanding of marriage that is shared by the whole of the human family, which is that it is a purposeful sexual union of a man and a woman that is vital to human society and confers upon society innumerable and vital benefits that are indivisible from that nature as a man and a woman. Without that basic principle enshrined in the institution, we cannot understand why human societies even have marriage and what it does—we cannot really understand it at all. On the other hand, there is a radical, new vision of marriage that has, in essence, been invented by a pretty small political class in a very small corner of the world in the past few years and which radically conflicts with that view.

We must decide which of those two conflicting understandings of the human institution of marriage we teach to children. We would say that the bill should not proceed at all. However, should it proceed, the decision on which of those conflicting views of marriage is taught to children would have to be made by parents because, in any free society, they are ultimately the people who are responsible for raising and educating their children and they have a basic right to have their ontological, philosophical and religious views communicated to their children. If the parents do not make the decision about the manner in which their children are educated, who does?

John Mason: Why would a school have to take one side or the other? On an issue such as abortion, the teacher could tell the children that

some people agree with it and some people disagree with it. Can that not apply to same-sex marriage as well?

Michael Calwell: With older children—in the teenage years, for example—we could probably tease out some of the political and ideological concepts that have gone into the bill. We could talk about gender theory, critical theory and all the ideologies that have driven the bill and then juxtapose the vision of marriage that is contained in the bill with what the human family understands the nature and purpose of marriage to be. Therefore, we could teach it in the context of a wider political and ideological conflict that is going on in this part of the world at this point in time.

However, when it comes to small children, who really cannot digest all that complexity, the people who must decide what marriage is—what its basic meaning and purpose are—and what they want to communicate to their children about that must be the parents. We emphasise the primacy of parental sovereignty in the debate.

Ruth Hunt: There is a fundamental misunderstanding at the heart of the debate, which is the assumption that the law is based on people's individual belief and faith. That is not the case. Scotland determines its law based on what the nation needs and has determined that same-sex marriage is a good thing.

Faith schools that work with Stonewall Scotland and those that choose not to but still take the issue seriously are clear that teachers are able to present their views and beliefs in a respectful and dignified way while still teaching truth. People in every faith community and those of no faith would agree that all children need to be taught the truth. Children under 11 do not need Michael Caldwell's analysis of Foucault's changing nature of gender variance. They need to know that different couples love each other and that love and relationships are important.

Providing age-appropriate materials and ways of describing that is exactly how good faith schools work. The faith schools with which we work say that homophobic bullying is not fair, not right and not Christian and that they strongly believe in that. They also say that some people believe that same-sex couples should be able to get married and some do not because they believe that marriage should only be between a man and a woman. Children, regardless of their level of sophisticated understanding, are able to grasp that concept easily.

It is possible to present different notions of faith without telling lies. That is what it comes down to. If the law changes, schools will have to teach the truth, but that does not preclude them from teaching their beliefs as well.

John Mason: What do you mean by "truth" in this? It is clear that two and two is four: that is a matter of fact and nobody argues with it. Do you accept that, on an issue such as same-sex marriage, there is, in a sense, no truth because some people have one view and some have another?

09:45

Ruth Hunt: Let me put same-sex marriage to one side. The truth at the moment is that opposite-sex couples can get married in a religious premises or in a registry office. Some people do not have any religion when they get married, but that is okay. Some gay people can enter into something called a civil partnership. Those are facts—factual pieces of information. The teacher can then say, for example, "I don't believe that gay people should be allowed to have a civil partnership. That's because I believe that relationships should only be sanctioned by the state when they are within a construct of faith." You know, you can have that conversation while presenting the truth.

When the bill is passed, the teacher could say, "Some gay people get married; some don't. Some heterosexual people get married; some don't. I believe that gay people shouldn't get married." That is not an impossible position to occupy within a school environment. Some of the discussions at the moment suggest that the bill will force teachers into a position where they cannot say, "I do not believe that this is a good thing." The reality is that good teachers, including good Catholic teachers, frequently manage their beliefs in juxtaposition with the curriculum that they are teaching. I remember a very good lesson in my Catholic secondary school, in which we were taught about evolution but the teacher began by saying, "I do not believe in evolution. This is my personal belief, but I will now teach you." As a pupil, that was a fascinating insight into the different ways of seeing the world, but the lesson also enabled me to pass my physics GCSE. These things are not contradictory.

The Convener: We will move on to questions from John Finnie.

John Finnie: Good morning, panel. Mr Calwell, in your written evidence, you say:

"There are four key components in the definition of marriage: it is voluntary, heterosexual, monogamous and lifelong."

What is the source of that information, please?

Michael Calwell: What we are saying is that you cannot understand what marriage is unless it has those characteristics. The purpose of marriage and the nature of marriage are indivisible, basically.

Here is a little thought experiment for you. Imagine that you were an alien coming down from outer space and you had to try to understand what marriage is. If you had to understand the human phenomenon of marriage, the purpose of marriage, why it is vital and why it is important—all those things—and all that you had was the bill that is before us, you simply would not be able to understand marriage. It would not make any sense at all. In fact, it would raise more questions—

John Finnie: What is the purpose of marriage, then?

Michael Calwell: Marriage unites a man and a woman to each other and any children they might have. It provides an ordered context for sexual activity. It provides children with a mother and father in a stable, ordered and committed relationship—

John Finnie: Is that the case with every marriage?

Michael Calwell: That is the reason why we have marriage in our society. That is why it is recognised.

In fact, the state's relationship to marriage is essentially tangential. The state recognises the importance of the extra-legal, pre-political and what you might call anthropological nature of marriage, and the state protects it in law. The state does that for the very simple reason that any civilised, functioning, happy, stable society needs the stable sexual unions of men and women.

Of course some men and women do not have children. Some cannot have children, and some may be too old. But even if 98 per cent of marriages did not produce children and even if 98 per cent of children—

John Finnie: What percentage of marriages at the moment produce children?

Michael Calwell: I do not know off the top of my head. I suggest that it is probably the majority—perhaps something like 60 per cent. I do not know the answer to that.

The point that I was making—if you do not mind me finishing—is that, even if the majority of marriages did not produce children and even if the majority of children were born outside marriage, that would not be a legitimate pretext for this legal innovation.

John Finnie: In your written evidence, you say:

“The Scottish Parliament should no more legislate for same-sex marriage than it should legislate for forced marriage, polygamous marriages, or temporary contract marriages.”

Why do you think that that is the case?

Michael Calwell: Because those things are incompatible with the purposes of marriage.

John Finnie: Do you accept that many people would find those views offensive?

Michael Calwell: No, I do not think that they would. I think that the majority of humanity understands marriage in much the way that I have just adumbrated.

John Finnie: Do you have a view on what I thought were the very succinct comments of Mr McCrossan on the code of professionalism and conduct for teachers? Do you think that there is something wrong with the existing code?

Michael Calwell: No, but I think that the bill introduces a new dilemma, which is to do with what marriage is, what it does and how that is communicated. As I said, there is also the issue of the rights of parents over education, which is explicitly laid out. Parents have a right to have their children educated in a way that accords with their philosophical, cultural and religious values.

John Finnie: You also go on to say:

“We are also concerned that teachers who indicate that they do not support same-sex marriage or who are unable in good conscience to use teaching materials that refer positively to same-sex marriage may face disciplinary action.”

Having heard Mr McCrossan's view, and being aware of the code of professionalism and conduct, do you still adhere to that view?

Michael Calwell: The problem with a lot of the bill and the guidelines is that they are unclear. We are not comfortable that a teacher could, in accordance with parents' wishes, posit that positive and constructive view of marriage without falling foul of potential legal action or facing other problems such as professional misconduct allegations.

John Finnie: Given what we have heard about how the curriculum is delivered, why would a teacher indicate their personal views on such an issue?

Michael Calwell: I will give an example. If a child were to ask a teacher what marriage is, what it does and why we have it, the teacher would be forced into a position in which they would have to go along with the radical, new vision of marriage, which really is not marriage at all but is the appropriation of the word “marriage” from its extra-legal context and its application to a legal construct that has nothing to do with marriage or the understanding of marriage that, frankly, most human beings have.

John Finnie: The abolition of slavery was seen as being radical, and people quoted scripture to support the retention of slavery.

Michael Calwell: I am not quoting scripture. I am just quoting the basic—

John Finnie: No, but I am saying to you that views can change over a period of time. You would accept that.

Michael Calwell: But the nature of marriage is rooted in the human person; it is rooted in the protracted and intense developmental, emotional and social needs of human infants. That is why it is a common human phenomenon. That is why it is found in much the same way in all human societies, even when those societies differ wildly in other respects. The common phenomenon of marriage tells us something about ourselves. It is not malleable. It is not really a malleable political or legal construct.

Marco Biagi: What about the deep emotional and social needs of those infants who will grow up to have same-sex attractions?

Michael Calwell: They need exactly the same maternal and paternal input that marriage provides. We have to decide here. They are equal citizens as well, and they have as much of a right to the security that marriage provides. Why would we treat them differently?

Marco Biagi: So, children who grow up to be gay men should marry women, and children who grow up to be gay women should marry men. That is marriage, as you understand it. Is that what you are saying?

Michael Calwell: No. The genesis and nature of homosexuality has nothing to do with the nature and purpose of marriage. They are completely separate things. They are not related. The fact that someone may not want to marry—or, for whatever reason, cannot marry—does not relate. I do not really understand your question.

Marco Biagi: I did not really understand your point, which is why I was trying to tease it out. You seemed to say that marriage, as it is currently set out in law, is necessary for the social, emotional and educational needs of infants—

Michael Calwell: That is why we have it, yes.

Marco Biagi: But you seem to ignore the infants who, as they grow and develop, will have same-sex attractions and will want to form relationships with people of the same sex.

Michael Calwell: No one is stopping anyone forming a relationship with a person of the same sex. Who is doing that?

Marco Biagi: If marriage flows from the social needs of the 95 per cent of children who will not grow up to have same-sex attractions, does it not also flow from the social needs of those who will grow up to have those same-sex attractions, and

should it not, therefore, simply reflect the social and educational needs that everyone has?

Michael Calwell: A child is not a sexual being.

Marco Biagi: Not when it is a child, no.

Michael Calwell: Marriage exists for them when they are children; it does not exist for them when they are adults. Do you see what I mean?

The Convener: I will bring in John Brown, and then John Finnie.

John Brown: I want to bring the argument, or the discussion, back to education in the classroom. Ruth Hunt talked about a classroom teacher presenting the facts and being able to say, "I don't believe in that." In a Catholic school, we would be teaching the idea of marriage as being between a man and a woman. That is the sacramental element in a Catholic school. That does not prevent me from stating that some people live different lifestyles and deserve respect for that. My worry is that if a teacher says in a classroom that they do not believe something to be marriage in the sense that we understand marriage, they could be liable to be attacked or taken to court because they are seen to be against something that the state has promulgated. Therefore, we need some sort of legal protection in the bill so that we can say what we believe within the Catholic understanding of marriage and we are not prevented from saying that some people go through a form of ceremony that they call marriage but is not marriage in our view.

Stephen McCrossan: My point is allied to that and it touches on Mr Finnie's point about disciplinary measures against teachers in schools. Our view is that the system already works. Normally, if a teacher has difficulties with the teaching resources that he or she is expected to use in the classroom, their professionalism allows them to flag up their difficulty with the particular topic and local arrangements come into play in the school. As the Government has pointed out, teachers have a responsibility through their professionalism, but employers also have a responsibility under the public sector equality duty to respect the beliefs of the individual teacher.

I work at a national level. Before I came to the committee, I asked colleagues whether they had come across any cases in which disciplinary procedures had been applied to teachers who said that using certain materials went against their beliefs. My colleagues have not come across any such instances at national level, which indicates that such issues are either being dealt with at local level, or they simply do not happen.

John Finnie: My question is in the first instance for Ms Spence and then perhaps for Chief Superintendent Manders. I do not know whether

the panel has seen the document on the issue that the Scottish Government has given us and that it has helpfully told us will be posted online today. I have to say that it is marked "DRAFT 1 EARLY 2014". It is titled "Conduct of Relationships, Sexual Health and Parenthood Education in Scottish schools". I will read a few small passages from it. Paragraph 7 states:

"RSHP education should present facts in an objective, balanced and sensitive manner within a framework of sound values and an awareness of the law on sexual behaviour."

After a short passage comes the phrase on which I would appreciate comment, which is:

"At the same time, teachers must respect and avoid causing hurt or offence to those who come from various family backgrounds."

That is some fairly woolly terminology, but I think that we all know where it is coming from. To what extent does such a statement, and people adhering to it, reduce the incidence of bullying? Does the leadership that comes from the classroom reduce bullying?

Cara Spence: That is so important. I would like to bring the discussion back to the welfare of children and young people. At the end of the day, we know that lesbian, gay, bisexual and transgender young people are in classrooms across Scotland. They tell us that if teachers said negative things about same-sex relationships, or said that same-sex relations are harmful or not equal to heterosexual relationships, they would find that damaging and hurtful. That is the most important thing.

In essence, part of a teacher's role is to consider the welfare of children and young people. That is paramount; it is not secondary to their beliefs or views. Before a teacher makes a statement in the classroom, they should consider whether it might have a damaging effect on a pupil in that classroom. Teaching should not be biased; it needs to be factual. If the bill is passed, the legislation will be fact. There is no need for teachers to state negative opinions in the classroom in relation to the legislation.

10:00

John Finnie: Chief superintendent, what are the implications for the police service if bullying gets to extreme levels? Does a statement like that help?

Chief Superintendent Manders: To be honest, I do not know whether it helps or not. I have been in the police for 26 years and I cannot remember an instance of bullying that has been precipitated by what a teacher has said in the classroom. It is more of a peer issue in the playground than

something that begins in the classroom. I have nothing else to add on that aspect.

John Finnie: An increasing dimension is bullying using social media and the internet. Messages are very important there.

Chief Superintendent Manders: Absolutely. I return to the fact that all those instances come across my desk because that issue sits within my remit. I cannot recall any instances since the inception of Police Scotland—and probably before that, in my time in Strathclyde Police—in which the bullying has been instigated by what was taught in a classroom.

John Finnie: I was not necessarily suggesting that it was. I was wondering about the contribution that education services can make. As elected representatives, we have all dealt with instances in which parents have felt that the education authorities have not been proactive in dealing with bullying. Such bullying can escalate to the severe violence that you and your colleagues have to deal with. I am talking about the extent to which messages are important.

Chief Superintendent Manders: Messaging is absolutely important. That said, I have detected a proactive stance on bullying in the education authorities with which I have worked closely. On the messaging that goes around, there is probably not enough on the internet and social media stuff but there is always a time lag before public authorities catch up with the here and now in these things. Police Scotland needs to do a bit of catching up with how it responds to cybercrime, internet crime, social media bullying and so on.

It is a slightly different debate, but I agree that messaging is very important. The messaging can be general and sensible and, in my view, it usually is.

Alex Johnstone: I want to discuss a specific point on the subject of education and how the bill may affect us in future. I have a rough idea of the views of everybody around the table and I respect those views. For the avoidance of doubt, I am one of the people who will oppose the bill.

Many of us, on both sides of the table, are veterans of the section 28 debate, which is more accurately described in Scotland as the section 2A debate, so we know that legislation can have an impact in the classroom.

My concern is that changes in the law in this case could ignite a similar, perhaps parallel debate over how we teach and how we react in the classroom. I ask the individuals on the panel whether they share any of those fears and whether they have any information that might assist me in deciding whether the legislation may

start a debate in the classroom similar to that on section 2A.

John Brown: There are issues about what is to be taught in the classroom, and about what is factual and what is belief.

The secondary element is about the public sector equality duty under which a local authority, if it is to fulfil that duty, might develop corporate policies that champion the need to advance equality. Advancing equality uniformly at the expense of the protection of religion and belief is where I see the difficulty. The public sector equality duty does not protect teachers who say things like, "I don't believe that this is marriage but the Government is allowing people to enter into what they call marriage", and that might lead to difficulties with employment law. There are examples of people who have been castigated and taken to court because they have made statements about what marriage is in essence and said that they disagree with the bill. We are looking for protection.

Ruth Hunt: Alex Johnstone is absolutely right to remind us about the effects of section 2A on Scottish schools and young people. The fundamental impact was that teachers felt paralysed and unable to talk about anything that related to sexual orientation. That legacy lives on in our schools. Some teachers think that that legislation still exists, and some know that it has been repealed but do not know what that means in terms of what they can do. That leads to there being very little reference to lesbian, gay and bisexual issues in any classroom, faith or no faith. The bill has reopened that discussion and it will give teachers the opportunity to think about how they can talk about these issues in an age-appropriate and sensitive way that reflects their belief system.

It is worth remembering that, as a wise man once said, just because something is not banned does not mean that it is compulsory. There is no reason why schools across Scotland would suddenly start waving rainbow flags and teaching their kids everything they need to know about gay stuff, but we need to move on from the paralysis that affected us under section 2A.

Any additional legislation in relation to education will be perceived and received by children and teachers in Scotland as the equivalent of section 2A, and that is a legacy that you do not want to return to and we do not want to return to under any circumstances. Existing guidance and legislation protects teachers of all faiths and none when they discuss these issues in a sensitive way that protects religious freedom but also enables children to learn the facts about how our society works in 21st century Scotland.

Stephen McCrossan: I work in the equality department of EIS and, as a trade union, we see it as our responsibility to keep teachers informed and give them a more informed view of equality issues. In undertaking that work, we organise LGBT networks for teachers, we have policies for giving advice to LGBT members, we are actively engaged with the Scottish Trades Union Congress to promote LGBT issues, and we actively encourage partnership activity with organisations such as LGBT Youth and Stonewall Scotland. Recently we highlighted Stonewall's "The School Report: The experiences of gay young people in Britain's schools in 2012", its approach to learning and teaching materials on different families, and its education champions programme. We have made our members aware of the LGBT Youth teachers' toolkit and lesson plans that it has provided.

We see all that as being part of our responsibility to make teachers more aware of LGBT issues and we do our best to address that.

The Convener: Alex, are you finished?

Alex Johnstone: I think that a few more people want to speak.

Michael Calwell: The word "diversity" crops up a lot during these debates and we have to be mindful of how Scotland is changing demographically, particularly with the inflow of people from very strong pro-marriage, pro-family cultures. That is visibly the case, particularly where I live. Scottish society will become increasingly reliant on people from those demographic backgrounds as our natural population, if you like, declines.

If we do not make provisions in the bill to protect parents who want and need their children to have an understanding of marriage that consists with their views, we could end up with a lot of problems in classrooms, particularly with parents taking local education authorities to court for violating their rights. Article 2, protocol 1 of the European convention on human rights makes it explicitly clear that

"the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

If we do not explicitly make that case, we are opening up a can of worms and problems. We therefore need to make such explicit accommodation in the bill. We need three provisions: first, a statutory obligation to inform parents if any teaching about marriage that conflicts with their views is done in the classroom; secondly, a right to withdraw children from such teaching; and, thirdly, a positive obligation on the state to provide children with education that conforms to their parents' understanding of the

vital—pre-political, if you like—nature and purpose of marriage.

The Convener: What would be the situation if the young individuals' views differed from those of their parents and they wanted to be part of the education that was offered in school?

Michael Calwell: For issues such as this, parents are the ultimate arbiters of what their children are taught.

The Convener: Up to what age?

Michael Calwell: I do not claim to be an expert on this, but I think that it is about when children get to a point at which they can understand the nuances of the arguments. However, the fear is that the state education system would not teach about the subject of marriage in an impartial manner. We can already see forces at work within the education system and the civil service that are antagonistic towards the traditional, established view of marriage. We would therefore not be necessarily comfortable that the state education system would provide a properly contextualised version of the wider debate about marriage not just in Scotland but throughout the world.

The Convener: If teachers in schools were not allowed to discuss the issue of same-sex marriage with young pupils, and some of the pupils had two mummies or two daddies and the young children asked the teachers about that, would the teachers then be allowed to discuss the issue?

Michael Calwell: What would there be to talk about? We are talking about marriage. The bill is concerned about what marriage is and what it does, and whether the law accurately reflects or contradicts that. I am not sure how your example would relate to the issue of marriage.

The Convener: If we assume that the bill goes through and we have marriage for same-sex couples as well as heterosexual couples, would you expect teachers in schools not to discuss that situation if there are pupils with same-sex parents?

Michael Calwell: This is why the bill is very problematic. Ultimately, it would be down to the parents of the other children to decide which of the conflicting versions of marriage they wanted their children to be taught about. That is one of the problems that the bill poses. I wish that I had an easy answer to that question, but the bill raises more questions than it answers.

The Convener: Are you finished, Alex?

Alex Johnstone: Yes. There is another volunteer.

John Brown: I want to clarify certain matters. Catholic schools already discuss homosexuality and gay, lesbian and transgender issues. They

can be discussed already because they are facts about people.

The question that arises is not about the discussion of marriage in the way that the bill would allow it; it is about the business of what marriage is. In that discussion of what marriage is, we want to say that the current legislation about denominational schools remains the same and is guaranteed so that, in the discussion of marriage, a teacher can clearly state that, for some people in society, although the Government has made a decision to call it equal marriage, in the view of the church we cannot call it marriage in the sense that we believe in marriage. That is where the problem arises: we want some sort of right to determine the faith aspects. That is not to say that we will not discuss these issues; the question is whether we say that they are exactly the same.

10:15

The state can define marriage—indeed, the fact that the bill does not define marriage is one of the issues—but we want the right and the freedom to teach the definition of marriage that the church would hold to. We also want an assurance that the faith curriculum is not going to be seen necessarily as discriminatory. That is the issue that we need to be careful about in whatever comes out of the bill.

Alex Johnstone: In the specific circumstances of a teacher in a Catholic school having a strong opinion and wanting to express that, would the legislation as currently proposed leave that teacher protected or unprotected?

John Brown: I will answer that question in two parts. First, I do not think that the teacher would have the right simply to say, "This is my strong belief." However, the teacher would have the right to say, "This is the belief of the Catholic church." We must clarify that. Secondly, as the bill stands, I believe that a teacher who made that statement would be unprotected, and that worries me.

John Finnie: I thought that Mr Johnstone was going to cover this. You have talked about the rights and freedom of teachers, and I respect the fact that a lot of people see those as important. At the moment, would a teacher in your sector of the Scottish education system be allowed to express a view that was different from that of the church and still hold down their job?

John Brown: Yes and no. A teacher is able to express any view. However, the expectation is that they will say, "This may be my view, but the view of the church is X." Parents who send their children to a Catholic school have certain expectations, one of which is that the teachers will teach what the Catholic church is about and what its views are. A teacher would be at liberty to say—as has happened in the past—"I personally

may disagree with the church on this particular point, but this is what the church believes and teaches." I do not think that the teacher can go beyond that.

Marco Biagi: Are teachers in Catholic schools who say that women should not be priests currently protected under any legislation?

John Brown: Are they currently protected?

Marco Biagi: Yes.

John Brown: I do not know, frankly, because the issue has not been raised. What we are looking at here has to do with marriage, and it is the equalities legislation that worries me. If a teacher said, for example, that women cannot be priests within the Catholic church, society would see that as something for the church to sort out within the church guidelines. However, what is suggested in the bill goes beyond simply the church. That is where my worry would be.

Marco Biagi: What about someone who is Catholic and who says, "I don't believe that women should be priests and I don't believe that women should be ministers either—that is my faith"? I do not know the exact scriptural justification that they would use for that, but the point holds for all religious observance. That situation could happen right now. Is there any protection right now, or is it simply that that issue has never come up?

John Brown: It is an interesting point. Frankly, I think that it has never come up as being an issue for society. What is suggested in the bill is a big issue for society as a whole; it is not within the strict parameters of church guidance and church rules and regulations. To my mind, the issue has not been raised. This bill may raise a number of issues with regard to the public sector equality duty. We want at least to strengthen that duty, in some way or another, within the bill.

Cara Spence: I assume—although I am not a lawyer—that teachers would be protected under article 9 of the European convention on human rights, in particular in relation to religious freedom. I assume that that is the case as regards protections.

I want to pick up on an earlier point about parents' rights. As a youth organisation, we are really clear that parents' rights should not be privileged over the rights of young people. It is important that young people's views are listened to and considered in any decisions that are made about their lives. Such a view is outlined in current practices such as getting it right for every child as well as in the United Nations Convention on the Rights of the Child.

We recognise that some parents may want to remove children from classes such as sexual

health and relationships education. However, we believe that it would be phenomenally impractical on the ground—if the bill goes through—for teachers to remove children from the classroom every time same-sex marriage is mentioned. Ultimately, good education is about dialogue between pupils and teachers—it is about discussing issues—so it would be difficult to plan for when a young person may raise the issue or to discuss it in the classroom.

Christian Allard: Does the panel agree that it would in fact be impossible to know in advance whether a subject was going to be taught in the classroom because the curriculum for excellence means that everything can be taught at any time?

Stephen McCrossan: The curriculum for excellence offers an awful lot of opportunity. I think that—touching on a previous point—there is now perhaps more of an emphasis on parental involvement within the working life of a school. Parent councils have a more important role.

It is also good practice within schools that, if any contentious issues are going to be covered within the curriculum, parents are advised of that well in advance. As regards any instances that I have come across, parents have the right to approach the school, the headteacher or perhaps a member of the parent council to register their objection or to withdraw their child from that specific aspect of the religious education curriculum or the sex education curriculum. That is simply my experience, but certainly the curriculum for excellence gives an opportunity for parents to express their views more powerfully.

Christian Allard: I will ask other members of the panel a more general question about what is happening in the classroom and what is happening in the playground.

We saw the introduction of civil partnership and now we have this bill in front of us. What are your views on what might happen? We have heard some views from representatives of the churches—today and on other panels. In particular, there is Pope Francis's last declaration, saying that the Catholic church may have an obsession with the issue of gay marriage and perhaps would be able to move on as in the case of civil partnership. I would like your views on that.

Michael Calwell: Are you talking about Pope Francis's view?

Christian Allard: Yes.

Michael Calwell: I do not think that it necessarily has anything to do with this bill, but I think that he was saying that these teachings have to be understood in a wider context and that the church cannot just hammer away at individual matters without putting them into the context

where they belong—for example, the good of society and so on.

Christian Allard: So is it possible to talk about these issues without, as Pope Francis suggested, being obsessed by them or thinking that they will be bigger than they actually are? Is that not what happened with civil partnerships? Perhaps Superintendent Grant Manders can tell us what happened in the classroom, the playground or the wider community in that respect.

The Convener: Ruth Hunt wants to come in on that subject.

Ruth Hunt: Civil partnerships brought us up a gear. We heard a lot from young people who had attended a civil partnership ceremony and then talked about them in school, and we think that civil partnerships created an environment in which these matters could be talked about in an easily understood way.

However, civil partnerships did not completely eradicate homophobia in our schools—50 per cent of young lesbian, gay and bisexual people still experience bullying—and the sense of otherness that comes from having two separate systems is incredibly damaging to gay people's sense of self and how that is described in schools. We thought that the situation would be better than that and that things would move more quickly, but that has not happened.

As we have seen in other countries, people stop worrying quite so much about equal marriage when it is introduced. I should also point out that by no means all faith communities share the same views on this issue; many gay and heterosexual people of faith see marriage as a good endorsement of good relationships, and the opportunity should be extended to gay people. Marriage will have a civilising effect on people's consideration of lesbian, gay and bisexual issues, and that will feed down into the playground.

There has been some confusion over why equal marriage will reduce homophobic bullying and, if the committee will find it useful, I will set out an explanation. The acceptance of equal marriage in Scotland will be heard and understood by those young people up and down the country who are sitting in their living rooms reading the papers that this country has voted for equal marriage and equal rights for lesbian, gay and bisexual people. That is very positive and inspiring news for lesbian, gay and bisexual people, their parents, their godparents and their friends and families, and it will have an impact on the culture in schools.

The type of vitriol that we are hearing about gay people right now will have a damaging impact and damage the young lesbian, gay and bisexual people who are watching on live stream—and I

can assure you that they will be watching it. They are interested in what is being said, and the way people are talking about gay people will have a negative impact. A positive vote for this legislation will change culture and attitudes and, crucially, make modern 21st century Scotland a nation that lesbian, gay and bisexual people want to stay in.

However, we will all calm down about this. Indeed, there has already been some movement and relaxation from the Church of England and the Pope on these matters. It is perhaps not as important an issue as child poverty and some of the other major issues that faith communities are concerned about.

Does that answer your question?

Christian Allard: Yes. Does anyone wish to comment?

The Convener: We are actually going to move on to Siobhan McMahon.

Siobhan McMahon: I apologise, convener, but I will limit my questions to the bill and not what is happening in the wider world.

First, I think that, as we have sought evidence on the bill, a certain confusion seems to have arisen that relates more to people's concerns than to what might actually happen. This morning, Ruth Hunt has been very eloquent about what could happen in schools, arguing that a teacher could share their own views and say, "That is what I believe; however, this is what the state teaches." Others, on the other hand, have argued that teachers cannot say, "This is what I believe" if what they believe is in fact contradictory. Where does your belief come from? Is it a legal protection? If so, it would be great to have the evidence about where it is set out.

Ruth Hunt: That is what happens already. This legislation will not make any difference to how teachers in faith schools and indeed non-faith schools—after all, this is not just an issue in faith schools—are already managing these issues. Teachers hold a range of beliefs about a range of different issues, but the fact is that they know that they need to teach things so that kids can pass their exams; so that they can live, work, socialise and pray in a modern society when they leave school; and so that they are equipped to work and to manage in society. Teachers want to ensure that young people respect their neighbours, their colleagues and the people they are going to work with. Of course, that does not preclude them from expressing a belief; indeed, young people are very interested in the range of beliefs that people hold on issues. There is no way—in fact, it is physically impossible—to say to a teacher, "You have to draw a line and not say what you believe here and teach only the facts there."

10:30

If this was a new issue or concern, I would be less confident in my answer, but the reality is that teachers navigate a fine line all the time about issues relating to contraception, genetics and modern crop rotation. We constantly battle with ethical issues of interest and issues that involve holding conflicting beliefs and teaching the facts. Good teachers are very well equipped to deal with that.

Management in the school—Stephen McCrossan will know more about this—will set the policies for that school. When a teacher deviates from those policies, management is experienced in how to navigate that. Managers have vast quantities of experience about how to manage teachers who say, “Do you know what, I don’t believe Dickens; I don’t want to teach him.” That is a problem, because Dickens is on the curriculum. They are very good at navigating problems that arise. This is not a new problem and we do not need new solutions.

My concern about any new legislation is that it would be misinterpreted as a reintroduction of section 2A and would give teachers a signal that they could actively go against teaching the facts. We need to avoid that at all costs.

Siobhan McMahon: Do you accept—my question is for the whole panel, so it is not directed at Ruth Hunt—that the equality impact assessment that came with the bill said that, not only for the classroom but all over, there would be guidelines and protections but that those protections cannot be guaranteed?

Ruth Hunt: I imagine that there would be the same disclaimer about any issue and that the Government is being a little bit cautious. Existing guidance probably needs to be more clearly stated. We would very willingly work with Government to ensure that the guidance is very clearly stated, but that does not require legislation.

I would also argue that new legislation would not solve the problem anyway, because it would lead to even more disputes about what means what and in what context. Teachers need to teach the facts and they need to know how far they can go in expressing their beliefs. Different schools will have different approaches to that issue, but it is not something that you can legislate about from the top, nor should you.

Siobhan McMahon: The draft Government document that John Finnie alluded to states:

“In issuing this guidance it is the Scottish Government’s expectation that if a teacher, child or young person is asked to do something against his or her conscience, he or she should be able to raise this with the school or local authority.”

The Government has included that statement in the guidance. I think that everyone would agree that that is welcome. Ms Hunt has suggested that we do not have to go further in legislation. Does anyone else have other views? If you have concerns, would that statement alleviate them?

John Brown: The concern about the impact assessment was expressed well by the Faculty of Advocates when it said that it

“does not extend to persons in other occupations who may face a conflict between their beliefs and the changed nature of marriage implicit in the Bill. The conflict is most likely to arise as a result of the public sector equality duties”.

We are talking about the management of schools setting a policy, but it may be that local authorities, under the public sector duty, may set a policy that could lead to difficulties for the teacher who says, “I believe.” We are looking for something in the bill, not just in advice, because, for example, the Lord Advocate’s advice that is given could change tomorrow. All that that requires is a change of Government and a change of personnel.

We are looking for some sort of guarantee in the bill that equates to what the Faculty of Advocates is stating and ensures that there is not the possibility of someone being considered to be discriminatory or homophobic because they hold a particular view about marriage. That would not apply to having a view about equal rights. We have to be very careful that we are not equating equal marriage with equal rights. They are not necessarily the same thing, unless we define marriage in a particular way, and that definition of marriage is not there now.

We are saying that we want to hold to the traditional church view of marriage and to have it included in the legislation that, under the public sector equality duty—I know that the Parliament is discussing with Westminster the issue of looking at the public sector equality duty—there is protection for the teacher who says, “I believe that this is what marriage is.” I do not think that such protection is in place now.

Cara Spence: I think that it is important to recognise teachers as professionals. I have worked on the ground with teachers; of course they have beliefs and opinions on a wide range of subjects. As a professional—I am a youth worker who works with young people—I have a duty to consider the impact of what I say. Professionals who work with young people reflect critically all the time on what they will say and the impact that it might have on a young person. I do not think that it would make sense to legislate to take the power away from highly competent teachers.

Siobhan McMahon: I agree entirely, but do you think that, particularly for denominational schools, greater protection—I do not know how that would

be worded—is needed? Do you agree? Given the view that you have just expressed, do you think that that is needed?

Cara Spence: For me, a teacher who works in a denominational school should be treated in the same way as everyone else. I know that there are lesbian, gay, bisexual and transgender young people in Catholic schools, and they need to hear positive messages, too, regardless of the educational establishment that they are in. All teachers have the same duties, which are outlined in the GTC code of conduct. That is already there.

John Brown: There is something that we need to be careful of. This is not an issue for denominational schools; it is an issue for every teacher in Scotland in terms of what statements they make and what duty is placed on them by their local authority or their own senior management. Quite rightly, we must treat everyone with dignity and respect. I hope that every teacher in Scotland treats every child and young person with dignity and respect, but it is when we look at what we have to teach that we get into difficult areas.

Siobhan McMahon: There are two things that you said in your submission that I would like to follow up on. One of them was about Catholic adoption agencies. You gave the example of what was said in previous legislation and what is happening now. Given that that related to a different bill, do you think that it is a valid example to use?

John Brown: I think that that example was included because, at the time that the bill in question went through, oral guarantees were given to the adoption agencies that fell through. It was a case of the public sector equality duty trumping religious belief. We are worried that the same thing could happen on the issue of marriage.

Siobhan McMahon: I have a final question for you before I move on. You say in your submission:

“Catholic schools are regularly being challenged to justify their teaching, their practices and their very existence by individuals and groups which appear determined to remove the rights of parents to choose faith-based education for their children.”

By whom are they being challenged and on what basis?

John Brown: At present, challenges are being made by certain groups on, for example, religious observance. There are certain groups that often challenge Catholic schools on the basis that they are divisive. We see in the newspapers from time to time that Catholic schools are divisive and sectarian.

We would simply refute that, first because parents can choose whether to send their children

to Catholic schools. I do not want to get into the argument about why Catholic schools exist. The fact of the matter is that, in Scotland, they exist, and they do so within the legal framework. The legal right to send children to Catholic schools exists—there is parental choice. We could spend a lot of time debating the benefits or otherwise of Catholic schools, but it is the case that people challenge whether they have a right to exist. At present, they exist under the law of Scotland. Therefore, when it comes to how they develop and how they teach, they have a right to protection and promotion within the Scottish education system.

Siobhan McMahon: Concern has been expressed—I am not sure whether that was done on behalf of chaplains or without you realising, Mr Robertson—that if someone who worked for the Church of Scotland, for instance, and who, when conducting a service, shared their view that they were against same-sex marriage, also worked as a chaplain in a hospital, that might conflict with their public service duty.

Some of the lawyers from whom we heard last week thought that that would not be the case, and it would all be perfectly fine, but others disagreed—they could not make up their minds, as lawyers cannot. Are you aware of the concern? Is it unfounded?

The Rev Blair Robertson: Thank you for the question. I do not see the issue as a concern. Ministers of the Church of Scotland and other denominations who work as healthcare chaplains are employees of the national health service and are bound by the codes of equality and diversity and their own professional codes of conduct, as is the case for any NHS employee.

Healthcare chaplains often have a dual status in that they are a minister or representative of a faith community as well as a healthcare chaplain. What someone says in their pulpit on a Sunday, as a minister of their church, is what they say on a Sunday; what they do as a healthcare chaplain is what I am interested in, as their manager. I would want to ensure that the service that the chaplain delivered in the hospital was in keeping with NHS equality and diversity policies and our professional code of conduct.

Siobhan McMahon: You think that those policies are there, so there is no need for additional legislation in that regard.

The Rev Blair Robertson: I believe so, yes.

The Convener: Does Christian Allard have more questions?

Christian Allard: I am surprised that you want me to ask more questions, convener.

I had a question for the Rev Robertson, but he gave the answer that I was looking for when he

talked about professionalism. He put it well when he talked about the difference between church and the job that someone does during the week.

Do other panel members agree that teachers will be in exactly the same situation? A professional who works in education during the week and who is a member of a church must separate the two areas. Church is what they do at the weekend, and during the week they have a professional attitude.

John Brown: I agree absolutely that teachers must act as professionals, but I would argue that they must do so whether they are at church on a Sunday or at school on a Monday. Religion is a way of life; it is not compartmentalised into a Sunday.

I would expect teachers in a Catholic school to be very professional in teaching the Catholic faith, because that is the *raison d'être* of a Catholic school and that is what the parents want. As I said, if a teacher says, "I might not believe in a particular aspect of the Catholic church", their professionalism should ensure that they say, "But this is what the Catholic church teaches." That is what I would expect.

Christian Allard: In the same way they must say what the law of the state is.

John Brown: I am sorry?

Christian Allard: A teacher must say what the church believes and what the law says.

John Brown: Yes. Currently a teacher must teach what the law states about equal rights. If the bill goes through, I expect that teachers will have to discuss the issue with pupils, because of the fact of the bill having been passed, while stating the church's position, which is that it disagrees totally that the new arrangements constitute marriage as the Catholic church understands marriage. That is why we want the protection that we have talked about to be clearly set out in the bill, to ensure that we can say that.

Christian Allard: Will that be an issue not just in Catholic schools but in other schools? Teachers will say that some churches disagree with the law, including the Catholic church.

John Brown: Yes.

10:45

Ruth Hunt: John Brown and I are in broad agreement on those issues. Many schools with which Stonewall Scotland works frequently hold debates in their religious education lessons about what different faiths think about homosexuality. It is not a no-go zone for discussion; it is an interesting discussion about where we are at.

The General Teaching Council for Scotland and the bodies for nurses, midwives and doctors are issuing increasingly detailed guidance about how professionals should behave outside work, not in relation to sexual orientation but in relation to where they go at a weekend, what they do and what they put on their Facebook posts. There is an increased awareness about how professionalism should extend outside the classroom, ward and clinic. The professions are well equipped to navigate the issues inside and outside the school, and I am confident that everything already exists to enable them to navigate that space successfully.

Stephen McCrossan: To return to the first point that I made, teacher professionalism is paramount on the issue. It relates back to the non-judgmental aspect of the code of professionalism and conduct.

Although examples of this have been used, in my opinion there are very few teachers who would stand up in front of the classroom and start off a lesson by saying, "I believe". They may use that as a tool to try to draw out and elicit opinion from children and young people, but a teacher's opinion is irrelevant. It is about the children and young people considering issues, exploring the facts behind them and drawing their own conclusions. Teachers are very much facilitators in that process.

Christian Allard: I know that we are going into a wider debate, and I will maybe take us back. What you just said is not about this bill in particular; the bill only highlights what already happens in schools.

Stephen McCrossan: Yes.

Marco Biagi: Rev Robertson, will you tell me—unfortunately, I am ignorant of the matter—how many different faiths are represented in the chaplaincy services in the NHS?

The Rev Blair Robertson: I cannot give you an answer to that question. Healthcare chaplains in the NHS are not appointed to represent any faith or tradition; they are appointed to deliver a service of spiritual care to people of all faiths. We do not represent a faith within the hospital: we are not there on behalf of any faith or church as chaplains.

Marco Biagi: However, I take it that they are drawn from a range of churches.

The Rev Blair Robertson: A wide range, yes.

Marco Biagi: I take it, then, that it is possible that there are chaplains who, outwith their employment, express views that other people consider controversial. For example, there may be some who already say on a Sunday that homosexuality is sinful and then come in as a chaplain on Monday. Is that possibly the case?

The Rev Blair Robertson: It is possibly the case. Not all healthcare chaplains are ministers: not all have a church for which they are responsible or where they preach on Sundays. We have a number of chaplains who are laypeople. In some respects, I would see the situation as being analogous to the fact that, when someone is on NHS premises, they do not smoke, but what they do when they get home is their own business.

Siobhan McMahon: On a point of order. I make this point because the same thing was said last week as well: I am not aware of any faith group that teaches that homosexuality is sinful. I say that just so that Marco Biagi knows it.

Marco Biagi: I am sure that I have seen written submissions that have suggested that.

Siobhan McMahon: Not that it is sinful.

Marco Biagi: I believe that it is taught that homosexual relations are sinful.

Siobhan McMahon: That is different.

Marco Biagi: It is rather a hair to split, but I am sure that we will have that discussion later when we write the report.

Siobhan McMahon: For the record, Marco, it is different.

Marco Biagi: Noted.

Rev Robertson, if your successor came down on someone who said something like what we are discussing outwith their employment, would they have any justification for doing that?

The Rev Blair Robertson: I am not sure what you mean by my successor.

Marco Biagi: Based on what you say, I assume that you would never do that but, should the next person to occupy your post have a completely different attitude towards the work and the Sunday-Monday separation, would they have the right to take action against a chaplain who, outside their work hours, said something according to their faith that other individuals might consider to be a contravention of equality?

The Rev Blair Robertson: If there was the potential that they had brought the good name of healthcare chaplaincy into disrepute or had misrepresented NHS policies in some way, the answer is yes.

Marco Biagi: I want to move on to Chief Superintendent Manders. He has had quite a quiet morning, so I want to ask him a question.

There were suggestions in previous submissions that changes to public order legislation are needed. Specific changes were suggested to ensure freedom of speech on the issue of same-sex marriage. It was suggested that

that approach might be stronger than the Lord Advocate's guidelines, as things would be in statute.

Section 14 of the bill is on the protection of freedom of expression. Do you think that amendments to public order legislation would have a material impact on how you police such issues?

Chief Superintendent Manders: In short, no. I think that the safeguards that are currently in place would cover any new issues that the bill brought in. I cannot see any significant issues being caused by that in respect of the policing of public order.

Marco Biagi: I have a question for the EIS. I presume that the EIS has represented teachers who have had complaints or issues relating to religious discrimination in the workplace. Am I right in thinking that? Is that very rare?

Stephen McCrossan: I cannot answer that question, to be perfectly honest with you. The way in which we organise our organisation is that we have an equality department and an employment relations department. The equality department is basically responsible for pushing out the message on equality issues, whereas the employment relations department deals with the case work that arises from equalities issues. Therefore, I have no knowledge relating to that matter.

Marco Biagi: Fair enough. Could you provide supplementary written evidence on any instances of disputes in the workplace to do with religious discrimination in which the EIS has represented members?

Stephen McCrossan: Yes. We would be happy to do that.

Marco Biagi: I would be very grateful for that.

Ms Spence, the particular experience of transgender young people has not been touched on, but it is an important part of the bill. Do significant issues arise from the bill in that area? If so, what is their relevance to what we have talked about, and what message should we take?

Cara Spence: I suppose that the relevance is that the bill would not necessarily make sense for transgender young people if it went through. What I mean by that is that, to get a gender recognition certificate, a person needs to be 18, but the age of marriage in Scotland is 16. Those bits of legislation do not necessarily compare. Our question is: how does that make sense?

We have spoken to transgender young people about what the bill would mean for them. Largely, we work with transgender young people from 13 to 25, and they say that, ideally, earlier discussions relating to gender recognition would be much more beneficial to them in their lives.

Marco Biagi: Are you aware of the issue of transgenderism being mentioned in classrooms at all? How widespread is that? At what age does that happen, if at all?

Cara Spence: When we started our challenging homophobia together schools project, we set out to address homophobic bullying specifically. Through that journey, we discovered that more and more transgender young people are coming out as transgender in primary and secondary education. That is in relation to gender, not sexual orientation. They speak about how their experiences of school are particularly harrowing. They often experience high levels of bullying in schools and even when they go on to university or college. The issue is beginning to be raised in schools and teachers are beginning to have discussions, largely to ensure that there is effective support. However, teachers often lack in confidence in the area.

Marco Biagi: Is it the experience of the transgender young people whom you work with that when this issue is raised in schools it helps with the atmosphere?

Cara Spence: Absolutely. We have moved some way in relation to understanding sexual orientation, but there is a real lack of understanding of transgender young people. If people do not understand what is going on for them, it is very difficult for them to accept who they are. If you are 13 years old, it is very difficult to explain to somebody else what is happening. If there is a broader awareness of what it means to be transgender, that would certainly improve transgender young people's lives.

Education is so important in terms of messaging across the board. We know that there are a lot of negative messages, particularly in the media, so it is important that education combats them.

Marco Biagi: I have seen statistics for levels of self-harm arising from homophobic bullying in schools. Can you refresh my memory as to what those were?

Cara Spence: I cannot remember off the top of my head. What I do know is that the research that we carried out with 350 LGBT young people in Scotland showed that 69 per cent of LGBT respondents had experienced homophobic or bi-phobic bullying and 10 per cent had left education as a direct result of homophobia broadly within the school environment. The research also showed that homophobic bullying can impact on young people's mental health, increase the suicide risk and the potential for someone to self-harm, and lead to poorer educational attainment.

Marco Biagi: Do you have any examples of good practice—really shining examples of schools that have dealt with the issue and, as a result,

brought down levels of homophobic bullying? How do you think that same-sex marriage would be discussed in such schools?

Cara Spence: One of the projects that we delivered worked really closely with schools to create a whole-school approach. It was about how we ensure that teachers are trained effectively, how we ensure that they have effective policies in place to support young people and how we ensure that there is age-appropriate content in the curriculum.

The project was also about having staff on the ground providing the support, because often they lack the confidence to do that, and about their having the capacity to do it, because they are phenomenally busy. We also have an LGBT charter mark, which two schools in Scotland have achieved, to showcase the amount of work that schools have delivered to ensure that they are LGBT inclusive.

Marco Biagi: In committees we are often asked to name and shame. Could you possibly name and credit?

Cara Spence: Maybe afterwards. They are two schools in Glasgow. I will tell you that much.

On connections to same-sex marriage, a number of people, including Ruth Hunt, talked about messaging. If you can talk about same-sex marriage in a positive way in the school environment, that will send positive messages to pupils as a whole, and I strongly hope that it would reduce the amount of homophobic bullying that LGBT young people experience.

Marco Biagi: Ms Hunt, do you have any comments to add?

Ruth Hunt: I have some data to help the committee. "The School Report", which is a self-selecting survey of lesbian, gay and bisexual young people in Scotland—I stress that it is a self-selecting snapshot, which means that young people who are not out or who do not have access to computers will not have completed it—found that half had experienced homophobic bullying, one in four had tried to take their own life at some point and more than half had deliberately harmed themselves. It is also worth flagging up that the work that we did with YouGov on the Scottish attitudes survey found that 92 per cent of people of faith stated that schools should tackle homophobic and transphobic bullying. There is a very real understanding and buy-in.

When the many schools that we work with positively include good examples of lesbian, gay, bisexual and trans issues in their day-to-day ordinary teaching, that has a positive impact on lesbian, gay and bisexual people. It is worth remembering that if the only things that young

people hear about sexual orientation are statements such as, “Your shoes are so gay”, “It’s so gay”, and “You’re so gay”, and if they go home and their parents are unhappy and their GP or chaplain are unable to help them, that leads to low self-esteem. A positive reinforcement makes those young people feel better, and it makes the heterosexual young people who hang out with them feel better, too.

Marco Biagi: Mr Brown, can you tell me how Catholic schools deal with homophobic and transphobic bullying?

John Brown: They deal with it in exactly the same way as all schools deal with bullying. It is a massive problem in terms of people’s perception of bullying.

Whenever HMIE reports and collects statistics on whether pupils have ever been bullied in school, the figures are horrendous. The issue is about what people see as bullying. For example, if you look at me in the wrong way just now, I may feel bullied because that is my perception. Rightly, all schools in Scotland, including Catholic schools, have zero tolerance of all forms of bullying, but that does not stop the bullying. I agree with what has been said about the scale of homophobic bullying, but it could also be said about lots of other kinds of bullying. Schools are trying to stop all bullying—some successfully, some less successfully.

11:00

We have talked about transgender young people. All young people need support when they enter our schools, and some young people need greater support than others. We would fully support those young people in understanding their sexuality—that would be part and parcel of the pastoral care of any school and would certainly apply to Catholic schools that have such young people in them. My issue is that I am not sure that same-sex marriage will suddenly solve all those problems. I think that we must be very careful if we are changing what marriage is in order to solve a number of other societal problems.

Marco Biagi: Despite what some people assume from my name, I attended a non-denominational school, so I have limited direct experience of denominational schooling. How would a teacher in a Catholic school address a young person who came to them having experienced homophobic bullying that was, in some way, justified by a twisted reference to scripture? What if the child asked how, if the teacher did not believe in same-sex marriage and all of that, the teacher could say that they were all right? How can you reconcile such issues? Have they ever come up?

John Brown: We would recognise the dignity of that young person as a person, and their dignity as a person is not dependent on their sexual orientation.

The other side of it is that we just would not accept homophobic bullying. If the youngster who was bullying was able to quote scripture, I would question both his ability and his understanding of scripture. As with all understanding of sacred scripture, people can pull out bits and pieces without seeing the whole. We must be very careful of that, and the person who is doing the bullying—whether it is homophobic or not—must be dealt with severely. We must help young people to understand that every person in society has dignity, and under Catholic belief that dignity is formed by the fact that every person is made in the image and likeness of God. For me as a Catholic, the principle that every human is made in the image and likeness of God means that I must treat other people with a tremendous amount of dignity, whatever their sexual orientation.

Ruth Hunt: I grew up in a Catholic school as a young gay woman. There were teachers who could use scripture against me and there were teachers who used scripture to make me feel better about myself. Teachers will interpret scripture in all sorts of different ways. An obscure reference to Leviticus that generally emphasises men—as the Bible does in its entirety—was easily counterbalanced by the idea that God is love and that we are all born enabled to live in that way.

The key issue is how we support young people who are experiencing bullying. The notion that everybody could perceive a slight as bullying is a distraction. If everybody was like that, the statistics would say that 100 per cent of gay young people experienced bullying. The fact that half of them experience bullying—it can be physical bullying, verbal abuse and taunts or damage to school property—means that the issue is real and pertinent.

Having one generic response to bullying has not worked, which is why the stats in schools that take that approach remain unchanged. That is a good practice issue about how schools work. Lots of Catholic schools that work with us have recognised that they need particular approaches to different issues, and they are working successfully on that.

Marco Biagi: To clarify, do you think that equal marriage is a silver bullet that will end homophobic bullying, or is it just one small factor?

Ruth Hunt: It absolutely will not end homophobic bullying, but it will have a transformative effect on Scottish society, and that should not be underestimated and cannot be

denied. However, it will not by any means change everything overnight.

Marco Biagi: Mr Calwell, do you want to come in?

Michael Calwell: First of all, asserting that marriage is a purposeful sexual union of a man and a woman is not in any way, shape or form a slur on anyone who is homosexual—it just is not. That is why I really do not understand why the issues get so conflated and confused all the time. Children bully because they are insecure and often because they come from unstable family backgrounds. They do not have proper paternal or maternal role models in their lives to give them the security to accept all human beings as equal and as having dignity, and they feel the need to be superior to others.

If we start dismantling the paradigms that keep our society together, particularly the very healthy and necessary paradigm of marriage in our society—some say that it will be extended but, actually, the bill will undermine the essence of marriage—we will create a society that has a lot more problems, the nature of which will lead to more bullying and problems. At this point in Scottish history, when for example half of all children will see their parents split up by the age of 16 and almost half of all children in the country are born without a married mother and father—frankly, that does not bode well for them, as the evidence suggests—the state should be positing a positive view of marriage, not as a basically empty political and legal construct but as something that is vital to human society.

The bill undermines that and will lead to more problems, not just of a social nature but of an economic nature. We have a certain stock of human capital in society, and it is dependent on people being raised in an ordered context with a mother and father and all the basic human norms. That is why the bill is counterproductive if we want to achieve many of the noble aims that we are talking about of reducing bullying and social problems.

Marco Biagi: Can you succinctly describe how allowing two men or two women to get married to each other will cause men and women to stop getting married to each other?

Michael Calwell: What do you mean by “get married”?

Marco Biagi: I mean, after the bill is passed, marriage as recognised in law taking place.

Michael Calwell: Marriage is not just a piece of paper from a bureaucrat. Nobody denies that, at some point in the history of the increasingly atomised, childless and ageing western liberal societies, the political class can convene and

create a bill such as this one in which people are issued with documents that say, “You are married.” Whether or not that constitutes marriage is the fundamental essence of the debate.

Marco Biagi: You clearly do not think that it is appropriate for two men or two women to get married to each other—

Michael Calwell: What do you mean by “get married”? I do not know what you mean by it in that context.

Marco Biagi: You do not consider that to be an adequate environment for children or for role models and so on. Do you have any concerns about a man who is in a stable relationship with another man—whether or not we call it marriage—teaching children?

Michael Calwell: I do not know what that has got to do with the debate at all. I do not know how it relates to this discussion.

Marco Biagi: This is—or has become—a panel on education and marriage.

Michael Calwell: If a man does that in a way that conforms with the views of parents and does not teach anything that conflicts with parents’ understanding of marriage, I would say that the relationship is not relevant.

John Mason: We have talked quite a lot about bullying of LGBT young people. Does anyone on the panel know whether there is bullying in schools of religious young people or of children who hold traditional values?

Michael Calwell: I know of people who are bullied. I know a young lady who expresses religious views and has been bullied. The school, which I will not name, has dealt with it. There is an increasing amount of vehement intolerance. The process that we are undergoing here is likely to lead to more of that kind of intolerance.

John Brown: Based on the evidence that we have, we do not know. The biggest piece of evidence on youngsters’ attitudes in schools is based on what comes through in reports from HMIE—now Education Scotland. As I said, those reports tend to suggest that vast numbers of young people think that they are bullied in school. We need to be clear about that. I have never seen any evidence to suggest that we know whether people have been bullied for religious reasons.

Ruth Hunt: The national data sets, which I do not have to hand, say that bullying comes in the following order. First and foremost, young people are bullied because of their weight, and second because of their sexual orientation, or perceived sexual orientation. About number five on the list is people who have faith. They tend to be of Muslim, Sikh or Hindu faith and are perceived to be

terrorists, basically. Christian faith is lower down the list.

John Mason: Okay. Thank you.

We have not really spent much time on chaplaincy, for which I apologise to the relevant witnesses. Mr Robertson, you have answered a few questions on that. Will you expand on what you have said? I do not know about the police or even schools, but you know about the NHS. In the NHS, is an employed chaplain different from a volunteer chaplain? Do you have both?

The Rev Blair Robertson: We do not have volunteer chaplains as such. Those who are healthcare chaplains are employed by the NHS to deliver the service. Representatives of churches and faith communities will be called upon, or will come to hospitals, to deliver a service to their own people, as and when required.

John Mason: Although you said that a chaplain is not there representing a particular faith, they are there in hospital or wherever representing the whole NHS. Presumably some patients want to see a Muslim chaplain, a Catholic chaplain, a Sikh chaplain or something very specific. Is that the case?

The Rev Blair Robertson: We would not use the term “chaplain” for those people. We would ask the patient, “Do you want to get your own minister, priest, rabbi or imam in?” and we would contact a representative of their faith community. They are not chaplains, though; they are representatives of the patient’s faith community.

John Mason: I see.

You said that if somebody was in the hospital they would not smoke, but if they went home and smoked that would have nothing to do with hospital. If they went home and put on Facebook that they think that smoking is a good thing, would the hospital get involved?

The Rev Blair Robertson: I do not know. It would be very strange if a respiratory physician did that.

John Mason: I watched the film “Diana” on Monday night and the heart surgeon was a heavy smoker.

Alex Johnstone: But he did not prescribe smoking to anyone else.

John Mason: No. I suppose that the parallel of that is that if a chaplain goes home and puts on Facebook that he or she thinks that same-sex marriage is wrong, would the NHS be interested in that?

The Rev Blair Robertson: If it came to my attention, I might say to a colleague, “Be careful what you’re saying. I’m interested in what you do

in the workplace as long as you don’t discriminate in any way in the delivery of your service.”

John Mason: Do chaplains lead services in hospitals?

The Rev Blair Robertson: When I say “service”, I mean delivery of a service, as in an NHS service, and not a church service.

John Mason: Do they run church services in hospitals?

The Rev Blair Robertson: Some do and some do not.

John Mason: Would that be in line with their denominational style?

The Rev Blair Robertson: Again, there would be diversity. In the hospital in which I work, we do a couple of small ward services a month, which are open to anybody.

John Mason: I do not know whether Mr Manders is able to talk about police chaplains. Is the picture similar?

Chief Superintendent Manders: No. It is a slightly different dynamic, in that we have not yet engaged any chaplains in Police Scotland. We are continuing to use the legacy force chaplains in the areas where they had them. They were not employees as such. The intention of Police Scotland is to use chaplains in a volunteer capacity.

That said, I think that the ground rules would be very similar to what the Rev Robertson described, in that chaplains would do what they do on a Sunday or whenever—we would understand that—but that when they worked as Police Scotland chaplains we would expect them to comply with the Equality Act 2010 and Police Scotland’s equality and diversity policies and guidance.

11:15

The Rev Blair Robertson: It might be helpful for the committee to know that healthcare chaplaincy in NHS Scotland is governed by health department letter HDL (2002) 76 and its revision in 2008. It is Government policy that puts in place the framework for chaplaincy and spiritual care in the NHS.

John Mason: With regard to the police, would a chaplain putting something on Facebook count as an expression of their private views?

Chief Superintendent Manders: Again, that would probably be considered on a case-by-case basis. For example, we would need to assess exactly what was put on Facebook and what the context was. If what was said was clearly unlawful

or offensive, a conversation would be had about that and a judgment would be made.

John Mason: Mr McCrossan, can you comment on school chaplains in this context? I do not think that they would be regarded as being employed.

Stephen McCrossan: Sorry, but I do not know.

John Mason: That is not your area. Okay. Thanks very much.

The Convener: As members have no further questions, I thank everyone for coming along to the meeting and for their contributions. Our next meeting on Thursday 3 October will include evidence from Alex Neil on the Marriage and Civil Partnership (Scotland) Bill.

Meeting closed at 11:16.

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