HOUSE OF COMMONS

Women and Equalities Committee

Oral evidence: Work of the Equality and Human Rights Commission (EHRC) (2024-25 session), HC 942

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Watch the meeting

Members present: Sarah Owen (Chair); Alex Brewer; David Burton-Sampson; Rosie Duffield; Kirith Entwistle; Catherine Fookes; Christine Jardine; Samantha Niblett; Rebecca Paul, Rachel Taylor.

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Witnesses

I: Baroness Falkner of Margravine, Chairwoman, Equality and Human Rights Commission; John Kirkpatrick, Chief Executive, Equality and Human Rights Commission.

Examination of witnesses

Witnesses: Baroness Falkner of Margravine and John Kirkpatrick.

Q1 **Chair:** Good afternoon and welcome to the Women and Equalities Committee. Today we are holding an evidence session examining the work of the Equality and Human Rights Commission. I want to start by welcoming members of the public. I appreciate that this is an issue dear to everyone's hearts, but in this Committee we pride ourselves on listening, understanding and challenging respectfully to find progress on the matters we hold dear. Everyone must feel and be safe to express their views without any abuse. So welcome to the Committee, Baroness Falkner, Chair of the Equality and Human Rights Commission, and John Kirkpatrick, Chief Executive of the EHRC. For anybody who does not know, the Women and Equalities Committee holds a scrutiny role regarding the EHRC, and today's meeting is just part of that standard process.

Baroness Falkner, this is the first and likely to be the last time that you appear before this Committee in its newest format. With that in mind, it is fair to say that the EHRC faces great challenges: increasing workload with diminishing resources, with only seven out of the up to 15 commissioner positions in place, against a backdrop of news reports and statements that have damaged the reputation of and public trust in the organisation. What are your plans to improve the situation in your final few months?

Baroness Falkner of Margravine: Can I start, Madam Chair, by saying that it is a real pleasure to be here. If I recall correctly, it is probably my fifth appearance in front of the Committee, if I include my confirmation hearing. I have always thought it quite right that the Committee should hold us to account. We take the work of this Committee incredibly seriously: we read its reports, view its deliberations and, shall I say, are informed by its conclusions, to a large extent. So it is great to be here, and you have mentioned that it is probably my last appearance. Could I just say to begin with that I would be very happy to come and see you again in a valedictory appearance, potentially in private, if that would benefit the Committee nearer the time. We still have six months to go, so quite a while.

I do not think I could agree with your characterisation of the EHRC and I hope, as the time goes on in the next two hours, that I will be able to disprove those sentiments with hard facts. It is fair to say that being chair of the Equality and Human Rights Commission is one of the toughest jobs in British public life, as it was described by one of my more famous predecessors. I am referring to Sir Trevor Phillips, and this was one of three jobs that he named. It has not been a ride in the park over the four and a half years that I have been here, but we are looking forward to the next six months with an absolutely full agenda of priorities. Among those priorities, as ever, is the retention of our independence. We are terribly proud of the fact that we are independent.

We work well with Governments of all complexions, but we are ultimately an independent, arm's-length body, and that is important to us in terms of public confidence in what we say and do. There is no point in having independence other than for a reason, and the reason is to engender public confidence in what we say. Impartiality is what we stand for from top to bottom, and the credibility of the organisation has been much enhanced as we have proven our way in impartiality. I will come to stats later on.

On obligations, we come to the actual programme of work: we have just developed a new three-year strategic plan that we entered into at the start of the new financial year, which is different to our previous plan. It has three pillars, as we describe them. I know we will come to that, so I will summarise it very briefly: a concentration in our core work; an ability to be responsive to judgments—that will cover some Supreme Court issues that we are bound to discuss—and then particular areas when we have detected, or are mindful, that there may be wrongdoing, where we are helping organisations to improve through using our regulatory powers. The other, very ongoing challenge that we have, which unfortunately continues to remain with us, is the budget. I know today that people will have been in chamber on the spending review. We know that all Government Departments are challenged, but I would like to be able to talk about that later if you if you have the time.

Then there are the challenges that we, as commissioners, face particularly. As you know, the Commission is an important public body and the commissioners are the legal entity of the body that in formal terms we refer to as a board, but the commissioners are the decision-making body. When we are denuded to the extent that we currently are—I am particularly mindful of Scottish and Welsh Members who might be here and the Scottish and Welsh interests in our work—it makes it harder to be able to deliver. So those are the five key things that I would like to highlight.

Q2 **Chair:** Thank you for that opener, Baroness Falkner. You are right, we will touch on some of those, particularly around budget and your strategic programme, a little later.

I want to just outline the format of today. We all have four questions; I hope that you will have the time to go through all of them, because they are all incredibly valid. We are trying to go through as many of the topics that you cover as possible. But let me come back to my first question because—I am sorry—you did not answer it. I do not think it is up for discussion as to whether there is an issue around the reputation of and trust in the EHRC at the moment, particularly in the last few years. Are you doing anything to improve that in your last six months? If not, just say that you are not.

Baroness Falkner of Margravine: We do surveys of opinion into our standing, and I will share one simple figure with you. I do not like words like approval or disapproval, but in the first year of my service, the so-

called approval rating—people who thought positively about us—was in the region of 35%, and it is currently 81%. I have a whole lot of other figures on media coverage, social media coverage and so on that we will share with you.

I do not recognise the characterisation, but I would like to speak positively about what we are doing, which is a period of consultation on a very important Supreme Court ruling on the For Women Scotland case. That will run until 30 June, and we are doing a very proactive session of engagement on that, different from anything we have ever done before. So whereas our normal consultation on our code of practice for services last year was 12 weeks long and we consulted, as we are required to on that, in our current consultation we are actively going out not just to engage the stakeholders that we should engage—there is a very clear line in the Equality Act that, in terms of consultations, EHRC should speak to those that it thinks have knowledge of the matter—but we are also doing an open consultation. We are not restricting it just to people we think have knowledge of the matter. For example, we are having several sessions in Parliament for MPs to raise their constituents' issues, having sessions in the Scottish Parliament and the Welsh Assembly, and holding stakeholder meetings with the groups most affected by the judgment. We have publicised very well how much this consultation is genuine and open, and the figures we have for responses are very interesting, which prove that people are engaged with us on that.

But we have other work that we are engaged in beyond that, and if I might, I will pass to John, our Chief Executive, to give you the core of the other work programme that we are involved with at the moment.

John Kirkpatrick: I would like to set out a few highlights in addition to the consultation on the statutory code of practice that Kishwer has referred to. Without going into detail about the way we operate—there may be time for that later—there is a range of activity that we can engage in. In all the activity we engage in, we seek to be independent, authoritative and agile. Those are the terms that we set out in the newly published strategic plan. That means the way we will deliver on our statutory obligations is to continue engaging in enforcement activity, of which there are various bits I can talk about, if you would like me to, across the economy.

These are things that we do: the review and publication of guidance and the encouragement of compliance, particularly with the public sector equality duty bearers across the public sector; advising Government and Parliament, for example on the legislative programme that the Government are bringing forward; providing briefings for parliamentary Committees and others; and regularly putting information in the public domain. These are things we do in order to establish that reputation.

Chair: Thank you very much for that; we understand the role of the EHRC. Where Baroness Faulkner left off is actually a good place to bring

in Rachel.

Q3 **Rachel Taylor:** Welcome to the Committee. It is my first time interviewing you and you are very welcome here. The EHRC has been saying that there is an incompatibility between the Gender Recognition Act and the Equality Act. To what extent has the Supreme Court judgment resolved those concerns and brought clarity?

Baroness Falkner of Margravine: I do not think we said there was an incompatibility—that was possibly another group. We said that the practical implementation of the Equality Act was made very difficult by the differential uses of sex and gender within the Equality Act 2010 itself. We are not the regulator of the Gender Recognition Act; I just want to clarify that. But the Supreme Court judgment, looking very narrowly at only the Equality Act for the purposes of its statutory interpretation, found that the meaning of sex in the Act, rather than gender, was the meaning that should apply for the purposes of the Equality Act 2010. That has given us clarification.

Our advice in our intervention to the Court itself did not say that. Our advice until that point had been different because we recognised a different category. In addition to a man and a woman—female and male—we recognised a third category, which was legal sex. We thought that a man or a woman's legal sex—in other words the sex at birth—was also augmented by people who had gender recognition certificates, whereby once they had a gender recognition certificate, that small group of people could also be defined as the sex that they had acquired as a process of transition. We were inaccurate in that regard, which the Supreme Court has clarified.

Q4 **Rachel Taylor:** So you are saying there is an incompatibility between those two pieces of legislation?

Baroness Falkner of Margravine: I am not commenting on the Gender Recognition Act other than to implement the Supreme Court ruling, which comments on section 9(1) of the Gender Recognition Act, which has a clause to say that for all purposes a person's acquired gender changes. Then section 9(3) says that that was not the intention of Parliament in passing the 2010 Act. So it is not our role to comment on the Gender Recognition Act, and I would not go so far as to say that we have found an incompatibility in that. We are restricted to our role in interpreting the 2006 and 2010 Equality Acts.

Q5 **Rachel Taylor:** It does not sound to me like things are particularly clear, so do you think there is still a role for Parliament to play in legislating to bring further clarity?

Baroness Falkner of Margravine: Given that you have had the highest court in the land rule on this matter in a fairly definitive 88-page judgment, I would suggest that perhaps Parliament would be better advised to let the regulator work through the bedding down of that statutory interpretation to see how it works in practice in tribunals,

courts, workplaces and schools, and on sports fields, in public spaces and so on. The code of practice that we are just publishing is on services and duty bearers. I would suggest that it would be wise for space to be given to the regulator to see how that beds down, to provide guidance on what duty bearers should be doing in those circumstances, and then to evaluate.

But you make a very interesting point, if I could just take us back to that. There is a convention in Parliament, passed in the CRAG Act of 2010, that pieces of legislation should be reviewed periodically in terms of post-legislative scrutiny. Looking at the 2006 and 2010 Acts, particularly the Equality Act 2010, we have never had a review of either of those two Acts in Parliament, and we are now 15 and 19 years into those two Acts. You could argue—on a personal level, I have long suggested—that it is time for a review. In fact, the only evaluation was done by your predecessor Committee in 2019, when it reviewed the work of the Equality and Human Rights Commission. So it did not review the Acts, but it reviewed our work in that regard. So one could go either way; I do not have particularly strong views on that.

Q6 **Rachel Taylor:** So I cannot push you on the Gender Recognition Act. You are leaving that to one side and commenting on the Equality Act 2010—that is fine.

I will move on to my second question, which is more on a personal level and is the sort of question that many of my constituents are asking. I want to start a trans-inclusive women's walking association. Your interim update says that I cannot, but former Supreme Court judge Lord Sumption said that while the recent judgment means women's organisations can exclude trans women, they are not necessarily obliged to do so. Is he wrong or are you wrong?

Baroness Falkner of Margravine: I am not going to comment on the views of someone I have not come across, and I do not know what the context was, in what format he was speaking or, indeed, his reasoning. I do not think I have read anything by Lord Sumption on these matters. I can only comment on the Supreme Court judgment itself and our interpretation of it. I hope you will understand that.

Q7 **Chair:** Baroness Falkner, before you go on, Rachel's question stands actually even if you take out the ruling. Is she allowed to set up a trans-inclusive women's walking group or not, under your guidance?

Baroness Falkner of Margravine: I was just coming to that, but the second point that you raised was the interim update. I will leave the interim update aside for now and go specifically to your question. Your question really goes to the heart of someone wishing to provide a single-sex service or a mixed-sex service. If you are wishing to provide a single-sex service, you should perhaps look very closely at who are the people that you are permitting to engage with that service. There is no obligation on you to provide a single-sex service in that context. In

competitive gendered sports it is a different issue, but in a park run, it would simply be a matter of choice for you whether you wish to provide a mixed-sex service or not.

Q8 **Rachel Taylor:** So if I wanted to set up a women's walking association, under your interpretation, I would have to exclude trans women or include men?

Baroness Falkner of Margravine: It depends on whether you wanted it to be single-sex or mixed-sex. It really would be your own definition in terms of what you wanted in that service that you were wishing to provide.

Q9 **Rachel Taylor:** I thought I had made that clear: I wanted to set up a women's walking association that was inclusive of trans women. Can I or can I not do that?

Baroness Falkner of Margravine: The rules on associations depend on how many people are members of the association—I think it is 25 people or more—but since I am obviously not being very clear, I wonder whether you might like to come in on that, John, and perhaps be clearer? I thought I was clear in the distinction between single and mixed-sex.

John Kirkpatrick: I might or I might not, but I will try. As we understand it, it is the choice of an organisation whether it wants to establish a single-sex service or not. If it does choose to establish a single-sex service, then in order to secure the protections available in the Equality Act for that service, the definition of single-sex has to be biological. So you cannot then admit someone who is not of that biological sex without losing that protection.

The important question though, is whether you want to set up a single-sex service in the first place. If you want to set up a service that is not single-sex, there is no obstacle to doing that. If you do, in order to secure the protections available under the Equality Act, it has to be single-sex based on biological sex.

Q10 **Chair:** If I wanted to join Rachel's walking group—it sounds fab; I love walking—how could you tell, and how could Rachel tell, whether I was a cisgendered woman or whether I was a trans woman? Can you tell by looking at me, Baroness Falkner?

Baroness Falkner of Margravine: I could make an informed judgment, but I would not be able to definitively tell, particularly if you said you were not. This is something actually that goes to the heart, if you do not mind my saying so, of the social contract that exists between us, as people, who live in our country. Society is not based on policing outside toilets and it is not based on policing outside certain venues; it is based on trust. It is trust that, in a workplace that provides single-sex toilets, the people who will use those toilets will generally know what the sign—woman or man—says on the door and they will abide by that. So we are not talking about people with badges coming along to enforce anything.

If you decided to be part of Rachel Taylor's group and I was another participant in that group, I would have no concerns about the 24 other people in the group—if it was an association—or I might have concerns. Let us get to the heart of what you are both talking about. We are talking about the privacy, dignity, safety and security of a certain group in society. We are talking about religious observance and certain religious norms that also dictate that some people may wish for different kinds of privacy to others. I am sorry, forgive me, I am a Muslim, and so I know my own community well and the requirements that are called upon for us. The better analogy would be a sick patient in an NHS ward who is offered the right to be in a single-sex ward and then discovers that the intrusive medical care they are getting is not meeting their expectation that they would be looked after by their own sex.

Let us go to the other side of that, again using the NHS as an example.

Chair: Baroness Faulkner, may I just stop you there? That was not what we asked. What Rachel was actually asking you was the position of many member organisations at the moment—many sports teams. We are not talking about big organisations here, but small organisations that are left in limbo at the moment and are trying to do the right thing. I am going to just hand over back to Rachel to finish her questions.

Q11 **Rachel Taylor:** I am clear on your answer that if I want to set up a women's walking association that excludes cis men, I cannot include transgender women. Is that what you have said?

Baroness Falkner of Margravine: Yes.

Q12 **Rachel Taylor:** Okay, thank you. I will move on to the next question. In the past few weeks you have told fearful trans people that this judgment brings clarity, when they have no idea what they are supposed to do. You have told them that they are banned by law from gendered spaces, when that is not what the Supreme Court judgment said, and you have dismissed their concerns by telling them they should use their powers of advocacy to ask for third spaces that they can use.

I have received messages from up and down the country—including from my constituents who are trans people—who say that they may have to resign from their jobs because of your interim update, that they have now developed UTIs because they are scared to use bathrooms without being challenged, and that they have completely lost faith in the EHRC under your leadership and believe that you are no longer interested in standing up for their rights. What do you have to say to those people?

Baroness Falkner of Margravine: The first thing I would say to those people is that they should respond to our consultation because we give tangible and practical day-to-day examples of how those people will navigate all those practical things that you have just mentioned.

Q13 **Rachel Taylor:** Are they one of the groups that you are holding specific sessions for?

Baroness Falkner of Margravine: Yes, indeed, I can confirm that. So the first thing to do is to read our consultation document carefully and to respond to it, which we would welcome. And indeed, come along to our consultation sessions because we are having several sessions with those groups. So that is the first thing I would say. The second thing is, "Please do not be fearful."

If you do not mind I will go back to first principles because they are always profoundly important. The Supreme Court judgment itself said it does not cause disadvantage to trans people, with or without a GRC. It said that in the light of case law interpreting the relevant provisions, a trans woman would be able to invoke the provisions on direct discrimination and harassment, and indirect discrimination. So, when the Supreme Court itself is saying, "You have not lost a right," I do not see why this particular group of people would become so fearful. The rights that exist are rights in terms of exemptions to single-sex services, and separate sex services have always been there in the Equality Act. We can say to you unequivocally that in our interpretation of the Act trans people have not lost any rights, as the Supreme Court has informed us and the whole country.

Could I just correct something on associations? I may have misspoken because I was imagining an association in a different context to a group of people who get together for rambling. You cannot have an association because everyone in an association has to have the same protected characteristics. So two associations can do things together, we will perhaps come on to that at a later date, but it is slightly more complex. But yes, our explanation of that was overall correct.

Rachel Taylor: Thank you. That raises further questions, but I will allow you to move on.

Chair: Thank you, and I think some of Rachel's colleagues on the Committee will go to those further questions. I am going to go to Alex and then to Catherine.

Q14 **Alex Brewer:** In your interim report, did you consider or look into the impact of the ruling on hermaphrodite or intersex people?

Baroness Falkner of Margravine: Intersex people are not covered by the Equality Act under gender reassignment discrimination clauses, so we did not.

Alex Brewer: I feel that brings us back to the role of Parliament question.

Rachel Taylor: Yes, and the clarity question.

Q15 **Catherine Fookes:** I am going to ask about the guidance now. Baroness Falkner, you said that no one has lost a right, but in its interpretation, the Supreme Court said that its interpretation would not be disadvantageous or remove protection from trans people with or without a GRC, yet you

have described it as enormously consequential. Your interim update says it, "Obliges trans people to use the toilets of the gender they were assigned at birth." A trans person may have to out themselves to use a toilet of the sex they were assigned at birth, so how do you reconcile those two statements?

Baroness Falkner of Margravine: I think you referred to my saying it was a consequential decision, was that the first part of your question?

Q16 **Catherine Fookes:** You also said that trans people have not lost a right.

Baroness Falkner of Margravine: Yes.

Q17 **Catherine Fookes:** But they have: they have lost the right to use the toilet of their choice. I have heard from people in my constituency in Monmouthshire that trans people who are not out have lost their right. For example, trans women who have been trans women for 30 years and have not told their work they are a trans woman—they do not want to tell their work. In what way have they not lost a right? How are they going to stay in that business that they have been working in?

Baroness Falkner of Margravine: We have a slight danger here of shooting the messenger. So the judgment was one delivered by the Supreme Court, and I suggest you call the five justices in front of you and challenge them on why they arrived at the decisions they have arrived at.

Q18 **Catherine Fookes:** We are talking about the update.

Baroness Falkner of Margravine: But in terms of us, as I tried to explain to Ms Taylor, the Equality Act—in fact if you want to go back to the Sex Discrimination Act of 1975, it is the Equality Act building on that—has always had exemptions for separate and single-sex spaces. They were always there. Because we realised that there was a balance, perhaps a conflict of rights in some workplaces and other situations—service providers and so on—we published updated guidance as long ago as April 2022 to explain that separate and single-sex exemptions had always been part of the law, and that they limited people to using only those facilities of their biology. We reiterated that in our consultation last year on the full code of practice, which we already consulted on for 12 weeks between October and January, and we did not get any particular reaction to that.

In terms of the law, what we are doing is helping to provide examples of how people should navigate it. We think that trans people should never not have facilities that they can use. By the way, these are very tangible examples and I appreciate you raising them. I would suggest that your constituents explore our consultation document and respond to it, giving out other examples if they have any. But in our consultation documents we are saying that people should never not have facilities that they could use, and that service providers should have that front and centre of their minds when they are deciding what services and facilities to offer. If they

decide to have single-sex spaces they also have to offer mixed-sex spaces, and we are very clear in even defining that those have to be entirely enclosed spaces with lockable facilities, and so on. They already exist now.

Q19 **Catherine Fookes:** But with all due respect, Baroness Faulkner, what if they do not exist now?

Baroness Falkner of Margravine: I was just coming to that. They already exist in large numbers of facilities. As our building infrastructure is being modernised, people in modernising have taken note of their public sector equality duty, if they are public sector organisations or others, and where they do not exist, they need to exist. We will ensure that we enforce the fact that trans people should not have any service which does not provide them with facilities that they might be able to use. So we look forward to receiving examples of that and to pursuing those examples in terms of our regulatory and enforcement powers.

Q20 **Catherine Fookes:** Coming back to the interim update itself, it states, "trans men…should not be permitted to use the men's facilities" and that "in some circumstances the law also allows…trans men…not to be permitted to use the women's facilities". What does that mean in practice?

Baroness Falkner of Margravine: This is one of the more ambiguous implications of the Supreme Court judgment. It is not intended to be a comprehensive analysis. The more comprehensive guidance on what to do in those circumstances will follow in the code. We appreciate it is slightly ambiguous, so we are looking at that very carefully and we expect to have dealt with that when we publish our finalised code.

Q21 **Christine Jardine:** Thank you very much, Baroness Falkner. I am the Women and Equality Spokesperson for the Liberal Democrats, and earlier this year—before the judgment—we completely reframed our policy on LGBTQ rights. I now find myself confused by the interim guidance. A lot of my constituents, party members and acquaintances who have read the guidance in full are coming to me confused, in the way that my colleague has just explained, about what exactly it means for them.

What I wonder is: how does this interim update comply with the requirement of Goodwin *v*. United Kingdom in 2002 that trans people should not be left in gender limbo? It seems to so many of us that what the interim judgment says is, "Well, you can't be one thing, and you can't be another."

Baroness Falkner of Margravine: First, I am slightly confused by what you mean by an interim judgment, as the judgment of the Supreme Court was a final judgment.

Q22 **Christine Jardine:** Sorry, I meant your interim guidance. I beg your pardon.

Baroness Falkner of Margravine: That is not in the interim guidance either. We have published 11 pieces of guidance in the last year, and this is not guidance. When we publish guidance we call it guidance, and we make the distinction between whether it is non-statutory or statutory. Statutory means that the courts and tribunals will take that into account, of course; non-statutory means it does not.

Q23 **Christine Jardine:** If I could interrupt, Baroness Faulkner, my point is that the interim guidance does not guide: it lacks clarity and leaves people in complete limbo, not knowing what the Act means for them, and it is causing a great deal of anxiety. So how do you think that we can progress until we have addressed that, removed the anxiety and created some clarity? Does that bring us back to Parliament, and perhaps new legislation?

Baroness Falkner of Margravine: I wonder whether it might be helpful for me to give you a timeline of where we are on these matters because that in itself may reduce anxiety.

We are halfway through our consultation on the code of practice, which is expected to conclude on 30 June. We expect to take the best part of a month to continue reviewing the responses and produce what we think will be the final version of the law as we understand it, for the purposes of this code of practice. Around the time of your summer recess we will hand it to the Minister for Women and Equalities, Bridget Phillipson MP, and it then becomes the property of Government.

One of the reasons we published the interim update was due to high demand, and incidentally, noting that you are a Scottish Member, this was mostly from Scotland. The relevant Scottish parliamentary Committees wrote to us the day after the Supreme Court judgment seeking our advice, and I was delighted to meet with several Scottish Ministers yesterday on some of these vexed issues as well—we had very good dialogue in terms of clarification.

We received letters from the UK Government; Jane Hutt, the Welsh Assembly Member; Ministers in Scotland, this Committee; and our other oversight Committee, the Joint Committee on Human Rights. We had to strike a balance between accuracy and clarity on the one hand—profoundly important to us, to deal with the anxiety point that you discussed—and speed, because we recognise more than anyone else that certain groups may feel particularly anxious about the meaning of these things as they are not always straightforward, particularly the practical examples that we have been discussing here today.

We decided that we would hand it to Government as soon as we conceivably could. What happens to it after July, when we give our final version to Government, is for Government. But we expect Government to have laid it before Parliament and for it to have progressed through the parliamentary stages by the autumn. Much as I would love to, I cannot say that there will be clarity from tomorrow morning. What I can say is

that our code of practice, by giving practical examples and seeking questions, is actually in a text which seeks narrative answers to questions, which will provide some clarity.

Q24 **Christine Jardine:** Thank you for that; I was aware of the timeline but thank you for clarifying it. It still does not answer the basic question that you asked yourself. You said it was a balance between the accuracy, clarity and time. Given some of the questions you have been asked already about clarity and the follow-ups about clarity, do you think you have actually succeeded in balancing clarity with speed, or perhaps the clarity and the accuracy was sacrificed for speed, with the anxiety as a result, and perhaps you should have taken a little longer?

Baroness Falkner of Margravine: We are taking until the end of July, and the judgment was handed down in April. By our calculations, we think it may be seven or eight months before it becomes statutory. But let me come to the heart of what I think you are getting at, which is that there is anxiety because people do not know what our landing point will be at the end. I would say, we do not know our landing point either because to be meaningful a consultation has to be open to the views and responses that you get. We will only come to a definitive landing point after we have seen those responses, spoken to those stakeholders, heard from them about their concerns, and then we will come to a landing point where we think the law rightfully, in practical terms, takes us.

Chair: Thank you very much, Christine.

Q25 **Rebecca Paul:** Thank you very much. First, can I say thank you to Baroness Falkner and Mr Kirkpatrick for being here today, and thank you for all your work over recent years?

I want to take a moment to actually think about the impact on women and girls. It is clear that organisations, going back many years, have breached the Equality Act. What approach will you be taking with respect to these historic cases where women and girls have been discriminated against to their detriment? I would be particularly grateful for your thoughts, specifically on the many women who have unfairly lost sporting awards, medals and places. What responsibility does the EHRC take for that in the light of the original guidance which, obviously, was not in line with the Supreme Court ruling?

Baroness Falkner of Margravine: I will ask John to come in because he will have more concrete responses. However, I want to say that it is a sad fact, but it is a fact, that organisations, even regulators, get things wrong. I should also say that I am proud to have led a board and a senior staff team where, when we started to realise that we might be getting things wrong over our understanding of the Act, and as litigation came up, the board changed. We got more knowledgeable members on the board who were prepared to question the orthodoxy that existed within the organisation. We realised that we were perhaps not in the right place as soon as the end of 2021. I had been in post for less than a year when

we started a course correction. As an organisation, I am proud to say that we have been the ones leading the course correction.

Even intervening in the Supreme Court judgment itself was an attempt to correct the course. Under section 11 of the Equality Act, we have to advise Governments when we think the application and enactments contained in legislation are creating difficulty, and we did so as long ago as April 2023. We started looking at that in April 2022.

John Kirkpatrick: As Kishwer says, from 2022 onwards the EHRC sought to put into the public domain, in our guidance, what we thought was the correct interpretation of the law as it was then. That was a move from what had previously been understood. We, and quite a lot of other people, had clearly got it wrong for a while as the Supreme Court has now determined.

To your point, now the Supreme Court has determined what it has, we have consciously taken the decision that our priority should be to try to bring some clarity through the guidance that Committee members and others have sought. That is our first priority.

We started with the code of practice on services, public functions and associations. There is a lot of other guidance out there that will be affected by the judgment that we want to make sure is correct and in the public domain. That will be our first starting point. Once we have done that, we think it is reasonable for us to move onto enforcement against current poor practice or current breaches of the law and/or potentially past ones. That is a little further down the road, I am afraid. We have, for reasons which are justified by this conversation, concentrated on trying to bring what clarity we can in light of the Supreme Court judgment and move forward on that first.

Rebecca Paul: Obviously I was pleased to see the course correction and that you were not afraid to recognise an error had been made and were looking to address it. That is exactly the right thing to do. The point I want to make today is that that error has led to women and girls losing out on opportunities. That error will have potentially changed lives, and it has also led the trans community to believe they had certain rights when they did not. I think it has created damage. No one has won from this ambiguity.

It is obviously important that we do not have this situation again. Both the Government and official opposition are very clear that the Supreme Court ruling is definitive and that that is recognised in the guidance. Sorry, that was a comment not a question.

Q26 **Rosie Duffield:** There have been numerous cases reported of intimidation and bullying of the EHRC, particularly relating to the guidance on women's single-sex spaces you mentioned. It was reported that in 2022, a group calling themselves—forgive my language—Pissed Off Trannies left more than 60 bottles of urine outside your offices,

poured some of the content into the revolving doorway, and staged what they called a piss-in.

In the immediate aftermath of the Supreme Court judgment and your EHRC interim update on the law, we saw placards calling for violence against women who want to protect our rights with slogans such as, "The only good TERF is a dead TERF". Having been on the receiving end myself for years, I understand the toll that that can take. It has been reported that you have had similar experiences in your role as chair. What do you think needs to change especially to ensure that the next chair, or your staff, does not experience such incidents?

Baroness Falkner of Margravine: I am trying not to be emotional about this because it goes to the heart of what public service is about. I have been involved in public service for 21 years now as a parliamentarian and long before that—in fact, in the same political party as Christine Jardine and Alex Brewer.

For some 40 years of my life, I have attempted to engage with legislation to make things better for people. That is what we all do. All of us, on all sides, are here because we have an ambition to improve public policy for people. It is personal attacks as well as attacks on my staff. I am more concerned about attacks on my staff than on personal attacks because we have a duty of care to our staff, and we must ensure that they are able to work in a respectful and safe place of work.

You may have seen that we were due to go to Glasgow for our regular annual board meeting in Scotland, but were unable to go because the police had not been informed and, I understand, there was a serious risk of violence from messages that were seen. What bothers me more than my own personal security is that our staff should be able to come to a place of work in safety and that has been somewhat lacking in the last several years.

I reflect a lot and in fact, if you do not mind, I will share a reflection with you. Rebecca Paul was just talking about, shall we say, if you want to put them on opposing sides, the other side of the debate—particularly women and girls, but the men are part of that debate because they are also covered by the protected characteristic of sex. Women and girls make up more than half our population. However, if you take the protected characteristic of sex, it covers everyone in our population. One thing one notices is that the vast majority of those people who felt disadvantaged, or felt the law was not supporting them, did so in a dignified and respectful manner frequently using the last resort of a tribunal or a court to pursue justice for themselves or their loved ones.

Here we have a group that I appreciate is vulnerable, but I do not think it is fair because women and girls are vulnerable as well. I do not think it is fair to have a balancing act of who is more vulnerable; victimhood is not the way I approach things. Let us be clear, this Supreme Court ruling only covers 8,464 people: the holders of GRCs. So in terms not of

disadvantaging but changing things, those are the people affected but the level of agitation that they can cause in terms of personal attacks, libellous attacks, defamation where our family members are affected, and our intimate family members have to think about how they are going about their place of work and so on, has to stop.

I am not saying that as I am departing as a board member; I am very silent about my own role. Incidentally, I have never spoken about it before and what it feels like to be on the receiving end of this; I did not come into public life to bleat on and feel sorry for myself. I remember in the old days, you would say, "Oh, it's the media," and everyone would tell you that you have to live with it. Either you live with it or you do not. I chose not to walk away. I chose to stay here, and I chose to deliver in the public interest as has done every member of my board. They do not need to do this; they and my senior staff do it because of a desire for public service.

Q27 **Chair:** Thank you, I appreciate that. I want to make sure that there was not an inadvertent and unwitting tarnishing of all campaigners and activists of either side when you spoke, because you said there was a—

Baroness Falkner of Margravine: We are there to defend the right to protest, we are there to defend and we do so vigorously.

Q28 **Chair:** That is what I wanted to make sure, that there was not—

Baroness Falkner of Margravine: We do so vigorously. We absolutely defend the right of people to protest, even though I noticed last week that we were accused of not doing so in a particular injunction. That was untrue, defamatory, and libellous.

Q29 **Chair:** It is very clear that we are not silencing people's right to protest but perhaps the way that they do so should be thought of. I will hand over to Rosie but before I do, there was an exchange around sports. We are talking about the Supreme Court judgment at the moment, and it is really important to note that the judgment was purely about positions on boards. It was not actually talking about sport or toilets, and that is important in the context of what we have heard. There are wider implications, which we were going to come to anyway, and it would probably have been better under that.

Rebecca Paul: Can I make a point?

Chair: I have not finished, sorry, you can make a point in a minute. We must make sure that this section is about the Supreme Court. Rosie's was about the Supreme Court, and we have sections on wider implications. I just wanted to make sure there was no confusion as to which bits we were discussing. It is a completely valid question; I wanted to make sure it was not being confused with the Supreme Court.

Q30 **Rebecca Paul:** I would like to say, with respect, that it is absolutely relevant because the Supreme Court ruling determines the legal

definition of sex for the purposes of the Equality Act, and the Equality Act covers the single-sex discrimination piece with regard to sport. So, with respect, it was very relevant.

Chair: Noted.

Q31 **Rosie Duffield:** Thank you for your previous answer; I thought you were pretty courageous and I did not know if you would want to answer personally, so thank you for doing that.

A recent report by the Policy Exchange, which I was involved with, found that many organisations are full of misinformation following the judgment. Public and private charitable sectors are still taking advice from organisations like Stonewall and paying a lot of money, including the civil service as I understand it. I know you probably cannot personally answer this, and perhaps it is one for John, but would you prefer some public organisations and charities to take more guidance and advice from you rather than organisations that could be seen to be misleading them on the Equality Act and the Supreme Court judgment?

John Kirkpatrick: I hope I will always be proud enough of the work that we do to advise public duty holders to follow the guidance that we provide or, at least, take due account of it. It goes to the point Kishwer made earlier; that we were keen to be able to place our best interpretation of a law as it now stands in the public domain so that people can use it. The draft that is out for consultation as we speak is just that: it is our best interpretation of what the law now is as we understand it. To the extent that it is not clear enough to people, or does not provide the right examples or its examples are not helpful, then the responses to the consultation we are most keen to have will be those from people who say, "It could be clearer if it covered this issue," or "It could be clearer if it said that," and so on and so forth. That is the purpose of consultation and we are really keen to get responses of that kind because that will make it more useful and clearer for everybody.

To go to the heart of your question, I would hope so yes. The obligation of all duty holders is to obey the law in what they do. What we have tried to do is provide them with some guidance on what that actually means in some practical circumstances that they encounter. I would like to think that they might follow some advice in our guidance now out for consultation as the best that is currently available. I would be very disappointed if people were still, in light of all that, using and relying on old guidance from us that is no longer valid. We would much rather they used what we have and, at the same time, commented on it and told us if it is not as clear as they would like it to be.

Chair: Is that all for that section, Rosie?

Rosie Duffield: Yes, thank you.

Q32 **David Burton-Sampson:** Thank you, Baroness Falkner and John, for your responses so far. Some have accused the EHRC of being

overreaching in its interpretation of the Supreme Court judgment. For example, Jane Fae, the director of TransActual campaign group said that you, Baroness Falkner, are "Overreaching" in your remarks because in the case of toilet provision, as one example, the tradition in the UK was more complicated than everyday facilities being single-sex. What is your response to this accusation by groups that you are "Overreaching" in your interim update?

Baroness Falkner of Margravine: Our interim update was necessarily very brief. We had high demand for some kind of explanation, and it was only the headlines of the Supreme Court judgment that we were highlighting. We had a banner right there saying, "You must take your own legal advice as organisations, service providers, duty bearers, and so on. This is not the definitive word. This is our interpretation on a first reading of it." When you have a synopsis of something, it can never spell out all the nuance that an argument or a position might entail.

I would tell people to judge us on what the final consultation document is because that will be the more definitive word on what we have found and will be the result of a conversation with, in fact, groups like TransActual. We are listening to them. We have scheduled meetings with those groups, and we are listening to what they are telling us about their experience on the ground. We will, of course, take that in mind. We will also be speaking to groups that represent the protected characteristic of sex. We hope to publish an authoritative, balanced, and accurate reading of the statutory interpretation that the Supreme Court has provided us.

Q33 **David Burton-Sampson:** Just a brief follow-on from that: if you were advising people to take legal advice, why did you issue an interim update which created what seems to be a greater amount of confusion?

Baroness Falkner of Margravine: We have powers under the Equality Act. It is Section 13(1)(a) of the Act which is to advise and inform people about the meaning of enactments in the Act. It is our duty to do so, and we decided that it would be the responsible thing to do. In fact, we would not actually have been doing our job if we had waited seven months until the statutory code of practice, sometime in the late autumn, comes out and Parliament decides what to do. All of you in this room then would have been rightly challenging me as to what we were doing in all this time.

Q34 **David Burton-Sampson:** With all due respect, it does seem to be a contradiction. You are saying to people, "Here is what you might want to do but seek legal advice." I do not understand that. Are you the people who give the guidance, or are you the people who do not give the guidance and ask people to seek legal advice?

Baroness Falkner of Margravine: I am so sorry, but I must correct you again. Guidance has a particular meaning, and guidance is not what it was.

David Burton-Sampson: The update.

Baroness Falkner of Margravine: It was an interim update, thank you. It is really important to be clear about categories of information.

No, I cannot see a contradiction at all. Your own Committee wrote to us, under the Chairwoman's signature. We put out the headlines of our interpretation of the judgment. By the way, they all stand. We have not been challenged on the meaning of what we said in the update. We told people it was not the law and that we were going to consult. We thought it advisable to give people a timeline, and the Committee wrote to us telling us that six weeks was the appropriate length of time. We finish on 30 June and you have to start counting from 25 April, which was when we said to people who we would be consulting. We wanted an honest and good-faith attempt—I hope members of this Committee will accept that it was a good-faith attempt—to say to people that, "This is what we are going to do and your anxiety might be reduced if we tell you how we are going to do it. This is how long we will do this, this is when we will do that, that is what happens next, and we will be speaking to you throughout all this to hear your views."

John Kirkpatrick: If I may add two things. First, as you reasonably asked, are we providing advice to people or are we not? One of the things we discover as we try to write guidance on legislation like this is that it cannot possibly cover everybody's set of circumstances. It really cannot. We have tried—as I am sure you will see if you have looked at it—to produce a variety of examples that help to illuminate the principles and issues. However, for individual services, public functions, or associations they will have their own peculiarities and their own sets of circumstances. In that situation, if they are concerned about their legal obligations, it would be irresponsible of us not to remind them that they would ultimately need to take their own advice. We have seen that a number of people have; a number of organisations have revised policies in light of the Supreme Court judgment with or without authoritative advice from us.

The second point I would very quickly make, if I may, is I said to Rosie Duffield that we were looking to get responses to our consultation which say, "This would be a whole lot clearer if it said X," or "It would be helpful if you provided an example along the lines of Y." I fully expect that we will get a lot of responses to the consultation that also say, "We think you have not interpreted the law correctly." I fully expect that, and we will have to look at those, take them on board, weigh them, and decide whether we think we are right or whether we think, in some respects, we may have it wrong. That too is part of the point of consultation, and we would absolutely want to do that and listen to those representations from whoever they may come.

Q35 **David Burton-Sampson:** So to clarify, you were saying, "Here is the guidance. Here is what we think this guidance might look like; do not take this as gospel, go and get some legal advice. But we would like you to tell us whether you think we have this right or not."

***John Kirkpatrick*:** This is our best interpretation and our best advice as of now. We want you to tell us if it is not as clear as it could be. If there are things in it that you fundamentally disagree with we probably want to hear that too, even if we ultimately decide that we still think we are right.

Q36 **David Burton-Sampson:** The way it was laid out to the public has caused a significant amount of confusion though, so that may be something to consider moving forward.

However, the interpretation by the Supreme Court also made it very clear that the conclusion does not remove or diminish the important protections for trans people under the Equalities Act. I am hearing a lot about the biological sex element of this interpretation and that is going into the consultation. The whole conversation seems to be around that, but as an organisation responsible for the Equalities Act for trans people, what are you doing to consult on how this impacts them? How are you interpreting for them, as individuals who are also still protected, what that protection looks like?

Baroness Falkner of Margravine: I am not sure that I understood the questions but let me try to answer because there are two different things here. Gender reassignment, discrimination, harassment and indirect discrimination are well covered in the Equality Act. So trans people have all the same protections as any other people in terms of their comparators in discrimination. Trans people also have the protection of indirect discrimination by perception. So if they pass in terms of appearance as a certain person and are disadvantaged due to appearing to be a woman, for example, they would also be covered by that. So the protections are unchanged in the Equality Act under those categories that I have explained to you. The Supreme Court's reading is birth sex; in other words, the sex that you are born with. That is the reading we all understand of what biological sex is.

Q37 **David Burton-Sampson:** I hear what you are saying but, obviously, that has always been the case in the Equality Act. The Supreme Court ruling has just highlighted that this is the case, but we are still consulting on what that looks like in reality for biological women and men. How about for trans people? They seem to be getting left out of this discussion.

Baroness Falkner of Margravine: Not at all. I assume you have not seen our consultation document, but if you were to read it you would find it is seriously targeted questions at the facilities that trans people would be affected by and use. They are not out of the conversation at all, they are absolutely vitally fundamental to the conversation because we guard nine protected characteristics. I personally am covered by eight protected characteristics. There are not many more boxes left for me to tick, unfortunately. We do it without fear or favour. I want to reassure you of that, Mr Burton-Sampson. We will take enforcement action where people are discriminated against, irrespective of which category of discrimination it is; whether it is people like you and me perhaps on the grounds of

race, or whether it is a woman on the grounds of being covered by the protected characteristic of sex, or indeed by the protected characteristic of gender reassignment.

Q38 **Kirith Entwistle:** Thank you both for your contributions so far. What assessment have you made of the impact that the Supreme Court ruling and your subsequent guidance will have on all communities, including disabled people?

***John Kirkpatrick*:** We have started, is the answer, rather than completed that process. When we consider publishing a substantial piece of guidance, one thing we think about whether we know what the equality impact of that will be. That, as we advise others, is a process we undergo as we are preparing it.

It is worth saying that, of course, what we need to worry about is the impact we are having by virtue of publishing guidance. It is not for us to decide what the impact of a change to the understanding of the law is; that is a different question. We take seriously our duty to make sure we assess the impact on all protected characteristic groups, as Kishwer was saying, of the work that we do and we will continue to do so.

Q39 **Kirith Entwistle:** The process has started but is very much ongoing?

***John Kirkpatrick*:** It is ongoing until we get to the point where we are publishing a code of practice.

Q40 **Kirith Entwistle:** Out of interest, how feasible is it to stop someone using a specific toilet?

Baroness Falkner of Margravine: I did not hear that. I am sorry, could you repeat it please?

Q41 **Kirith Entwistle:** How feasible is it to stop somebody using a specific toilet?

John Kirkpatrick: I would take that back to the answer Kishwer gave earlier. What the law obliges service providers to do, for example, and indeed in some cases employers, is to provide facilities of the right kind in various ways. The rules vary a little in the workplace; they are governed by one set of law and service providers are guided by others. What makes them compliant with the law is that they have compliant policies on how those facilities ought to be used and that those compliant policies achieve the objectives they are trying to achieve, which includes making sure that there are facilities that secure the safety and dignity of women.

Those policies are the things that really matter. The way they enforce those policies will vary a lot locally and, as Kishwer was saying earlier in an exchange with the Chairwoman, a lot of that ultimately has to be based—in the overwhelming majority of cases, one has to expect that it will work on this basis—on trust, openness, and honesty. In some situations it will be through local agreement where you find ways to make

sure that people have access to the facilities to which they are entitled, and that those facilities perform the functions that they need to perform and are compliant with the law.

Baroness Falkner of Margravine: I wonder whether I could just add one sentence to emphasise this? The policy-making function of a service provider is to make that decision as to whether to have a single or separate sex facility or not, but proportionality lies at the heart of their decision-making if they wish to be found to have acted lawfully. So a proportionate means of achieving a legitimate aim is what they have to demonstrate, and that is where you will find that they are obliged not to disadvantage any category of people by the way. Of course, there are service providers who may decide that they are not going to provide single-sex spaces, and they may find that they are attracting claims of indirect discrimination by not catering to, for example, women's privacy or dignity. So it cuts both ways. They have to be very careful to balance the interests of different groups.

Q42 **Kirith Entwistle:** In relation to that, what should people who are concerned that members of a certain community or service providers themselves are potentially in breach of the Equality Act as applied by the Supreme Court do?

John Kirkpatrick: It depends a little on the circumstances in which they find themselves. If people feel they are being discriminated against, as a matter of general principle the starting point would be to raise that with the organisation they think is discriminating against them through whatever mechanisms are available. Obviously, that is a bit different depending on whether it is an employer, a service provider or anything else. Ultimately, in different circumstances there is recourse to law. We sometimes engage with those recourses to law where there is litigation in these areas. Our ambition in providing guidance, among other things, is to try to get ourselves into a situation across wider society where people comply with the law and therefore it is not necessary for people to have to enforce their rights through bringing discrimination claims left, right, and centre because that is very burdensome on the individual and on the system.

Q43 **Chair:** A lot of the answers you gave to Kirith's question there are around good faith. Even if we took people acting in completely good faith, whether it is the provider of that space, single-sex spaces or employers and employees, for example, whose rights win? If a trans person loses their right to privacy because they can no longer use the toilet they have been using for many years and they are now outed because they suddenly have to use a gender-neutral toilet or a disabled toilet, compared to women who were born as women saying, "I'm going to challenge that trans person for using a single-sex toilet." Whose rights win?

Baroness Falkner of Margravine: It is a misreading of attempts to balance rights. There are two key words here: balance and rights. It is a

misreading of the balance of rights to assume that it is possible to have a neat 50/50 disbursement of a scale in every instance. That is not possible. You have to go back to the genesis of whose rights they are. That is the key word, rights.

Through this Committee, we are trying to reassure you and the wider British public that trans people's rights are not going to change. If you take another group of people covered by the protected characteristic of sex, but for the purposes of this conversation we shall say mainly women—although I keep reminding people that men are also part of that—women have not won new rights. What has happened here is that a statute, the Act, has been interpreted by the highest court in the land and it has been clarified. So the rights remain extant as they always were.

Parliament passed the Equality Act. Looking around the room, I would say I was probably the only person here who participated in the passage of that Act, so I have good memories of it. When Parliament passed the Equality Act, it did a very difficult job of bringing together and wrapping into one organisation all the different rights in the hope that balancing rights would become easier if there was one body, one umbrella body, doing so. As every chair and chief executive of EHRC has found, it is not a zero-sum game. That is not the way we approach it. Nobody wins; there are no winners and losers. What we try to do in good faith is strategic litigation, and litigation is the important part of testing in the courts whether our interpretation is correct or not.

Q44 **Chair:** The problem with this good faith argument is that there are companies and organisations out there that will be worried they are going to be sued by one or the other. That is where this limbo lies. That is why I said that, if you are an organisation that does not provide information or advice to individuals but does, or hopefully will, give updated guidance as to how they are supposed to work, even if they do adhere to some of this, somebody's rights will lose out and they will be fearful that they will be sued or end up in court.

Is there no guidance or attempt to understand that point, or to deal with that point other than, "We're going to work with people in good faith?" That is where I am trying to get to because the law, as you say, is clearly black and white but actually the practicalities of this do not seem to be.

Baroness Falkner of Margravine: John would like to come in, and then I will come back.

John Kirkpatrick: A word or two directly on that point, and I have the text of the code we are consulting on open in front of me. Part of the answer is that exactly the problem you identify bears on the decision of service providers, and I will stick to service providers in the first place for the time being. If they are thinking of providing a separate or single-sex service, they have to be clear on why they are doing it and that it is a proportionate means of achieving a legitimate aim. When talking about

proportionality—I am not going to quote the text but it is here—that includes the benefits you expect to achieve by setting up a single-sex service and, potentially, the impact on people who might be excluded from it. That proportionality question, that balance question in relation to the practical reality that they are facing, is absolutely the burden that the law places on those individual service providers. I would argue that, while the Supreme Court judgment produces clarity on that, it does not necessarily make that judgment easy for those people, I am afraid. Thus far I would agree with you, but that is the balancing act they need to go through as they think about whether to provide such a service.

Q45 **Chair:** I would say that some feedback that many of us have heard around this table, and I am sure would have been fed back to your consultation, is that the EHRC interim update has not provided any more clarity. In fact, it has probably made things a bit worse.

I wanted to wrap up this final section. I know this is the majority of what we have covered today, but there are lots of other sections we will be covering and we will probably be picking speed up on that. The former Supreme Court member, Baroness Hale, said in a ruling in 2017, "The way in which the law and officialdom treat people who have undergone gender reassignment is no trivial matter. It has a serious impact upon their need, and their right, to live, not as a member of a 'third sex', but as the person they have become, as fully a man or fully a woman as the case may be."

Has the EHRC interim update overridden trans people's rights to a private life and created this third sex, which Christine has talked about and Lady Hale had warned against? I was quite worried about the fact that there was no answer for intersex people. It feels that their existence is not part of either the interim guidance or Supreme Court ruling. Is there space for your organisation to do more work on that?

Baroness Falkner of Margravine: I will pick that up, and I go back to what I said earlier in response to post-legislative scrutiny. I fully expect that an Act which was first conceived of around 2004, more than 20 years ago, particularly an Act that is so foundationally based on changing social attitudes, progress for different groups and so on, would be reviewed at some point by Parliament. I have always advocated a joint Committee of both Houses to do that because it has had differential treatment in the two Houses. Of course, the Equality Act was not a perfect formulation because the general election was called in 2010 and it was rushed through its stages in the House of Lords where it was attracting far more scrutiny than it had in the House of Commons. These are all perfectly valid questions for a post-legislative scrutiny Committee to look at. I do not know, John, if you want to address it more directly than that.

Q46 **Chair:** I am going to move onto consultation in the code of practice and the legal advice questions around that. Have you sought legal advice on the form of your consultation and who from? Have you sought legal

advice, or will you be seeking legal advice on the final version of the code of practice? If so, will it be with in-house or external legal teams?

Baroness Falkner of Margravine: We are very fortunate in our excellent staff resource in terms of legal advice with a caveat that, by leaving aside that particular interpretation, the two Scottish courts also abided by our legal interpretation of what was legal sex. If you leave that aside, we are very fortunate to have an excellent legal team. We are also extremely fortunate to have a great deal of legal expertise on our board. If I remember, off the top of my head, we have four lawyers on our board.

We are well conversant with legal argument, but we have always used external legal counsel. We have always done so. Most regulators that I can think of do. I am involved in a decision-making committee at the Bank of England, and I know we certainly do there. It would be extraordinary for a regulator to think that its own interpretation of anything was the only one because, in the end, we all want to save public funds and judicial time by not having litigation. Litigation is the final end point and what we do is designed not to have litigation, so we take legal advice all the time. I will not be able to share with you who we use for what; we use a range of lawyers but that information is legally privileged.

Q47 **Chair:** Baroness Falkner, if you are happy to share that in confidence that would be useful.

Baroness Falkner of Margravine: I do not think I could without permission or waiving legal privilege. I am really sorry. I can assure your Committee that on this issue, since our guidance on single-sex exemptions in 2022 and our letter to the Minister for Women and Equalities in 2023, and now in the current situation as well as our code of practice last year, we must have used a dozen external lawyers. Perhaps a bit less than that, but we take legal advice from a range of experts. If you have nine protective characteristics, you are not going to get the experts on disability to be the expert on race.

Q48 **Chair:** I will try a different way. You said you have taken a range of legal advice on this from different sources. If you do not want to share, or feel that you cannot share, where the legal information came from or perhaps even the cost, did they all give you the same response or did you get contradictory legal advice on your consultation and the code of practice?

Baroness Falkner of Margravine: On the consultation and code of practice, I am afraid I will not be able to answer that myself because I was not so involved. John is the accounting officer of the organisation, and he is the person who would be authorising who, what, when, where and how.

John Kirkpatrick: I can give you one bit of assurance which is, where we have taken legal advice from more than one person, both inside and outside the organisation, as is no doubt others' experience around this table, they do not always agree with one another on everything. There

has been some quite robust debate about the meaning of the law among those who advise, both internally and externally. I am quite relieved by that because that is reassuring. Ultimately, we have to come to a view as to what we think the best legal interpretation is and we have done that on the basis of a combination of internal and external legal advice.

Chair: Thank you very much.

Q49 **Kirith Entwistle:** How has the EHRC ensured that it engages with a wide range of stakeholders? Have you had any proactive engagement with certain groups? Do you think that your consultation is fully accessible?

John Kirkpatrick: Can I answer that in the opposite order?

Kirith Entwistle: Sure.

John Kirkpatrick: We hope so. The consultation is open to all. I am not going to give you the precise number, but as of last night we had 5,000-odd responses. We are expecting more because there are a number that are as yet incomplete, and we would expect that many people will need longer to get their responses together than they have had so far. So we are expecting quite a lot. That suggests that those people at least have not found it difficult to access.

We have tried to construct the consultation in a way that makes it easy to respond and will enable us to review those responses. We follow normal government practice on how to do that in a professional way as best we can. If people have difficulties accessing it, we would like them to please get in touch with us and we will see what we can do. We have not sought to proactively deal with any accessibility issue that anyone might come to; that would take us an awful lot of work in advance. But if people are having difficulty accessing it and want to respond, please get in touch with us.

Q50 **Chair:** What is the best way that people can get in touch if they are having difficulty with a consultation?

John Kirkpatrick: I think there are details on the website, but I will double-check that.

Baroness Falkner of Margravine: There are.

Q51 **Chair:** There is no specific helpline or email address dedicated to that, is there? I just want to double-check that we are not missing anything.

Baroness Falkner of Margravine: I think there is a specific email address, but if we are wrong, we will write to you.

John Kirkpatrick: I will find it and clarify.

Baroness Falkner of Margravine: I seem to remember that when I looked at the website some weeks ago—when the consultation was launched—it was very clear, visible and evident how to contact us.

John Kirkpatrick: It is here on the second page of the hard copy version that I have in front of me; it was easier for this purpose. There is an email address and a phone number.

Q52 **Chair:** We will put those into the transcript; that would be useful for people to know.

Baroness Falkner of Margravine: Thank you.

Q53 **Kirith Entwistle:** Did you have any answers for the other questions?

John Kirkpatrick: Sorry, the other question was about how we were reaching out and who we were reaching out to, was it not? As I say, first and foremost, it is available to everybody, certainly everybody who responded to our previous consultation on the whole code in the autumn of last year. As Kishwer said earlier, we are also holding a number of question-and-answer sessions, both with parliamentarians here and elected parliamentarians in Scotland and Wales. We have a couple of sessions organised about 10 days hence with the civil society organisations that we know to be most interested in the issues we have been discussing around this table this afternoon, to give them an opportunity to ask us questions about both the substance of the consultation and indeed how to respond to it if need be.

Baroness Falkner of Margravine: If I can provide any reassurance, you may be aware that some organisations are taking legal action against us, or have attempted to. That does not make a jot of difference to our duty to listen to them. We are listening to them with interest and hoping to learn from their insights to see what we can do to assist in clarifying the law in their interest as well.

Q54 **Kirith Entwistle:** How is that being done proactively? That is the bit I do not understand.

Baroness Falkner of Margravine: We have written to them to invite them to meetings; that is how we are doing it proactively. We have been contacting them. We always do that, by the way. We have four ways that we engage with stakeholders. We have key relationships meetings, and those continue in normal times where you have your key relationships with civil society groups, of course with parliamentarians as well, and our staff meet your clerks and all that.

We consult with stakeholders—which is what we are doing at the moment—even when we do not have a code of practice, but there may be other areas where we are working in which they may have an interest. We have not spoken about human rights at all today, but we are a national human rights institution. We regularly liaise with other human rights institutions to ensure we are across those aspects of our work as well.

We share knowledge and promote our work. We have a newsletter that incidentally had rather low take-up among our stakeholders when it was

started, although it now has very good take-up. You might be getting it; I am not sure. I certainly get it here as a parliamentarian. We report everything we are doing in there that we think might be of interest and the circulation of that goes up. It is a combination of information, advice, listening and decision-making.

Q55 **Chair:** Just to follow up on Kirith's point, we wrote to you and asked what organisations the EHRC has proactively sought input from for the consultation, and you gave us examples. Would you be able to expand and give us the full list that you have proactively expanded on? You gave examples of Amnesty International, Consortium LGBT, TransActual, For Women Scotland, Sex Matters and LGB Alliance. It would be useful for the Committee to know which groups you have proactively sought advice from. For example, it would be really good to see some disability charities proactively as well. I am sure you would have, but until we see a list we cannot know.

Baroness Falkner of Margravine: We are very happy to write to you. Would that be enough?

Chair: Thank you very much.

Q56 **Rebecca Paul:** Does the EHRC currently have sufficient resource available to it to review all the responses that you get on the consultation in a timely manner? If not, can you elaborate on that and explain what action you are taking or what action needs to be taken?

John Kirkpatrick: We will process the responses, look at them and respond to them. We are working out how to do that as the numbers go up. It is probably fair to admit that we were not necessarily expecting quite as many as we have had when we first embarked on this process. But our obligation is that we will take seriously and consider all consultation responses, and we are working out how to do that. To the extent that we cannot or do not want to do that in-house, we will buy in additional support if we need it, and we will do that within the normal structures of proper government procurement of advice or support.

What may lie behind your question is that that means we are spending more of our internal resource and money on this consultation than we previously planned. That is a reasonable prioritisation decision on our part. It is not clear to me that we could do otherwise in these circumstances, so we have to do what it takes to run a proper consultation.

We may talk about this if we talk more about our strategic plan, but something we have sought to achieve with the way we are thinking about our strategic plan is to become a more agile organisation so that we can redeploy activity to evolving priorities. This is a priority; there will be other things that get put on the back burner in order to put more people into this. As of now, we are doing our best to pull together what we can in order to do this job properly.

Q57 **Rebecca Paul:** You have already talked about it a little. Clearly, there is not much flexibility for you here. The Supreme Court has issued a judgment, and like you say, you are the messenger. Your job is to take that judgment from the highest court in the land and convert it into usable, user-friendly guidance. But really, the pillars of that guidance and the type of things it would cover are fundamentally clear already, are they not? I appreciate that it is really clear and a wonderful thing to see how open you are to listening to everyone. But is there a risk—because of the consultation and how extensive it is—that people may think there is the possibility of the law being reinterpreted as part of this? Clearly that is not happening here; this is just about putting guidance in place that is user-friendly based on the Supreme Court ruling.

John Kirkpatrick: I said earlier that I was expecting at least two different sorts of consultation response. I am expecting and hoping for people who say, "It could be clearer if it did X." I am expecting and possibly slightly more nervous about people saying, "We don't think you've got your interpretation of the law right." I am also expecting some people to say, "We don't think the law is right. Even if this is what the Supreme Court has said, that is not where the law ought to be."

We cannot consult properly and not take account of everything that we are given. What we will do is consult properly and do our level best to work out what we need to do with the draft that we have put in the public domain in order to make it as good a product as we can against the obligations it is seeking to achieve. That will be the core of what we try to do with those consultation responses.

Baroness Falkner of Margravine: I wonder if I might just go to the heart of where I think you were trying to lead us, which was would we perhaps reinterpret the Supreme Court judgment in a particular direction?

Q58 **Rebecca Paul:** No. I recognise that you cannot do that. The point I am making is that other people out there may make that incorrect assumption, and how do you best manage that? People need to realise that you are not the decision-maker here on how this works; you are interpreting a Supreme Court judgment. People will not like some of what the guidance says, but it comes out of the law, which we make here, and the Supreme Court judges.

Baroness Falkner of Margravine: John's third category of person is where it would not help—in any sense—for people who are dealing with our consultation to write in saying that they disagree with the judgment itself. They are perfectly entitled to write that in, but we are not going to issue a letter to Government saying, "We think the Supreme Court has got this wrong and you need to establish a new Supreme Court." That is not going to happen.

Q59 **Rebecca Paul:** No, and that is exactly the point I am making, in order that you can do what you need to do as quickly as possible and just

making sure that people understand that and the limitations.

Baroness Falkner of Margravine: It is not parliamentary language, but I was tempted to remind you of what Mr Churchill said about the voters at a particular point in time when he lost an election. I will not; it is unparliamentary language.

Q60 **Samantha Niblett:** Coming to the wider implications of what has been happening, it has been fascinating to listen to so much talk about proportionality, the grey lines, social contracts between people, and trust. When we talk about proportionality, we are talking about less than 0.5% of the population upon whom so much attention is being put. There is an expectation that a Supreme Court ruling will result in lots of organisations right across the country having to change what they do to support less than 0.5% of the population who until this point probably most of us did not know—we talk about toilets all the time—we were sharing a toilet with.

It is also great to hear you reference the PAG Act of 2010 and talk about post-legislative scrutiny. As we have mentioned earlier, intersex people are not covered by the Equality Act 2010, which could then technically make someone be a woman born at birth who presented as a boy born at birth but was then a transgender woman, and that then takes us down another loophole. Would you say that what is happening at the minute and any implications and unintended consequences are proportionate when we are talking about 0.5% of the population?

Baroness Falkner of Margravine: We do not play a numbers game at EHRC. We are there to defend nine protected characteristics, and we do so without fear or favour. Sometimes you will find us concentrating on one particular protected characteristic versus another, and that is a necessary function of small resources and a small organisation. From our perspective, it is not the numbers that are relevant, although as I have said earlier, sex covers the entire population of the country, and here we are talking about the impact on 8,464 people who hold GRCs.

The important principle is that strategic litigation and picking and choosing where there is a change will have ripple effects in terms of a ruling that comes down and changes things, and this is where we spend our resources best. We do strategic litigation regularly—we have just done another important case in the Court of Appeal on religion and philosophical belief called Higgs *v*. Farmor's School—with the intention that a particular case will have an impact beyond the circumstances of one or two individuals. That is what we tend to concentrate on. I do not know if that answers your question, but I was not quite clear what the question was.

Q61 **Samantha Niblett:** It is talking about all this attention and expecting people to change what they have been doing for 0.5%; that does not quite seem proportional to me. That also brings me on to a point around trust. It was really interesting to hear you talk about the satisfaction

rates with the EHRC of 36% up to 85%.

Baroness Falkner of Margravine: That is for awareness, and 81% of positive reactions to EHRC.

Q62 **Samantha Niblett:** I have spoken to constituents of mine—trans women in particular—in South Derbyshire who have probably had trust eroded in the EHRC. As EHRC and as a body, you "Promote equality and diversity, eliminate discrimination, and protect and promote human rights for everyone." What message do you have for people whose trust has been eroded, and how do we gain back the trust of the trans community?

Baroness Falkner of Margravine: We have this coming from a certain perspective from you, and we had Rebecca Paul on the other hand telling us that trust was eroded for women and girls under the stewardship of my predecessor commissioners.

Rebecca Paul: Not in my experience.

Baroness Falkner of Margravine: Here we have the perfect example of how you might need to balance—

Q63 **Samantha Niblett:** We are talking about 0.5% of the population in my group and 51% of the rest of the population, who probably did not know they were sharing a space with a trans woman.

Rebecca Paul: Women and girls are impacted.

Chair: Can we just have one meeting and just have the questions and then answers?

Baroness Falkner of Margravine: I was just trying to answer Ms Niblett's question. How do we restore trust with the trans community? I am going to be slightly personal here, just to begin with. The trans community supposedly had a great deal of trust in the previous chair—my predecessor—who had also been the previous chair of Stonewall. Perhaps we have to recognise that when people are lobbyists or advocates for a particular cause, the cause that they represent generates greater trust from that particular group than perhaps other groups.

On our board as commissioners, we have five statutory roles. It is not just the chair and the deputy chair; there are also Scotland and Wales commissioners, but also importantly—we were talking about disabled people's rights—you have to have one commissioner who has experience of disability. At the moment we have two.

Trust is something that we all want, but it is a commodity that is built up through credibility, impartiality and fairness. And that is what impartiality and fairness are about: being credible, no fear or favour for any civil society groups—as some people might say was the case in the past—even-handedness, and evidence-based, objective solutions to difficult problems.

When trans people see the final version of our code of practice, if they accept—this is the critical point—that we have to interpret the law of the land, then they will find what we are saying is something that they can trust. I have always said from the first day—including in conversations with Stonewall, the largest advocacy group in that domain—that if they were able to bring to us any cases of trans people's discrimination, we would pick them up and run with them, and I am proud to say we have done so.

Chair: Christine brings us to a close on the wider implications before we move on to budget and commissioners.

Baroness Falkner of Margravine: Madam Chairman, before we start with Mrs Jardine, I wonder whether you would be able to tell us how long this evidence session was meant to last. I thought it was two hours.

Q64 **Chair:** Yes, but it really depends on the length of your answers. I said at the beginning that there would be four questions each and that we would get through those. If you would like to be briefer in your responses, perhaps that will facilitate us getting to a closer time of quarter to 5.

Baroness Falkner of Margravine: I am afraid I cannot stay until then because I was not told that it would stretch.

Chair: It will stretch to two hours.

Baroness Falkner of Margravine: I can stay until 4.30 pm.

Q65 **Chair:** Shall I bring you to a close every time I feel that perhaps you are going off topic?

Baroness Falkner of Margravine: Please do.

Chair: We have a number of questions that we perhaps need to follow up on in writing, which we will do afterwards.

Q66 **Christine Jardine:** I was very interested in what you were saying about pitting two vulnerable groups against one another, which is what has happened: women and girls who feel attacked and vulnerable to violence, very often from men, and trans people who feel vulnerable in their lives all the time.

Unfortunately, regardless of what your intentions might have been, the common perception is that the wider implication of this has been to leave the trans community feeling that rights that they had before have been taken away, and that for decades, many trans women used single-sex facilities and had the right to do so.

Going forward, what work do you feel needs to be done to ensure that trans people's rights are actually upheld and that they do not feel that they are being discriminated against? What role do you envisage in that for the EHRC?

Baroness Falkner of Margravine: If I can take the latter part first, and I am going to be very brief. The EHRC is where the buck stops in that regard. We are there to protect and promote the rights and freedoms and non-discrimination for nine protected characteristics. That is what we do and why we exist.

In terms of restoring trust, which I think is what you are asking about—

Q67 **Christine Jardine:** No. What I am saying is that regardless of what the interpretation was, the wider implication and result of everything that has happened is that trans people feel that they have lost rights that were guaranteed to them before by the protection of the EHRC. That is how they feel. How are you going to restore that trust, but also how are you going to protect their rights in future?

Baroness Falkner of Margravine: We protect their rights under the law as it exists. We have always done so and will continue to do so. But you have to distinguish between rights in law and a preference for things to be a certain way. We can advocate for those preferences for things to be a certain way, and advocacy is part of what we do.

For example, on conversion therapy, we are advocating that the Government bring forward a draft bill. There are other areas where we are doing other work in that regard, for example, technical guidance, helping to advise public services providers—such as the NHS—on where they might better uphold rights, gender identity clinics which are scheduled to open in 2026, and all those things. There is a whole programme of work. Again, we can write to you on our programme work.

Q68 **Christine Jardine:** Because we are so short of time, I am thinking specifically here about the privacy of trans people. How are you going to respect and protect their right to privacy in the workplace and socially and their right to go about their lives without fear of discrimination if they are going to be identified because they cannot use certain facilities?

John Kirkpatrick: There are a couple of things we can do. One—which is somewhat teased out in our guidance and consultation—is provide some appropriate guidance about how questions can be asked respectfully in the workplace, services and so on, in such a way as to respect privacy and dignity as far as possible. We think there are ways of doing that—where it is necessary—that are more helpful and considerate than others.

The second thing we can do—as Kishwer said earlier—is where we become aware of examples of where trans people are being discriminated against or feeling as though they are being discriminated against; those are things we may be able to act on. If we find people who are discriminating against trans people, we have the powers we have to act in those cases, in the same way as if we find people who are discriminating against disabled people or whatever else that is contrary to the law.

Q69 **Chair:** I am going to ask that you write with those concrete examples of

how you will support people because we do not have time to deal with the vagueness of that answer. We need to have much more concrete examples.

Christine Jardine: That specific first answer about asking people, is that not a breach of their privacy in the first place? That makes the point that has been behind everybody's questioning today, that there is a basic right that is being undermined.

Q70 **Chair:** That is a yes or no question. Is it a breach of privacy?

Baroness Falkner of Margravine: We do not think article 8 rights apply, neither did the Supreme Court, and neither has previous legal advice that we have taken on that area applied.

Q71 **Catherine Fookes:** I am incredibly proud to come from the wonderful country of Wales. It is the most beautiful, welcoming, open and supportive country, especially for LGBTQ people, and it is a country whose Labour Government said in their LGBTQ+ Action Plan in 2023, "It's important to set out that Welsh Government's position on trans people is clear. Trans women are women, trans men are men, and non-binary identities are valid." Is that why there has been no Welsh commissioner since 2023? Is the board of the EHRC worried that by having a Welsh commissioner, you would have someone who perhaps does not hold the current view of the EHRC? Where are we with the recruitment of a Welsh commissioner?

Baroness Falkner of Margravine: If I have the Chairwoman's permission, can I raise the conversation I had with you in February, Madam Chairwoman, when I first came and saw you? I expressed my concern about why there was not a Wales commissioner to the Chairwoman as long ago as February. We have written to the Government asking for a speedy appointment of a Wales commissioner.

We have tried everything in the book to try to get a Wales commissioner. We have been astonished that you have a Labour Government in Wales and Westminster and the two Governments cannot get together, because they must agree to appoint a Wales commissioner. They are represented on the selection panel and the two Governments together have to agree to the appointment. We can only scratch our heads as to why there is not a Wales commissioner; it is nothing to do with the motives that you ascribe to us. You must ask your own Government about that.

Q72 **Catherine Fookes:** I will. The very quick follow-up question is how many CEOs have there been during your tenure, Baroness Falkner?

Baroness Falkner of Margravine: During my tenure there have been three.

Q73 **Catherine Fookes:** There have actually been six permanent and interim. Why do you think that change in CEOs happened so often?

Baroness Falkner of Margravine: I do not think I can speak about legally privileged matters, but there was an early resignation—which is still sometimes mentioned in the news—because an unlawful act took place. I am not going to go into the interims because our interims are usually from within our own ranks. We do not take external interims; we recruit internally. Our best people—our senior leaders—step up while they must, and they have all proved to be excellent. So I would not wish to comment on interims.

The second CEO again left us voluntarily. But John here, for example—who was approved as a CEO at the end of August last year—served as interim. So you can double count if you think of the same person; he has also been an interim and is the substantive CEO.

Q74 **Catherine Fookes:** I am just really concerned that there has been a big turnover of senior staff and CEOs during the past few years.

Chair: Can we draw it to a close please?

Catherine Fookes: Okay. I just want to put on record that that is worrying for your organisation, and I just wonder what that tells us about the organisation.

Baroness Falkner of Margravine: If I could just respond very briefly. What it tells you about the organisation is that we have been going through a transformation. We had too many senior staff, and three roles were designated not to exist long before I came along.

Catherine Fookes: Perhaps it has become that groupthink.

Chair: We are going to draw that section to a close. I want to bring Samantha in please.

Q75 **Samantha Niblett:** It leads quite nicely on to my point, actually. How do you monitor diversity in your workforce, and what if anything do you do to encourage and support a diverse workforce?

Baroness Falkner of Margravine: Can I just talk about the board for a second? And then John will speak about the workforce because he is the CEO. On the board, we have enormous diversity. We have 50% of people who represent ethnic minorities, two disabled commissioners, age represented across our board, and most of the protected characteristics. The only thing I would say about diversity is that the most important thing that you need in regulatory bodies such as ours is diversity of thought, and that is profoundly important. Talented boards are the ones that have the greatest diversity of thought.

John Kirkpatrick: I suppose the starting point is we are not a very large organisation; we are a little under 200 people. By virtue of recruiting and promoting as inclusively as we can and fostering a workplace culture where everyone can contribute, we do our level best to make sure we are a place where great people want to work.

In terms of the facts of our diversity data, I will not read it out to you but I am very happy to write to you about it, and to an extent it is published in our annual report. We are slightly over-represented on some protected characteristic groups by comparison with the rest of the population. My view of that is that it is not particularly surprising nor frankly worrying; in fact I am very happy about it in many ways. But this is a matter of constant vigilance to make sure that we continue to be an inclusive organisation, that when we recruit we seek to recruit from broad and diverse pools, and that we have a reasonably diverse workforce as a result. Kishwer made the additional point that in being effective, diversity of thought is at least as important to us as diversity against protected characteristics.

Q76 **Alex Brewer:** I have a very general point. What impact is the lack of budget increase having on the EHRC and therefore the wider equalities agenda?

Baroness Falkner of Margravine: It has had an enormous impact in the sense that it feels like we more or less get new regulatory powers and duties to discharge with every Bill that comes through Parliament, yet we have had a flatline budget. It was recommended in 2012 that we get a settlement of X, £17.1 million, and that is pretty much where we still are in 2025. So, 13 years on, it is increasingly difficult to cut your cloth the way you would wish to cut it, but John will have the headlines on that.

John Kirkpatrick: I do not have much to add to that. I answered Rebecca Paul's question earlier to say that we have to prioritise pretty rigorously and divert our resources to our highest priorities. We can deliver our statutory functions. If we had more money, we would be able to do more, be more proactive, enforce more, hold Government and other public bodies to account for their compliance with the Public Sector Equality Duty more, take more strategic litigation cases of the kind that Kishwer describes, and pick up enforcement responsibilities for the various things that Parliament ask us to do more proactively and more energetically.

Q77 **Alex Brewer:** That leads me very nicely on to my next question, which is how feasible is it to hold any Government to account when that Government control both the finances and remit of your organisation?

John Kirkpatrick: My answer to that is by our record you shall know us. Our principal enforcement and compliance work is against Governments—both the previous and current—which we have held to account in various ways in my time. As I am sure you know, we currently have active enforcement action in place against the Department for Work and Pensions because we do not think it is properly fulfilling its obligations. As I say, we have held both the Westminster Government and the Governments in Scotland and Wales to account against that. Yes, they hold the purse strings, but they have never—in my time at least—sought to use that leverage in any way. We have been able to act without fear or favour, holding them to account, as we have chosen to do.

Q78 **Chair:** We have three questions that we need to get through in the next five minutes from myself, Rebecca and Rosie, so if we could be as succinct as possible. This one should be quite easy. Have you assessed or discussed with Government officials and Ministers the cost of the regulatory burden and financial costs of implementing the draft code of practices for services, public functions, associations and businesses? Will there be a financial impact assessment to accompany any updates? Have you estimated the cost to the taxpayer, for example?

John Kirkpatrick: Not yet. Though I would add, of course, that the cost of compliance with the law is the cost of compliance with the law.

Chair: It would be useful to the taxpayer and Government Departments to know how much of their budgets they should be allocating to conform to this new updated guidance. I would stress that any updated code of practice should come alongside a financial impact assessment as well.

Q79 **Rebecca Paul:** I want to talk very briefly about the legislative programme. We have obviously already talked about the Supreme Court and the clarity that comes from that. What consideration have you given to the potential of new legislation muddying the waters again? For example, the Data (Use and Access) Bill, which does not require accurate sex data to be recorded, and therefore effectively lets self-ID through the back door. This is particularly important in the case of disabled girls and women requiring same-sex intimate care. Under the Equality Act 2010, how can their rights be protected in the absence of accurate sex data and are you raising this issue with Government?

Baroness Falkner of Margravine: We have raised the issue with Government. You will be aware that Professor Alice Sullivan published a significant report on data use and statistics and the importance of recording statistics accurately, not least for the health and safety of people on every side of every debate. So yes, we have discussed it with Government, but just at a very preliminary level.

Unfortunately we came to it slightly late as legislation because—as you would expect with a new Government full of vigour—there has been a lot of legislation coming down the road, and we come back to our resources. So when there are several Bills going through, we cannot comment on each one; we have to choose our parliamentary advice quite carefully.

Q80 **Rebecca Paul:** Are Government receptive to the preliminary discussions you have had and are they recognising the issue?

Baroness Falkner of Margravine: What I found interesting was Government were well aware of the issue but I do not think I could say either way. I could not read the room accurately; it would not be fair of me to opine on that.

Q81 **Rosie Duffield:** This Committee is currently doing a report on social cohesion. In many ways, society seems to be more polarised than ever in terms of religious belief, race, politics, and trans-identified people versus

feminists. What more can the EHRC do strategically to foster better relations between community groups and those often bitterly divided?

Baroness Falkner of Margravine: John may have a more concrete answer than me. I have been struggling with fostering good relations. When I first arrived at EHRC, I was shocked by the tone of the debate on some issues we have discussed today. Incidentally, it was likewise when I arrived on race, where there was a great deal of divisiveness between people who were minority and people who were not in that debate. Fostering good relations is a really important part of our work but is a part of our work that really needs to come with a cheque.

We have thought of a dozen ways to foster better relations. You know that if you get people in the room together and you have a thoughtful conversation, you might advance the objective that you are trying to improve relations. We try all those low-budget, but we cannot tell the impact. Clearly, we are hoping that the settlement of this issue by the Supreme Court will lead to a calming down of the atmosphere.

Q82 **Chair:** That is a really good question to have finished on. There are a number of questions that are left outstanding, and possibly a number of questions that Members of the Committee would like to follow up on. Are you happy for us to write to you both?

Baroness Falkner of Margravine: Indeed. We would look forward to providing greater explanation. We have always appreciated the oversight that your Committee gives us, Madam Chairman. We are here to account to you and are delighted to do so; it is part of our job.

Chair: I really appreciate your time and your team's time in all the preparation and answering some questions ahead of time as well; that is really useful. We look forward to hearing more comprehensive answers to some questions in writing as well. Thank you very much. That brings this session to a close.