

# Written submission from Dr Ruth Lamont; Reader in Child and Family Law, University of Manchester; UKRI Thematic Research Lead in UK Parliament, 12 March 2025

## SPCB Supported Bodies Landscape Review Committee

This evidence is based on research completed with Professor Pam Cox (Essex University, now MP for Colchester); and Professor Maurice Sunkin (Essex University) commissioned by the Office of the Victims Commissioner (OVC), 'Constitutional powers of the Victims' Commissioner of England and Wales, (2020).<sup>1</sup> The findings of this report are developed in Cox, P, Lamont, R, Sunkin, M. 'Constitutionalising regulatory governance: The case of the Victims' Commissioner' [2025] *Public Law* forthcoming April 2025.

The research was focused on a comparison of the functions of Commissioner bodies in England and Wales, and considered the constitutional arrangements of different Commissioner. It highlighted that:

- **There is no single framework for a Commissioner body:** they are described as at arm's length from government. They are not independent from government as they are funded by government, and associated with government departments. The powers they have are idiosyncratic to the particular body, but usually include powers of consultation and representation, soft powers of influence within government and beyond; and, more rarely, hard powers of enforcement and monitoring against a specified standard.
- **The constitutional role of a Commissioner body:** Commissioners often represent the interest of a particular social or interest group that do not otherwise hold a status within government or a specific policy environment within a wider regulatory regime. Some Commissioners, e.g. Children's Commissioners, are part of a global network of similar bodies representing children's interests at a national level and maintain international networks. They become one aspect of the 'regulatory conversation'<sup>2</sup> between those within government, other government bodies and external actors, in determining and negotiating the regulatory frameworks.
- **Underpinning framework and powers:** The underpinning framework referenced by a Commissioner body appears to have a strong influence on the nature of its attributed powers. Bodies with strong underpinning codes, such as the Information Commissioner, had clear mechanisms and hard powers of enforcement. Commissioners without this clear code for enforcement tended to hold only soft powers of consultation, research and influence.

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<sup>1</sup> Available at: <https://victimscommissioner.org.uk/document/constitutional-powers-of-the-victims-commissioner-for-england-and-wales/>.

<sup>2</sup> Black, J. 'Regulatory conversations' (2002) 29 *Journal of Law and Society* 163.

- **Appointment of the Commissioner:** Commissioner appointments should be subject to Parliamentary oversight through Select Committee scrutiny. This is essential to ensure that offices are filled and that candidates have suitable experience. Particularly in Commissioners where their role is influence within a wider policy framework, the nature of their work depends greatly on the personality of the individual and their interests within the policy space, which often determines the nature of their agenda and scope of activity within their governing framework.
- **Relationship with government:** the status and their engagement with government, Ministers and Parliament is central to their effectiveness within the wider regulatory framework. This depends on both the government department and Minister, and the actions and work of the Commissioner themselves. The risk of having a Commissioner who cannot, or does not, effectively carry out their role in promoting the interests they should represent, is that this may undermine trust in governance of a particular issue for the identified interested constituency.

In terms of the operational model for a ‘Commissioner’, the *structure and powers* attributable to the Commissioner should be appropriate for the anticipated nature of the role in terms of influence on the regulatory environment and/or enforcement of specific standards. It is entirely legitimate to have a Commissioner who is influential, a participant in a wider policy environment as a source of longer form scrutiny and source of specialist research, as long as they have the powers to carry out that role. Equally, if it is necessary to have an enforcement mechanism to ensure compliance with a framework, a Commissioner can perform that role with the appropriate hard powers, including judicial review, if necessary. However, if created Commissioner must be awarded the powers to enable them to effectively represent the interests they are deemed to represent, otherwise there is a risk of undermining trust in the governance processes for individual citizens.

In determining an ‘optimal model’, thought must be given to:

1. What constituency the Commissioner is to represent and why they need a general form of representation based on commonality of interest;
2. Whether the Commissioner would be there to influence policy and decision-making, or to enforce standards (or both);
3. The powers they need to meet the stated purpose.

## **Accountability**

We found no single model for accountability of a Commissioner body. To ensure accountability through Parliament, Commissioners should be required:

- To report on an annual basis to Parliament; explaining how activities of the previous year meet the stated aims of the Commissioner role; and

- Appointments to the post of Commissioner should be scrutinised by Select Committee and annual reports should be sent to the relevant Committee Chair directly.

Where a Commissioner holds enforcement powers, annual reporting and data monitoring may take place in terms of the number of investigations or legal actions launched, prosecuted and resolved. Whilst this is an important data measure, it may not indicate a wider environment of compliance with standards, so wider qualitative data based on end user experience will also be valuable. A Commissioner must have the resources available to research and present data for this monitoring purpose.

In terms of demonstration of outcomes, there are significant difficulties in creating 'measurables' where the Commissioner is designed to be one of influence, rather than an enforcement body. It is difficult to capture influence as an 'outcome' in policy, particularly within complex, diffuse policy environments. Whilst evidencing of engagement and distribution of information, support or guidance may be possible, the actual impact in terms of change will be much more difficult to capture. Accountability processes must be sensitive to the difficulties of capturing 'influence', particularly where this may be a long-term, relationship-based and reflective process, between public bodies.