

Written submission from the Scottish Human Rights Commission, 13 February 2025

SPCB Supported Bodies Landscape Review Committee

Executive Summary

The Scottish Human Rights Commission (SHRC) welcomes the opportunity to submit written evidence to the SPCB Supported Bodies Landscape Review Committee. It is the Commission's assessment that:

- Improved exploration of purpose and outcomes of the SHRC will support the Scottish Parliament and the people of Scotland understand the role of the SHRC in being an independent voice which a) promotes human rights for everyone, and b) supports the Parliament to discharge its duty as the ultimate guarantor of human rights in Scotland
- Accountability arrangements in the Scottish Parliament about the impact, function and development of the SHRC would benefit from greater cross-Committee engagement
- Greater information sharing across mandates could be encouraged through the office holder network
- Office holder services within the Scottish Parliament Corporate Body are an essential part of ensuring good governance arrangements, and must be strengthened.
- Shared Services are critical from a best value perspective. The SHRC has adopted this through a Shared Services Agreement with SPSO since April 2023, but we highlight that this aspiration for others requires a robust and agile infrastructure to be in place for new and existing office holders to adopt.
- Building on current experience, an options appraisal around the Shared Services Infrastructure should be explored further, including consideration of whether this could become a function of an enhanced office holder services model within SPCB and/or develops further as a function of an existing office holder.
- Consideration might be given to a multi-Committee scrutiny process for proposals for new Commissions, which involves the lead policy Committee, the Public Finance and Administration Committee and the Scottish Parliament Corporate Body. An additional criteria could be considered to require an options appraisal of whether the proposed function could be delivered by amending the mandate/resources of existing office holders.
- Whilst there are many factors which have resulted in the calls for new Commissions/ers, overall, persistent lack of access to justice, at individual and systemic level, is the driving reason behind the calls for the creation of new public bodies to address these issues. Assessment of any gaps in

existing office holder mandates and resources in pursuit of access to justice for all must be a necessary part of the consideration of the optimum model for office holders.

- We therefore invite the Committee to consider this within the context of its Inquiry, and we note the recent letter from the Convener of the Equalities, Human Rights and Civil Justice Committee to the Convener of the SPCB Supported Bodies Inquiry.
- We highlight to the Committee that this has been a persistent recommendation of the Global Alliance of National Human Rights Institutions (GANHRI) in its accreditation of the Commission as an A status National Human Rights Institution (NHRI). The SHRC's next accreditation process is due in August 2025.

We also use this opportunity to provide Committee members with some wider context in relation to the SHRC, in particular:

- our role as Scotland's UN accredited independent National Human Rights Institution,
- our role in supporting Parliament as the ultimate guarantor of human rights; and
- the areas where the SCHR Act 2006 could helpfully be amended to strengthen the SHRC's ability to deliver its general duty to promote the human rights of everyone in Scotland.

Whilst recent amendments as a result of the UNCRC (Incorporation) (Scotland) Act 2024 to enable the SHRC to intervene in more cases and to raise own name litigation are a welcome start; it is critical to extend these additional routes to access justice to all people in Scotland, beyond children and young people.

About the SHRC model

The Scottish Human Rights Commission was created by the Scottish Parliament through the [Scottish Commission for Human Rights Act 2006](#), and its legislative mandate has not been substantially reviewed since. It is Scotland's National Human Rights Institution (NHRI), as accredited by the United Nations system. The SHRC is independent from Government and Parliament, but is accountable to the Scottish Parliament.

Office Holder model: The independence of the SHRC is essential to fulfilling its functions. The promotion of human rights may require it to be critical of existing practices or provide critical advice in relation to policies and legislation enacted by the Parliament or Government without fear or favour. The Scottish model of the NHRI as an office holder of Parliament rather than a body sponsored by a department of Government is considered gold standard in the international human rights community; and indeed, is the only NHRI in Great Britain and Northern Ireland which is established in this way.

Commission model: The structure of the SHRC is distinct from most other officeholders, noting that the Standards Commission is the other multi-member 'commission' model as opposed to a 'commissioner'. This is a requirement of the UN accreditation system, which requires a 'pluralist' membership to reflect diversity of representation and the experiences of all members of society. The SHRC comprises of a Chair, who is a Crown appointment, and up to four members Commissioners, all of whom are appointed by the SPCB on behalf of the Scottish Parliament. As a group, they set the strategic direction of the Commission and oversee the delivery of the Commissions' work through its staff team, led by an Executive Director, who is also Accountable Officer.

SHRC mandate and resource: The SHRC has a broad mandate, and modest resource to deliver it. Its general duty is to promote human rights for everyone in Scotland, and it does this by monitoring the enjoyment of the specific rights afforded to all people through:

- the European Convention on Human Rights, given effect domestically through the Human Rights Act 1998 and the Scotland Act 1998;
- the International Covenant on Civil and Political Rights;
- the International Covenant on Economic, Social and Cultural Rights;
- the UN Convention on the Rights of Persons with Disabilities;
- the UN Convention on the Elimination of All Forms of Discrimination Against Women;
- the UN Convention on the Elimination of All Forms of Racial Discrimination;
- the UN Convention Against Torture;
- the UN Convention on the Rights of the Child¹
- the European Social Charter; and
- the Council of Europe Convention on Preventing and Combatting Violence Against Women and Domestic Violence.

National Human Rights Institutions

The SHRC is accredited as Scotland's National Human Rights Institution (NHRI), and is part of a global network of NHRIs . As defined by the United Nations, NHRIs are a critical part of the human rights system; they are the cornerstone of domestic human rights protection systems and serve as a bridge between international human rights norms and the State. NHRI's are unique and do not resemble other parts of government or other public authorities. Of paramount importance for their

¹ As the Children and Young People's Commissioner for Scotland has duties and powers to monitor compliance with the UNCRC, the Scottish Human Rights Commission takes care to avoid duplication of effort

functioning, NHRIs must be independent institutions. If the work and performance of NHRIs are regulated in law, such regulation must not compromise its ability to perform its role independently and effectively.

NHRIs are assessed and accredited based on the UN Principles Relating to the Status of National Human Rights Institutions (the "[Paris Principles](#)"). The Principles constitute a set of internationally recognised standards to assess the credibility, independence and effectiveness of NHRIs and were adopted by the United Nations General Assembly in 1993.

The key pillars of the Paris Principles are pluralism, independence and effectiveness. Overall, the Principles indicate that:

- NHRIs should have a broad mandate to enable them to promote and protect all human rights;
- They should have broad functions enabling them to deliver on their mandate;
- Pluralism being a key pillar on which NHRIs are founded, the composition of NHRIs should reflect the "social forces (of civil society) involved in the protection and promotion of human rights";
- NHRIs should have adequate resources to ensure the funding, staffing, infrastructure and institutional capacity to perform their functions and discharge their responsibilities;
- NHRIs should work cooperatively, recognising that effective human rights work requires NHRIs to collaborate with other state institutions, NGOs and civil society groups.

Since 2010, the UN system has accredited the SHRC as Scotland's NHRI with an 'A status'. This means that it has determined that it complies with all aspects of the Paris Principles given its structure of governance, accountability, and independence. It has however consistently made recommendations that the SHRC's mandate should be strengthened, and that its resource be reviewed in line with the ambition of its current mandate. The Commission is next accredited in August 2025.

Working with Parliament

The SHRC's role as an NHRI supports the work of the Scottish Parliament in protecting people's rights. Principles for effective working between NHRIs and Parliament have been supported by the Office of the High Commissioner for Human Rights and encouraged by the UN Human Council (the [Belgrade Principles](#))² as well as by the Inter-Parliamentary Union.³

² United Nations Human Rights Council (2012), National institutions for the promotion and protection of human rights; Annex – the Belgrade principles on the relationship between national human rights institutions and parliaments. Belgrade principles on the relationship between national human rights institutions and parliaments (Belgrade, 22–23 February 2012)

³ Inter-Parliamentary Union and the Office of the High Commissioner for Refugees (2016), Human Rights: Handbook for Parliamentarians no.26.

In line with these principles, the SHRC monitors parliamentary proceedings and provides advice intended to support effective parliamentary consideration of human rights law. As mentioned previously, NHRIs are often referred to as 'bridge' institutions. In this role, we provide insight from international human rights law and practice to support stronger domestic accountability and report on domestic human rights practice internationally to support accountability.

Almost all policy decisions raise a number of human rights standards from one or multiple treaties. The SHRC can provide Members of the Scottish Parliament and other decisionmakers with an independent analysis of which rights could fall within the scope of legislative proposals. To assist MSPs in their deliberations, we provide an assessment of which tests apply, for example whether a right is absolute and therefore whether a threshold is or could be met, or whether and what factors have to balance against one another to prevent violations.

We also monitor how well people in Scotland are enjoying their rights as protected under the ECHR and the treaties listed above, and we provide evidence to the Scottish Parliament on our findings to inform Parliamentary business and Committee sessions. Over the period 2024-2025, the SHRC issued the following monitoring reports to the Scottish Parliament and its Committees:

- [Review, Recommend, Repeat](#) assessing progress over the last decade in implementing recommendations of international human rights bodies to improve compliance with human rights obligations in Scotland's places of detention
- [An assessment of Economic, Social and Cultural Rights across the Highlands and Islands](#)
- [State of the Nation report](#) - focusing on the status of rights protected under the International Covenant on Civil and Political Rights
- [Tick Tock - a human rights based assessment of progress towards moving from institutions to the right to independent living](#), in line with Article 19 of the UN Convention on the Rights of Disabled People

Measurement and prioritisation of outcomes

How do you measure and demonstrate outcomes, and how are these outcomes selected and prioritised? What improvements could be made to this process?

The SHRC's vision is for a fairer Scotland, where human rights are protected and understood, and there is justice when things go wrong. The Scottish Commission for Human Rights Act 2006 establishes that our statutory duty is to "promote human rights and, in particular, to encourage best practice in relation to human rights."⁴

⁴ Scottish Commission for Human Rights Act (2006) Section 2(1)

Our legislation also requires the SHRC to develop a strategic plan for a 4 year period, setting out its objectives for the period to fulfil its general duty.⁵

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The SHRC is currently in Year 1 of its [2024-2028 strategic plan](#). As required by Section 7 of our enabling legislation, the Commission consulted with the Scottish Parliamentary Corporate Body on its content as a draft, which was informed by consultation with civil society and key stakeholders as follows:

- Commissioned research: To help us understand what people think about human rights and how they access help and support we commissioned two
- new pieces of research: [Attitudes to Human Rights In Scotland](#); and; [Access to Justice for Everyone](#).
- Action research: We identified new [spotlight projects](#) in 2023-24 to deepen our understanding of key human rights situations in Scotland, including places of detention, the deinstitutionalisation of people who have learning disabilities and/or who are autistic, and the experience of people and communities in the Highlands and Islands in relation to their economic, social and cultural rights.
- Leading public debate: We prompted stakeholder discussions about gaps in accountability in the human rights system in Summer 2023 with our publication [At A Crossroads](#), which considered the themes emerging from the increasing number of proposals for new Commissions/ers to engage with human rights for specific groups, e.g. Older People's Commissioner, Disability Commissioner.
- Internal review: We commissioned an [Independent Governance Review](#) published in September 2023 and completed an internal review of participation with the Commission.
- Internal consultation: Commissioners and staff participated in strategy away days in February 2023, October 2023 and November 2023.

⁵ Scottish Commission for Human Rights Act (2006) Section 7

⁶ Scottish Commission for Human Rights Act (2006) Section 2(1)

⁷ Scottish Commission for Human Rights Act (2006) Section 7

- Human rights monitoring: We reviewed available evidence including: Scotland's second National Action Plan for Human Rights (SNAP2); treaty monitoring cycles, particularly the International Covenant on Civil and Political Rights (ICCPR) (2019/20); the International Covenant on Economic, Social and Cultural Rights (ICESCR) (2022/23), and the Equality and Human Rights Commission (EHRC) 2023 Monitor.
- Peer human rights organisations: We engaged with the European Network of National Human Rights Institutions (ENNHRI), the Global Alliance of National Human Rights Institutions (GANHRI) and other National Human Rights Institutions (NHRIs) including EHRC Scotland, and the office of the Children and Young People's Commissioner Scotland.

The SHRC measures performance through KPI targets and thematic priorities which demonstrate progress to achieving the objectives of the three key strategic themes in its 2024-28 Strategic Plan: People, Purpose and Performance. Progress is monitored quarterly via reports to the independently chaired Audit and Risk Committee, and to meetings of the Commission, up to nine times a year. This informs the development of our Annual Report.

In 2024/25, for the first time the SHRC published an annual [Operational Plan](#), outlining the activities it would deliver to achieve the objectives of the 2024-28 Strategic Plan. This publication contained the decision making framework which the Commission applies to guide use of its limited resource to priority areas of policy to engage with, or human rights concerns to spotlight.

To improve our ability to monitor and measure the impact of the SHRC, we are developing a Theory of Change to track our contribution and gather data to evidence our impact on improving human rights outcomes across Scotland over time. By using this structured approach, we aim to ensure ongoing accountability and continuous improvement in our human rights work. Over the coming years, the outcomes we capture will provide a comprehensive analysis of our impact, guiding future strategies, including our 2028-2032 plan. Our outline Theory of Change will be published on our website in 2025, and annual progress will be captured in our Annual Reports.

Scrutiny

How has Parliamentary committee scrutiny worked in practice and how has this impacted performance? How could scrutiny be improved and/or standardised?

As a responsible public body we welcome parliamentary scrutiny, working to a range of domestic and international standards. We actively encourage the Scottish Parliament and its Committees to undertake effective scrutiny of our functioning and outputs on the status of rights in Scotland. The SHRC currently has five layers of scrutiny and assurance of its Governance functions and delivery to its mandate; as a group, the members of the Commission also fulfil a governance function, monitoring performance to Strategy:

- 4.1 Audit and Risk Committee

The SHRC has an Audit and Risk Committee which meets four times per year as a sub Committee of the Commission, and is Chaired by an independent member of the SPCB's Audit Advisory Board (AAB).

The SHRC Executive Director is the Accountable Officer, and reports to both the Commission meetings and the Audit and Risk Committee. The minutes of all Commission meetings and Audit and Risk meetings are published on our website.

The Commission has an annual internal audit programme to provide assurance on our corporate governance.

- 4.2 External Audit

The SHRC is subject to an annual external audit reviewed by the Auditor General.

- 4.3 SPCB Scrutiny

The SHRC's Accountable Officer meets on a regular basis with SPCB staff to provide reassurances on how the Commission is meeting its statutory mandate and public body assurance requirements in broad terms, submission of the annual budget and any contingency bids, and its strategic plan more specifically. As explained above, the SHRC receives feedback from the SPCB on its four year strategic plan before laying it in Parliament.

Members of the Commission meet annually with SPCB members.

- 4.4. Equalities, Human Rights, and Civil Justice Committee (EHRCJC)

As acknowledged by the Committee itself, the EHRCJ holds an annual evidence session with the SHRC. The three (3) most recent in this parliamentary session were held on 6 December 2022, 16 January 2024, and 14 January 2025.

These sessions are held after the SHRC has published its annual report and are an opportunity for the Committee to scrutinise the Commission informed by that report. Areas covered during the sessions have included: the SHRC's strategic priorities; annual accounts; budget for staffing and resources; powers and functions of the SHRC; monitoring of the SHRC's performance; the SHRC's work programme and priorities for the year, and the impact and engagement of its work.

It is notable that the Commission does not routinely engage with other Committees, such as the Public Finance and Administration Committee, however, members of the SPCB do report on the Commission's budget and financial performance in this context on the basis of our budget bids, and audited accounts.

- 4.5 United Nations System

In accordance to international regulation, as Scotland's NHRI, the SHRC is also periodically reviewed and accredited before the Sub-Committee on Accreditation (SCA) of the Global Alliance of NHRIs. Every four to five years, the SHRC is thoroughly evaluated with reference to the Paris Principles. If the SHRC does not

meet the strict requirement of independence, or does not adequately deliver its mandate, it can lose its status as a UN accredited NHRI.

The SHRC has been accredited and reaccredited on three occasions. On all three occasions, most recently in 2021, the Committee has determined that it is in full compliance with the Paris Principles (A status).

However, the SCA has previously noted its concerns in relation to the resourcing levels of the SHRC and the limitations on its mandate.

The SHRC is preparing for its next accreditation process in August 2025.

Working with other bodies

How do you work in practice with other public bodies or services and what are the main barriers faced? How can these barriers be overcome to improve efficiency and reduce costs while ensuring that shared services maintain high standards of quality and accountability?

As required under Section 5 of the Scottish Commission for Human Rights Act 2006, the SHRC must: 'seek to ensure, so far as practicable, that any activity undertaken by it under this Act does not duplicate unnecessarily any activity undertaken by any other person under any other enactment.'

The SHRC operates an established Memorandum of Understanding (MoU) with the Equality and Human Rights Commission (EHRC) Scotland in respect of areas of potential overlap in our mandates as we operate jointly in Scotland. The cyclical review of this is underway in 2025 through a collaborative process which will be approved by the respective Commission Chairs.

Decisions by the Scottish Parliament have produced recent legislative changes via the UNCRC (Scotland) Act 2024, meaning the enabling powers of the SHRC are evolving. As a result, a formal MoU between the Children and Young People's Commissioner (CYCPS) and the SHRC will be developed in 2025. Should new Commissions/ers be established, similar arrangements would be sought to manage the impact of potential duplication and maximise the benefits of collaboration.

The SHRC is also strongly committed to working closely with other scrutiny bodies, to harness institutional impact and reach, with the objective of improving rights realisation. In the last decade, the SHRC has work closely, for example, with the Scottish Housing Regulator, Audit Scotland, the Mental Welfare Commission, among other scrutiny bodies.

Currently, across the SPCB supported body network there exists a range of organisational structures and resourcing levels. Within this variation, we collaborate formally across four key operational areas:

- Shared office accommodation and facilities management, managed by SPSO

- Shared Services Arrangement with SPSO, who provide our financial transactions, payroll, HR advice, and some core learning and development
- Through the Officeholders Shared Services Network (OSSN) the SHRC Head of Corporate Services meets with their equivalents from each of the other SPCB supported officeholders on a quarterly basis, sharing insight on emerging policy and practice developments common to public bodies, such as accessibility, ICT, and procurement processes.
- Finally, the officeholders themselves and accountable officers meet on a regular basis to discuss issues of mutual interest and to explore other opportunities to work together and pool resources.

At a more strategic level, officeholders engage in collaborative ways of working across areas of shared concern in relation to ensuring effective remedy and access to public services including complaints procedures and access to information.

Criteria for the creation of new SPCB bodies

Criteria were developed by the Session 2 Finance Committee to help guide decisions on whether to create a new commissioner. These criteria (Clarity of Remit, Distinction between functions, Complementarity, Simplicity and Accessibility, Shared Services and Accountability) are considered by the Scottish Government and Members when proposing Commissioner related bills. Are these criteria currently adequate and how could they be improved?

Given the variation in scale, mandate and enabling powers of new Commissions/ers which are being proposed and considered by the Parliament, it would appear that these criteria could be improved.

Consideration might be given to a multi-Committee scrutiny process for proposals, which involves the lead policy Committee, the Public Finance and Administration Committee and the Scottish Parliament Corporate Body to assess whether these tests have been met. If they have not, then Parliament may wish to consider a definitive position on whether a proposal should proceed, or make recommendations on alternative mechanisms to achieve the policy intent.

Taking a best value approach, an additional criteria could be considered to require an options appraisal of whether the proposed function could be delivered by amending the mandate/resources of existing office holders.

Shared services should rightly be a critical consideration for the establishment of any new office holder, and the rationale for this was well explored in the previous Committee Inquiry; however it is critical that there is an effective and scalable shared services infrastructure in place to underpin and deliver on this expectation.

This inquiry is an important opportunity to consider the role of the SPCB in supporting shared services and functional requirements across the SPCB Officeholders. There are elements of commissioning of services, audit and

oversight, and structural services such as human resources support that might be provided by the SPCB if its support services were to be reconfigured and resourced. Such changes could also result in more efficient use of budgeted resources.

Optimal model of Commissions

What should the optimal model and structure for commissioners look like, and what key features should it include?

This Inquiry is an important opportunity to review the models for supporting the organisational and structural functions of independent officeholders/Commissions and the role and relationship with the SPCB.

Functional independence, decision making and autonomy are critical to office holders, and must be maintained, but there are elements of shared approaches which could be further encouraged. However, the independence of functions of officeholders must be protected, and the nature of this interaction must be transparent and easily understandable to the public.

The function of office holder services within the SPCB is essential to supporting the office holder infrastructure, and due to retirement of key personnel, is at a key point for review. The shared services model has developed and evolved through the sharing of functions through office holders themselves, and there may be merit in exploring how the SPCB office holder function could be evolved to provide consistent shared support on training, public body compliance, internal audit, communications and accessibility, HR support, ICT and other functions.

A consistent approach to induction for office holders and accountable officers could also be developed, as could documentation of Governance frameworks.

While we cannot comment on other organisations, we have reflected on the role of the SHRC with the general duty of promoting human rights in Scotland, and whether this role is operating optimally within the current office holder model. Our 2023 report '[At a Crossroads](#)' and our [submission to the Scottish Government proposed Human Rights Bill consultation](#) (October 2023) makes clear that there is an international evidence base of more pluralist Commissions with a greater number of members, supported by enhanced monitoring teams, and enabled by more powers to enforce legal action, compel information, or issue binding guidance. Adjustments to the SCHR Act 2006 on these elements would secure a more comprehensive and cohesive national human rights institution in the office holders landscape, with greater agility to meet emerging human rights priority areas or groups of people whose rights are most at risk.

Necessary further reform

The SHRC has already indicated that, whilst there are many factors which have resulted in the calls for new Commissions/ers, in the main, persistent lack of access to justice, at individual and systemic level, is the driving reason behind the calls for the creation of new public bodies to address these issues. The Commission shares those concerns. Many people in Scotland still experience denials of their basic

human rights and dignity every day – and lack effective access to the mechanisms and means to challenge them.

Access to justice is a core foundation of the internationally accepted human rights legal framework. Human rights remain an aspiration without accountability, monitoring, and routes for people to access justice when things go wrong. Yet, research published by the SHRC has confirmed that the majority of people in Scotland do not know where to turn if they have a human rights problem.

Given such context, in the last few years the SHRC has undertaken a significant programme of work to ensure that the development and potential expansion of its mandate is guided firmly by the experience of rights holders in Scotland, and international NHRI best practice.

The SHRC aspires to fulfil its mandate to the highest standard for rights holders and wants to ensure it is part of the solution to addressing violations of human rights faced by people in Scotland. For these reasons, since 2023, the SHRC has called for its powers and mandate to be strengthened to enable us to:

- Provide legal advice
- Raise legal proceedings in its own name
- Conduct investigations
- Conduct inquiries in less limited circumstances
- Require and compel information
- Make unaccompanied and unannounced visits to any human rights duty bearer
- Hold public hearings and require duty bearers to be present
- Issue binding guidance
- Recruit more members of the Commission

Recent amendments as a result of the UNCRC Incorporation Act 2024 to intervene in more cases before the Courts and to raise own name litigation are a welcome start; it is critical to extend these additional routes to access justice to all people in Scotland, not just children and young people. Beyond legislative change, the SHRC also highlights to the Committee that alternative models of dedicated monitoring teams by treaty, in line with international examples in other NHRIs, may provide for more focused protection of the human rights of groups of people which are specially protected by UN Treaties, or any other group of people where rights may be most at risk. Any such changes would have resource implications for the SHRC, but not necessarily legislative implications for its founding mandate.

Conclusions

The SHRC welcomes this Committee Inquiry as an opportunity to strengthen independent scrutiny and accountability mechanisms which are aligned to the Scottish Parliament, and which share the ultimate aim of ensuring that everyone's rights are protected. The SHRC has provided insight into the operation of the current office holder landscape as requested, and has highlighted that the criteria for new office holders should consider how the mandate of existing office holders could be amended to reflect the identified need, even on a time limited basis. We have outlined specific ways in which the SCHR Act 2006 could be amended to enhance the current domestic mechanisms of human rights scrutiny, improve pluralism in the membership of the Commission, and increase access to justice for all. The SHRC calls on the Committee to consider such proposal within the scope of its review recommendations.