



OFFICIAL REPORT
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DRAFT

Finance and Public Administration Committee

Tuesday 16 April 2024

Session 6



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FINANCE AND PUBLIC ADMINISTRATION COMMITTEE
13th Meeting 2024, Session 6

CONVENER

*Kenneth Gibson (Cunninghame North) (SNP)

DEPUTY CONVENER

*Michael Marra (North East Scotland) (Lab)

COMMITTEE MEMBERS

Ross Greer (West Scotland) (Green)

*Jamie Halcro Johnston (Highlands and Islands) (Con)

*John Mason (Glasgow Shettleston) (SNP)

*Liz Smith (Mid Scotland and Fife) (Con)

*Michelle Thomson (Falkirk East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Katy MacMillan (Research Scotland)

CLERK TO THE COMMITTEE

Joanne McNaughton

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Finance and Public Administration Committee

Tuesday 16 April 2024

[The Convener opened the meeting at 09:30]

Scotland's Commissioner Landscape

The Convener (Kenneth Gibson): Good morning, and welcome to the 13th meeting in 2024 of the Finance and Public Administration Committee. We have received apologies from Ross Greer.

The first item on our agenda is to take evidence as part of our inquiry into Scotland's commissioner landscape. We are joined online by Katy MacMillan, the director of Research Scotland. I welcome her to the meeting and invite her to make an opening statement.

Katy MacMillan (Research Scotland): Hello. I am from Research Scotland. Thank you very much for inviting me along today.

I will tell you a little bit about our research, which we were commissioned to undertake in September 2022 and which we published in March 2023. We were asked to look at the role of existing commissioners in the United Kingdom, including in Scotland. Our brief was to explore their role in order to inform the development of the proposed learning disabilities, autism and neurodivergence bill, which might include provisions for a new commissioner.

Our brief set out a particular focus on how commissioners have been used to protect the rights of vulnerable groups, so we focused on commissioners who work to protect human rights. We looked at what helps and what hinders commissioners in performing their roles, how the roles intersect and what lessons can be learned. It is worth saying that the audience for our research included the Scottish Government and a lived experience panel, which was set up to inform the bill's development.

In relation to the method for our research, we carried out a very brief literature review, the main purpose of which was to inform the research tools that we would use, our discussions, the questions that we would ask the commissioners and which commissions and commissioners would be involved in the research. We then held 11 interviews with commissions and commissioners who protect the rights of vulnerable groups. Five of

the commissioners were in Scotland and two were outwith Scotland.

Our findings from the literature review were that there is very little published research on, or evaluation of, the role and approaches of commissioners and that there is no consistent guidance in place for designing the role of commissioners.

In relation to our findings from the interviews, we focused quite a lot on the powers that different commissions and commissioners have and on the approaches that they take. Most of the people we spoke to felt that they have the powers that they need. The commissions and commissioners emphasised that they need clear and well-written powers set out in law and that, even if their powers are not always used, it is useful to have them. People emphasised that there is a balance. They do not want to use their powers to punish people; they focus on improving outcomes and improving rights for vulnerable people.

Most of the people we spoke to felt that they have the resources that they need to protect human rights but that they need to prioritise their work, so they have clear plans for what they will focus on each year. A few people said that they would use a different approach if they had more resources. Some said that they would be more proactive, more collaborative and more focused on culture change, and that they would put a bit more resource into research and policy influencing than they were currently able to.

There was some concern that new commissioners being created would limit the powers of existing commissioners. Some people emphasised that that was particularly obvious in relation to their investigation powers, as there could be some overlap.

Most of the commissions and commissioners we spoke to felt that their governance arrangements work well. Some felt that having a single commissioner is useful and helps to provide clarity, as it creates clear accountability and decision making. Some mentioned that a little bit of extra effort might be needed to clarify governance arrangements when more than one commissioner is in place. Some also emphasised that commissioners changing over time could lead to different approaches being taken by organisations.

Different arrangements for joint working are in place. Some have close joint working arrangements and written agreements in place with other commissions and commissioners, while others have more ad hoc arrangements, depending on the focus of their work at the time. Commissions and commissioners felt that joint working arrangements are simplest when their

roles are clearly different and they can be clear about how each can contribute at the time. They felt that joint working can really help when organisations have different powers. For example, if one organisation has the power to take cases while others do not, they can link up and follow through on their work.

Commissioners emphasised that there could sometimes be some confusion about their mandates in relation to protecting human rights, particularly when individuals consider which commission or commissioner could help in protecting and upholding their rights. They emphasised that, because there are still grey areas, there is absolutely a need for a structure for talking through how they work together day to day.

We asked a number of questions about how people felt about the creation of new commissioners. Interviewees stressed that they would consider such proposals in detail as they were developed over time, but initial reactions included some concerns that creating commissioners for particular groups could lead to a large number of commissioners, further complicate the existing landscape and potentially confuse individuals. There was also some concern that creating new commissioners could duplicate the role of, or reduce the value of, existing commissioners.

That is a high-level overview of some of our findings, just by way of introduction.

The Convener: Thank you very much for that helpful introduction.

I notice that you interviewed five of the commissioners in Scotland. Why did you decide not to interview all seven in Scotland to ensure that all views were heard?

Katy MacMillan: Our focus was on commissions or commissioners that have been used to protect the rights of vulnerable groups. We identified a long list of commissions and commissioners in Scotland and elsewhere across the UK that could be included in that group, because that was our brief, and we chatted to the policy team about how to select the commissions and commissioners that should be involved.

We looked at commissions and commissioners that report in different ways—some report to the Scottish Parliament, some report to the Scottish Government, some report to the UK Government, some report to the UK Parliament and some report beyond that, in Northern Ireland and Wales. We worked with the policy team to develop our long list into a short list, and we focused closely on those whose intention is to uphold the rights of individuals and those with an interest in how their roles might intersect with the role of a learning

disabilities, autism and neurodivergence commissioner.

The Convener: In your opening statement, you talked about the importance of improving outcomes. In its submission, Alzheimer Scotland said:

“The financial cost of this changing landscape must be considered against improved outcomes”.

Through your research, have you identified whether commissioners have been able to deliver improved outcomes for those for whom they are advocating? If so, can you give an example or two?

Katy MacMillan: That was not necessarily the focus of our work, which was to look at the different powers that commissions and commissioners have and to explore how those powers are used. I will check the discussion guide, but we did not ask a question about examples of the work of commissioners resulting in improved outcomes for individuals or groups, so I cannot comment on that.

The Convener: I was not originally intending to ask that question but, because you mentioned outcomes in your opening statement, I thought that I would throw it out there. Ultimately, improving outcomes is what commissioners are trying to do. The whole purpose of them is to look at outcomes, and there is a concern about the lack of overall research, so it is important that we ascertain whether commissioners are delivering better outcomes than would be the case if they did not exist and whether there are other ways in which organisations and individuals could be assisted.

Katy MacMillan: Absolutely. The reason why I mentioned improving outcomes is that people felt that there was a balance. We asked people questions about their role, their powers and how they use them, and the approaches that they take. They said that they understood that their ultimate role was about improving outcomes for vulnerable people, but in using their powers they wanted to be careful about that balance. They recognise that that is their end outcome, so the question is how they best get there and how they best use their powers to improve outcomes for vulnerable people.

The Convener: Another area that you touched on in your opening statement was duplication. You say in your report that

“One interviewee highlighted that the focus on creating more bodies to promote and support human rights did not support the findings of the Crerar Review in 2007, which reviewed regulation, audit, inspection and complaints handling of public services in Scotland. It found that scrutiny arrangements in Scotland were complex, and aimed to simplify and reduce bodies.”

The Deputy First Minister contacted us about that particular issue with regard to the strategic approach to the commissioner landscape and said:

“As agreed by Cabinet on 9 May 2023, the Scottish Government’s Ministerial Control Framework (MCF) aims to ensure that decisions around the creation of new public bodies are made based on evidence and value for money”.

The first of the three principles that she touches on is that new public bodies

“should only be set up as a last resort”.

That is completely different, incidentally, from what *The Times* reported today. It talks about the Scottish Government wanting to double the number of commissioners. I was certainly not aware that it was trying to do that. In the context of your research, how do you view the issue of the number of bodies and how duplication can be avoided?

Katy MacMillan: I can comment on what the commissions and commissioners that we interviewed told us could be other options and how that duplication could be avoided.

The people who we spoke to were very clear that they would absolutely welcome investment and resources in protecting the rights of vulnerable people, and that that was the right thing to do, but they had questions about whether the creation of commission or a commissioner was the way to go.

People suggested alternative options to us such as more resources for existing organisations that champion human rights; rather than create a new organisation, invest in existing organisations. Another suggestion was more resources for existing commissioners, so that perhaps a strand of work could focus on protecting rights for certain vulnerable groups. Some people suggested the creation of champions or advocates within public bodies who would champion the rights, for example, in this case, of people with learning disabilities, autism and neurodiversity.

Others suggested that a core part of the work of a commission or a commissioner is actually about supporting good practice and that there were other ways to do that than creating a commissioner. Some people suggested investing more resources and supporting good practice in different ways. Finally, people suggested that an alternative could be creating a lead within an existing commission for, in this instance, learning disability, autism and neurodiversity, but some were very unsure about that option because they felt that the focus of a human rights organisation should be on protecting human rights for everyone. They were unsure about whether, if a lead was created for one group, they would require to create a lead for all sorts of different groups and were not sure where that would end.

The Convener: Page 55 of your report, which you have touched on there, is really important because it looks at how commissioners are not the only game in town. One could argue that organisations are looking for specific improved outcomes, and perhaps people see commissioners as a way of getting there more easily than constantly having to battle for additional resources. Is that correct?

Katy MacMillan: I am not sure. We spoke to the commissions and commissioners at quite an early stage of the development of a new commissioner for learning disability, autism and neurodiversity, and you are absolutely right that their early reflections were that it is about the outcomes for protecting human rights. There are different ways to get there, and although a commission or commissioner may work in some instances, there are other options that would be worth considering.

09:45

The Convener: One of the things that I found interesting with regard to the submissions that we received—distinct from the report—is that a lot of the existing commissioners are not too enthusiastic about additional commissioners. For example, the Children and Young People’s Commissioner Scotland said:

“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.”

Did you find in your research that there was something of a resistance from the commissioners and those bodies to extending remits to more commissioners?

Katy MacMillan: Again, people were very reflective when they spoke to us and were clear that this was early on in the development of a potential new commissioner. They emphasised that, over time, they would consider any clearly developed proposal and respond to it. However, when we asked about how roles could interact and the potential creation of a new commissioner, there was definitely some concern about potential duplication.

Some of the people that we spoke to stressed that it was extremely important to ensure that, if there were a new commission or commissioner, they did not duplicate existing activity and that, really importantly, they did not take powers away from existing commissioners. As I said in the introduction, some people were concerned that it could create quite a lot of confusion among individuals about which specific commission or commissioner would protect their rights and which would be the right commission or commissioner to go to in which circumstance.

The Convener: One of the issues is that the role of commissioners seems to develop in different ways. Is there an argument for having a much more coherent approach to the development and creation of new commissioners?

Katy MacMillan: I was appointed to do this one specific bit of research and gather the views of the interviewees that I spoke to, so I am not sure that I am best placed to have a view on that. The people that I spoke to felt that it might be useful to consider the duplication, overlap and roles of commissioners, but I do not think that I should express an opinion on that.

The Convener: Okay, I will try not to stray too far from your research then—although it is tempting. I will ask you just a couple more questions.

A commissioner is restricted to three to five years in post and then another commissioner replaces them. However, I did not see anything in your research—let me know if I have missed it—about sunset clauses. When a commissioner sets up, and once they are in existence, I would expect there to be lots of energy and enthusiasm—they might think, “Oh, there’s things that we’ve wanted to do for the last 10 years, now we’ve got a commissioner, we can press ahead and do it” and so on. However, one would think that a lot of what they would hope to deliver might start to tail off. Might there be an argument therefore for a sunset clause so that, for example, when a commissioner steps down and retires, the question whether that body should continue if it has completed its tasks, or, indeed, whether a new commissioner should be appointed, should be looked at?

Katy MacMillan: Again, that was not something that we explored through the research. I looked back at our discussion guide and we had a lot of questions that we wanted to explore with each commission and commissioner and optional questions depending on the amount of time that people had available. Most of the questions on governance and resources were optional—we only had two questions on that strand—and, in some cases, we did not have enough time with the relevant interviewee to explore them, so that kind of issue was not explored in depth.

The only similar or related thing that we came across was with, I think, one interviewee, who mentioned that the approach of the commissioner who was leaving could be very different to that of the commissioner coming in—so, they recognised that they were working in different ways.

I did not speak to anybody who felt that their work was reducing over time. I spoke to lots of people who felt that there was always more to do, and that, with more resources, they could do more. I spoke to some people who felt very much

that the approach of the organisation changed over time. When they were set up and had new powers, they wanted to show that they were able to use them and might have done so in key cases or examples where people would notice the impact that they were having. Over time, they would shift to more co-operation, best practice, standards and working jointly with organisations.

Some talked about a change over time—absolutely—but I did not speak to anybody who said that their work was reducing; there was always more to do and it was a case of prioritising their work.

The Convener: Yes, they have certainly all had increases in their resources in the current financial year, not least for staffing.

One of the issues for this committee is scrutiny by the Scottish Parliamentary Corporate Body. In the responses that the committee has received—I am not going to quote any of those submissions because you probably will not have seen them—the commissioners all seem to feel that they are being sufficiently scrutinised. My understanding is that only one and a half, or possibly two, members of Scottish Parliamentary Corporate Body staff are dedicated to scrutinising them. Are you familiar with the level of scrutiny? They all seem to be marking their own homework and saying, “Aye, the scrutiny that we are receiving is excellent.” Do you want to comment on that?

Katy MacMillan: I am really sorry, but our research did not focus on the scrutiny of commissions or commissioners, so, unfortunately, I am not able to comment on that.

The Convener: I did not think that you would be able to, but I thought that it was worth a punt. Let us open up the questions to colleagues.

Liz Smith (Mid Scotland and Fife) (Con): Good morning, Ms MacMillan. You have made it very clear that you had a specific remit, which was about advocacy for those with a disability and autism and in relation to their vulnerability. Nonetheless, the title of your report from March 2023 is “The role of commissions and commissioners in Scotland and the UK”. Does it strike you that your very specific remit does not quite fit with that title?

Katy MacMillan: Perhaps, yes.

Liz Smith: May I just pursue that? With all due respect, this committee is looking at the big picture. The committee needs to do that from the perspective of getting an overview and carrying out scrutiny, but it needs to look at the cost aspect, too. Therefore, when I see the title of that report, I think that it is exactly what the committee wants to look at—the role of commissions and

commissioners in Scotland and the impact that the UK might have on that.

The issue that the committee has to look at is commissioners who have different roles. You have been very clear that your research relates to advocacy for one particular group, but there are other commissioners, some of whom handle complaints, some of whom have a regulatory role and some of whom have an investigatory role. The committee wants some idea of the whole picture. With regard to your specific remit, do you have any concern that there is no overall strategy for that bigger picture and what it might be?

Katy MacMillan: I am so sorry if you feel that the research is not useful or does not cover all the issues—

Liz Smith: I am sorry, but I did not say that—I did not say that at all. What I am saying is that it is only part of the bigger picture.

Katy MacMillan: Yes, absolutely—

Liz Smith: —and what I am asking in relation to the title that you presented the committee with, which is the issue that we want to delve into, is whether your specific role would raise questions about the overall strategy for commissioners in general. I am asking whether that came up, either in your own research or with the people to whom you spoke.

Katy MacMillan: The research title and focus were agreed with the Scottish Government policy team that we worked with. That is why the research has that title; I appreciate that it is maybe not appropriate, but the remit was set very clearly by the Scottish Government.

As for some strategy for, or overall approach to, commissioners, that is not something that we specifically asked about. We were asked to look at the creation of one new commissioner in particular and to explore that with commissioners. We were also asked to explore powers, approaches and joint working. As we were asked to explore particular things, I do not think that I will be able to comment on your question, because that is not something that we asked—

Liz Smith: I fully understand that you have been examining one specific aspect; indeed, you have said so several times now. However, have questions not been raised about the overall role of commissioners and their respective staff and how they are serving Scotland? Has that not come through your research at all?

Katy MacMillan: That was not something that we explored. We were considering duplication, joint working and ideas with regard to the creation of one particular commissioner. Questions about an overall strategy did not come up in the research.

Liz Smith: If you are considering potential overlap, that means that comments must have been provided about other commissioners. Did those comments not raise questions? Let me put it this way: do you think that there should be an overall strategy for commissions?

Katy MacMillan: I really do not feel able to comment on that. We spoke to individuals about their views, we reported on that and we produced research on that. I do not feel best placed to comment on whether there should or should not be a strategy.

Liz Smith: I will ask one more question, specifically on the issue of an autism and learning disability commissioner. Do you feel that the demand for the new commissioner resulted from the needs of those vulnerable groups of people not being as well looked after as those of other groups? Has that situation arisen, because there are gaps in the care that they fully deserve and to which they are entitled, or has the proposal been made in addition to the care that is provided?

Katy MacMillan: Again, I am not sure that I am best placed to answer that question. We were asked to speak to existing commissioners about their roles, their powers and their views on that commissioner, not particularly on why the need or the issue arose. The Scottish Government policy team did quite a lot of consultation on why people believe that there is a need for a commission or commissioner, and the views that came back were very mixed. Some people felt that there absolutely was a need for a commission or commissioner, while others felt that there absolutely no such need. There are very mixed views on whether a commission or commissioner is needed for learning disability, autism and neurodiversity.

I am not sure that I can comment further on that.

John Mason (Glasgow Shettleston) (SNP): In an interview referred to on page 54 of your report, the interviewee starts by saying,

“The current government is very enthusiastic about commissioners”,

but then makes the point that

“it’s becoming very confusing what a commissioner is”,

adding that

“the phrase commissioner is starting to lose its value in terms of what it is.”

Is it an issue that the term “commissioner” seems to mean a lot of different things in a lot of contexts?

Katy MacMillan: Yes. That definitely came through from the interviews that we held: it does mean lots of different things. When we speak to commissions and commissioners, we find that they are taking lots of different approaches, have

lots of different powers and are set up in lots of different ways.

I believe that there are lots of different ways in which a commission or commissioner can work. In some cases, that is because of the way in which they have developed with the people whose rights they are protecting. That is why they have developed in the way that they have. Indeed, some people mentioned that that was creating some issues with joint working, potential duplication and the requirement to think about where additional commissions or commissioners are created while thinking carefully about the landscape, too.

John Mason: You and we might understand the area that we are looking at, but there are some other commissions. For example, we also deal with the Scottish Fiscal Commission, which is completely different from any of the commissions that we are discussing today. However, we still call it a “commission”, and it has commissioners and so on. Did you pick up on the public—or even the organisations themselves—getting a bit confused by that?

Katy MacMillan: Those in the organisations that we spoke to said that members of the public and people in their organisations could be confused about which commissioners had particular roles, how those roles interacted, how they protected human rights and how they best supported the people they were working for.

We absolutely picked up from the interviews that there could be grey areas, and organisations are working hard to ensure that they reduce such areas. For example, they have written agreements in place for working closely on particular issues with another relevant commission or commissioner. However, they mentioned that there can still be grey areas within the organisation, so there needs to be constant communication and good joint working arrangements. In addition, they said that there could be some confusion outwith the organisation, among the public.

10:00

John Mason: You made the point to the convener that, when the commissioner changes in a certain commission—say, the Children and Young People’s Commissioner Scotland—the new commissioner’s approach can be quite different from that of the previous one. Is that because we have given commissioners quite a lot of scope to work within? I suppose that if their role were more clearly defined, they would be more fixed in what they could do.

Katy MacMillan: Gosh—that is interesting. We did not get into that level of detail as to why there

were such different approaches, but in some instances it was clear that one commissioner can take a very different approach from another—for example, on joint working. That will come down to the individual and how they believe that the outcomes are best achieved, and what methods and approaches they should use. They have a range of powers and approaches, which can be used in a lot of different ways, so each individual will have different views about how they can best be used.

John Mason: One of those differences is highlighted on page 33 of the report. This question follows on from the previous question, but I note that the report states that some commissions and commissioners are looking very much at “individual cases”, while some are looking much more at “systemic issues”. Is that because of the way in which they have been set up and what they have been told to do?

Katy MacMillan: Yes, absolutely. Some commissions and commissioners do not have the power to take on individual cases, whereas for others, supporting individuals is their main role. The way in which the powers are set up for the commission and the commissioner will influence the approach that they take, and some will not be able to get involved in individual cases at all.

Some felt that their strongest power relates to inquiries and investigations in which they explore a specific issue or theme in depth, while others felt that they were not able to do that, because they did not have the power to establish what they were going to investigate. Instead, they had to respond to the cases that were coming through from individuals.

There are very different approaches, which depend not only on the way in which the powers are set up, but on how the commissions or commissioners decide to use them. Some highlighted that, although they had clear powers that they were able to use, either they had never used them or they had decided to use them very rarely. They wanted to work in a way that fostered co-operation, good practice and higher standards without their moving to using those powers.

John Mason: Do they just adapt to the powers that they have and get on with it, or did you pick up a level of frustration, either from the commissioners or from outside bodies, that some of them wanted to do other things but could not?

Katy MacMillan: Yes, there was definitely a level of frustration in some instances. Some of the people to whom we spoke felt that it would be useful to have more powers or certain powers that were not currently specified in law.

John Mason: You said that you were sometimes limited by time and how much you

could ask people, but I picked up that somebody had said to you:

“I don’t think that given the chance to start things from scratch you would choose to create the institutional landscape that you have now.”

Did you explore that any further with them, or with anyone else? Did you ask what, if they were starting from scratch, they felt that they would do now?

Katy MacMillan: Unfortunately, no, we did not explore that. We explored what other options might be used for a commission or commissioner; how they were interrelated; and issues around joint working and potential duplication. You have raised an interesting question, but we did not explore that within the overall context for commissions and commissioners. We asked what alternatives they might suggest to a commissioner in a particular instance—for instance, around disability, autism or neurodiversity—and we have already talked about the responses that people gave there.

John Mason: Okay. One suggestion is that the Scottish Human Rights Commission should just do everything and have departments, individuals, spokespersons or whatever to look at different aspects. You picked up, in particular, that having a lead on the elimination of discrimination against women was suggested to commissioners as a possibility. Can you tell us what the reaction to that suggestion was? Was it seen as likely to be difficult to do?

Katy MacMillan: We have to be very careful about making sure that when we report what people said in the interviews that we did, we do so anonymously, because of research ethics. I can tell you what everybody thought about that concept, but I cannot tell you specifically what the SHRC thought.

John Mason: That is fine.

Katy MacMillan: We heard from some that creating a lead within an existing commission for a particular group might be an option. In this case, we were looking at learning disability, autism and neurodiversity, but equally, as you have mentioned, I know that the suggestion of having a lead for women and girls has come up.

Some were interested in that approach and felt that it could be a way of making sure that there was protection for certain groups of people within the system, without having to create a new commission or commissioner. However, some did not think that it was a good idea and were concerned that it would result in the creation of a wide range of different leads within the organisation to cover lots and lots of different interest groups. There was some interest in the idea, but there was some concern about it, too.

John Mason: The fact that they said that it would lead to a wide range of different leads seems slightly ironic to me, given that we are facing a wide range of different commissioners instead of leads. It sounds as though we are going in the same direction.

Katy MacMillan: Absolutely. People had different views on it. The other concern that people brought up in relation to the idea was that organisations that protect human rights should be protecting the human rights of all. There was some concern whether having particular strands and leads would still fulfil their requirement to protect the human rights of all. That was the only other issue that came up in that regard.

John Mason: That has been very helpful.

Michael Marra (North East Scotland) (Lab): Ms MacMillan, we are trying to draw out broader lessons from your report at the outset of our inquiry. The discussion has been useful so far. It is clear that you are saying that there is a lack of coherence across the landscape—that comes through quite strongly in your report. Is that a fair comment?

Katy MacMillan: Yes—it is fair to say that people were concerned about duplication and joint working arrangements.

Michael Marra: It also jumped out at me—I think that this point is coming through from the questions that my colleagues are asking—that you observe in the report that

“There is very little published research”

in this area and

“little evaluation exploring the pros and cons of different approaches”.

At the inquiry’s outset, we are working on the basis of there being very little published work exploring this area, and that is probably where you found yourself, too. Is that correct?

Katy MacMillan: Yes—that is correct.

Michael Marra: You then went about the process of having structured interviews—conversations with a limited number of people. However, it is probably fair to say that it is quite difficult to come up with a broader framework based on that evaluation.

Katy MacMillan: Yes, and that was not necessarily the role of the research.

Michael Marra: I hear you on that.

Through the inquiry, my committee colleagues and I are going to be quite concerned about outcomes and, as politicians, we will be trying to understand how the commissioner landscape best provides better outcomes for specific groups of

people and for the broader population. You have said that the purpose of your research was not to evaluate outcomes, but you stated that the evidence that you gathered indicated scepticism from different parts of communities in relation to the proposal that having a commissioner would lead to better outcomes. Is that correct?

Katy MacMillan: Almost. The research that the Scottish Government policy team had already done before we carried out the series of interviews indicated that there was some scepticism about whether a commission or commissioner was the correct approach—perhaps it was not scepticism, but there were different views from members of the public and other organisations about whether a commission or commissioner was the right approach. We did not speak to members of the public at all.

Michael Marra: I am keen to get observations from this work on the causality and the relationship with better outcomes. It is almost about the theory of change, if I could put it that way. There is the idea of having a commissioner, as understood by the people you spoke to, and the idea that it might produce better outcomes. I am asking you to comment not on the outcomes, but on the theory of change in terms of a person being appointed and the idea that things might get better.

Katy MacMillan: We did not speak to members of the public or any wider organisations in the research. We spoke to a limited number of commissions and commissioners. When we spoke to them, they were unsure about whether the creation of a commission or commissioner was the correct way to go, and whether there were other options that, as you say, could better protect or advance the rights of the group that we were looking at.

We have talked about the other options. The commissions and commissioners suggested that there could be other ways to go. Everybody who we spoke to was very clear that, at the time that we were speaking to them, the proposals were in their very early stages and that, as work progressed, they would engage, write papers and respond to consultations. People were clear that there would be much more work. The responses were very early-stage ones to an idea or proposal that had not been developed in any clear way that people could respond to; it was just a concept at that stage.

Michael Marra: So as far as you could determine, none of the responses was based on people's experience of other commissioners.

Katy MacMillan: Nobody mentioned that. There was some discussion about how people had to be careful not to duplicate the work of other commissioners and about how they had to work

closely with others on a day-to-day basis. I am sorry—I cannot comment on whether that was based on their personal experience of other commissioners.

Michael Marra: Page 6 of your report mentions the “accountability gap”. What is meant by that phrase?

Katy MacMillan: Are you referring to the cross-party group on autism's recommendations in its report “The Accountability Gap”?

Michael Marra: Yes—I am wondering what that is. Your report mentions the need to

“bridge the gap between good intention and policy and practice on the ground”.

Is that what is meant by the “accountability gap”? I am trying to dig into the purpose of a commissioner, and I am not really sure what the point about the accountability mechanism means.

Katy MacMillan: I am not sure—the cross-party group on autism would probably have to comment on that. I could go away and look at the report and come back to you, but I am sorry that I cannot comment at the moment.

Michael Marra: That is fine.

Concerns have been raised that the establishment of a commissioner could be a drain on resource—in essence, it could be a substitution. Would we be better off spending the money on direct services or interventions rather than a commissioner? Did that come through in some of the evidence that you took?

Katy MacMillan: Yes—absolutely. When we spoke to people about the idea of a new commissioner, there was concern about duplication and a suggestion that investing more resources in existing organisations that support or advance the rights of the group that we were considering might be an alternative approach.

Michael Marra: I will close with a question on the process of establishing a commissioner. You were almost a participant in that, in that you provided the background research on the idea that the Government department was approaching.

I was intrigued by the quote on page 9 of your report, which says that correspondents felt that

“the campaign for a commissioner had been done to their communities, not with them.”

That is evidence that you have taken and it probably speaks to some of the concerns that the committee expressed at the outset about the policy-making process of establishing a commissioner. Is it a politician's idea or a third sector idea, rather than something that is based in the community of people that the commissioner is meant to be serving?

10:15

Katy MacMillan: That evidence was provided to the policy team in the Scottish Government rather than being provided as part of our research. It was a response from various organisations to the Scottish Government policy team, which then assessed it. We did not speak in any more detail with people about it, unfortunately.

Jamie Halcro Johnston (Highlands and Islands) (Con): Some of the points that I was looking to make have been covered by Michael Marra, but I will focus a little on outcomes. Your report informs discussion and consultation on the potential setting up of a new commission or commissioner. The introduction to your report says:

“The research was to provide a nuanced understanding of how commissions or commissioners effectively complete their functions, working jointly with others.”

Is evaluating outcomes not part of that?

Katy MacMillan: The Scottish Government policy team asked us to focus on what powers the different commissions and commissioners had, the approaches that they took and how they used those powers. That was the main focus of the research. We were not in any way evaluating the commissions or commissioners that we spoke with. The research involved doing between one and three interviews with each of the commissions or commissioners and it would not be possible to undertake any sort of evaluation in that regard. We were gathering the views and opinions of the people that we spoke with about the powers that they had and the approaches that they took and, towards the end, we gathered their views on how that might interact and work jointly with any new commissioner for learning disability, autism and neurodiversity.

Jamie Halcro Johnston: You are saying that evaluating the outcomes of commissioners was not part of what you were asked to do in the remit for the report that the Scottish Government asked you to produce. I want to be clear on that.

Katy MacMillan: We were not asked to evaluate the commissions or commissioners.

Jamie Halcro Johnston: Do you find it slightly surprising that you were asked to conduct a report on a potential new commission or commissioner but you were not asked to evaluate the outcomes of other commissioners? You were asked to look at all the governance, overlap and other aspects of commissioners and commissions but not at whether they work.

Katy MacMillan: I think that the research was commissioned to fulfil the particular purpose of understanding what powers or approaches it might be useful for a potential new commissioner to

have, as the Government was looking at developing that commissioner. It was a reasonably small bit of work that involved 11 interviews in total and a brief literature review, as I said.

Because of the scope and scale of the research, it was absolutely not surprising that we were not asked to evaluate the other commissioners. That would be a much larger piece of work. The team was interested in the powers, the approaches and the understanding of how commissioners work jointly and how a new commissioner might influence that or be involved in it.

Jamie Halcro Johnston: As far as you are aware, have reports and analysis been done on the outcomes or the success of commissioners in fulfilling their duties? Has a widespread piece of work been done on that?

Katy MacMillan: There is very little research in terms of overall reports on commissioners and their roles. I imagine that each organisation reviews various powers and bits of work and evaluations, but we were not asked to look at that, so I cannot comment in detail.

Jamie Halcro Johnston: You will appreciate the difficulty. We are looking at the landscape and a number of areas of the work of commissioners—how they overlap, their governance, accountability and the financial costs—but we cannot seem to pin that down to what they achieve for the people they are meant to be achieving things for.

There are specific areas as well—for example, as I represent the Highlands and Islands, I want to see whether there are any issues around rurality and its impacts, and which groups are missed out. Do you accept that our ability to consider issues is limited if we lack detailed information on outcomes?

Katy MacMillan: I am sorry—I have not done a review of what evidence there is of outcomes of commissions and commissioners, so I am unfortunately not able to comment on that.

Jamie Halcro Johnston: Okay—thank you.

Michelle Thomson (Falkirk East) (SNP): Good morning and thank you for joining us. I have a couple of quick questions. Your report states that the Scottish Government commissioned you. Can I check whether the directorate that commissioned you is the same one that is now looking at introducing a new commissioner for learning disability, autism and neurodiversity?

Katy MacMillan: It was the learning disability, autism and neurodiversity policy team.

Michelle Thomson: In other words, it is potentially in the team’s interests to limit the scope of what your research would evaluate. Let us imagine for a minute that the team is keen on

introducing a new commissioner for its area of interest. It would make sense to limit the scope of what you were asked to evaluate in terms of the wider landscape, as you set out today in your evidence. Is that a fair assessment?

Katy MacMillan: I am not sure that that is fair. In the review and exploration of whether a new commissioner was required, the evidence was very balanced about whether there should be a new commissioner. Good work had already been done to gather lots of views about whether people felt that a commissioner was necessary, and the views were mixed. I think that the team was interested in finding out more about how a commissioner could work, with the appropriate powers, the right approach and joint working with others. You would need to ask those in the team, but I do not think that what you suggested happened in the development of the research—it did not feel unusual or anything like that.

Michelle Thomson: However, as you set out in your statement, the team wants there to be a new commissioner—that is a statement of fact. You have found out some other incidental stuff but, as Ms Smith pointed out at the start of our session, we are looking at the wider landscape including independence, governance, accountability, costs, budget lines and overlap, which are underpinned by strategic positioning and—critically—outcomes. It sounds very much as though you were given a different brief, to look more gently at the concept of introducing a further commissioner, by the directorate that wants to do so.

Katy MacMillan: I am not sure that I can comment on that. You would probably need to ask the directorate about that.

Michelle Thomson: What reception did you get for your research? Have you met the team subsequently and have you taken any feedback from it? If so, what was that?

Katy MacMillan: We produced the report in early 2023. The Government provided some minor comment on it and we finalised the report in early 2023. Since then, I have been in touch with the team once to let it know that I was coming to this evidence session.

Michelle Thomson: Is there a possibility that the report was commissioned to neutralise objections, given that the committee was going to be looking at the landscape?

Katy MacMillan: That was not something that ever came up. I did not know about this committee and that was not a conversation that we had.

Michelle Thomson: Thank you. You mentioned human rights earlier. In any discussions about the concept of a number of commissions or commissioners looking at human rights and the

complexity around that, was there any recognition that creating a hierarchy of rights could be problematic, or did the discussion not go to that depth? In the Parliament, we have seen challenges with recognising different sets of rights, and we see that in the wider environment, too.

Katy MacMillan: That was not something that came up specifically. It came up only when some people suggested alternatives to a commission or a commissioner, such as a lead for a particular group in an existing commissioner's office, and others talked about whether that was appropriate, how many leads we would need to have, whether we would still be protecting the human rights of all and whether we would still be meeting our requirements as a human rights organisation. That is probably as close as we got to that important conversation.

Michelle Thomson: Thank you very much. That is all, convener.

The Convener: I understand that there is an element of frustration from committee members. We have seen the research, and I understand that you have undertaken only the research that you were commissioned to do. You have been asking people whether they support a new commissioner or whether they think that resources could be better allocated. Do you agree that, if we do not know the potential outcomes in relation to improvements—or not, as the case may be—from having a new commissioner, the exercise is two dimensional?

Katy MacMillan: Perhaps. When we spoke to people, they were clear that they had already been involved in conversations about the potential development of the new commissioner and that they would expect to be involved in many more conversations about that over time. I suppose that the exercise fulfilled a certain purpose. It absolutely did not cover all the issues that you are looking at, and I completely understand that, but it had a particular purpose and role. The interviewees were clear that it was part of that journey, and they understood that they would be involved in further conversations as things progressed.

The Convener: I will finish with one issue that came up in your report. On page 13, you said:

“In Scotland there is a range of commissions and commissioners. However, there is very little published research on commissioners, and no handbook or blueprint within government for designing the role.”

Do you think that there should be?

Katy MacMillan: Again, I think that I am not best placed to comment on that. I was researching and speaking to—

The Convener: I am asking for your opinion, based on your research and on the discussions. You have to understand the frustration of the committee—we are looking for some kind of answer, lead or steer. You have undertaken this comprehensive research. It is not as comprehensive as we would like, but it is a not insubstantial document, and you have covered a lot of ground. Having spoken to the people you have spoken to, do you feel that there should be a more robust mechanism for developing commissioners? You referred to that when you said that there is

“no handbook or blueprint within government for designing the role”.

The implication is that you surely feel that there should be one.

Katy MacMillan: I suppose that we were just stating a fact that there is no handbook or blueprint. Some of the interviewees I spoke to were clear; the organisations are very different. The organisations that we spoke to all reported in different ways—not all of them reported to Parliament, because they were all set up in different ways.

I really do not feel that I am best placed to answer the question. It is something that commissions and commissioners, or others in the Scottish Government system, would be better placed to answer. I do not have a view on that.

The Convener: Do you want to make any further points before we wind up?

Katy MacMillan: No—thank you very much.

The Convener: Thank you very much for giving your evidence. We will continue taking evidence for our inquiry into Scotland’s commissioner landscape at our next meeting, on Tuesday 23 April. Before that, we will discuss aspects of the issue in a private session.

As that was the only item on our agenda, I close the meeting.

Meeting closed at 10:28.

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