



The Scottish Parliament  
Pàrlamaid na h-Alba

Published 16 September 2024  
SP Paper 642  
7th Report, 2024 (Session 6)

## Finance and Public Administration Committee

# Report on Scotland's Commissioner Landscape: A Strategic Approach



**Published in Scotland by the Scottish Parliamentary Corporate Body.**

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# Finance and Public Administration Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any report or other document containing proposals for, or budgets of, public revenue or expenditure or proposals for the making of a Scottish rate resolution, taking into account any report or recommendations concerning such documents made by any other committee with power to consider such documents or any part of them;

(b) any report made by a committee setting out proposals concerning public revenue or expenditure;

(c) Budget Bills; and

(d) any other matter relating to or affecting the revenue or expenditure of the Scottish Administration or other monies payable into or expenditure payable out of the Scottish Consolidated Fund.

(e) matters relating to the National Performance Framework within the responsibilities of the Deputy First Minister, public service reform within the responsibility of the Cabinet Secretary for Finance and Local Government, and public administration.



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# Introduction

1. The Finance and Public Administration Committee's inquiry into Scotland's Commissioner Landscape: A Strategic Approach <sup>1</sup> was prompted by our concerns at the potential for, and implications of, this landscape growing exponentially over this parliamentary session and beyond.
2. There are currently seven Scottish Parliamentary Corporate Body (SPCB) supported bodies, with the creation of another recently agreed by Parliament but not yet in operation, and proposals for a further six being considered. The Committee first highlighted our concerns regarding this potential significant increase in our Report on the Scottish Budget 2023-24 <sup>2</sup> and we have continued to raise these issues during our recent scrutiny of Financial Memorandums (FMs) for Bills that propose establishing additional new SPCB supported bodies <sup>3</sup>.
3. The Committee's inquiry was launched in December 2023, with the purpose of establishing the extent to which a more coherent and strategic approach to the creation and development of SPCB supported bodies is needed and how this might be achieved. The inquiry remit can be found in full at Annexe A to this report. Our call for views ran from 11 January until 11 March 2024 and received 23 responses. <sup>4</sup> We held seven oral evidence sessions <sup>5</sup>, as well as two informal sessions <sup>6</sup> to explore the experiences of former Commissioners and Ombudsman who previously sat within the SPCB supported body model, and the background to individual MSPs submitting proposals to create new such bodies. We thank all those who provided evidence to this inquiry, which has helped shape our conclusions and recommendations which can be found at the end of this report.
4. To support the inquiry, SPICe produced a summary of the written submissions <sup>7</sup> received, a briefing <sup>8</sup> which maps the current SPCB supported body landscape and details other UK and international models, and a supplementary paper <sup>9</sup> containing additional information on the models in New Zealand and Wales. The Committee has also drawn on Research Scotland's 2023 report on role of commissions and commissioners in Scotland and the UK <sup>10</sup>, which was commissioned by the Scottish Government to inform its decisions around creating a new commissioner in relation to learning disability, autism and neurodiversity.
5. We use the term 'SPCB supported bodies' consistently throughout this report in response to concerns raised in evidence that the terminology of commission, commissioner and ombudsman can be confusing. As we heard, these terms can refer to bodies with entirely different roles. Some are responsible to the Government, others to Parliament, and those set up as royal commissions, for a defined period of time, have an entirely different purpose: to carry out formal public inquiries.
6. The focus of this inquiry was solely on those bodies funded and supported by the SPCB, each of whom have distinct functions ranging from investigation and regulation to complaints, data handling and advocacy. Other than as wider context, the purpose of this inquiry was not to consider the overall public body landscape, the role of those commissions or commissioners who report directly to the Scottish

Government, royal commissions, or the merits or otherwise of individual bodies. Nevertheless, we recognise that an inquiry of this nature can be unsettling for those involved.

7. Based on the evidence we received, the Committee concludes that creating a series of individual new SPCB supported bodies can no longer be the default response of Government and Parliament to perceived failures in public service delivery, or to calls for new 'champions' to promote a specific cause. Now is the time to pause and take stock. Our findings and recommendations pave a way to bring more coherence and structure to the landscape, as well as greater accountability, value for money, and enhanced scrutiny of performance.
8. We urge the Government, Parliament, and individual Members to now each step up and play their part in implementing these recommendations, so that collectively we can deliver an SPCB supported body landscape fit for the future.

# Current landscape

9. Currently, there are seven SPCB supported bodies<sup>i</sup> with a range of different functions, including investigatory, regulatory, complaints handling, specialist oversight (biometrics), and advocacy. Each was established through specific legislation approved by Parliament. The table below lists the bodies alongside the year their enabling legislation was passed, estimated costs as set out in the original FMs, and their 2024-25 budgets, providing an illustration of how the landscape has evolved.

**Table 1**

Supported Body	Created	Estimated annual cost as set out in the relevant FM*	2024-25 Budget
Standards Commission for Scotland	2000	£400,000 - £450,000	£363,000
Scottish Information Commissioner	2002	£700,000	£2,413,000
Scottish Public Services Ombudsman	2002	£990,000	£6,834,000
Children and Young People's Commissioner Scotland	2003	£1,216,875	£1,687,000
Scottish Human Rights Commission	2006	£1,000,000	£1,456,000
Commissioner for Ethical Standards in Public Life in Scotland (various iterations of the Commissioner from 2000)	2013	No FM as post was established by Order <sup>ii</sup>	£1,818,000
Scottish Biometrics Commissioner	2020	£333,000	£499,000
<b>Total</b>			<b>£15,070,000</b>

\*All FMs are available on [the Scottish Parliament website](#) and are expected to set out best estimates of the costs, savings, and changes to revenues arising from a Bill. Additional functions have since been added to some bodies.

10. Legislation creating a Patient Safety Commissioner was also passed by the Scottish Parliament in 2023, with an estimated annual budget of £650,000<sup>11</sup>, however, this post is yet to be filled.
11. At the time of writing, a further six potential SPCB supported bodies are being proposed by the Scottish Government and by individual Members. All could be described as advocacy-type bodies, i.e., they are intended to champion and represent the interests of a particular group of society or policy area. These proposals, their status at the time of writing, and estimated costs where available, are set out in the table below.

<sup>i</sup> The SPCB also funds the Electoral Commission's (EC's) devolved Scottish activities. The EC is not part of this inquiry.

<sup>ii</sup> In evidence on the Order on 23 May 2013, the then Cabinet Secretary for Finance and Sustainable Growth told the Standards, Procedures and Public Appointments Committee that he was unable at that time to confirm estimated costs of the post. However, he said that creating the post would result in savings of up to £44,000 per annum as the single commissioner would replace the Commission for Ethical Standards in Public Life in Scotland and its two members: the Public Standards Commissioner for Scotland and the Public Appointments Commissioner for Scotland.



**Table 2**

Proposal	Status	Estimated annual cost where known
Victims and Witnesses Commissioner	Scottish Government Bill, at Stage 2 of the Bill process	FM <sup>12</sup> - Up to £615,149Set up and year 1 running costs - up to £638,719
Disability Commissioner	Members Bill, at Stage 1 of the Bill process	FM <sup>13</sup> - £574,717 - £878,005Set up costs £314,539-£378,539
Older People's Commissioner	Members Bill proposal, at draft proposal stage	Consultation document <sup>14</sup> Costs envisaged to be similar to Commissioner for Children and Young People. Detailed FM to follow on Bill introduction
Wellbeing and Sustainable Development Commissioner	Members Bill proposal, at right to introduce a bill stage	Consultation document <sup>15</sup> - Costs anticipated to be a minimum of £1.5 million (Wales model). Detailed FM to follow on Bill introduction
Future Generations Commissioner	Scottish Government proposal included in 2022-23 Programme for Government	No costs available at this stage
Learning Disability, Autism and Neurodiversity Commissioner or Commission	Scottish Government consultation undertaken in 2022-23	No costs available at this stage

## Role of the SPCB

12. The primary purpose of the SPCB is to provide the Parliament and Members with the property, staff and services needed to carry out all parliamentary and representative functions. Its role in relation to SPCB supported bodies is set out in the specific legislation creating each of the offices. These statutory duties include—
- **Providing the funding for the bodies to undertake their functions.** SPCB supported bodies are expected to provide budget bids by a specific date for the SPCB to approve, and must, in doing so, declare that these resources will be used economically, efficiently, and effectively. Their budgets form part of the SPCB's overall budget which is "top-sliced" from the Scottish Consolidated Fund and is scrutinised by this Committee as part of the wider Scottish budget process.
  - **Appointing certain officeholders, acting officeholders, and accountable officers, and determining their terms and conditions,** including term of office, remuneration, pensions, and allowances.
  - **Powers of direction** regarding (a) the location of SPCB supported bodies' offices, (b) the sharing of premises, staff, services, and other resources with any other SPCB supported or public body, and (c) the form and content of annual reports.
  - **Approving determinations** on the number of employees and their terms and conditions of employment, and advisers' fees.
  - **Providing comments** as a statutory consultee on SPCB supported bodies' draft strategic plans.
13. Officeholders are subject to annual evaluation, which is undertaken by an independent assessor, on behalf of the SPCB. This process is intended to provide independent information to the SPCB on whether an officeholder is fulfilling the terms and conditions of their post, and allows any development needs to be

identified and support provided.

14. The SPCB's budget bid for 2024-25 <sup>16</sup> looks ahead to the “known additional requirements for 2025-26”, which includes an additional £650,000 for the Patient Safety Commissioner, and states that further costs may arise if legislation is passed to create additional such bodies or if existing remits are extended.

## Role of parliamentary committees

15. Scottish parliamentary committees hold SPCB supported bodies to account, in the exercise of their functions, on the Parliament's behalf. This can include scrutiny of their annual reports and strategic plans. The Scottish Parliament's Standing Orders (Rule 3A.6) <sup>17</sup> state that “where a supported body's annual report or strategic plan is laid before the Parliament, the Clerk shall refer that document to the committee within whose remit the subject matter of that document falls for consideration”. It is for individual committees to decide the frequency and level of scrutiny they undertake in relation to how the bodies within their respective remits carry out their duties and, as we note later in this report, this can vary.
16. In January 2023, the SPCB and Conveners Group signed a Written Agreement <sup>18</sup> aimed at clarifying their respective roles and responsibilities in relation to SPCB supported bodies. This states that “parliamentary scrutiny is essential in ensuring public accountability [and] committees should therefore ensure their engagement with officeholders is meaningful and effective as an important part of ensuring their accountability to the Scottish Parliament”. The Written Agreement also clarifies which committees are responsible for scrutiny of each individual SPCB supported body, as follows.

**Table 3**

Officeholder	Committee(s)
Scottish Public Services Ombudsman	Local Government, Housing and Planning Committee
Scottish Information Commissioner	Standards, Procedures and Public Appointments Committee
Children and Young People's Commissioner Scotland	Education, Children and Young People Committee
Ethical Standards Commissioner	Standards, Procedures and Public Appointments Committee Local Government, Housing and Planning Committee
Scottish Human Rights Commission	Equalities, Human Rights and Civil Justice Committee
Standards Commission	Local Government, Housing and Planning Committee
Scottish Biometrics Commissioner	Criminal Justice Committee

## Role of the Scottish Government

17. The Scottish Government can propose new supported bodies through Government Bills and, indeed, the last two <sup>iii</sup> such bodies approved by Parliament, and three of the six current proposals for new bodies are Government initiatives. The other three proposals have been brought forward by individual Members. The other way in

which a new supported body can be established, is through a committee bill, as was the case with the creation of the Children and Young People's Commissioner Scotland (CYPCS) through legislation passed in 2003.

18. In a letter dated 7 March 2024<sup>19</sup>, the then Deputy First Minister, Shona Robison MSP, advised that the Cabinet had agreed a Ministerial Control Framework (MCF) on 9 May 2023. This, she explained, "aims to ensure that decisions around the creation of new public bodies are made based on evidence and value for money against the backdrop of significant pressure on public spending". The MCF is based on the following three principles—
  1. any new public body should be set up as a last resort,
  2. only after all other delivery mechanisms have been exhausted should the approval process for setting up a new public body through the MCF be followed, and
  3. approval for setting up a new public body must be sought formally from Cabinet before any decision or announcement is made.
19. The then Deputy First Minister stated that "the MCF ensures there is a rigorous, consistent, and transparent decision-making process for the creation of new public bodies should a proposal or consideration come from within government". However, it is currently unclear whether the MCF itself, as well as the assessment of individual proposals against the three principles in the MCF will be published in full to provide greater transparency over the Government's decision-making process, a key theme of this Committee's public administration work. We believe that the MCF should be published and ask that a copy is included in the response to this report.
20. The letter further suggests that "it could be a viable option" for the SPCB to introduce a similar "best value assurance process" for proposals originating outside Government.
21. The letter goes on to note that the Government also has a role in taking a position on bills that arise from outside Government, both during consultation stage and throughout the passage of a bill through Parliament.

## Earlier reviews of the landscape

22. This is not the first review of the SPCB supported body landscape. In 2009, a dedicated SPCB Supported Bodies Committee made recommendations<sup>20</sup> to alter the structure, and terms and conditions of those bodies supported by the SPCB.
23. That Committee's recommendations drew heavily on a 2006 report by the then Finance Committee on its Inquiry into Accountability and Governance<sup>21</sup>, as well as the Crerar Report of 2007 on the regulation, audit and inspection and complaints handling of public services in Scotland<sup>22</sup>, as "both reports had been debated by and received the general support of the Parliament".

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iii Scottish Biometrics Commissioner (2020) and Patient Safety Commissioner (2023).

24. Similar to our current inquiry, the then Finance Committee's 2006 inquiry was "prompted by concerns about increasing costs, the perceived shortcomings of budgetary accountability, the lack of consistency in governance arrangements and other matters". In its report, that Committee proposed tests for the creation of future SPCB supported bodies; firstly, that any future bodies should not duplicate a role already being carried out, and secondly, for bodies to be designated as parliamentary commissioners, the following criteria or guiding principles should be met—

- **Clarity of Remit** : a clear understanding of the officeholder's specific remit,
- **Distinction between functions**: a clear distinction between different functions, roles and responsibilities including audit, inspection, regulation, complaint handling, advocacy,
- **Complementarity** : a dovetailing of jurisdictions creating a coherent system with appropriate linkages with no gaps, overlaps or duplication,
- **Simplicity and Accessibility**: simplicity and access for the public to maximise the "single gateway/one-stop shop" approach,
- **Shared Services** : shared services and organisational efficiencies built in from the outset; and
- **Accountability**: the establishment of clear, simple, robust, and transparent lines of accountability appropriate to the nature of the office.

25. The then Finance Committee recommended that these criteria should be followed by MSPs when considering whether to approve proposals for new SPCB supported bodies and that—

” Policy papers accompanying new proposals for officeholders should provide strong evidence that the proposer has explored all possible opportunities to have an existing body carry out the additional function or make use of existing resources wherever possible to support any new officeholder and have very good reasons for not adopting an approach which would avoid the creation of a new body.<sup>21</sup>

## Terminology

26. As noted in our introduction to this report, the Committee is, throughout this report, using the term 'SPCB supported bodies' rather than commission, commissioner, or ombudsman, due to the concerns expressed in evidence that this terminology can be confusing. Research Scotland's 2023 Report<sup>10</sup> highlights comments from one interviewee that "the current Government is very enthusiastic about commissioners", however, "it's becoming very confusing ... what a commissioner is", adding that "the phrase ... is starting to lose its value in terms of what it is". Research Scotland went on to say that "it does mean lots of different things ... and we find that [commissions and commissioners] are taking lots of different approaches, have lots of different powers and are set up in lots of different ways".

27. The Scottish Information Commissioner (SIC) told the Committee that “coming in as a new boy ..., I was rather surprised, to be honest, because I could not quite understand what a commissioner was at first and what it meant”, adding “every single one of us has a different governance structure and a different way of being put together”.<sup>23</sup> We also heard from Dr Ian Elliott that “the fact that so many different terms can be used that essentially all mean the same thing makes it very difficult to explain to the public what the different bodies are”.<sup>24</sup>
28. Jackson Carlaw MSP, representing the SPCB, further suggested that “the public might have expectations that the word ‘commissioner’ has a common standard ..., which might not even be the case”.<sup>25</sup>

# How the current model works in practice

## Democratic accountability

29. The Committee sought to establish how well the SPCB supported model fits within existing democratic accountability structures. SPCB supported bodies told us that they are responsible to the people of Scotland through the Scottish Parliament and that their work is complementary to that of the Parliament and its MSPs.<sup>26</sup>
30. The Law Society of Scotland, however, highlighted that, in constitutional law, a fourth branch of government had occasionally been proposed – an ‘integrity’ branch – equivalent to the legislative, executive, and judicial branches - with the aim of maintaining the integrity of government functions.<sup>24</sup> Professor Alan Page, Emeritus Professor of Public Law at the University of Dundee, explained that this concept “was developed with a view to underlining the importance of the part that is played by those bodies in the control of Government” and “the thinking was that we could develop that concept and have a more systematic, more clearly defined system”. He went on to suggest, however, that the notion is a “red herring” and that, “we should focus on what role such bodies play in the context of Government, instead of getting too hung up on whether we should call them an integrity branch”.<sup>24</sup> There was also some concern that creating a ‘fourth branch’ involving SPCB supported bodies could serve to legitimise and consolidate an already inadequate system.<sup>24</sup>
31. Nevertheless, most witnesses recognised that those SPCB supported bodies with an ‘integrity’ function, i.e., a duty to maintain public confidence and independence of decision-making about elected representatives, require some distance from the Government and Parliament. It was also noted that there is an argument for those supported bodies with functions requiring some level of technical expertise being independent. However, there was less sympathy amongst a large number of witnesses for the creation of new advocacy or rights based SPCB supported bodies, with some witnesses going so far as to argue that there should be no such bodies at all, as they have “limited power” and are “largely unaccountable” as they sit outside the usual democratic accountability structures.<sup>27</sup> It was further argued that, in carrying out functions which could otherwise be undertaken by Government or MSPs, advocacy SPCB supported bodies shift democratic accountability.<sup>24</sup>
32. This advocacy role, it was suggested by some witnesses, “is the job of Parliament” and its MSPs, through scrutiny of how effectively Government and public bodies are undertaking their functions, with the electorate able to vote for other candidates if they are dissatisfied with the action taken.<sup>27</sup> Indeed, Professor Alan Page asked the question, “under the model you describe, is my MSP not my commissioner?”<sup>24</sup> Jackson Carlaw MSP said he was “struck by [this] evidence”, adding “when it comes to advocacy, that is what MSPs were elected to do” and “if we are failing in our duty ..., that is a question for us”.<sup>25</sup> Professor Alan Page further questioned whether these bodies need to be parliamentary bodies, asking “is the Scottish Government not shuffling off responsibility that properly belongs to it?”<sup>24</sup>
33. In its written submission, Common Weal stated that “we believe that the Scottish

Government is developing a risk-averse attitude in expanding the growth of Commissioners as it allows Government to claim the credit when policies are adopted and are successful but to ignore 'inconvenient' advice or to pass blame for failure".<sup>28</sup> In oral evidence, it went on to warn against the landscape becoming one of "ministers without accountability", where they are not held to account by the Parliament as a whole and there is no corresponding minister in place.<sup>29</sup>

34. However, in written evidence, Carnegie UK noted that "the Scottish Parliament is unicameral, [and] the independent accountability and scrutiny function of Commissioners is important in this context [as] they act as an additional accountability mechanism and contribute to a landscape of robust oversight".<sup>30</sup>
35. Jackson Carlaw MSP told the Committee that he has "always been concerned that, with this raft of commissioners, we are creating a new level of Government that did not exist when the Parliament was established", adding "it is not elected, and it is not properly accountable".<sup>25</sup>

## Accountability to Parliament

### A coherent approach?

36. Witnesses told us that the vehicles of accountability and scrutiny relating to SPCB supported bodies are inadequate and inconsistently applied. They also highlighted tensions within the current model, where resourcing for each body is provided and scrutinised by the SPCB, whilst scrutiny of their performance and reports rests with committees. For example, the Convener of the Standards, Procedures and Public Appointments Committee stated that "there is a challenge in the relationship between the Parliament and the commissioners, and the corporate body and the commissioners [and] it is sometimes difficult to identify who is responsible for certain aspects".<sup>31</sup>
37. The Scottish Public Services Ombudsman (SPSO) agreed that the current process could be more 'joined up'. She said she receives "robust scrutiny from the relevant subject committee on performance, ... however, I do not see that circle being squared back to [the Finance and Public Administration] Committee asking me whether I have done what I said I would do with the money that, through the SPCB process, you have given me as an accountable officer".<sup>26</sup>
38. Professor Alan Page noted that "the bodies are established, the Parliament funds them, sets their budget, appoints people to them and all the rest of it, but they then occupy a certain no man's land ... where they are not really accountable to anybody, and no one is responsible for saying whether or not the system works or whether it should be rationalised and so on".<sup>24</sup>
39. We understand that last parliamentary session, there was a challenging situation with the performance and effectiveness of a specific SPCB supported body, which could have been identified and remedied at a much earlier stage, if the roles of the SPCB and parliamentary committees were clearer. The Written Agreement<sup>18</sup> between the SPCB and Conveners Group referred to earlier in this report arose

from this situation and seeks to provide clarification around the respective roles of the SPCB and committees and encourage more engagement between the two where appropriate.

## Governance arrangements

40. The role of the SPCB in respect of supported bodies is set out in full earlier in this report. As summarised by Jackson Carlaw MSP in evidence, these responsibilities involve ensuring that “the housekeeping within the actual commission is effective, that it represents a good use of public money, and that public money is being carefully managed”.<sup>25</sup> Regarding the SPCB’s role of appointing post-holders, he highlighted that “for quite a number of the positions for which we are required to make recommendations, there are very few applicants [, which] to my mind ... is an issue”.<sup>26</sup> Indeed, campaign groups recently expressed serious concerns regarding delays to the appointment of the newly created Patient Safety Commissioner, after a successful candidate did not emerge from the first recruitment exercise.<sup>32</sup>
41. Research Scotland told the Committee that most of the commissions and commissioners it spoke to – a mix of both SPCB supported bodies and those directly responsible to Government - felt that their governance arrangements work well.<sup>10</sup> SPCB supported bodies confirmed this position when they gave evidence to the Committee. They, however, highlighted that budget setting arrangements can be challenging, as they are required to submit their annual budget bids to the SPCB around August or September and then receive confirmation of their budget allocations the following February, before the SPCB pay award, which applies to their offices, is finalised. For the Scottish Biometrics Commissioner (SB Commissioner), this approach led to an under-allocation for salaries of £32,000 last year.<sup>26</sup>
42. We heard that staffing costs can make up around 80-90% of supported bodies’ budgets and other expenditure is often demand-led (such as complaints, legal expenses, and appeals), which provides a further layer of uncertainty in relation to budget bids. Like other public sector bodies, supported bodies said they find it challenging to undertake medium and longer-term financial planning in the absence of Government multi-year spending plans.<sup>26</sup>
43. When asked about the extent to which they were challenged by the SPCB in relation to their budget bids, supported bodies told us that the SPCB provides guidance on the parameters for their budget bids, “including where the context is one of fiscal constraint”. For example, the SIC told the Committee that, “in its communications, the corporate body is very clear that there is no money [and] ... so, we are very circumspect in what we ask for, and if we need to go for funding, we are aware that there is a limited pool of money and there is a duty on us to be mature and sensible in our ask and expectations”.<sup>26</sup>
44. Jackson Carlaw MSP explained that staff in the Parliament’s Clerk/Chief Executive’s Office “meet with the commissioners regularly to try to identify any organisational or operational problems relating to the governance aspect of their responsibilities”. He also confirmed that the SPCB has decided to “carve out



time—even if it means having exceptional meetings—for more structured and regular meetings with each of the commissioners to understand exactly what they are doing and how they are going about these things”. In relation to additional costs, Mr Carlaw said that the SPCB is “pretty rigorous” and has declined some requests, however, some bodies have had additional responsibilities placed on them that require funding for additional staff.<sup>25</sup>

45. Based on her own experience as the Scottish Parliament’s former Head of Legal Services, Lynda Towers (now of the Law Society of Scotland), said that “the commissioners who had to appear in front of the SPCB were given a robust and challenging session in relation to their outcomes, their budgeting, and their aims”.<sup>24</sup> The Committee, however, notes that, as the SPCB meets in private, there may be a lack of understanding and transparency in relation to how these governance arrangements work, as well as their effectiveness.
46. The SPCB has previously indicated to the Committee that the oversight of independent officeholders is now becoming a more significant time commitment for it, as well as accounting for a substantial part of the SPCB’s overall budget.<sup>33</sup> Concerns were also raised in evidence, including by SPCB members, about the capacity of the SPCB to carry out this governance role, particularly as the landscape of supported bodies is expected to grow exponentially. Maggie Chapman MSP, representing the SPCB, highlighted that it has previously raised concerns with the Committee and Scottish Ministers about the impact of the growing landscape on its workload, overall budget, and staff.<sup>25</sup> Age Scotland also noted that “the corporate body might not have the resources that it needs to do an effective job as it might want to do ... to ensure that the process works”.<sup>34</sup>
47. Others, such as Professor Alan Page, posed the question of whether it is for the SPCB to perform this oversight role for supported bodies, or if the Government should be carrying it out and be held to account by the Parliament, rather than the SPCB “being presented with a commissioner about whom nobody is quite sure where they fit into the overall structure”. He also suggested these responsibilities may be diverting the SPCB away from its core duties of running the Parliament.<sup>24</sup>
48. The Minister for Public Finance, Ivan McKee MSP, told the Committee that the Scottish Government engages with the SPCB on the potential costs of those SPCB supported bodies that it proposes and that the SPCB then receives additional funding in line with the FM for the relevant bill. Should the SPCB require extra funding to increase its governance capacity in relation to supported bodies, it could, he suggested, build this into its annual budget bid.<sup>35</sup>

## Parliamentary scrutiny through committees

49. As noted earlier in the report, relevant parliamentary committees are responsible for scrutinising the overall performance of SPCB supported bodies against their functions. The Law Society of Scotland suggested that committee scrutiny “can sometimes seem a little perfunctory”, while Professor Alan Page said his “... sense is that [committee scrutiny] does not really amount to very much at all—there is ad hoc or occasional engagement, not systematic engagement”.<sup>24</sup> Jackson Carlaw

MSP confirmed in evidence that “we do not have a proper, structured way of scrutinising the work of commissioners”.<sup>25</sup>

50. SPCB supported bodies told us that their experiences of committee scrutiny vary, but usual practice tends to involve annual scrutiny sessions to examine annual reports. All supported bodies said that, when it does happen, scrutiny is robust, and that they would welcome more regular engagement with committees. The CYPCS explained that she is regularly invited to give evidence on specific bills or inquiries, as well as appearing in relation to her strategic plans, adding that “scrutiny feels proportionate, fair and representative”. However, the SB Commissioner told the Committee that he has been asked to give evidence once in the three years he has been in post, to discuss a statutory code of practice. While he advised that the evidence session was “challenging”, he had produced seven reports to Parliament in that time, which remain largely unexamined.<sup>26</sup>
51. Capacity issues within committee workloads was highlighted as the main challenge in undertaking more regular, and effective, scrutiny of supported bodies. The Convener of the Criminal Justice Committee explained that “it can sometimes be difficult to bring commissioners or other witnesses to a committee because of tight work programmes”.<sup>36</sup> Jackson Carlaw MSP acknowledged that “finding time once a year for this kind of scrutiny must feel like a brick in a bucket in terms of its relevance to everything else they do”, adding “I wonder, therefore, whether scrutiny is genuinely being underwritten”. Also asked whether there is an obligation on committees to let the SPCB know about the level of scrutiny that they have undertaken of a particular supported body in a particular year, Mr Carlaw confirmed there was no such requirement.<sup>25</sup>
52. A significant number of witnesses told us that parliamentary scrutiny should be enhanced with a focus on delivery of outcomes. However, challenges in assessing Commissioners’ performance, whether they have made a difference, are delivering on their purpose or if they are value for money, were also highlighted. The Convener of the Standards, Procedures and Public Appointments Committee explained that supported bodies within that Committee’s remit produce annual reports which “shows the work in and the work out [and] we can scrutinise how successful that work has been over a period of time”, adding that it can also identify and interrogate from that information any blockages and delays in the system.<sup>36</sup> However, the SB Commissioner highlighted “one of the challenges for any organisation that is not primarily, for example, a complaints-based body that can evidence its performance through metrics, is how to evidence its outcomes”, particularly where they rely on other bodies to implement their recommendations, which can take time.<sup>26</sup> Similarly, the Convener of the Education, Children and Young People Committee said it is difficult to measure the CYPCS’s progress against outcomes “... because everything that the Commissioner does is subjective”. She said the Committee “is keen to see” how a new accountability tracker introduced by the Commissioner with the aim of holding Government and other public bodies to account on their commitments develops and “whether it gives us some oversight as a tool to track progress”.<sup>36</sup>
53. The CYPCS suggested that committee scrutiny should be focused on examining what specific SPCB supported bodies are set up to do and look at how they have outlined progress against those functions, as well as any evidence that

demonstrates the extent to which outcomes are being achieved.<sup>26</sup>

54. The National Autistic Society Scotland (NASS) said that that any new commissioner should “be absolutely focussed on outcomes, because the outcomes for autistic people are stark”.<sup>34</sup> Carnegie UK argued that “if a commissioner is able to successfully drive an ‘outcome-based’ approach and improve outcomes, there will be cost savings from all sorts of different places”, adding, however, that “those cost savings are quite difficult to capture, and we are not very good at understanding what would have happened if the commissioner had not been there”.<sup>34</sup> The ALLIANCE provided the example of difficulties in measuring how much money has been saved by an SPCB supported body securing a change or intervening in a way that leads to fewer people reaching crisis point and accessing an acute service.<sup>34</sup> Dr Ian Elliott, Senior Lecturer in Public Administration at the University of Glasgow, agreed that “as with many things in public administration, it is difficult to prove whether something is effective or is providing value for money”.<sup>24</sup>
55. As noted earlier in this report, an independent assessor appointed by the SPCB routinely assesses supported bodies’ performance against their individual terms and conditions. These assessments are not published, which former SPCB supported bodies felt was a missed opportunity as they could help to build up a picture regarding effectiveness. It is understood, however, that these independent assessments are used as performance reviews, and it would not therefore be appropriate to publish them in full.
56. The Minister for Public Finance agreed that it was “difficult to put a finger on ... effectiveness” [of SPCB supported bodies] and whether any progress, for example in relation to child poverty, could be attributed to an individual body’s actions. He, however, disputed the suggestion that the Scottish Government may have a role in evaluating whether the SPCB supported bodies that it had proposed were subsequently operating effectively, and in the way that it had envisioned. He said that he expected the Parliament “to do its job” in relation to scrutiny of supported bodies’ performance.<sup>37</sup>
57. Witnesses highlighted other models of scrutiny that may be worthy of further consideration, including—
- a suggestion from Carnegie UK that the national performance framework could be better used to measure effectiveness and that “all the different commissioners could work to those shared outcomes”.<sup>iv 34</sup>
  - setting out more clearly the specific functions and expected outcomes of SPCB supported bodies in the enabling legislation, which committees could then use as a way of measuring effectiveness and the delivery of outcomes.<sup>26</sup>
  - a “dual process”, which the ALLIANCE suggested could involve committees scrutinising, and Parliament debating, supported body annual reports. This approach, it argued, “would allow all members of the Parliament to feed into the discussion about what that commissioner had achieved or not achieved”.<sup>34</sup>
  - the Welsh model, which requires committees to hold annual evidence sessions with officeholders, was highlighted as an example of good practice by some

former SPCB supported bodies.

- in addition to holding annual evidence sessions, committees could undertake a more thorough review of these bodies once a session. The Local Government, Housing and Planning Committee suggested that “such a review could involve engagement with stakeholders and individuals who have engaged with these bodies and would hopefully provide committees with a better understanding of how effectively these bodies are operating”.<sup>38</sup>
- a strong oversight committee responsible for scrutiny of all SPCB supported bodies, similar to the model in New Zealand which has a separate ‘Officer of the Parliament Committee’ chaired by the Speaker, with some functions similar to the SPCB, including budget-setting and appointments, as well as the role of reviewing proposals to create new officers. That model also includes a requirement on the various crown entities to submit annual reports, statements of intent, and statements of performance<sup>3</sup>.<sup>24</sup>
- better linking committee scrutiny of performance to enhanced scrutiny by the Finance and Public Administration Committee of their budgets, efficiency, and effectiveness.<sup>26</sup>
- evaluating all supported bodies’ effectiveness against the same common and consistent standards.

## Duplication and overlap

58. Significant concerns were raised in evidence regarding the potential for duplication and overlap amongst SPCB supported bodies and across the wider public sector. Existing supported bodies said that where these issues arise in the current landscape, they work together to co-ordinate their activities. The CYPCS, for example, said that “... where there is some overlap with existing officeholders, we manage that well”.<sup>26</sup> Research Scotland highlighted that some commissions and commissioners who took part in its 2023 research “have close joint working arrangements and written agreements in place, while others have more ad hoc arrangements, depending on the focus of their work at the time”.<sup>39</sup> All former SPCB supported bodies that the Committee spoke to agreed that more can be done to share services, carry out joint projects and joint working, as well as changing the culture to work together more to resolve issues.<sup>40</sup> A similar point was made by the SPSO, who said that there should be more opportunities “to work together across the public sector more often, to work more collaboratively and to share information and intelligence more constructively”.<sup>26</sup>
59. Existing supported bodies said that they are particularly concerned that these issues of duplication and overlap would be exacerbated with the proposed expansion of the landscape. For example, the CYPCS Commissioner told the Committee that she feared duplication could limit her activity, as she is only able to

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iv The FPA Committee is currently co-ordinating the Parliament’s consideration of new proposals for national outcomes and is expected to report later in the year.

- take forward investigations where that would not duplicate work being undertaken under another body's investigative functions. The Scottish Human Rights Commission (SHRC) said it had similar concerns, as well as the potential for a "hierarchy of rights to be created through having multiple bodies with a variety of mandates". It was also suggested that proliferation of the landscape could create barriers for some people due to a lack of clarity on who they should approach for support in a cluttered landscape.<sup>26</sup>
60. Former Commissioners and Ombudsman of SPCB supported bodies highlighted the potential for the newly created Patient Safety Commissioner to duplicate some SPSO functions.<sup>40</sup> SPICe, in table 3 of its briefing to support this inquiry, sets out where potential overlap might arise between the six proposed advocacy or rights-based supported bodies, existing supported bodies, and public bodies. This table is replicated at Annexe B to this report. Drawing on one example from this table for illustrative purposes, there is potential for overlap between the proposed Disability Commissioner and three current or proposed commissioners, as well as four other public bodies.<sup>8</sup>
61. The Convener of the Criminal Justice Committee told the Committee that, along with costs, the potential for overlap and duplication with existing bodies was a key reason why it concluded that it remains to be convinced of the need for a Victims and Witnesses Commissioner. It was felt that the money could be put to better use, such as on legal representation for victims.<sup>36</sup> The same issues of potential overlap and duplication were also considered by the Health, Social Care and Sport Committee in respect of the proposed Patient Safety Commissioner, however, Committee "members felt that the role had the potential to improve patient safety across health services in Scotland and ultimately supported the Bill's general principles at Stage 1".<sup>36</sup>
62. The NASS was less convinced that overlap and duplication was an area of concern. Indeed, it stated in its submission that "... we would contend that overlap in functions should not be seen as a problem, but rather the means of ensuring that individuals do not fall through a gap in the system".<sup>34</sup>
63. It was, nevertheless, argued that more clarity and distinction of functions should be built into the enabling legislation creating each body, to help avoid overlap and duplication. The Committee also heard that a more strategic and consistent approach to sharing back-office functions should be taken to avoid duplication, while also creating efficiencies. The SB Commissioner, for example, argued that "if you were to design the current landscape today, you would not necessarily do it this way", adding that "the next step is how we achieve some ... efficiency savings for the public purse" through common back-office support functions.<sup>26</sup>
64. The SPCB and existing, and former Commissioners and Ombudsman of, SPCB supported bodies, however, noted that significant progress has already been made in relation to sharing office premises and services, and discussions continue regarding how to make further progress on back-office functions. Jackson Carlaw MSP explained that, in session 5, the SPCB "did everything that we could to rationalise costs by bringing together as many of the commissioners as possible" in one office premises, and that this approach was expected to exceed the projected savings of £500,000 over a 10-year period from 2020.<sup>25</sup>

65. It was recognised that hybrid working provides greater opportunities to share office spaces and the Committee heard that the SIC has offered to make available some office space to base new supported bodies as needed.<sup>26</sup> A former SPCB supported Commissioner, however, highlighted that the sharing of offices is not always as simple as it sounds, with penalties for early release of leases and challenges around data-sharing in light of GDPR requirements.<sup>40</sup> Challenges were also noted regarding the sharing of audit functions as primary legislation would be required to remove the requirement for individual audits to be carried out. This, they argued, has the potential to streamline activities and achieve efficiencies.<sup>26</sup>
66. The SIC further noted that, while more can be done in relation to shared services - "and there are some short-term strategies" -, this is a "challenging project and I do not think we have a huge amount of capacity to do it". He added "we would probably need some funding to get it going".<sup>26</sup>
67. Two other models highlighted by witnesses as being more cost-effective were Commissioners being responsible to Government with the ability to access its services and accommodation and more SPCB supported bodies being located within the Scottish Parliament, in the same way as the Standards Commission for Scotland.<sup>26</sup>
68. The Minister told the Committee that "we already spend too much on back-office functions" in relation to the public sector and this is one of the areas he wishes to look at as part of a wider review, which he noted is an ongoing process, with savings starting to be realised in this financial year.<sup>37</sup>

## Use of Session 2 Finance Committee criteria

69. During our inquiry, the Committee sought to establish the extent to which the Session 2 Finance Committee's criteria or guiding principles (set out at para 24 of this report) are being used by the Scottish Government and individual Members proposing the creation of new Commissioners, as well as by Parliamentary committees in examining such proposals.
70. The Committee understands that the Scottish Parliament's Non-Government Bills Unit asks Members to consider these criteria when developing any proposals for creating new SPCB supported bodies. Indeed, the FM for the Disability Commissioner (Scotland) Bill confirms that, in drafting the document, "reference was ... made to the Scottish Parliament Finance Committee Report on Accountability and Governance" of Session 2. It goes on to state that, "in line with the principles set out in the report, the member's view is that, where possible the Commissioner should share services and accommodation with other public bodies and avoid duplication of work".<sup>13</sup> Consultation documents on draft proposals to bring forward Members Bills creating a new Wellbeing and Sustainable Development Commissioner (Sarah Boyack MSP)<sup>15</sup>, and a Commissioner for Older People (Colin Smyth MSP) also refer to the criteria being used in the development of their proposals<sup>14</sup>.
71. There is no mention in the accompanying documents for recent Scottish

Government Bills containing proposals to create a Patient Safety Commissioner and a Victims and Witnesses Commissioner of the criteria being used when developing the proposals. The Scottish Government's MCF was put in place in May 2023, after the two bills were introduced in Parliament. The Minister for Public Finance, however, confirmed that the new proposals relating to a Learning Disability, Autism, and Neurodiversity Commissioner, and a Future Generations Commissioner, were still to be assessed against the MCF.<sup>37</sup>

72. Witnesses noted that the Government and Members often opt for the SPCB-supported body model as a starting point rather than as the outcome of detailed deliberations on need, added value, and a full range of alternative options.<sup>26</sup> The SPSO, for example, questioned “why the recommendation often jumps straight to thinking that being independent equals having a parliamentary officeholder, as opposed to analysing what the gap is, what the need is, and whether the work is being delivered somewhere else but could be done better, before creating the right structure to meet the need”.<sup>26</sup> We also heard that costings presented for creating a new post must be realistic and include the opportunity cost, i.e., what could be achieved if the money was spent on alternatives to SPCB supported bodies.<sup>40</sup>
73. Former SPCB supported Commissioners/Ombudsman told the Committee that, before creating a new such body, the proposals should be tested against the criteria “with rigour” and consideration be given to “the public good and public purse”.<sup>40</sup> Making a similar point, the SIC said that “... quite rightly, any proposal will be exposed to quite substantial scrutiny, which needs to be really robust” and “there has to be challenge with an eye to the public purse in all of these things”.<sup>26</sup> The SPSO, in its written submission, argued that “... further work is needed to review and develop the criteria to meet a much-changed public sector delivery landscape, and the differing Commission/er models ...” She went on to say that “while they remain in essence appropriate, my view is there is an opportunity to adapt and modernise them so that the right questions are asked before a Commission/er model is proposed”.<sup>26</sup>
74. One former MSP that we spoke to agreed that the criteria should be enhanced beyond being guiding principles and used to assess all proposals that would create new supported bodies, suggesting, for example, that it be consolidated into legislation or formalised in guidance.<sup>27</sup>
75. As noted earlier in this report, the then Deputy First Minister, in her letter to the Committee dated 7 March 2023, noted that “while the Scottish Government has the Ministerial Control Framework, I am aware there is not a similar control mechanism available for public bodies being proposed from outside government”. She went on to suggest that “introducing a best value assurance process for proposals coming outside of government would be a decision for Parliament” adding “it could be a viable option for the SPCB to take on that role as sponsor”.<sup>19</sup>
76. However, Jackson Carlaw MSP disputed the assertion, arguing “that is not our responsibility ..., we in the corporate body do not have a party-political function”, adding “it is the will of Parliament to express whether it wants a commissioner, and our responsibility is to facilitate that commissioner”.<sup>25</sup>

# A growing landscape

## Overview

77. A key element of the Committee's inquiry was to establish how the SPCB supported body landscape has evolved since devolution. We heard from witnesses that the landscape has evolved in an ad hoc way, with no overarching structure or framework in place to determine under what circumstances, and in what form, supported bodies should be created. Indeed, Research Scotland's March 2023 Report, which looked at a sample of commissioners responsible to Government and to Parliament, stated that "in Scotland there is a range of commissions and commissioners, and no handbook or blueprint within government for designing the role".<sup>10</sup> During oral evidence, Research Scotland advised that a literature review carried out to inform its Report found "... very little published research on, or evaluation of, the role and approaches of commissions [and] ... no consistent guidance in place for designing the role of commissioners".<sup>39</sup>
78. As already noted, the current landscape comprises a collection of disparate supported bodies with distinct functions, including handling investigations, complaints, or data, upholding rights, or acting as advocates for a specific group or an area of policy. Powers also vary, for example, some supported bodies have powers to initiate their own thematic inquiries, a few can intervene in legal proceedings, and others consider individual complaints and promote good practice. Additionally, two are recognised institutions by the United Nations.<sup>v</sup>
79. Six of the supported bodies emerged in the early years of devolution (2000-2006), with some amendments to their structure and functions arising from the SPCB Supported Bodies Committee's report published in 2009. What followed, was a relatively settled picture until 2020, when the SB Commissioner was created, and 2024 saw the establishment of a Patient Safety Commissioner. Both were initiated by the Scottish Government. As noted above, a further six bodies could be created before the end of this parliamentary session, in 2026, all with advocacy or rights-based functions. Three are being initiated by the Scottish Government, and three by individual Members.
80. During our inquiry, we heard significant concerns regarding this continuing expansion of the SPCB supported body landscape, including from existing supported bodies. The CYPCS, for example, argued that the "proliferation of Commissioners' offices will be a costly exercise and may not provide good value for money for taxpayers, especially if there are multiple bodies tasked with intervening on similar or identical matters".<sup>26</sup>
81. Research Scotland told us that its interviewees had concerns that further growth would complicate the existing landscape, potentially confuse individuals, and duplicate roles, or reduce the value, of existing commissioners.<sup>39</sup> Former SPCB supported Commissioners/Ombudsman cautioned against the proliferation of

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<sup>v</sup> The CYPCS is recognised as an Independent Children's Rights Institution, while the SHRC is recognised as a National Human Rights Institution.



commissioners, asking “Where does it stop?”<sup>27</sup>, while the Convener of the Education, Children and Young People Committee further argued that “... bringing more commissioners into the mix could create further confusion and could make things even more ineffective for young people by making it harder for them to figure out who to go to who could act as their champion”. She further warned that “such confusion in the landscape comes with costs and creates more barriers to justice”<sup>36</sup>. Both former MSPs that we spoke to also recognised the associated costs at a time of pressure on public finances.<sup>27</sup>

82. An existing post-holder warned that a larger landscape could bring more avenues for the same people to explore which could lead to inefficiencies. He said that “as commissioners, we see frequent flyers, who come to us across our different organisations and people looking for an angle in on their particular issue, and sometimes the more angles you have, the more risk there is and the more inefficiency there is in a system”.<sup>26</sup>
83. While it was recognised that arguments can always be made in support of the creation of individual champions, witnesses argued that attention must be paid to the overall cluttering of the landscape. A number of respondents further highlighted the financial implications of the growing number of SPCB supported bodies, including the SPSO, which stated that “increasing the number of different Commissions/ers at a time when public resources are tight means that the resourcing and structure of some of the proposed Commission/ers may not be proportionate or adequate for the roles and the issues they are trying to resolve”.<sup>26</sup> However, the SB Commissioner argued that “it would be a dangerous path for Scotland to view the value of independent officeholders solely through the lens of their operating costs.”<sup>26</sup>
84. Given the upsurge in the number of proposals to create new SPCB supported bodies being brought forward in recent years, and concerns raised regarding the potential implications, the Committee sought to better understand the current drivers for these proposals.

## **Drivers for establishing new SPCB supported bodies**

### **Failures in public service delivery**

85. The Committee received strong evidence to suggest that people’s experiences of failures and their frustrations with public service delivery is a key driver for establishing new advocacy or rights based SPCB supported bodies.
86. We heard from several campaign groups who told us that various initiatives, strategies, and policies, although welcome, had not delivered the level of change needed in their sectors. The ALLIANCE, for example, told the Committee that “there is a strong case, given the incredibly poor outcomes that ... [the learning disability, autism and neurodiversity] community faces, for a focused commissioner who is 100% dedicated to and focused on improving those outcomes”.<sup>34</sup> Age Scotland’s

view is that a commissioner for older people “is necessary [as] there has not been enough movement from the Government or the Parliament to address issues at the scale that we think is needed”.<sup>34</sup>

87. Existing SPCB supported bodies also observed this as a key driver, with the SHRC noting that “fundamentally, there is an accountability gap and people are frustrated about the difference between good human rights-infused policy and the reality”.<sup>26</sup> The SIC further highlighted that “... a lot of the desire for future commissioners is a bellwether to the lack of trust and confidence in a lot of public services”.<sup>26</sup> Age Scotland argued that the SPCB supported body model is “an established way of getting more effective action on particular issues”<sup>34</sup>, while Carnegie UK also suggested that the model is “appealing” due to “a belief that existing mechanisms are not working for particular groups of rights holders”<sup>34</sup>.
88. Some of those who support the creation of advocacy or rights-based supported bodies, however, recognise the limitations on their ability to reverse systemic failures. For example, the ALLIANCE argued that “... people are hoping that they will get a lot out of commissioners, but commissioners might not be able to solve the fundamental problems that exist in the first place”. It went on to say that “until we address the root cause of real pressure on public finances and public services ..., commissioners will perhaps plaster over a wound, but they will not solve the root problem”.<sup>34</sup>
89. Other witnesses suggested that the funding for proposed new bodies would be much better spent on the delivery of services, including Alzheimer Scotland, who argued that this spend “could otherwise be directed to facilitate the direct provision of the types of services and support that people could benefit from to improve their experiences”. It went on to say that “given the lack of evaluation and monitoring of the existing landscape [as highlighted by Research Scotland], it can be difficult to understand specifically what value they bring and why having commissioners would be a better route forward than other routes”<sup>34</sup>, a view shared by Common Weal<sup>34</sup>.
90. There was also a suggestion that deficiencies within the current model could be adding to the public’s frustration around policy failures. The SHRC, for example, said they believe weaknesses in their current mandate may be a factor in this frustration, as it has no powers to provide advice to individuals or has enough commissioners to represent them.<sup>26</sup> The SPSO had a slightly different take on this issue, suggesting that “we are not doing the job that we think we should be doing because we do not have the right legislative remit”.<sup>26</sup>
91. The Committee also heard different perspectives from two Committee Conveners on whether proposals to create new SPCB supported bodies within their Committee remits are needed. As previously referred to, a Patient Safety Commissioner was considered by the Health, Social Care and Sport Committee to be a necessary response to historic and systemic failures in the health service and could potentially “unify and unite patient safety and clinical governance structures” and “amplify their voice”<sup>36</sup> In contrast, the Criminal Justice Committee recommended that the resourcing earmarked for a new Victims and Witnesses Commissioner should be better targeted towards improving services for this group of society.<sup>36</sup>

92. We found the perspectives of two former MSPs who had, in previous parliamentary sessions, brought forward members bills proposals to create new advocacy or rights-based supported bodies, to be a valuable addition to this debate. Both had changed their positions entirely. One former MSP argued that the costs of creating an Older People's Commissioner would be better spent on improving public services, while the other considered that a 'champion' for victims and witnesses could be achieved in other ways.<sup>27</sup>
93. Witnesses, including these former MSPs, argued that the Scottish Government can see value in creating something new rather than resolving difficult issues.<sup>27</sup> The ALLIANCE further argued "... it can be seen as an easy win for Government and Parliament to say that they have addressed an issue because they have created a commissioner to deal with it", adding "it is not the case if you create a commissioner, you can pat yourself on the back and say that you have solved the issue".<sup>34</sup> Professor Alan Page also noted that it "is a way of appearing to do something without necessarily doing anything, or it is a way of being able to say 'Look, we have set up this commissioner'. Great".<sup>24</sup> Jackson Carlaw MSP, representing the SPCB further observed that "the Scottish Government now seems keen on the establishment of commissioners as an instrument of policy".<sup>25</sup>
94. The Minister for Public Finance, however, suggested to the Committee that "... advocacy groups probably would not be doing their job properly if they were not asking for a commissioner, so the fact that they are asking for one, alongside all the other things that they advocate for, is not necessarily an indication that things are failing".<sup>37</sup>

## The need for 'champions'

95. Witnesses also told the Committee that one of the drivers for creating new supported bodies was that groups are looking for a 'champion' to give prominence to specific issues or rights, particularly when they can see the perceived benefits of similar bodies across the UK, and those in Scotland which represent other groups of society.
96. For example, Age Scotland suggested that the Older People's Commissioner in Wales "has the ear of Government ... to push forward issues, they have credibility and clout, with insight, and they are able to undertake investigations".<sup>34</sup> The NASS also told us that "we see, in the children's commissioner [in Scotland] a very powerful advocate and champion who is out there talking about what needs to happen for children and young people", adding "there is no such advocate for autistic people and people with a learning disability".<sup>34</sup>
97. The SHRC further observed "the impact of comparative policies elsewhere in the UK"<sup>26</sup>, while Sarah Boyack MSP told the Committee that her proposal for a Wellbeing and Sustainable Development Commissioner is based on, what she described as, a successful model in Wales<sup>27</sup>.
98. However, others, such as the Law Society of Scotland argued that "... a disproportionate number of the commissioners will have been set up ... because

that seemed to be an easy way to give a degree of prominence and importance to that particular issue, whereas there might have been a different, more effective way of doing that".<sup>24</sup>

## A longer-term approach

99. The Committee heard from some witnesses about the longer-term approach that can be taken by SPCB supported bodies, which exist beyond electoral cycles and with post-holders being appointed for an eight-year term. Carnegie UK argued that "a commissioner is not bound by the short-term political cycle in the way that other actors might be, they can take a longer-term view [which] can positively help address some of the big challenges that we face, such as making difficult spending decisions and prioritising prevention".<sup>34</sup> A similar point was made by Age Scotland in written evidence, who said that "Government ministerial shuffles or changes in political priorities can raise or diminish important areas, and an independent commissioner can be much more immune to political fluctuations".<sup>41</sup>
100. Dr Ian Elliott further argued that "... a commissioner can be helpful, in comparison with, say, a parliamentary committee, because a commissioner cuts across all aspects of policy and all the areas that are covered by the different parliamentary committees", adding "that means they can offer strategic oversight of a policy area in a way that a parliamentary committee might struggle to do".<sup>24</sup> Carnegie UK also noted that "... one of the advantages of a commissioner, compared with somebody in a public body or a government department, is that they can take a helicopter view and join the dots, which is difficult because of the way that departmental budgets work at the moment".<sup>34</sup>

## Independence

101. Some witnesses told the Committee that they favour creating new commissioners under the SPCB supported body model due to its independence from Government. This included Sarah Boyack MSP who argued that, in the case of her own proposal, accountability to Parliament is crucial to raising standards and ensuring transparency.<sup>27</sup>
102. Existing post-holders, such as the SIC, explained that "... trust in my independence is absolutely fundamental to my role", adding "if I lose that, it is burst".<sup>26</sup> Former SPCB supported Commissioners/Ombudsman also said that this status had allowed them to hold the Government to account on its performance and avoid any possibility of the Government controlling its activities through funding levels.<sup>40</sup>
103. We also heard from the Law Society of Scotland that supported bodies have influenced policymaking and legislation in a way that may not have been possible if they had not been fully independent of Government.<sup>24</sup> The Convener of the Standards, Procedures and Public Appointments Committee suggested that the independence of those supported bodies within its remit "is critical because of the questions that come in front of them and what they do", adding that their role

includes a quasi-judicial process which is different from advocacy bodies.<sup>36</sup>

104. However, one former SPCB supported Commissioner said that this independence can also create a mindset of them “always being right”.<sup>40</sup> We also heard strong evidence to suggest that commissioners do not need SPCB supported body status to be able to demonstrate independence from Government, with policing and prisons inspectorates cited as good examples of Government-led bodies that act independently and produce robust recommendations<sup>vi</sup>. The SB Commissioner told the Committee that “the only difference is that they are appointed by Ministers whereas we are appointed by Parliament”, adding “you can get hung up on the meaning of independence, but the primary thing is having independence of thought and the ability to say what you need to say, free from any political interference”.<sup>26</sup>
105. Professor Alan Page agreed with this position, stating that “independence is not a quality that is exclusively associated with being appointed by the Parliament”, adding “there are lots of examples of executive bodies that have a high degree of independence”.<sup>24</sup>
106. Maggie Chapman MSP, representing the SPCB, agreed that “one of the reasons for people considering that an advocacy and rights-based role is required is that it would be independent from Government and from the control of, and framework setting for, public services”.<sup>25</sup>
107. Responding to a discussion on whether Commissioners do need to be entirely independent of Government, the Minister for Public Finance said that “it is clear to me that the way in which bodies and their remits are set up is important in terms of their legislative competence to address issues”, adding “it is an important aspect”.<sup>37</sup>

## Sunset clauses

108. The need for some form of post-implementation review was a key theme arising in evidence, particularly in the context of a growing landscape. The SB Commissioner argued that there should always be a presumption against creating any new SPCB supported body unless it is absolutely necessary and, if you do decide to create a new body, there needs to be a post-implementation review, and periodic reviews by Parliament “to consider whether an individual officeholder ... is still required and is still relevant”. Posts, he argued, should “be kept under continual review by the Parliament to see whether they are still required”.<sup>26</sup>
109. The Committee therefore explored in evidence whether there may be merit in including sunset clauses in the enabling legislation that creates new SPCB supported bodies. The majority of those we heard from were in favour of adding sunset clauses to new enabling legislation, including former MSPs and former SPCB supported Commissioners/Ombudsman.<sup>40</sup> One former MSP went further to argue that the bill creating the CYPSC should have included a sunset clause to

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vi Criminal Justice Committee Convener and SB Commissioner.

allow their effectiveness to be measured before deciding whether the role in its current form is still needed, adding “if the job is done, then why have one?”<sup>27</sup>

110. More recently, the Criminal Justice Committee recommended in its Stage 1 Report on the Victims and Witnesses (Scotland) Bill that, if the Scottish Government is clear that the post of a commissioner is required, “it should be for a time-limited period” and “Parliament would want to see clear evidence that the post of commissioner has noticeably improved the experience of victims and witnesses”.<sup>36</sup>
111. Asked whether he could envisage a time when the SB Commissioner’s functions are no longer needed, the current post-holder responded that the role had arisen “because of a number of controversies [and] I could reasonably see, that in maybe five- or six-years’ time, this [biometrics] landscape may settle down and come right off the radar”.<sup>26</sup>
112. Both the CYPSC and the SPSO, however, warned of the unintended consequences of using sunset clauses, suggesting that this could drive bodies to focus on activities that can be achieved in the time available, rather than addressing some of the systemic underlying issues that can take years to address.<sup>26</sup>
113. Research Scotland confirmed that, while the issue of sunset clauses was not specifically raised during its research it “did not hear anyone saying that their work was reducing; there was always more to do, and it was a case of prioritising their work”.<sup>39</sup>
114. Maggie Chapman MSP told the Committee that, “with the proposals that are going through now, one of the questions that we have discussed—again it is not for us to dictate or mandate—is whether, if a commissioner is proposed to deal with particular systematic failures, there should be a sunset clause that limited the lifetime of that office to deal with that specific issue.”<sup>25</sup> Jackson Carlaw MSP, however, sounded a note of caution that “when there is any suggestion that a commissioner might not be renewed or that it could fail, MSPs find themselves lobbied considerably about not allowing such a heinous act of violence to be visited on the very valuable individual’s work”, adding “that is the obstacle that I think that colleagues would face”.<sup>25</sup>
115. The Minister told the Committee that “the mechanism of including a sunset clause could absolutely be part of the toolkit, if everyone agreed that a commissioner was required, and the proposal has passed through the control framework and other assessment processes”. He went on to say that “a sunset clause might be quite a valuable and helpful mechanism” to assess whether the body is still relevant and required.<sup>37</sup>

## The case for review

116. There were also calls for a broader review of the SPCB supported body model. In its written submission, Common Weal highlighted Research Scotland's conclusion regarding a lack of research into the evaluation of effectiveness and recommended that this research is conducted, arguing that "until that review is complete, no new SPCB supported bodies are created and that existing commissioners are not replaced at the end of their term".<sup>10</sup> It expanded on this position further in oral evidence, stating "if we do not have evidence of effectiveness, we need to know that".<sup>39</sup> Alzheimer Scotland had a similar view, stating "we would encourage further investigation of what the existing landscape is and what it is likely to be as we move into the future".<sup>34</sup>
117. The Convener of the Criminal Justice Committee told the Committee that "the landscape of commissioners has emerged organically [and] perhaps we are at the point at which, in the spirit of efficiency and transparency, a fairly robust overarching review is entirely appropriate".<sup>36</sup> The Health, Social Care and Sport Committee's Convener agreed with this position and suggested that this should include scrutinising what organisations, stakeholders, and the public think that a commissioner will do that will improve or advocate more for their particular cause, issue or concern.<sup>36</sup>
118. Dr Elliott said he would "absolutely support that idea of having a much more thorough review into the nature and the role of commissioners",<sup>24</sup> while the Law Society of Scotland said "one idea is to have a fairly radical review" on the basis that things have changed, or to "set out what needs to be looked at, how that will be delivered and whether that should be done by a number of commissioners, or through a piece of legislation that sets out what all commissioners do, with a menu from which you pick what commissioners can do, that would also give clarity as to the powers of commissioners".<sup>24</sup>
119. Professor Alan Page suggested that it should be considered whether "we expand the landscape, or should we stop and take stock before we make a decision on that", and then a decision can be taken on whether the structure for the existing bodies is ideal: "should it be rationalised or reformed along the lines that you have said or in some other way?"<sup>24</sup> The Law Society of Scotland suggested that "there is scope for improvement and for undertaking a full review of what you are doing at this stage". It intimated "that does not mean that what went before was wrong or was not appropriate at the time, but it is probably the right time to think about how appropriate the current system is for delivering the rights that we are now considered to have".<sup>24</sup>
120. Maggie Chapman MSP further highlighted that "there is an opportunity to restructure and amalgamate and I would welcome the space in Parliament to have those discussions in a comprehensive way"<sup>25</sup>, while Jackson Carlaw said, "I think that the SPCB would welcome the Parliament's establishing the architecture by which, these things could be properly evaluated and deciding what it would like in that respect."<sup>25</sup>

121. The Minister for Public Finance indicated that the Scottish Government would support any 'root and branch review' of the existing Commissioner landscape, but that it would not play a leading role in this review. In his view, it would not be appropriate for the Government to interfere in the workings of the Parliament in this way.
122. The Minister further argued that the Scottish Government's role is to review the broader public body landscape in Scotland for its effectiveness, efficiency, and simplicity, and to robustly consider individual proposals to create new Commissioners (and other public bodies) against its Ministerial Control Framework. His "focus is on saving hundreds of millions" rather than the "very small amounts" relating to Commissioners.
123. He further referred to the Committee's inquiry report as being "helpful in setting the tone" for the Scottish Government's wider review of the public body landscape.<sup>37</sup>



## Alternative models

124. The Committee heard about the various alternatives to the SPCB supported model, given the potential implications of the proliferation of such bodies, and the challenges presented by the current model, as highlighted above.
125. Those Commissions and Commissioners who participated in Research Scotland's interviews highlighted other options, including providing more resources for existing organisations, creating champions or advocates within public bodies, investing more resources in achieving good practice, or creating leads within an existing body. Similar options were raised in evidence to the Committee, which we explored in more detail as part of our inquiry.<sup>10</sup>
126. Dr Ian Elliott suggested that a model of fewer SPCB supported bodies with more powers and larger budgets "might bring a more strategic approach" to the landscape. As an example, he referred to the New Zealand model where there are only three officers of Parliament, but they have much bigger budgets and are overseen by a specific committee in Parliament. This he argued is "a much more thought-through approach".<sup>24</sup> Some former SPCB supported Commissioners/Ombudsman also favoured larger bodies, suggesting that some of the proposed new commissioners could fit into existing bodies, in the same way that the jurisdiction of the SPSO had extended over time, to include other complaints and whistleblowing.<sup>40</sup> The Law Society of Scotland further highlighted that there could be some benefit in grouping all the rights-based bodies, such as the SHRC and CYPCS together, while placing the more "transactional" organisations, including the SIC, SPSO and Ethical Standards Commissioner (ESC) in one place.<sup>24</sup> The ALLIANCE stressed that the model must be designed with the delivery of outcomes at its heart and suggested that "perhaps having a smaller number of generalised commissioners who work together, and share knowledge and expertise is the answer".<sup>34</sup>
127. The Committee notes a proposal from the SHRC that its functions should be expanded to include 'rapporteurs' to represent and support the rights of specific groups of society. Those in favour of the approach argued that this intersectional 'champion' approach could prevent people "falling through the gaps", and the ALLIANCE, who said it is "... quite taken with the model" as it "might address some of the concerns about not having a dedicated voice".<sup>34</sup> Others, such as the NASS, said they are "quite sceptical that bolting something on to an existing commissioner will result in the systemic change that we want to see...".<sup>34</sup> Research Scotland also highlighted that its interviewees were "very unsure" about this option because "they felt that the focus of a human rights organisation should be on protecting human rights for everyone" and "... if a lead was created for one group, leads would be required for all sorts of different groups and [they] were not sure where that would end".<sup>39</sup>
128. It was highlighted that some international human rights commissions have very broad remits, including the New Zealand model which includes designated commissioners for race relations, equal employment opportunities, and disabilities. A former SPCB supported Commissioner told the Committee that it can be

challenging in such a model for these 'leads' to be visible and to have their own autonomy over budgets and decision-making and it could also lead to tensions and limit an intersectional approach.<sup>40</sup>

129. Asked whether the CYPCS should be part of any SHRC 'rapporteurship' rights-based model, the Convener of the Education, Young People, and Skills Committee suggested that "having a commissioner that large with a remit as broad as that, would not allow for advocacy for young people, who often feel unheard at the best of times without their perspective being diluted by all those other things".<sup>36</sup> Similar points were made by the CYPCS, who said that "... merging the Children's Commissioner into an adult-focused organisation would be a backward step for Scotland".<sup>26</sup> Other arguments for retaining the CYPCS as a separate entity included children having no democratic or economic rights, and the office being recognised by the UN as an Independent Children Rights Institution.
130. The SHRC said it "will not disagree with the children's commissioner on anything that she has just said" and highlighted that "not by any means could all the existing proposals be meaningfully folded into the SHRC, given its existing mandate", as some, such as the Patient Safety Commissioner, go beyond having only a human rights element.<sup>26</sup>
131. Asked to comment on this possible expanded SHRC model, Jackson Carlaw MSP highlighted "there is some sympathy for the suggestion ... within the current architecture of commissioners, who are concerned that clear lines of responsibility and authority are potentially being diluted by having additional advocacy commissioners". He went on to say, however, that when additional responsibilities have previously been added to the SHRC's remit, "it has been quite a milestone for the organisation", and any future changes "would have to be phased over a particular timeline".<sup>25</sup>
132. Another option highlighted by witnesses was for an individual to be appointed within Government that has responsibility for being a focal point and representing specific voices when policy is being developed or challenged. As highlighted earlier in this report, many witnesses did not consider that advocacy or rights-based commissions or commissioners need to have the status of an SPCB supported body, as a large number of Government 'champions' successfully demonstrate their independence through holding government and public bodies to account and producing challenging reports and recommendations. In that structure, there are clear lines of accountability to government, with their actions being scrutinised by Parliament, and there is potential for efficiencies through sharing offices and services with government and public bodies. Disadvantages of this approach cited include less dynamism, independence, and visibility.<sup>40</sup>

## Conclusions and recommendations

133. **As stated in our inquiry remit, the Committee does not take a view on the merits or otherwise of individual SPCB supported bodies in this report. It is clear to us that the post-holders we spoke to are a dedicated group of people with a common purpose to serve Scotland in the public interest. Many of the offices they hold play a crucial role in preserving trust, integrity, and transparency in relation to our public institutions and elected Members. The Committee's findings and recommendations in this report are intended to ensure that the SPCB supported body model within which they operate is structured in a way that effectively delivers the best outcomes and value for money for the people of Scotland.**
134. **During our inquiry, the Committee heard compelling evidence that this model is no longer fit-for-purpose. In the absence of a clear and coherent framework underpinning how the overall landscape should operate, it has developed in an 'ad hoc' way with individual proposals being agreed on a case-by-case basis. This approach has led to a disjointed landscape comprised of a collection of individual bodies, with varying functions and powers.**
135. **There is evidence of duplication and overlap between existing SPCB supported bodies and other public bodies in Scotland, which appears to be currently managed through collaboration and co-ordination of activities. We welcome the views of supported bodies that more work can be undertaken in this area, including sharing premises and back-office functions.**
136. **Overall accountability, budget-setting, and scrutiny mechanisms, as set out in legislation and procedures, require an overhaul to ensure they are clearer, more robust, joined-up, and transparent.**
137. **Capacity issues present challenges for the SPCB in enabling sufficient time and resource to provide comprehensive oversight and governance of supported bodies. This function of the SPCB has evolved organically and is a role that sits uneasily alongside its other core purposes.**
138. **Faced with busy workloads, committees also experience capacity issues in scrutinising the effectiveness of SPCB supported bodies and their delivery of outcomes. Enabling legislation must in future be much more tightly drawn, with specific functions, expected outcomes, periodic reviews, and regular performance reporting included, as well as sunset clauses to allow assessment of continuing need.**
139. **The Committee notes that the SPCB supported body landscape was relatively stable until 2020, when an additional body was created, followed by another in 2024. Proposals for a further six new advocacy-type SPCB supported bodies are currently being considered. This proliferation appears to have been primarily driven by calls to respond to perceived systemic failures in the delivery of public services, to bring prominence to**

a specific issue or policy area, seeing similar high-profile Commissioners in Wales and England, and more awareness of, and expectations, around individuals' rights.

140. **We tend to agree with witnesses that creating new Commissions or Commissioners under the SPCB supported body model has, in recent years, been seen as an 'easy win' for the Scottish Government; it can demonstrate that it is responding to calls for the creation of new 'champions', without the need to provide oversight or ensure effectiveness. We understand that creating new supported bodies can also seem appealing and attainable to individual Members through the Members Bill process.**
141. **The Committee is disappointed that the Session 2 Finance Committee's criteria in developing and considering new proposals to create new SPCB supported bodies, does not, however, appear to be being used in the way intended when they were agreed by Parliament. We question whether some of the bodies that have been created, or are now being proposed, would meet the tests in these criteria, including clarity of remit, distinction between functions, and complementarity. We believe that these criteria must now be strengthened and consolidated into the Parliament's formal practices. We also ask that proposals for new public bodies will be robustly assessed against the tests in the Scottish Government's Ministerial Control Framework agreed last year, to limit further cluttering of the broader public sector landscape.**
142. **The Committee shares the views of some witnesses who highlighted that the creation of new advocacy organisations within the SPCB supported body landscape presents democratic accountability concerns, as well as challenges in demonstrating effectiveness and delivery of outcomes. It is our clear view that this advocacy role is for MSPs to undertake, with Parliament holding Government to account on how it seeks to improve the lives of specific groups of society or develop and deliver effective policy, with the third sector continuing to play a crucial role. We also believe that the funding for new supported bodies would be better spent on improving the delivery of public services 'on the ground', where greater impact can be made.**
143. **Continuing the trend for creating new advocacy-type SPCB supported bodies is not sustainable, especially at a time of significant pressure on public finances in Scotland. Before adding any more to the mix, we must first design a coherent structure, with enhanced accountability, budget-setting, and scrutiny mechanisms, as well as effective delivery and measurement of outcomes. We welcome the valuable engagement from campaign groups, SPCB supported bodies, the SPCB, the Scottish Government, Committees and Members, during the course of this inquiry and we now seek further support in taking forward these important recommendations. Collectively, we believe that we can design and deliver an SPCB supported body landscape that is fit for the future.**

144. **The Committee therefore calls for a moratorium on creating any new SPCB supported bodies, or expanding the remit of existing bodies, until a ‘root and branch’ review of the structure is carried out, drawing on the evidence and conclusions set out in this report.**
145. **We recommend that this review should be undertaken by a dedicated Parliamentary committee, set up in the model of the Session 3 Review of SPCB Supported Bodies Committee, including all political parties and with meaningful engagement by the Scottish Government. We ask the Parliament to ensure that this review is completed by June 2025.**
146. **The aims of the review would be to build on the evidence and conclusions in this report in order to—**
- **put in place a clear strategic framework to underpin and provide more coherence and structure to the landscape,**
  - **create more effective accountability and scrutiny mechanisms for SPCB supported bodies,**
  - **strengthen and formalise criteria for assessing whether new SPCB supported bodies should be created,**
  - **identify and address any barriers to sharing services and premises and achieving efficiencies, and**
  - **commission an evaluation of the effectiveness of SPCB supported bodies to inform the review.**
147. **The Committee further recommends that the following improvements are made to the current system in the meantime—**

**We ask the Scottish Government to:**

- **set out how it plans to use this report to “set the tone” for the Scottish Government’s wider review of the public body landscape, as highlighted by the Minister for Public Finance in evidence.**
- **provide, as part of its second update to the Committee on its public service reform programme, details of the savings achieved in relation to wider public sector back-office functions that are starting to be achieved this year, and are anticipated in the future, as referenced by the Minister.**
- **provide confirmation that it will publish the Ministerial Control Framework (MCF), as well as assessments of new proposals against the criteria in the MCF, to ensure transparency of decision making, in line with recommendations in our 2023 public administration inquiry.**
- **provide an update on when it will produce multi-year spending plans which would allow all public bodies, including SPCB supported bodies to plan on medium-term basis.**

**The SPCB is invited to:**

- **continue to work with SPCB supported bodies to identify opportunities for sharing services, premises and achieving efficiencies, and to include evidence of this work in its budget bids to this Committee.**
- **explore ways in which it will seek to bring greater transparency to its governance and oversight arrangements and discussions with SPCB supported bodies. This should include considering whether any material from internal assessments could appropriately be published for use by committees and others.**
- **review, alongside the Conveners Group, the operation of the Written Agreement between the SPCB and Conveners Group and make any improvements, in light of the evidence and conclusions outlined in this report.**

**SPCB supported bodies are invited:**

- **to set out more clearly in their annual reports how they have fulfilled the functions included in their enabling legislation and what specific outcomes they have delivered, to support more effective scrutiny of their performance by committees.**

**We ask relevant committees:**

- **in addition to annual evidence sessions, to undertake more detailed scrutiny of the performance of supported bodies once a session, wherever possible.**

148. **The FPA Committee also undertakes to carry out enhanced scrutiny of the SPCB supported bodies' budgets as part of our examination of the overall SPCB Budget bid, including seeking views from relevant committees on the performance of bodies within their remits.**

149. **We will also seek to hold a parliamentary debate to enable Members to discuss the report in more detail at the earliest opportunity.**

## Annexe A - Inquiry remit

Following informal discussions with the Scottish Government's Public Bodies Support Unit, the Scottish Parliament's Non-Government Bills Unit, and SPCB supporting officials, the Committee agreed the following remit for our inquiry into Scotland's Commissioner Landscape: A Strategic Approach—

- to foster greater understanding of how the Commissioner landscape in Scotland has evolved since devolution,
- to enhance clarity around the role, and different types, of Commissioners and their relationships with government and parliament,
- to establish the extent to which a more coherent and strategic approach to the creation and development of Commissioners in Scotland is needed and how this might be achieved,
- to provide greater transparency to how the governance, accountability, budget-setting, and scrutiny arrangements work in practice, and whether any improvements are required, and
- to identify where any lessons might be learned from international Commissioner models.

# **Annexe B - Extract from SPICe Briefing on Scotland's Commissioner Landscape: A Strategic Approach**



**Table 3: Proposed Commissioners - Potential Overlap**

	Remit*	Potential Overlap -Commissioners	Potential Overlap -Public Bodies
Patient Safety Commissioner	The commissioner's role is to advocate for systemic improvements in healthcare safety and to promote the importance of patient and public input, including gathering information, making recommendations, and fostering coordination among healthcare providers.	Scottish Public Services Ombudsman Equality and Human Rights Commission	Healthcare Improvement Scotland
Victims and Witnesses Commissioner	The commissioner's role is to protect and promote the rights of victims and witnesses, advance their voices, influence change, ensure that criminal justice agencies meet their responsibilities under the Victims' Code, and abstain from championing or intervening in individual cases.	Scottish Public Services Ombudsman	Community Justice Scotland Police Investigations & Review Commissioner Scottish Police Authority Scottish Criminal Cases Review Commission
Disability Commissioner	The commissioner's role is to promote and safeguard the rights of disabled people, advocate for them at a national level, review laws, policies, and practices related to their rights, promote best practices among service providers, and conduct investigations into service providers related to matters within the remit of the devolved institutions, focusing on how they have addressed the rights, views, and interests of disabled people.	Scottish Commission for Human Rights Learning Disability, Autism and Neurodiversity Commissioner / Commission Equality and Human Rights Commission	Independent Living Fund Scotland The Mental Welfare Commission for Scotland Poverty and Inequality Commission Mobility and Access Committee
Older People's Commissioner	The commissioner's role is to raise awareness of the interests of older people in Scotland, promote opportunities for, and eliminate discrimination against, older people, encourage best practice in their treatment, review the adequacy and effectiveness of laws affecting their interests, and undertake investigations into how service providers consider the rights, interests, and views of older people in decisions and work related to devolved matters.	Scottish Commission for Human Rights Equality and Human Rights Commission	Independent Living Fund Scotland Poverty and Inequality Commission
Wellbeing and Sustainable Development Commissioner	The role of the Commissioner is to ensure compliance with the proposed Bill, hold public bodies accountable, oversee relevant Acts, provide advice, make recommendations, and contribute to legislative reviews and reform, with a focus on achieving the National Outcomes and meeting the values and aspirations of the people of Scotland.	Future Generations Commissioner	Highlands and Islands Enterprise Scottish Law Commission Poverty and Inequality Commission Scottish Futures Trust
Future Generations Commissioner	The role of the commissioner, who acting on behalf of future generations would be empowered to hold public bodies, including Ministers, to account as well as provide support in relation to the delivery of wellbeing, sustainable development, and future generations outcomes.	Wellbeing and Sustainable Development Commissioner	Highlands and Islands Enterprise Poverty and Inequality Commission Scottish Futures Trust
Learning Disability, Autism and Neurodiversity Commissioner / Commission	The role of the Commissioner is to oversee the protection of the rights of individuals with learning disabilities and autism, ensure compliance with new laws, and address concerns related to policy implementation, thereby promoting inclusivity and support for neurodivergent individuals in Scotland.	Scottish Commission for Human Rights Disability Commissioner	Independent Living Fund Scotland The Mental Welfare Commission for Scotland Poverty and Inequality Commission Mobility and Access Committee for Scotland

\* The list is not exhaustive of the activities in which the Commissioner might engage.

# Annexe C - SPICe Briefings and Notes of Discussion with Former Commissioners and MSPs and Former MSPS

## SPICe Briefings

The Scottish Parliament Information Centre (SPICe) produced briefings on Scotland's Commissioner Landscape and the New Zealand Performance Measurement Framework and Wales Commissioners Accountable to Government Model. Links to the briefings are provided below:

[SPICe Briefing on Scotland's Commissioner Landscape](#)

[SPICe Briefing on the New Zealand and Wales Commissioner Models](#)

## Discussion Notes

The Committee held an informal discussion with three former Commissioners/Ombudsmen on 23 April 2024. The Committee also held an informal discussion with three MSPs and former MSPs on 14 May 2024 on their experiences of proposing Members' Bills that include the creation of new Commissioners. Links to summaries of these discussions are provided below:

[Summary Note of Discussion with Former Commissioners](#)

[Summary Note of Discussion with MSPs and Former MSPs](#)

# Annexe D - Extracts from the Minutes of Finance and Public Administration Committee Meetings

[13th meeting 2024 \(Session 6\), Tuesday 16 April 2024](#)

**1. Scotland's Commissioner Landscape: A Strategic Approach:** The Committee took evidence from—

Katy MacMillan, Director, Research Scotland

[15th meeting 2024 \(Session 6\), Tuesday 30 April 2024](#)

**1. Scotland's Commissioner Landscape: A Strategic Approach:** The Committee took evidence from—

Ian Bruce, Ethical Standards Commissioner;

Dr Brian Plastow, Scottish Biometrics Commissioner;

David Hamilton, Scottish Information Commissioner;

Lorna Johnston, Executive Director, Standards Commission for Scotland;

**and then from—**

Nicola Killean, Children and Young People's Commissioner Scotland;

Dr Claire Methven O'Brien, Commissioner and Jan Savage, Executive Director, Scottish Human Rights Commission;

Rosemary Agnew, Scottish Public Services Ombudsman.

[16th meeting 2024 \(Session 6\), Tuesday 7 May 2024](#)

**1. Scotland's Commissioner Landscape: A Strategic Approach:** The Committee took evidence in a roundtable format from—

Adam Stachura, Associate Director for Policy, Communications and External Affairs, Age Scotland;

Vicki Cahill, Policy and Public Affairs Lead, Alzheimer Scotland;

Jo McGilvray, Senior Policy Advocate, Carnegie UK;

Craig Dalzell, Head of Policy and Research, Common Weal;

Allan Faulds, Senior Policy Officer, Health and Social Care Alliance Scotland (the ALLIANCE);

Rob Holland, Director, National Autistic Society Scotland.

[17th meeting 2024 \(Session 6\), Tuesday 14 May 2024](#)

**1. Scotland's Commissioner Landscape: A Strategic Approach:** The Committee took evidence from—

Audrey Nicoll, Convener, Criminal Justice Committee;

Clare Haughey, Convener, Health, Social Care and Sport Committee;

**and then from—**

Sue Webber, Convener, Education, Children and Young People Committee;

Martin Whitfield, Convener, Standards, Procedures and Public Appointments Committee.

[18th meeting 2024 \(Session 6\), Tuesday 21 May 2024](#)

**2. Scotland's Commissioner Landscape: A Strategic Approach:** The Committee took evidence from—

Lynda Towers, Convener, Constitutional Law and Human Rights Committee, Law Society of Scotland;

Dr Ian Elliott, Senior Lecturer in Public Policy, Centre for Public Policy, University of Glasgow;

Professor Alan Page, Emeritus Professor of Public Law, University of Dundee.

[19th meeting 2024 \(Session 6\), Tuesday 28 May 2024](#)

**1. Scotland's Commissioner Landscape: A Strategic Approach:** The Committee took evidence from—

Jackson Carlaw, Member and Maggie Chapman, Member, Scottish Parliamentary Corporate Body;

David McGill, Clerk/Chief Executive, Scottish Parliament.

[20th meeting 2024 \(Session 6\), Tuesday 4 June 2024](#)

**1. Scotland's Commissioner Landscape: A Strategic Approach:** The Committee took evidence from—

Ivan McKee, Minister for Public Finance, Catriona Maclean, Deputy Director, Public Bodies Support Unit and Steven MacGregor, Head of Parliament and Legislation Unit, Scottish Government.

# Annexe E - Evidence

## Official Reports (substantially verbatim transcripts) of meetings of the Finance and Public Administration Committee

[16 April 2024](#): evidence from Research Scotland

[30 April 2024](#): evidence from Commissioners and Ombudsmen

[7 May 2024](#): evidence from stakeholders

[14 May 2024](#): evidence from Committee Conveners

[21 May 2024](#): evidence from stakeholders

[28 May 2024](#): evidence from the Scottish Parliamentary Corporate Body

[4 June 2024](#): evidence from the Scottish Government

### Written submissions

The Committee received the following written submissions to its call for views as part of its inquiry:

[Age Scotland](#)

[Alzheimer Scotland](#)

[Campaign for Freedom of Information in Scotland](#)

[Carnegie UK Trust](#)

[Children and Young People's Commissioner Scotland](#)

[Commissioner for Ethical Standards in Public Life in Scotland](#)

[Common Weal](#)

[COSLA](#)

[Enable](#)

[Fife Council](#)

[Health and Social Care Alliance Scotland](#)

[Human Rights Consortium Scotland](#)

[Independent Age](#)

[Law Society of Scotland](#)

[National Autistic Society Scotland](#)

[SOLAR Scotland](#)

Scotland's International Development Alliance

Scottish Biometrics Commissioner

Scottish Human Rights Commission

Scottish Information Commissioner

Scottish Public Services Ombudsman

Standards Commission for Scotland

Together (Scottish Alliance for Children's Rights)

- [1] Scottish Parliament. (2024). Finance and Public Administration Committee's Inquiry into Scotland's Commissioner Landscape: A Strategic Approach. Retrieved from <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-finance-and-public-administration-committee/business-items/scotlands-commissioner-landscape-a-strategic-approach>
- [2] Scottish Parliament. (2023). Finance and Public Administration Committee's Report on the Scottish Budget 2023-24. Retrieved from <https://sp-bpr-en-prod-cdnep.azureedge.net/published/FPA/2023/1/25/42c03ad9-7df1-47ec-a8c7-5a2a8eedfc44/FPAS623R2.pdf>
- [3] Scottish Parliament. (2023). Finance and Public Administration Committee's Scrutiny of Financial Memorandums . Retrieved from <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-finance-and-public-administration-committee/business-items/scrutiny-of-financial-memorandums>
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- [6] Scottish Parliament. (2024). Finance and Public Administration Committee's Inquiry into Scotland's Commissioner Landscape: A Strategic Approach - notes of informal sessions. Retrieved from <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-finance-and-public-administration-committee/business-items/scotlands-commissioner-landscape-a-strategic-approach>
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