



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Finance and Public Administration Committee

Tuesday 7 May 2024

Session 6



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FINANCE AND PUBLIC ADMINISTRATION COMMITTEE
16th 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:

Steven Bunch (Scottish Government)

Vicki Cahill (Alzheimer Scotland)

Angela Constance (Cabinet Secretary for Justice and Home Affairs)

Craig Dalzell (Common Weal)

Allan Faulds (Health and Social Care Alliance Scotland)

Rob Holland (National Autistic Society Scotland)

Donald McGillivray (Scottish Government)

Jo McGilvray (Carnegie UK)

Adam Stachura (Age Scotland)

CLERK TO THE COMMITTEE

Joanne McNaughton

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Finance and Public Administration Committee

Tuesday 7 May 2024

[The Convener opened the meeting at 09:01]

Scotland's Commissioner Landscape

The Convener (Kenneth Gibson): Good morning, and welcome to the 16th meeting in 2024 of the Finance and Public Administration Committee. The first item on our agenda is a round-table discussion on Scotland's commissioner landscape.

I am pleased that we are joined by Adam Stachura, associate director for policy, communications and external affairs at Age Scotland; Vicki Cahill, policy and public affairs lead for Alzheimer Scotland; Jo McGilvray, senior policy advocate at Carnegie UK, Craig Dalzell, head of policy and research at Common Weal; Allan Faulds, senior policy officer at the Health and Social Care Alliance Scotland; and Rob Holland, director of the National Autistic Society Scotland. I welcome you all to the meeting. Thank you for your excellent, very detailed written submissions. Before you came in, we were talking about the amount of time that we spent over the weekend reading and absorbing them, which is a compliment to your hard work in putting them together.

I want to make it clear that this is not a situation in which I will sit and ask each of you questions. I will ask Adam Stachura an opening question that, I hope, will stimulate thoughts and conversation. If you want to come into the discussion, just let me know—put up your hand, nod your head or whatever—and I will let you in as and when I see you.

Without further ado, we move straight to questions. We expect the session to last for 90 minutes or so.

Adam Stachura, I will start with you simply because your name is first on the list and Age Scotland's submission is the first that I have in front of me. One of the important issues when it comes to commissioners is why we need them and what difference they can make. In its submission, Age Scotland said:

"There has ... been a growth in public calls, policy initiatives and Member's Bills for new Commissioners which address perceived gaps or inaction from government and public services on important matters."

What do you consider those gaps to be, and why is a commissioner needed in order to improve matters?

Next, you said:

"We believe that this landscape should grow further".

To what extent should it do so?

Adam Stachura (Age Scotland): The view that is held by Age Scotland in particular but which I think has grown in recent years among charities, third sector organisations and the public is that a commissioner might be helpful on some big issues. One of the reasons for that could very well be that, as Governments change—in essence, we will have had the second formation of a Government within 12 months—policy priorities can change at the click of a finger. In addition, elections can really change the national priorities, and the constituent groups and the big issues that remain might no longer be on the agenda.

Age Scotland's view is that a commissioner for older people is necessary. Has there been enough focus on the needs of an ageing population in Scotland? The population has been ageing for a long time and is doing so faster than the population in the rest of the United Kingdom. For instance, has there been enough Government action, priority and focus on a lot of the big challenges that that group faces?

When we look across the piece, including across the rest of the UK, at the work that commissioners do and how they operate, we see that the answers to such questions might be dependent on the individual in each role.

We can see where there has been success. For instance, at the beginning of the Covid pandemic, I and Age Scotland colleagues spoke regularly—if not weekly, then fortnightly or monthly—with the commissioners for older people in Wales and in Northern Ireland, who convened working groups. They were able to put out a call and get together a lot of the right people, as they saw it, to focus on and tackle issues and to offer insight. That work shows how successful commissioners can be in leading campaigns or in having the ear of the Government as honest brokers who offer insight and advice. They take up issues that Governments and committees will not or cannot take up.

There have certainly been gaps in addressing priority issues for organisations and individuals. There has not been enough movement from the Government or the Parliament to address issues at the scale that we think is needed. The committee has demonstrated that commissioners are an established piece of the Scottish political and public service landscape, and the Government has accepted that by virtue of its

wanting new commissioners. We look at the commissioner model as an established way of getting more effective action on particular issues.

The Convener: I understand that Alzheimer Scotland remains unconvinced by the argument that we require additional commissioners.

Vicki Cahill (Alzheimer Scotland): We appreciate that the role of commissioners is very much to place a focus, and we appreciate and welcome the principle of having a commission or a commissioner to champion the rights of individuals. However, given that there is a lack of evaluation and monitoring of the existing commissioners in the current landscape, it can be quite difficult to understand specifically what value they bring and why having commissioners would be a better route forward than other routes.

When we engaged with members of the Scottish dementia working group and the national dementia carers action network—member-led organisations of people with dementia and carers of people with dementia, respectively—we found a lack of clear understanding of how a commissioner would work to meet their specific individual needs. There is a risk that, by simply having a commissioner to highlight issues in the system, opportunities will be missed to directly address the underlying root causes of those issues. It is therefore important that we think about the whole system of commissions and commissioners and how they would work across the piece, instead of focusing on one particular population or group of individuals.

John Mason (Glasgow Shettleston) (SNP): I know that we are not concentrating on one particular commissioner, but Adam Stachura has put his case for one. Older people are one of the most powerful political groups in the country. They have achieved the triple lock for pensions—I am aware of no other group with that kind of strength. Would older people not be one of the last groups that need a commissioner, given what they already have? It is very different for children, who have no vote and no voice.

How many commissioners do you think there should be? Would you put a limit on the number of them? If we had 100 commissioners, all their voices would be tiny.

Adam Stachura: It is a good question. We are saying that there are 2 million older people in Scotland, with 40 per cent of the population over 50—

John Mason: I should have declared that I am one of them.

Adam Stachura: —and there is considerable ageism in our country, as public perceptions confirm. Children and young people have a

commissioner already, but it is not a zero-sum game, Mr Mason. It is not that there is only one thing and that we should take it away from someone else.

Within the population of older people, there are a lot of people who are incredibly disadvantaged and who do not have a voice. Although you might suggest that they are a powerful political bloc in terms of voting, only 3 per cent of older people feel that it is easy to have their voice heard, and only 8 per cent of over-50s believe that policy makers, decision makers and politicians give due consideration to the needs of older people.

In Scotland, 150,000 pensioners live in poverty. That has been the case for a number of years, but there has been no real action by the Scottish Parliament or the Scottish Government to address the issue. In a Scottish context, older people make up the greatest proportion of those who are in fuel poverty, and there has been a 14-point increase in the number of those in extreme fuel poverty.

John Mason: I do not mean to interrupt you, but, given that you are clearly a strong voice and advocate for those people, why do they need a commissioner, too?

Adam Stachura: A commissioner would have legal powers to undertake investigations and could work with other commissioners on such matters. A charity, for instance, does not have the ability or the resources to undertake a legal challenge when human rights have been breached or to take up cases on a wide scale. An organisation such as Age Scotland, which is one of many charities and organisations with an interest in older people, is a different creature entirely.

One could make the same case with regard to any of the established commissioners—why is that role necessary if there are other voices there? I appreciate that there are opportunities to have voices raised, but sometimes the action that results from that is limited. To what degree does the Government or the Parliament wish to listen to a charity? There are times when we hear that charities are deemed to be a nuisance in policy making, whether in the Scottish Parliament or in Westminster, because they have ideas that are different from the political philosophy of the Government or political parties. At times, however, politicians will really want to listen to them make a case. The mood is changeable.

There are also cross-sectional issues. Older people are one example, but when we look at all the proposals, we find that there are groups of people who demonstrably face substantial inequalities that clearly have not been addressed on a scale that is necessary, particularly as we look to the future. People might feel that a commissioner is the next step to try to address

that. It might not be the perfect solution—who am I to say that it would be?—but, given the current position and trajectory, we believe that some positive actions are required.

Liz Smith (Mid Scotland and Fife) (Con): I have two questions, Mr Stachura. You rightly said that the older demographic is a very high proportion—40 per cent—of the population. That group has multiple interests and concerns. Do you believe that, if there was to be a commissioner, you would be able to deal with all those interests and concerns?

Adam Stachura: That is a very good question. The answer is probably not, but it would depend on the resourcing of the commission. Those things are part of the unknowns. Where commissioners work with others is incredibly important. For instance, how would an older persons commissioner work with the Scottish veterans commissioner or the Scottish Human Rights Commission, for instance, to look at the cross-sectional challenges? I am not entirely sure—I might be completely wrong on this—of the degree to which commissions or commissioners work together where issues have been raised that may require better or more specialised knowledge in certain areas.

Liz Smith: That raises an interesting point for us as a committee. The commissioners in place so far have a variety of different roles: some are investigative, some deal with complaints and some deal with advocacy. So far, you have said that you think that an older persons commissioner would have primarily an advocacy role, but you also mentioned investigative aspects to that. One of the difficulties that we face—apart from the cost aspect, which is a central concern for the committee—is how we would align the roles of different commissioners if there were to be new ones. I think that it is incumbent on you to explain to us what you would see as the prime role if there was to be a commissioner for older people.

Adam Stachura: The perfect position would be something that mirrors the role of the Children and Young People's Commissioner Scotland. That role has developed and grown over time, and its level of resourcing is probably one of the highest among the current commissioners or commissions. However, you are asking a charity with an interest in older people in particular for a perfect solution—the best thing that we could possibly have. Looking at the effectiveness of the Children and Young People's Commissioner's role and the scale and type of issues in which the commissioner can be involved, I think that that would be a good place to look.

Liz Smith: Do you see any role for a commissioner in dealing with complaints? Obviously that would not be in a legal context,

because such issues would probably have to go to other commissioners, but do you see that as an aspect in which a commissioner might be involved?

Adam Stachura: I think that it could be. I apologise for being slightly vague, because there is a lot to unpick as to what that role might involve. A lot depends on what the issues of the day or of that generation are, and on what the other routes are.

09:15

However, beyond almost anything else, the challenges that older people will face are with accessing health and social care. One of their main concerns is the lack of that, and it is incredibly hard for them to have recourse to justice on that. Although that might link into other parts of public life as well, the ability of a commissioner to complain to Government, NHS boards or integration joint boards—either en masse or otherwise—and have effective action taken and be listened to because they have a statutory footing demonstrates power. The Older People's Commissioner for Wales has been able to open doors there. People see that and know that they must listen to them in a way that they might not otherwise have had to.

Again, as with all such things, many factors can make it successful or not. It depends on the person, the environment, the people, the Government or the Parliament and on what the commissioner's own interests are, but it can certainly take on big issues. There is demand for it.

Nine out of 10 older people would like one, and seven in 10 people in their early 20s think that there should be a commissioner for older people, and they understand the reasons for that. I do not want to put too much on one particular type of commissioner, of course, but there is an idea that some of these things are not just for people of the day but are for future generations as well.

All people become older. If people's lives have been made better by virtue of a commissioner for younger people, given that there is severe inequality in later life too, being able to capture challenges before they become problems for people is also important.

The Convener: I notice that a lot of our guests are very coy. So far, only MSPs have indicated that they want to come in.

Michelle Thomson (Falkirk East) (SNP): I will pose my question to Adam Stachura, but I suspect that other witnesses might want to come in. You made some very powerful arguments, as you do in championing the work that you do, but those

powerful arguments surely can be applied to a multitude of concerns.

We have considerable concerns across all of society, so what counter-arguments would you posit as to why there should not be commissioners for other areas that are of similar concern? Some potential commissioners have been suggested, but they are the tip of the iceberg, considering the issues and challenges that we have. What would be the tipping point before we get somebody advocating for a commissioner for making pâté out of crabs' eyelashes? I am being a bit facetious, but you get the point that I am making. What are the counter-arguments, and what is the tipping point before it becomes a completely crowded landscape? What the heck is the Parliament—whether it is the Scottish Parliamentary Corporate Body or MSPs—not doing?

Adam Stachura: I will try to be very brief. My hope is that others will jump into the line of fire.

I do not think that it is for us to say where the line is. Political decisions are made about where Parliament or the Government feel that there are gaps. I said to John Mason that it is not a zero-sum game in which we can have one thing and must have no more.

Michelle Thomson: It is, because it has to be financed.

Adam Stachura: I agree, but it is also not a decision that Age Scotland would make. There are lots of other areas that could be seen as gaps.

Michelle Thomson: You might have an opinion about that.

Adam Stachura: I might have an opinion, but I am not sure where the tipping point is—maybe before a commissioner for making pâté out of crabs' eyelashes, although a fishers' lobby might be right up for that. It is a very difficult position, and it boils down to how Parliament, the SPCB and others are able to scrutinise commissions and commissioners and hold them to account to ensure that they are doing effective jobs.

I am sure that there is a greater role for committees in that. Looking through all the evidence that has been submitted thus far, I think that it is clear that some commissions and commissioners do not feel that they have enough time with committees for scrutiny. However, I know that the workload in the Parliament is incredibly heavy, so there will be anxiety about adding more to it, particularly if it is not as defined as well as possible.

I will stop in a second so that others can jump in and maybe make a better case, but politics is what runs this place and the Government. The priorities are clear, but when it comes to a commission for older people, for instance, it is pretty clear that the

Government has not focused enough on older people in general and many of the related issues, considering our demographics and the fact that we are looking to make Scotland fitter for the future. Would something like that, which would be on a statutory footing, put more fire under the Government or Parliament to do so? That could be the case.

Michelle Thomson: You have neatly rounded it back to what I know you are very passionate about. If other people want to come in, I am trying to get your sense of where we go from here, because we could end up with commissioners for everything.

Allan Faulds (Health and Social Care Alliance Scotland): Starting from the ALLIANCE's position on commissioners in general, we describe ourselves as structure agnostic. We are not interested in having particular structures and we are not wedded to any particular commissioners. We are interested in outcomes and whether we can make sure that we have public services that help to realise people's human rights and to uphold those human rights, so that, when those rights are breached, people can get justice and redress and we ensure that those breaches do not arise in future.

If having a commissioner for making pâté out of crabs' eyelashes would improve things for people, we would say that it is a good idea. If having dozens more commissioners improved people's outcomes, we would say that it is a good idea. If there is a way to do it by taking a more strategic approach to the landscape, to refer back to the title of the inquiry, we would also support that.

The question that we need to ask ourselves is, what is the best thing for people's outcomes? Is it having a range of highly specialised commissioners? Some people might argue that that gives those commissioners deep insight into specific groups and allows them to focus, but it perhaps fragments people a little bit. People are not fragmentary. We are talking about an older people's commissioner, and there is also a disability commissioner, but there are also older disabled people. If they are facing issues, where do they come to? It is quite difficult to unpick that. Perhaps having a smaller number of generalised commissioners who work together and share knowledge and expertise is the answer.

Another point that I want to make about how we draw the line is that we need to be clear-eyed about what commissioners can do. We are saying that the requests for commissioners are arising from public service failures and people not having their needs met. Commissioners might go some way towards addressing that issue by highlighting good practice, stamping out bad practice, being able to investigate and so on. Fundamentally,

however, we have public service failure because we have had more than a decade of austerity and significant cuts to public services. If you strip billions out of public spending on public services, spending a few million here and there on a new commissioner might help to address some of the worst of that, but we cannot expect commissioners to overcome that fundamental problem with finance. That is perhaps the difficulty, because 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.

The Convener: I have four members who are keen to come in.

Jamie Halcro Johnston (Highlands and Islands) (Con): I am pleased that Allan Faulds talked about outcomes, because I was going to ask about those and about how we measure them. Adam Stachura, you talked a lot about effectiveness, which is completely understandable, but one of the concerns that the committee has seen in the evidence that we have received is that it is hard to identify how effective commissioners are and whether going down the commissioner route is the best way of solving issues. I would be happy to hear people's thoughts on how we measure the effectiveness of commissioners and the outcomes.

I also want to follow up on the point that Allan Faulds made about the route. Are commissioners being used in some cases as a deflection by Parliament and Government, whereby responsibility for an issue that we all identify as an issue is deflected away from Government or Parliament to a body that is not cheap but which is perhaps cheaper than actually dealing with the problem. That might not be the case in all areas but, given that different commissioners have different responsibilities and we have some that advocate and some that have regulatory powers, is there any concern that they could be used almost as a deflection?

Allan Faulds: The Scottish Human Rights Commission made that point about deflection in its useful paper "At a Crossroads—which way now for the human rights system in Scotland?" There is a degree to which it could be seen as an easy win for Government and for Parliament to say that they have addressed an issue because they have created a commissioner to deal with it. I would not say that the Parliament should take that as a reason to never have another commissioner ever again, but it is something to be aware of and to understand that it can be one of the consequences. It is not the case that, if you create a commissioner, you can pat yourself on the back and say that you have solved the issue.

I will go back to the point about measuring effectiveness. One of the points that we made in our submission was that it is very difficult to do that. That goes back to the effectiveness of preventative spend overall, because you are asking people to identify how much money has not been spent when, by virtue of the money not being spent, you do not know how much that is. If a commissioner has achieved a change to a service or intervened in a way that led to fewer people reaching a crisis point and accessing an acute service, that will save money, but it can be quite difficult to identify just how much money was saved. Therefore, I suppose that that is a question for people who are more expert in statistics and measurement than we are, but we certainly recognise that difficulty.

Jamie Halcro Johnston: However, if there is a call for a commissioner, it must have been possible to identify and measure a problem. It seems strange that, once the commissioner is in place, it is then harder to identify the problem or the progress on alleviating it. It just does not seem particularly logical, yet that is what we have seen time and again in the evidence—commissioners have said that it is sometimes hard to look at how effective something has been.

Allan Faulds: To be honest, I do not think that I have a response to that point, because, as you are saying, it is incredibly difficult to unpick those things.

We often think about disabled people. If you are talking about a disability commissioner, one of the problems that disabled people face is access to social care. There is a huge amount of unmet need in that area. I believe that the Scottish Government is working to identify the level of unmet need. Once we have figures for that, it might be possible to identify the kind of savings that might be made by preventing people from getting to that crisis point and how much it would cost to meet that unmet need versus how much is instead being spent on the consequences of people winding up in hospital because they have not received care. However, perhaps that is a further down the line thing.

Rob Holland (National Autistic Society Scotland): We have long advocated for a commissioner to promote and protect the rights of autistic people and people with a learning disability. We did that in the lead-up to the 2021 election, along with other organisations. That received cross-party support in the manifestos, and that is now one of the proposals in the Government's learning disabilities, autism and neurodivergence bill proposal, so we welcome that.

On the reasons why we campaigned for a commissioner, we have talked about the

representation of groups, and autistic people and people with learning disabilities are a population that is often on the margins, where there is not a focus on them and no advocate to speak alongside them and speak up for the issues that they are facing.

You talked earlier about outcomes. We are absolutely focused on outcomes, and we want the commissioner to be very focused on outcomes, because the outcomes for autistic people and people with learning disabilities are stark. We know that children with additional support needs are five times more likely to be excluded from school than their peers. A significant proportion of those children are autistic. Fewer than one in five autistic people are in employment. Research tells us that autistic people and people with a learning disability have a lower life expectancy than the general population, and often, sadly, those deaths are preventable. We also know that there are 300 autistic people and people with a learning disability in out-of-area placements in mental health institutions, far from their families, detained for care and treatment. There are currently very, very poor outcomes, which is why we believe that a commissioner with a focus on this population is required.

What people have told us consistently is that there is a gap between the support that they should receive and which is laid out in policies and strategies—and indeed in the law—and what they receive in practice. The other issue that we know about, from what families tell us, is that they are passed from pillar to post and unable to seek recourse and redress.

Therefore, we would want a commissioner to make progress on those things. That is what we hope for. To do that, a commissioner would need the correct resources, legal framework and focus, and, importantly, to listen to the communities that they would exist to serve.

The Convener: Rob Holland, you made an interesting comment in your submission. Many of the submissions that the committee has received and much of the evidence that we have taken refer to concerns about the risk of duplication. However, in your submission, you said:

“Potential for overlaps in function is put forward as an argument against Commissioners being established. We would contend that overlap in function should not be seen as a problem, but rather the means of ensuring that individuals do not fall through a gap in ‘the system’.”

However, if there is duplication in the system, surely that confuses the issue and makes it difficult to deliver the outcomes that people require.

09:30

Rob Holland: That depends on what we mean by duplication. For example, if we are talking about information around understanding your rights and how to exercise those, there is duplication already. That exists across different websites, whether it is the Scottish Human Rights Commission website or our website, for example. Therefore, in some ways, we do not see that as an issue.

If we are talking about things such as investigation, at the moment, commissioners pursue a generalist approach—they are set up to do that—so there is not focused work on this particular community. Therefore, there would not be duplication in that regard because that focused work is not going on at the moment.

The Convener: There are six people who are keen to come in. Before I bring you in, Craig, I just note that, in your submission, you said:

“The Scottish Parliamentary Committees are themselves too weak and too vulnerable to being co-opted or ignored by Government”,

which I do not think is something that this committee would recognise as reality.

Craig Dalzell (Common Weal): I think that that point has been brought up by some other committees. If some committees are better at making their voices known, then all power to them.

Part of the commissioners’ role, as we have been discussing, seems to come from that advocacy and protection perspective. Recently, we have seen a much more rights-based approach to legislation in Scotland, and commissioners might well have a role to play in safeguarding rights. If you feel that your right has been broken in some way and you do not know how to redress it, you do not have it as a right—it is not protected. However, that also opens up the messy landscape that we have often talked about in which we do not have rights that relate to every commissioner and not every single commissioner is a protector of rights. If our right to, say, freedom of information is broken, we can go to the Scottish Information Commissioner. However, we do not yet have the right to housing or the right to food, so the commissioners who cover those areas do not have a remit in that regard.

However, that brings in a concern that we have brought up in our submission, which is that a lot of these commissioner roles come out of Government legislation. I do not want to overfocus on the proposal for an older persons commissioner, but our interest in that arose from the early days of the now outgoing Administration when it dropped the minister for older people, with whom we had been developing quite a good relationship. That is normal—Governments will

chop and change their ministers to deal with the priorities of the day—but it raises the question of what the landscape looks like in a particular area. There might be, say, a minister and a commissioner covering a particular role; you might have one but not the other; or you might have neither. We might have two different pathways to determining a matter, if we have both a minister and a commissioner for older people or younger people, or we have one or the other, or we have neither.

That is why, in our submission, we looked at why commissioners should be much more governed by Parliament than by Government. However, one of our big concerns in that regard is that, if the Government is creating commissioner roles that are not necessarily backed up by a ministerial role in the same area, democratic accountability could be shifted out of Parliament. Commissioners can come to committees and be held accountable in that way, but they cannot be held accountable to the whole Parliament in the same way that a minister can be. Therefore, I really would not like the commissioner landscape to turn into a landscape of ministers without accountability.

The Convener: You say in your submission:

“The Scottish Government itself has admitted a lack of research into the evaluation of effectiveness. We would recommend that this research is conducted as part of the review of the role of Commissioners. We would also recommend that until that review is complete, no new Commissioners are created and that existing Commissioners are not replaced at the end of their term.”

A significant gap would be created if that research were to be delayed in any way.

Craig Dalzell: That comes down not so much to what we want commissioners to do but what we want them to achieve. If we do not have evidence of effectiveness, we need to know that. I do not think that we should get into the position of not having an information commissioner, for instance, although I should say that there is very good evidence that that commissioner has been effective.

The Convener: Five people are still keen to come in, but Ross Greer has been very patient and has been waiting quite a while.

Ross Greer (West Scotland) (Green): For us, part of the motivation for holding this inquiry is the sense that, when proposals for individual commissioners are posed to Parliament, it is—to put it bluntly—put in a position where no individual MSP or political party wants to look unsympathetic to a particular vulnerable group. Clearly, though, we are heading into a situation where things are spiralling. I want to pick up on what Allan Faulds said about the potential for having a wide range of

very specialist commissioners or a couple of more generalised ones.

My question is particularly for Adam Stachura and Rob Holland in the first instance, as they represent organisations advocating for specific commissioners. Given that the vast majority of the commissioner positions that are being or have recently been proposed relate to rights advocacy and the upholding of rights, I have to wonder whether that is not something that a strengthened Scottish Human Rights Commission could do. Most of the proposals on the table at the moment are to do with upholding rights. We already have a human rights commission, so should we not be considering why so far it has been unable to fulfil the specific needs that have been identified? I think that the commission would be interested in having its position, role and resource strengthened instead of the landscape being fragmented further.

Rob Holland: That is a very good question. Indeed, the committee explored it with the commissioners at last week’s meeting, and it is one of the proposals in the public consultation on the learning disabilities, autism and neurodivergence bill, which has just closed. It will be very interesting to see the responses to that. It is important that we listen to the voices of autistic people and people with a learning disability, because they are not always listened to.

Last year, we did some research—it is the glossy booklet in front of me—called “Closing the Accountability Gap”, which included the views of autistic people and their families, 96 per cent of whom wanted a distinct commissioner with a focus on their community. There is a strong case, given the incredibly poor outcomes that that community faces, for a focused commissioner who is 100 per cent dedicated to and focused on improving those outcomes.

Ross Greer: I am not being unsympathetic, Rob, because I completely agree with that, having sat on the education committee for eight years working with children with additional needs. Unfortunately, however, there are literally dozens of other groups in Scottish society that we could point to as having incredibly poor outcomes and whose rights are not being upheld. Clearly, though, we cannot have dozens and dozens of specialist commissioners.

The Parliament, then, is presented with the challenge of having to ask whether there are certain groups whose rights are being so fundamentally compromised or whose situation is so specific that they require their own commissioner, and that puts us in the very uncomfortable position of having to say that some vulnerable groups are more vulnerable than others and so on. Could that not be addressed by having a strengthened human rights commissioner who

can take that intersectional approach? There are people with autism who are also older people, and there are people with autism who are also disabled. Surely a single commissioner, with all the responsibilities and resource that they needed, would be better able to address the intersectional way in which people's rights are often compromised.

Rob Holland: We are completely focused on the outcome. You could beef up an existing commissioner and give them the correct legal powers and resources, but they would also require to be able to fundamentally change what they were doing. At the moment, with their legal framework, they operate—for want of a better phrase—as a generalist body. The question is whether they can pivot to focus on and make progress with one particular group, but I do not know the answer to that.

We are 100 per cent focused on whether the outcomes will improve and whether that is better than having a focused body whose role is listening to autistic people, carrying out investigations in that area and responding to individual inquiries. We are quite sceptical that bolting something on to an existing commissioner will result in the systemic change that we want to see, but we will see what the consultation tells us and, indeed, what communities tell us, too. Without pre-empting the consultation's results, I imagine that there will be some scepticism from communities who have had their voices ignored for many years if the response is that we are just going to bolt it on to something else and see what happens.

Ross Greer: I see that Allan Faulds is keen to come in.

Allan Faulds: The ALLIANCE was taken with the suggestion in the Scottish Human Rights Commission's "At a Crossroads" paper of establishing a rapporteurship model. That might address some of the concerns about not having a dedicated voice; although they would be part of the SHRC overall, you might have a rapporteur for people with learning disabilities, one for people with autism and one for older people. We definitely think that such a model merits investigation.

There is something that we would encourage not just the third sector and commissioners, but the Parliament and the Government, to do. Often, we find ourselves advocating for particular policies, then new evidence and ideas emerge, and we need to engage with that new evidence and those ideas with an open mind and not with prejudice towards our previous positions. Setting up each of these commissioners as a separate statutory body, with its own separate staff and commissioner, might result in an incredibly complex landscape, but if what people want is a

champion—a word that occurs quite a lot—a rapporteurship model could very well create one.

As we have touched on a number of times—I have said it myself and Ross Greer and others have said it, too—people do not fit into individual boxes. You might be autistic, but that will not be the only thing about you; you might also be an older or younger person, you might be a member of the LGBT community and so on. At the meeting that we had a few weeks ago when the inquiry opened, someone said that people's lives were not fragmented, so why should the commissioner landscape be fragmented? I found that contribution to be useful.

We at the ALLIANCE are not saying that the rapporteurship model is the one that should be taken up. However, it very much merits investigation by people.

Vicki Cahill: What Allan Faulds has just been saying folds neatly into the point that I am about to make on public expectation of commissions and commissioners, what they can or cannot do, and what they are seeking to achieve. It is through listening to people with lived experience that we identify the problems that commissions and commissioners seek to address. However, whatever their expectation might be of how those issues can be addressed and whether they fit neatly into a particular box, it can be difficult and challenging if commissioners have broad remits and do not necessarily deal with specific groups of individuals or their level of needs. There is a concern that potentially broad commissions might miss the specific needs of individuals, and what we need is something that shores up everyone's rights.

In our submission to the inquiry, we say that we should explore ways of reinforcing the ability of existing commissions, such as the Scottish Human Rights Commission, to deliver on their current remit and provide the additional resourcing that they might require to be able to do so effectively for all groups of individuals. We recognise, for example, that people with dementia do not fit neatly into a particular box. We have people who are younger and people who are older, and people who recognise that they have a disability and people who do not necessarily recognise dementia as a disability. They would find it difficult to pop themselves into a particular box. In addition, where there are overlapping issues, the level of confusion in the landscape can create difficulty in terms of being able to access the right person at the right time.

We then need to think about how we support those individuals in accessing an easier route towards ensuring that their rights are actually met. We would encourage further investigation of what the existing landscape is and what it is likely to be

as we move into the future. We also need to think about how we shore up existing rights and ensure that they are put in place.

09:45

The Convener: Jo McGilvray, I note that you call in your submission for “a Future Generations Commissioner”.

Jo McGilvray (Carnegie UK): First, to follow on from what Vicki Cahill said, I think that it is helpful to see calls for a commissioner as the start of a conversation. The goal is not the commissioner itself; as others have said, the goal would be the outcomes that we want to see. However, the conversation can be a useful way of drawing political attention to the issues and exploring all the solutions that could be on the table, whether they involve a commissioner or something else, or the strengthening of existing models.

In response to your point, convener, my answer is yes—we at Carnegie UK are calling for a future generations commissioner. That is linked to certain specific individual benefits that we think that commissioners can bring in comparison with other models, including the ability to drive an outcomes-focused approach; to offer accountability by scrutinising the work of Government and governance bodies, and all the different parts of the state; and, crucially, to drive long-termism. Because 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. We think that all of those things could positively help address some of the big challenges that we face, such as making difficult spending decisions and prioritising prevention.

John Mason: I will follow on from what Jo McGilvray said. The Carnegie UK submission made the point that a commissioner can make “cost savings”. I want to press you on that. How quickly could that be done? Is it inevitable that the costs will be in year 1 and the savings will be in year 25?

I will say my bit before you come in. Should that be one of the measures? When a commissioner meets a parliamentary committee—whichever committee it is—should that committee ask the commissioner whether their work has produced savings or whatever?

I initially put my hand up to speak in response to some of the things that Rob Holland had said, but Ross Greer asked him about some of those points. The National Autistic Society Scotland submission talks about “improved representation and visibility”. That is fine if there are seven commissioners, but—to go back to Ross Greer’s point—what if we have dozens? If there are 100 commissioners, no one will have much visibility. I

realise that you are fighting your own angle, but could you take an overall approach and look at the bigger picture? You might get visibility for a few years with a commissioner, until more commissioners come along.

You also talk in your submission about leveraging finance. Can you tell us what you mean by that? Does that mean that the money would come from other vulnerable groups who did not have a commissioner, or from higher taxation? Where would the money come from?

Perhaps Jo McGilvray can go first.

Jo McGilvray: That is quite a difficult question. It comes back to the point that Craig Dalzell made about evaluation, which clearly needs to be strengthened so that we can understand how well commissioners are doing.

If a commissioner is able to successfully drive an outcomes-based approach and improve outcomes, there will be cost savings from all sorts of different places. However, 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. If they had not done that piece of work, what would the costs have been? I do not know how you could do that, but there are probably ways of doing it a bit better. Some of that is probably about which outcomes we look at and how we capture progress.

There are things in place in Scotland. We have the national performance framework, which could be better used to capture all those things. All the different commissioners could work to those shared outcomes.

John Mason: Let me press you a little on that. Is it inevitable that, when a commissioner is created, the first thing that they will ask for is more money for their sector, or can a commissioner look at the money that is being spent and say, “You could spend that same money better”?

Jo McGilvray: They should be able to do that, because 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. You are accountable for the money that you spend and the particular outcomes that you are supposed to deliver, but if somebody sat above that and brought the different parts together, there would certainly be potential to save money.

Rob Holland: On the issue of money, back in 2018, the Scottish Government published “The Microsegmentation of the Autism Spectrum”, a report that calculated the annual cost associated

with autism to be £2.3 billion. That includes the cost of services and support, as well as the loss in economic productivity connected to, as I mentioned, the employment rate being below one in five.

A significant amount of that support is spent on crisis. As I mentioned, 300 autistic people and people with a learning disability are in in-patient mental health hospitals and out-of-area placements at the cost of hundreds of thousands of pounds to local authorities and other agencies. We very much see the commissioner as having a role in ensuring that people get the services that they need at a lower level, so to speak, which would prevent the need for more costly crisis provision. That figure of £2.3 billion would then, I hope, come down.

John Mason: Is that not fundamentally because we do not have enough money to do the things that we want to do, including—I am sure that we all agree on this—what you have just said we would like to do? A commissioner being created does not create more money.

Rob Holland: But a commissioner could highlight through their work that spending money at a certain level prevents further costs down the line.

John Mason: The committee has struggled with that over the years. We could spend more money in any sector today and save money in year 25, but where do we get the money today?

Michael Marra (North East Scotland) (Lab): We have talked about outcomes and the two groups that are principally advocating for new commissioners. There was a bit of focus on the case that has been made, but I have still not heard examples of outcomes having been improved in Scotland as a result of having a commissioner.

Rob Holland, your survey showed that 94 per cent of respondents said that they were supportive of a commissioner—I think that that was question 4 of your survey. I feel that the methodology supported the concept, because you could have asked people, “In the absence of evidence of improved outcomes, do you support a commissioner?” Did you present evidence of improved outcomes to people who filled in the survey, or did you tell them that there was none?

Rob Holland: There is not currently a commissioner who is focused on autistic people and people with a learning disability, whereas, with the children’s commissioner, for example, there has been progress in a number of areas.

Michael Marra: What areas?

Rob Holland: We are looking to that as a model of practice.

Michael Marra: In what areas have there been improved outcomes? I put that question to the children’s commissioner last week. We see increasing levels of child poverty, declining educational attainment and a mental health crisis among young people. The children’s commissioner has been around for 21 years, but I am not sure that I have seen evidence of improved outcomes.

Rob Holland: It is for the children’s commissioner rather than me to defend what they have done, but many of the things that you are talking about are not the fault of the children’s commissioner—

Michael Marra: No, of course not, but you are proposing that a commissioner model would improve outcomes, and I am saying that I do not see the evidence that that has been the case with other commissioners. Given that you are advocating that model, I assume that you have seen the basis on which outcomes have improved for a set of people somewhere.

Rob Holland: We see, in the children’s commissioner, a very powerful advocate and champion who is out there talking about what needs to happen for children and young people. There is no such advocate for autistic people and people with a learning disability. We absolutely want the proposed commissioner to focus on outcomes, but I cannot speak to how successful the children’s commissioner has been in relation to some of the areas that you have picked up on.

Michael Marra: You are advocating the commissioner model, which is what the committee is exploring, so I am keen to understand why you think that there has been cause and effect—the connection between using that model more and outcomes, which you have said that you are completely focused on.

Adam Stachura, do you have any other evidence?

Adam Stachura: Those questions, as with all the questions from the committee, are very good and shrewd. I will look at the macro aspect and, if you will indulge me for a couple of minutes, I will go into a bit more of the micro aspect.

When we look at where we are on lots of different issues, including social issues, and big challenges in Scotland, we find that there is either no progress or no opportunity for progress on fixing things. I do not want to litigate with regard to current commissioners and what they do. I do not have much experience of that, because there has been no such thing in this space. Particularly in the case of the Scottish Human Rights Commission, perhaps there has not been a huge amount of focus on older people’s needs because of its remit or its small resource.

However, we see commissioners as taking a more long-term view in trying to narrow the inequalities in some areas, which is not happening at the moment. That could be done through Government action, but Governments can change. As we heard from Craig Dalzell, ministerial responsibilities can change and lots of things could happen in the current set-up, whether that is with regard to the Parliament, committees or changing ministerial positions. However, with a commissioner, organisations or individuals think, "Here is something else, because there is potential and opportunity."

If we are reflecting, we can look at the Older People's Commissioner for Wales and the Commissioner for Older People for Northern Ireland. Those are two slightly different positions, because Eddie Lynch in Northern Ireland had, in essence, no functioning Government for a number of years and his term will imminently come to an end. Only within the past month or so has he had any kind of Government to go to with issues, and there has been a stagnant civil service that was unable to make decisions. However, Heléna Herklots in Wales is able to look at certain issues with the Welsh Government. For example, with regard to pensioner poverty, she can try to get the Government to do more work on increasing awareness of pension credit and social security or on ageism reports. That role has a good bit of locus so that the Government can then take action.

Michael Marra: That is useful. Have outcomes improved?

Adam Stachura: To be honest, right at this second, I could not say exactly what the outcome is. Our reflection, from speaking with Heléna Herklots—at one point, on a weekly basis with a coalition of organisations across the UK—is that the outcome is that the role can bring together, in lots of different circumstances, a lot of the right people in the right rooms. The commissioner has the ear of the Government—at times, depending on the political will—to push forward issues, they have credibility and clout, with insight, and they are able to undertake investigations. I apologise for not having the details, but that is certainly our reflection: we have seen that having a commissioner or a commission can work really well.

However, that is quite subjective, depending on what you want the outcomes to be. For instance, in Scotland, you might look at how we can close the digital exclusion gap.

Michael Marra: To be fair, I am looking for objective rather than subjective outcomes. We all agree that we have seen really impressive people come before the committee as commissioners. They are incredibly passionate about the people

whom they represent, and we share their sympathies. My questions are about the model.

I will take my questions into a slightly different space, if that is okay. People are talking about accountability and, in lots of the evidence, about holding politicians to account for what they say. However, I think that the suggestion is that committees of politicians should hold the commissioners to account. In what way does the accountability model work, and is it reasonable to assume that we will get better outcomes if commissioners hold politicians to account and politicians hold commissioners to account?

10:00

Craig Dalzell: At Common Weal, we have a principle that nobody should govern themselves, so a circular model of accountability such as the one that you have described could be effective.

Michael Marra: I understand the technical need for people such as freedom of information commissioners and standards commissioners to oversee Governments and politicians. It is absolutely right and necessary that those people keep an eye on politicians. However, if this is about influence, will there be a conflict in the power structure if we ask politicians to do something and we have lobbyists being held to account on their lobbying? Will that improve outcomes?

Craig Dalzell: That speaks to the point that I was going to raise. When I was reading through the part of Allan Faulds's submission on the rapporteur model—

The Convener: That is funny—I was going to talk about that part of Allan Faulds's submission next.

Craig Dalzell: When I read that part of the submission, Philip Alston's 2018 report came to mind. When he was the United Nations special rapporteur on poverty for the UK, he produced an incredibly detailed and wide-ranging report on the state of poverty and welfare. It could be argued that that was an effective role, because that really good report laid bare a lot of issues and changed the way that we talk about poverty and welfare in the UK. However, it could be argued that it was an ineffective role, because the UK Government completely ignored the report.

That gets to the heart of the question about effectiveness and accountability: what happens if commissioners are ignored by Governments? I suggest that they can still perform an effective role, but that changes the nature of it.

The Convener: That takes me to the point that I was going to raise with Allan Faulds. In your submission, you said:

“We would suggest that at a minimum, all Rights-Based Commissioners should report directly to the Scottish Parliament.”

What would the mechanism be for that? If it is not committees, are you talking about commissioners going before the whole Parliament? How do you envisage that working in practice?

Allan Faulds: I am not sure whether that was my exact wording.

The Convener: It was—I quoted you word for word.

Allan Faulds: Perhaps I gave an impression that I did not intend to. I said “directly to the ... Parliament” and committees are obviously part of the Parliament. We are arguing for a dual process. Commissioners come before committees, and committees get reports on what commissioners have done, but the outcome of the reports should go to the whole Parliament, which should be involved in the work. If a commissioner has had their say—perhaps through an annual report—and a committee has scrutinised that, there should be space for, perhaps, a committee-led debate on the work of that commissioner during the previous year. That would allow all members of the Parliament to feed into the discussion about what that commissioner had achieved or not achieved.

It was not our intention to suggest that the committees’ role of scrutinising commissioners should be taken away, but the rest of the Parliament should feed in.

The Convener: Craig Dalzell, at the start of your submission, you said:

“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.”

Have you got any examples of that?

Craig Dalzell: I do not think that I can give you a concrete example off the top of my head, but it is a risk of that model. I mentioned that, in the current model, commissioners who provide, let us call it, inconvenient advice can be ignored because they are not part of Government, but a minister cannot do that; they have to stand up and take accountability for Government. If there is a shift of roles and responsibilities from ministers to commissioners, we would worry about that.

The Convener: You talk about the Government developing “a risk-averse attitude” to expanding the growth of commissioners, but a lot of commissioners are coming from the ground up. Rob Holland, Adam Stachura and Jo McGilvray have made it clear that they are keen for additional commissioners, so it is not as if the Government is rolling out loads of commissioners to avoid

responsibilities. A lot of them are coming from beneath. That is one of the issues that the committee is trying to address about the expansion of the entire landscape.

Craig Dalzell: Yes, and we have seen that, too. As I say, our interest in the issue came from that moment when we lost the minister for older people, which provoked a call for a commissioner for older people to try to retain some of that lobbying power and accountability. We have seen that.

The Convener: The Government would argue that it did not really lose the minister for older people; it just did not use the title. In fact, Adam Stachura and I talked about that last week and I commented on the issue in the *Sunday Post*. I think that older people should be in the title of a forthcoming minister. Removing the reference does not mean that the issues are put to one side; it just makes it look as though those people are not considered to be as important as others, which is an important issue.

John Mason: On that point, and based on what Craig Dalzell said, is it important that the words are in a minister’s title?

The Convener: It sends a signal.

John Mason: I know that it sends a signal, but you could have names that go on for weeks. Surely every issue is covered by a minister, so does it really matter what their title is?

Adam Stachura: I think that it does. It is not just about what the title is; it is about the number of responsibilities that they have and where they sit. I am not here to give a running commentary on what is or is not worthy of being in the title. I go back to Craig Dalzell’s point about the call for a commissioner for older people coming on the back of losing a named minister for older people. At one point in 2018, there was a Cabinet Secretary for Social Security and Older People and a Minister for Older People and Equalities. I am sure that you will all recall that a commissioner for older people was in the Age Scotland 2021 ask of the Scottish Parliament, when at the same time there was a minister for older people, which shows a realisation that there are complementary roles.

John Mason: Do you think that the minister cares less about older people because those words are not in their title?

Adam Stachura: No, I do not think that that is the case. What matters is how much time the Government, ministers or departments have for particular issues. This is not meant with any particular criticism of the current minister or the current set-up, but it just feels as though it has been heavily diluted from where it was. We maybe saw more action in the past. In 2018, we had a

minister and a cabinet secretary with named responsibility and it felt like a lot more was going on.

There is a big job for the current minister who has older people within their responsibilities. Reshuffles have meant a bit of merging of things such as migration and refugees into the equalities portfolio. It is about how the First Minister wants to run their Government. I think that the title is really important, and I think that older people feel that it is really important.

John Mason: But so do people with autism and so do children.

Adam Stachura: You are absolutely right.

John Mason: Is “equalities” not a better overall term?

Adam Stachura: I suppose that there is an argument to be had about whether equalities is the right place to put older people. Should they maybe be in with social justice? It depends on the action and activities. Age is a protected characteristic, so is that the right place? That is a political decision and an outcomes and action-focused decision.

Before I am muted, I will speak to Michael Marra's point about political scrutiny. I am thinking about a commissioner challenging the Government, not just politicians in general, and the politicians in the Parliament holding the Government to account in the same way as the committees challenge and hold the Government to account.

Michael Marra: I talked about a minister challenging—

Adam Stachura: Yes. The commissioner is there to challenge the Government and ministers on their actions, whereas the term “politician” is really meant in two forms. One is Government and there is also the Parliament and the strength of the committees to do that. The term “politician” is a loose phrase for where a commissioner might go. Having scrutiny of the person who is scrutinising the Government is another route to scrutinising the Government and making sure that important matters are right up the agenda. That is politics. A lot of it will be about not just who shouts the loudest but where the evidence is, what the big issues of the day are and the Government's political philosophy for tackling them.

It is not just about virtue signalling, Mr Mason. There is an importance in the minister's title, which might be lost in this particular instance, but there was also a reason to bring it in in the first place. Jeane Freeman previously had a role with older people while she was Minister for Social Security and, at a certain point, it was deemed that the role should be enhanced. The feeling was that it had been watered down among lots of other things. All

credit to the ministers but, if I was doing it—and I am glad that I am not—there are lots of really important issues to get involved in, because everything that is important to everyone is really important.

The Convener: Adam, we touched earlier on the commissioners in Northern Ireland and Wales, and you say in your submission that Wales and Northern Ireland have had older people's commissioners since 2006 and 2011 respectively, which is a considerable period of time. Your submission states:

“Both have had a positive impact on the experiences of older people, working together with older people to stand up for their rights, enact change and seek justice when things go wrong.”

What have they been able to achieve that we have not been able to achieve in the same space here in Scotland?

Adam Stachura: They have certainly been able to achieve—whether you can measure this in actual pounds is a slightly different question—the right kind of structure and political noise on issues. I will give the example of Eddie Lynch. Northern Ireland did not have a functioning Government, and he felt heavily frustrated—when reports on work had been collated, he wondered who on earth he should lodge them with and have discussions with.

The commissioner in Wales, Heléna Herklots, has taken forward action on ageism in Wales and has brought that to the Welsh Government looking for actions, but I do not know whether it has been able to do anything on that. The commissioner has been looking at bigger national campaigns on uptake of things such as pension credit. Although that is not devolved to Wales, the commissioner has taken that up, whereas we do not have such concerted central action on that in Scotland.

The commissioner has also looked at issues such as digital exclusion of older people because, as a result of the Covid pandemic, public services and access to them have become predominantly online. The commissioner has been able to challenge public authorities in making sure that the door is open for people, and has been able to do so with the locus and gravitas that comes from being on a statutory footing, whereas, if a charity such as Age Scotland comes to many committees and complains that older people who are digitally excluded have no access to services, not much action is taken. There is much agreement in general, and there is hand wringing from us and others, but the commissioner in Wales has been able to look at issues.

I do not mean this only through the lens of older people, but the issues can change for any commissioner over time. Having a commissioner

for older people might have been effective during the Covid pandemic. It might have been effective with regard to putting access to social care and care homes up the political agenda and looking at investigatory powers, when others may not have been doing so. You can look back, but we do not know what is coming in the future.

In the landscape that we have, there is at times a huge amount of frustration among people outside this building, including charities and the third sector, about inaction on things that we care deeply about. The public also has that frustration. The mechanism for a commissioner has been one issue, probably of many, to see better actions and outcomes on the issues that you live and breathe every single day, and your constituency mailbags will be full of those, too.

The opportunity to take better and more effective action depends on the people, the resourcing, the structure and how people work together. For instance, I wonder whether you have cases in your constituency surgeries and inboxes where you might feel that if you got together with a commissioner with statutory powers, you could make something happen and run a big campaign. There is almost a feeling of, “What other tools do we have in our Scottish toolbox to tackle these injustices?”

That is where some of the positioning on commissioners from many organisations comes from. They see that there is a gap and that having a commissioner seems to work or has been established or accepted as a useful mechanism in some places. However, it is clear that there is also frustration around being able to measure the financial outcomes and, in some ways—as I said before—the preventative spend of those actions.

The Convener: We have been chatting for almost 75 minutes, and we have about 15 minutes left. I will let John Mason in in a minute. He is the only person who has indicated that he wants to come in. After that, I will ask each of our witnesses to think about what they would like to say as a final comment. Perhaps you could touch on an area that we have not covered so far, or you could re-emphasise an area that we already have. I will leave it completely up to you.

I will let Adam speak last, so that he can catch his breath, apart from anything else, and because he spoke first.

John Mason: I will follow up on what Adam said. We sometimes struggle a bit to measure things, but uptake of pension credit is a long-running problem—it was a problem when I was in Westminster. That is something that we could measure.

You said that the Older People’s Commissioner for Wales has been around since 2006, and

Northern Ireland’s has been around since 2011. I am not expecting an answer right now, but could you come back to us with figures to show whether pension credit uptake has improved in Wales and Northern Ireland?

Adam Stachura: Relative to Scotland?

John Mason: Yes. It is stuck everywhere, as I understand it.

Adam Stachura: I will try my best.

The Convener: Okay, who wants to go first?

10:15

Rob Holland: I am happy to go first. We arrived at wanting to campaign for a commissioner partly because many good strategies and many good laws—lots of different initiatives—have failed to make the kind of impact that we want. Although the 10-year Scottish strategy for autism, which concluded in 2021, made progress in some areas, it did not really result in the systemic change that we want. The calls for a commissioner have therefore come after lots of things have been tried but have not made much progress. That is coupled with the fact that the voices of autistic people and people with a learning disability are often unheard. Having a body that has statutory powers to speak up and perceive things is therefore important.

As we have talked about, however, having a commissioner does not by any stretch solve everything, and lots of other important things are included in the learning disabilities, autism and neurodivergence consultation, including placing various statutory duties on different bodies as well as putting local and national strategies on a statutory footing. In the proposals in that consultation, which has just concluded, there is a real ambition from the Scottish Government to transform things for that group of people. A commissioner will play a key role in that new and improved landscape, so there is a very strong case for it.

Jo McGilvray: I think that everyone here recognises that there is no easy answer to any of this. Commissioners do all sorts of different things, so a one-size solution will not arise. It is helpful to view the advantages of each proposal on their own merits and in their own contexts and to continue to consider the public administration benefits that commissioners can bring, as well as the costs. It is about value, not just cost.

Craig Dalzell: I mentioned that the worst-case scenario for me would be commissioners turning into ministers without accountability. However, I will leave on a happier and more positive note—

The Convener: Good.

Craig Dalzell: For me, a positive outcome of the review would be the strengthening of commissioners' ability to guide committees, to be responsible to the Parliament and, ultimately, to help both of those to hold the Government to account. I would like that model to come out of this process: committees and the Parliament becoming much more empowered to do their job.

Vicki Cahill: I will leave you with thoughts on accountability going beyond just the commissioner, the commission, the Parliament and parliamentary actors. It has to extend further and take into account all the stakeholders who might be involved when it comes to a commission or commissioner achieving what they set out to do to get particular outcomes. Those stakeholders could be individuals from third sector organisations or from other public bodies, who may have a vested interest in meeting those outcomes or dealing with complaints that might come about, or, equally, and probably most important, those with lived experience. We need to ensure that they have some involvement in the accountability model and how that is set out, so that those whom the commission or commissioners are there to serve have some kind of say in what the commission does, how it moves forward and how it engages with those whom it seeks to serve.

The Convener: Thank you. Allan Faulds has been scribbling furiously over the past few minutes.

Allan Faulds: A lot of the focus today has been on the champion and visibility side of having a commissioner and their role as a spokesperson and someone who develops policy. We have talked less about the possibility of commissioners having investigatory powers and the right to raise legal proceedings. For example, the SHRC has asked for the ability to raise legal proceedings in its own name.

We know that people whose human rights are being breached or are not being fully realised are struggling to access justice and remedy. If commissioners are able to support people to access justice and get redress for service failure, and that comes with enforceable recommendations or court rulings that public bodies have to follow, we might see substantive and meaningful change. Perhaps a strengthened SHRC with a rapporteurship model might excel. If individual commissioners had those powers, they might help.

I go back to the point that I made earlier, which various MSPs and other speakers have made. A lot of this fundamentally comes down to resourcing and the ability of public services to meet people's needs. I made the point to the Equalities, Human Rights and Civil Justice Committee during pre-budget scrutiny a couple of years ago that human

rights are not delivered with good intentions but, frankly, with cold, hard cash. We need the services to be in place to realise people's human rights. Until we address the root issue of real pressure on public finances and public services—I appreciate that this inquiry cannot do that and that this committee cannot do that by itself—commissioners will perhaps be a helpful plaster over a wound, but they will not solve the root problem.

Adam Stachura: It is really important to realise and recognise that outcomes can be better for real people—for citizens of Scotland—today and in the future, and a model of commissioners can be one of the routes to help with that. It can help to raise issues and take action where others cannot or have not, and potentially be a constant for people, whatever their challenges are.

I have talked about the deep frustration that we might have about inaction on things that we are all so passionate about or recognise and see every single day. It is important that the committee looks at the context of the spend of money, but also at the scrutiny and accountability. For instance, where does an older person go to with the issue that they are faced with? Where do they feel that they will get support? It is about not being passed from pillar to post and ensuring that we have effective places for people to get the action that they require and demand. It should be the overwhelming urge of all of us to meet that.

I welcome this inquiry. It is really important, because we have had a growing landscape, and the anxiety about how we are able to manage what we have and what will maybe happen in the future is clear. However, a Government can decide and concede at any point that it wants to commission something, and that will go through if it has the votes in the Parliament.

There are more fundamental issues behind how those things are managed well. In our submission, we suggested that the corporate body might not have the resources that it needs to do as effective a job as it might want to do, or as the committee might want it to do, to ensure that the process works.

We do not necessarily need clarity and uniformity in respect of each commissioner's role. Overlap could be helpful, and it is important for commissioners to have different powers depending on the need. Therefore, having a really clear map of what commissioners do might not be the best starting point, because they will do different things for different people at different times. The committee should have an open mind about what could be beneficial.

On John Mason's point, the savings that could be made—I am sure that they will be made—might

not always be realised in year 2 or year 3, but if we do not do anything, we certainly will not have any savings in year 25. That is really important to consider.

The Convener: I thank all our witnesses for their active participation in the discussion. We will continue our evidence sessions next week. Thank you very much for coming along. I also thank members of the committee for their involvement and contributions.

We will have a break until 10.30.

10:24

Meeting suspended.

10:30

On resuming—

Police (Ethics, Conduct and Scrutiny) (Scotland) Bill: Financial Memorandum

The Convener: The next item on our agenda is to take evidence from the Cabinet Secretary for Justice and Home Affairs on the financial memorandum for the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill. The cabinet secretary is joined by Scottish Government officials Donald McGillivray, who is director of safer communities, and Steven Bunch, who is the bill team leader.

I welcome you all to the meeting and invite the cabinet secretary to make a short opening statement.

The Cabinet Secretary for Justice and Home Affairs (Angela Constance): Thank you, convener. I am appreciative of the opportunity to join you all this morning and to answer any questions that you have. If you are content, I am more than happy to dispense with opening remarks, bearing in mind that you have heard from Scottish Government officials and I have written to the committee. I do not want to waste the committee's valuable time in repeating what you already know. Therefore, convener, I am happy to go straight to questioning.

The Convener: Thank you. That is indeed helpful. As normal, I will kick off with a few opening questions and I will then let colleagues in. Two members have already indicated that they wish to ask questions.

The main concern was that, in March, Scottish Government officials presented us with a financial memorandum for scrutiny that they already knew bore no resemblance to the actual bill costs, which they stated. If we look at the updated figures that we will be presented with, it seems that the costs in that memorandum were only about a quarter of the actual costs. I am sure that you will agree that, for the committee to carry out effective scrutiny prior to stage 1, we need the most up-to-date and accurate costs that are available.

Angela Constance: First and foremost, I acknowledge the importance of scrutiny at every stage of the process. As well as being a minister of some years' standing, I am also a former member of the finance committee.

The Convener: Indeed.

Angela Constance: I therefore understand your role, remit and responsibilities in that regard very well. I of course have to acknowledge that the changes to the financial memorandum are significant. Would I have preferred what I know

now to have been in the original presentation, along with the bill? Absolutely. My officials have narrated that the financial memorandum that was produced and published along with the bill last June was based, in accordance with standing orders, on the best information that was available at that time.

As the committee is aware, Police Scotland, which is a significant partner, reconsidered its position after the bill was published. I contend that that was for legitimate reasons. After significant scrutiny on behalf of the Government, we are accepting the information that Police Scotland and other partners presented. I acknowledge, however, that the change is not insignificant. Although it is a very small part of the overall policing budget of £1.55 billion, I am nonetheless acutely aware—as members of the committee are—that, right now, every pound in the public purse is precious.

The Convener: One of the submissions that we received was from a local authority that is concerned that, because of the increased costs to the budget, there could be an impact on operational policing. Although the amount is not massive compared with those in some of the financial memorandums for bills that the committee is dealing with, the increase is still significant. Can you reassure the committee that there will not be an impact on operational policing due to the updated costs for the bill?

Angela Constance: With pleasure, convener. I can very much give that reassurance. The admittedly increased costs that have now been communicated to the committee represent about 0.2 per cent of the overall Police Scotland budget. The most recent figure for Police Scotland's investment in the functions of training is around £18 million. I appreciate that the change from what the financial memorandum originally set out to the information that is available now is not insignificant. However, it is manageable in terms of Police Scotland's overall budget, and we will have another budget round later this year.

One of the reasons why the police budget for this financial year increased by £92 million was to demonstrate the importance that the Government places on operational and front-line policing.

The Convener: Thank you for that. There appears to have been some miscommunication between the bill team and the Scottish Government. For example, it seems that Police Scotland's change of position is due to the statutory duty in the bill to ensure that officers have undertaken training. Police Scotland has said that that key point was unknown to it, but you say in your response to my letter that Police Scotland has always known that. There seems to have

been some kind of miscommunication in that regard.

Angela Constance: In my view, the fundamental change to the bill's policy intentions of taking an existing code of ethics and putting it in statute and placing a new duty on the chief constable have been well communicated. I am confident that the policy intent of the bill was well explained and explored, in part because of the governance arrangements around the implementation of the Dame Elish Angiolini independent review on police misconduct and the complaints system, in which the bill is rooted. The bill is based on 35 of the legislative recommendations that Dame Elish made, and there were robust governance arrangements around implementing her non-legislative recommendations.

There was extensive communication and positive working together between the Government and Police Scotland on the implementation of Dame Elish's work. Parliament was kept up to date with that via Government-initiated questions and other correspondence, principally—if I recall correctly—on a six-monthly basis. Police Scotland was led to reconsider its position over a period of time—it did not do so immediately—by the specific wording of the legislation.

I am sure that the committee will appreciate that the Government does not share a draft bill before it is introduced to Parliament. We discuss the policy intent. There is also the three-week period before the introduction of a bill when it lies with the Parliament and we do not discuss the written detail.

The Convener: One of the issues that we raised with the bill team was about the bill being a framework bill. The bill team said:

"The legislation is an enabling and framework bill, and a number of provisions will be set out in secondary legislation."—[*Official Report, Finance and Public Administration Committee*, 26 March 2024; c 6.]

However, in your response to my letter, you said:

"I do not consider the Police Ethics etc Bill to be a framework bill. The Bill is an amending one".

I wonder why there is that difference in view.

Angela Constance: Let me be crystal clear, convener. I have never considered the bill to be a framework bill. It is an amending bill. It is not a framework or an enabling bill. The vast majority of the substantial provisions are on the face of the bill. Only four of the 16 substantive provisions could be described in any way as enabling.

The reality is that matters in and around police conduct procedures are very regulated, and much of that is already in regulation, so aspects of the

bill are focused on amending regulations. The bill amends the Police, Public Order and Criminal Justice (Scotland) Act 2006 and the Police and Fire Reform (Scotland) Act 2012.

I will point to my experience. I recall very well the original social security legislation. The Social Security (Scotland) Bill was a vast, enabling framework bill that was co-designed. Social Security Scotland was to be built up from the grass roots, based on service user experience. That is not the case with the bill that we are discussing, which is rooted in clear recommendations from Dame Elish Angiolini, so it has not been co-produced. That does not mean that it is not informed by stakeholders, such as the Scottish Police Federation and Police Scotland, or by the voices of people who have had unsatisfactory experiences as a result of matters involving misconduct and complaints processes. However, the bill is in no way a framework bill and it is not a bill that has been co-designed in our normal understanding of that. It is firmly rooted in specific recommendations from Dame Elish Angiolini.

The Convener: Another issue that came out in our previous evidence session on the bill was the way in which figures are presented in the financial memorandum. Some of the figures are presented exactly, to the last pound, and others have rounding. That is a clear anomaly in a financial memorandum. One would expect one or the other, frankly. Also, we do not normally see the phrase “material and immaterial costs”. I see that Mr McGillivray is nodding. What is your view on that? How is it being addressed?

Angela Constance: My view and my understanding of that is that we took the information that we were given. Where we were given specific information, particularly where the source was operational organisations, it was placed in the financial memorandum. However, I have had a close look at the *Official Report* as well as the correspondence from the committee, and I note and take seriously the committee’s remarks.

I ask Mr McGillivray—or Mr Bunch, if need be—to say a wee bit more about the aspect of material costs.

Donald McGillivray (Scottish Government): As the cabinet secretary said, part of the reason for the mixed approach is that, where external organisations gave us numbers that were to the nearest pound, they were inserted straight into the financial memorandum as they were. When we were building up other parts of the financial memorandum within Government, using a variety of methods, we took the view that it would not be meaningful to estimate to the nearest pound, so we took a materiality view of estimating to the nearest £10,000. As you have observed, that led

to a slight difference in approach in some of the numbers. The reason for that is simply that we inserted the external numbers that were to the nearest pound as they were.

10:45

The Convener: You said—I will quote you—that you “inserted” figures straight into the financial memorandum. What work was done to interrogate the accuracy of the figures that you were given?

Angela Constance: That work took place over a period both before and after the introduction of the bill. I will not repeat myself on the oversight and governance arrangements in the implementation of Dame Elish Angiolini’s recommendations. However, there are forums such as the Scottish police consultative forum, in which we engage with partners, and there is engagement outwith this jurisdiction—for example, with the Metropolitan Police, bearing in mind its experiences and the path that it has trodden, and with the Home Office.

The Convener: I am sure that colleagues want to interrogate the financial memorandum in greater detail, as I have hogged the first 15 minutes of the session, but I will ask one last question before I open it up to them.

One of the costings in the financial memorandum is about the code of ethics and the duty of candour. Those were costed at zero because, originally, they were to be absorbed within the existing police budget. However, that has been reconsidered and we are now looking at a one-off cost of £1,522,000 and recurring costs of £793,500; a breakdown of those costs follows in your letter.

How can there be such a huge differential? Surely there must have been discussions before the bill was introduced on whether there would be such significant costs. It seems to me very odd that a huge section of the financial memorandum was classed at zero cost, given that there is not only a significant initial cost but on-going, recurring costs.

Angela Constance: Convener, to be utterly candid, being told that significant stakeholders have revised their costs is not music to my ears—although, in this instance, I accept the reasons for that—because, when people revise costs, they very rarely revise them downwards. Bearing in mind that, in real terms, over two years, we as a Government lose £0.5 billion of real worth in our spending power, every public pound is absolutely precious.

You will know that the initial understanding between my officials and Police Scotland was that, bearing in mind that there were existing training

arrangements and an existing code of ethics, those costs would be absorbed. Police Scotland revised its position because it has taken constructive steps internally to understand more, and earlier, about the impacts and costs of legislation for Police Scotland as a whole. That is positive for the future and positive when it comes to the information that has been flushed out.

I would of course have preferred all that information to have been available before the financial memorandum was published, but it was not, because of the shared understanding that there were existing training arrangements—as I said, Police Scotland spends around £18 million on training—and an existing code. However, because of the detailed wording of the bill, which means that the code will be strengthened by being put on a statutory basis and that the duties of the chief constable will be strengthened, Police Scotland wants to strengthen its training arrangements. Bearing in mind some of the evidence that the Criminal Justice Committee is now hearing on the need for the bill, I welcome the fact that Police Scotland is committed to investing in training on the bill's implementation.

The Convener: I will open the session to colleagues around the table.

Liz Smith: When the bill team gave evidence to the committee on 26 March, they indicated that it was their intention to publish the updated financial memorandum after stage 2 of the bill. Is that effective procedure, given the need for parliamentary scrutiny?

Angela Constance: I well and truly understand the need for parliamentary scrutiny at all stages of the process. I have looked closely at the *Official Report* of the meeting when my officials gave evidence to the committee and I received correspondence from the convener following the evidence session. I have carefully considered the issues that were raised. I am bound by the standing orders. I am also aware that the committee has had lengthy correspondence from the Minister for Parliamentary Business and that the permanent secretary will give evidence to the committee soon. As you would expect, if standing orders or procedures across the piece were to change, I would comply with those changes.

Liz Smith: You mentioned earlier that you were a member of the then Finance and Constitution Committee. Do you accept that, given the parliamentary process that is laid out in the standing orders, it is exceptionally difficult, if not impossible, for a committee to effectively scrutinise, investigate and interrogate the current numbers, because they are not accurate?

Angela Constance: I understand the committee's position—you want as much

information as possible and you want that information to be as robust as possible, which is what I want, too. However, I know from my years in the Parliament—I think that Ms Smith and I may have joined the Parliament in the same year—that financial memorandums, under standing orders, are a “best estimate”. They have to contain the best estimate of the information that is available at the time.

Liz Smith: I do not disagree; that is exactly what is laid down in standing orders. The problem is with the timing. That is the difficulty that we are facing. The proposal is that the committee should scrutinise updated figures after stage 2. I think that I can speak for most committee members when I say that we are not satisfied by that because, as I said, it renders our job pretty much impossible.

Angela Constance: I understand the committee's position, because it has been clear in articulating it. As things stand, it is my understanding that there is no formal mechanism to revise a financial memorandum in advance of stage 2 of a bill. However, ministers are beholden to keep committees updated. I have written at length to the committee and would have had every intention of doing so, irrespective of whether officials had been called to give evidence. All that I am pointing to, Ms Smith, is that there is a cross-Parliament, cross-Government perspective on the matter and my voice is part of that. The strongest message that I can give to the committee is that I have to abide by standing orders. If those were to change, then so be it.

Liz Smith: We all have to abide by standing orders—they are the rules of the Parliament.

Angela Constance: The other point that I intended to make was that there are some sensible reasons why the formal process exists for the revised or supplementary financial memorandum to be laid at the end of stage 2. As we all know, the nature of amendments is that they can incur costs.

I am also aware that, because of the revised timing for the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill, stage 2 will take place after the October recess, so there is still some distance to travel. For example, although inflation is decreasing, it has not gone away, and there will be another round of pay settlements.

On the one hand, I am respectful of the committee's position, but, on the other hand, there are sensible reasons why a revised financial memorandum should be provided after stage 2. It is my recollection that that was the practice that was adopted most recently with the Children (Care and Justice) (Scotland) Bill, a revised financial memorandum for which was provided post-stage 2.

Liz Smith: We are in the very difficult position in which, as the convener set out in his questioning, we are looking at costs that are vastly different from those that were initially presented to the committee. In addition, we understand that the Scottish Government had known about some of the inaccuracies for quite some time—six or seven months, perhaps.

Our problem is that, on what is an important amending bill, we are being asked to make a judgment about matters in relation to which we do not know enough of the facts. I hope that you would agree that that is not good for parliamentary scrutiny.

Angela Constance: I will make two points. I understand that you want to have as much information as possible, and as much information as possible that will not change subsequently—I concede that. I do not appreciate change, although I must accept that it happens and that there are sometimes good reasons for it to happen.

As far as Police Scotland's reconsideration is concerned, our understanding is that last autumn, through the Scottish police consultative forum, Police Scotland intimated that its understanding was changing and that it felt that the costs—especially those relating to training and other matters—had been underestimated. However, at that time, Police Scotland still had to go through its internal approval process with regard to what its view on the specific numbers was. As my officials said the last time that the committee considered the matter, Police Scotland provided the Scottish Government with the evidence that it submitted to this committee on 6 November, which was two days before it was published.

I hope that what I am about to say gives some reassurance to the committee. I say this with respect to Police Scotland and to other major stakeholders. When people tell me that costs have been revised upwards, I am not in any way cavalier about that. I do not just say, "Okay then—so be it." I expect my officials to go and interrogate those revised costs, because it is crucial that we have a shared and very detailed understanding of why those costs have been revised. In March, on the basis of that interrogation process, we came to the conclusion that we accepted the new information that Police Scotland had provided.

Liz Smith: Thank you for that detailed response—

Angela Constance: I apologise for the length of my answer.

Liz Smith: —but I do not think that it answers the question. Do you accept that, when it comes to the process of submitting amendments at stage 2, it is possible that we might be hampered by the

fact that we will not have a detailed, up-to-date financial memorandum?

Angela Constance: But you have detailed, up-to-date financial information now. I am pointing to the fact that that information has been made available now. People may have strong views about the formality of a process around that, but I consider a letter to this committee and to the Criminal Justice Committee as an important and significant way to put information into the public domain, and committee members can make use of such letters as they see fit.

11:00

Michael Marra: You cite the example of the Children (Care and Justice) (Scotland) Bill, for which an amended financial memorandum was published after stage 2. The committee was very critical of that financial memorandum, as you may be aware. For the National Care Service (Scotland) Bill, we were provided with an update to the financial memorandum prior to stage 2.

The Convener: Prior to stage 1.

Michael Marra: Indeed: prior to stage 1, as the convener has clarified. Is that not a better precedent, so that we could deal with some of the issues that Liz Smith raises?

Angela Constance: I do not want to irritate the committee by repeating what I said earlier. I am here to talk about a specific bill and a specific memorandum. If the Parliament wishes business to be done differently, I am entirely respectful of that.

Michael Marra: It is not really a matter of doing it differently; it is to do it in line with what your colleague did in providing an updated financial memorandum prior to stage 1, which is what happened with the National Care Service (Scotland) Bill. You are citing the standing orders, which seem to be available to your colleagues. Why not follow them in this circumstance?

Angela Constance: I am not going to speak to the National Care Service (Scotland) Bill, but I would be interested to go back and look at the process that was taken there—whether things were done by letter, by committee or by a new financial memorandum—and at what the status of that financial memorandum was.

Michael Marra: Okay—we can have a look at that.

I have mentioned three of the bills and financial memorandums that we have had before us. The other one to note is the Circular Economy (Scotland) Bill.

I am keen to hear your reflections on Government practice in regard to financial

memorandums, and particularly that to the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill that is before us. Police Scotland said that the costs were “vastly underestimated” and the Scottish Police Federation said that the estimates were “woefully inadequate”. It is right for us to think about the process by which you arrived at the numbers. Can you describe that process to the committee? What gateways are in place for costing a bill that comes to you, as cabinet secretary? What other colleagues sign off on that process in agreeing with the costs? How does that go through the Government?

Angela Constance: There are a number of processes. I will not repeat the points about the on-going engagement that we have had on the bill to implement Dame Elish Angiolini’s specific recommendations.

By the time a financial memorandum comes to me, it has been through a number of internal processes in the civil service, and there is a Cabinet sub-committee clearing process for the policy memorandum, the financial memorandum, the bill and other associated documents.

If Mr Marra would like more information, we can follow up in writing. Is there anything else of substance that would be helpful here, Mr McGillivray?

Donald McGillivray: The only detail that I would add is that there is detailed consideration of the issues by both policy and finance officials before the documents get to ministers. The financial memorandum is signed off by finance officials before it goes to ministers. When I said that the numbers go straight into the financial memorandum, that is after a process of engagement between officials and Police Scotland—in this case—or it could be with any other external organisation that is providing numbers. That engagement will involve both policy and finance officials.

Michael Marra: At what level in the civil service would the financial memorandum be signed off?

Donald McGillivray: It is usually signed off by a senior civil servant—at senior civil service level.

Michael Marra: What level is that?

Donald McGillivray: In this case it would have been at deputy director level.

Michael Marra: That would be both in the policy department—

Donald McGillivray: I would need to check that. If it is different, we will update that.

Michael Marra: That would be useful.

Donald McGillivray: I think that that was the case with this bill, however.

Michael Marra: At ministerial level, does the finance secretary sign off the financial memorandum for a bill?

Angela Constance: Yes.

Michael Marra: So, before we received this, it will have been signed off by the Deputy First Minister, who is the Cabinet Secretary for Finance and Local Government.

Angela Constance: Yes.

Michael Marra: Cabinet secretary, you have long experience—17 years or so—of being in the Government. Has the process changed during that time?

Angela Constance: I will double check that. My time in the Government has not been continuous—hence my time on this committee—and there may have been some changes. I am not aware of any changes, but I will double check.

Michael Marra: My understanding is that there was a significant revision to the process around the time of the Creative Scotland Bill and that additional gateways were introduced. I am keen to understand whether the process has changed since then. It would be useful if that information could be provided.

There is a recurring theme for the committee. We have at least four financial memorandums in front of us that are deeply inadequate and that do not seem to have been properly signed off or scrutinised by Government. As part of our stewardship of the public finances, the committee is keen to understand why that continually happens. Do you have any observations about that recurring theme?

Angela Constance: I have closely read the committee’s more general observations and frustrations. I think that financial memorandums have improved over time, not only because they are lengthier: that improvement is as much about quality of information as it is about quantity.

You referred to a stakeholder who said that the estimates were woefully inadequate.

Michael Marra: That was the Scottish Police Federation.

Angela Constance: For some data, such as any estimate of the number of serious misconduct hearings, we rely entirely on stakeholders, such as Police Scotland and the Scottish Police Federation, to provide information. The initial information subsequently changed, for reasons that I accept. The only caveat to my remarks is that, with the best will in the world, there is always room to improve processes, procedures and communication. In the world in which we operate, there will always be things that are unpredictable or that change. It is important to recognise that we

are not entirely in control of the information that comes to us from independent organisations, although that information is always sought.

Michael Marra: Does that also apply to the National Care Service (Scotland) Bill, the Children (Care and Justice) (Scotland) Bill and the Circular Economy (Scotland) Bill?

Angela Constance: With respect, I am not going to be drawn on the deliberations of other committees.

Michael Marra: Cabinet secretary, you are a member of the Cabinet that is responsible for Scotland's public finances, so it is important that we can ask you about how, as a body, that Cabinet controls the public purse. It is clear that there appears to be no control of public spending across a range of legislation.

Angela Constance: We have narrated that collective responsibility and the processes that are involved in our collective scrutiny. I am not going to get into a debate about specific bills that I am not in charge of.

John Mason: On a more cheerful note, I agree with materiality, which I think is a good thing. I may be in a minority on the committee in that regard—I do not know about that.

Mr McGillivray suggested that internal figures are rounded, but I would be inclined to round external figures, too. I cannot remember the exact figures, but some of them go down to the exact pound, when, as you said, it is not meaningful to go down to the exact pound. It is totally meaningless to talk about whether something will cost £354 or £353 in 10 years' time, and I think that it gives the wrong impression. It gives people the impression that there is a high degree of accuracy, which, frankly, is unrealistic. That is my personal opinion—take it or leave it.

I do not want to repeat what colleagues have said, but I am interested to find out how we got to this point, because, in one sense, I think that it is a one-off. I do not remember a financial memorandum ever coming to us in relation to which there seems to be such a gap between what one of the main players—Police Scotland—thought and what the Government thought, and I am intrigued as to how that happened. Why did Police Scotland not see the bill in a fairly complete stage in order to understand what the requirements were?

Angela Constance: First, Mr Mason, we note your personal reflections as someone who, in another life, was a chartered accountant.

It is important to stress that there was a shared understanding at the time that the bill was introduced. Police Scotland, for reasons that I accept, revisited its position, largely in response to

work that it had commenced on reviewing its processes and procedures so that it could better assess the impact on the organisation as a whole of any piece of legislation that is relevant to it. That is a very welcome process, which will be an important platform to build on.

Regarding Police Scotland seeing the bill, call me a stickler, but I would not share a bill in detail before it had been laid before the Parliament and introduced. I just would not do that. However, I stress again that the full policy intent was shared. It was simply the case that information changed and the information that the Government was given changed. For example, the reassessment by Police Scotland and the Scottish Police Federation meant that they came to the view that more misconduct cases were likely, which would cost more in legal costs. That is fairly straightforward.

John Mason: I am still struggling a bit. I get that the policy intentions were always clear—you already said that. That is fine, and I think that we are all agreed on that. The police knew the general policy intentions. However, is it the case that, although there was no new information in the detail of the bill that the police did not already know about, perhaps they got a new lawyer that Monday or something, and they looked at it and revised their position? You said that they revisited their position. Did they just have second thoughts, whereby they went away, slept on it and thought, "Oh! Maybe there are going to be costs here"? Was there nothing new in the bill that they did not already know about?

Angela Constance: There are two points that are important here. I am simply articulating what Police Scotland has said to us and the committee, which is that, when it saw the precise wording of the bill, particularly in relation to the duties and responsibility of the chief constable to ensure that all police officers and staff are well versed in the code of ethics—

John Mason: I am sorry to interrupt, but does the police chief constable not always do that?

Angela Constance: Well, yes. I am just narrating what Police Scotland has said was one cause for reflection. In my comments to other colleagues—again, forgive me for repeating myself—I have said that Police Scotland has reviewed its approach and has adopted different processes in relation to how it assesses the impact of legislation on its organisation.

That was not done before the bill was introduced, and I am sure that both I and Police Scotland regret that. However, the fact that those processes have now been introduced should give us confidence about the information that we now have. At a corporate and an organisational level, Police Scotland has revisited its processes around

how it assesses the impact of legislation on its organisation.

11:15

John Mason: The key difference is that it was previously thought that the training in question could be incorporated into the normal training, but now it has been realised that separate, additional training will have to be provided.

Angela Constance: Yes. Because the code already exists and is being made statutory rather than non-statutory, given its importance to everyday policing and its value in relation to, for example, human rights, the previous understanding was that the training costs could be absorbed and the training could be done by being absorbed into existing modules, but Police Scotland has now come to a different view.

John Mason: Is it fair to say that training is always a bit of a vague thing? You could ask whether any of the seven members of the committee is properly trained, but there is no right answer to that, because we could all get more training. I do not know for how many days a year the police train their officers, but I presume that they prioritise the most important things in that training, as old laws such as the blasphemy law get dropped and new laws come in.

I am also a bit surprised that the police have asked for £X and are getting it. Could they not be pushed to do some of the training within the existing time?

Angela Constance: As I said to Ms Smith, once Police Scotland had informed the Scottish Government of the precise nature of its evidence to the committee, there was a period of regular discussion and exploration. Given the financial constraints that we all operate within, you will understand that we do not simply accept it when people say that something will cost £X as opposed to £Y. We have a responsibility to scrutinise that.

The training of new police officers and the on-going training of existing police officers and staff is not a frivolous matter. It is, of course, an operational matter, so I need to be respectful of boundaries here. Training is entirely an operational matter for Police Scotland. I am, of course, well within my rights to test information that I am presented with by Police Scotland, but I accept that we should continue to invest in the training of new and existing police officers and staff.

Michelle Thomson: Good morning. In relation to the financial memorandum for the National Care Service (Scotland) Bill, which my colleague Michael Marra brought up, I can confirm that we were brought back an updated FM, which the

committee had the chance to scrutinise. Given that, in that case, there was no reverting back to the process that is set out in standing orders, and it was deemed both appropriate and necessary to update the FM, why do you not simply agree to do likewise, and then we would all be happy?

Angela Constance: I did not realise that I was here to make people happy, tempting though that is. I will go away and look in more detail at what happened in relation to the National Care Service (Scotland) Bill, although I emphasise that the bill before the committee is not on a par with that bill in terms of size or magnitude, nor is it a framework or enabling bill.

When my officials were here, you mentioned the fact that there are additional risks with framework bills, in that significant decisions are taken further down the line. Therefore, I could see why there would be a case for a different procedure to be adopted with the National Care Service (Scotland) Bill, given its magnitude and the magnitude of public resource to be invested in the new service.

However, the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill is small. It has 16 substantial provisions and three ancillary ones—it is not a massive bill. I absolutely appreciate the change in some columns from zero to not insignificant sums of money. I assure you that that is not how I would have wished events to be, but the cost of the bill to Police Scotland is somewhat small—it is 0.2 per cent of the organisation's overall budget.

However, I will reflect on matters. I will not make any false promises about providing a revised financial memorandum earlier. After the previous evidence session, I took advice from parliamentary business colleagues. My one concern about updating the financial memorandum now is that we still have this year's pay claim to come, so there are other potential changes coming down the track.

Michelle Thomson: I fully accept what you say about the scale of the numbers. A multitude of financial memorandums come before the convener, and the tendency is to pick a sample of those. However, in general terms, this committee has now got its teeth into the rigour around framework bills and, arguably, it is that, as much as anything else, that we are testing here.

The committee looks forward to hearing back from you; I certainly do, because that would be helpful. Although I accept what you say about the pay claim—we understand that—that would come within the margins of uncertainty.

In your replies, you have articulated a compelling case for increased scrutiny on your part with regard to revised costs, so I would find it surprising from the point of view of rigour and

good practice in this place if that same respectful position were not adopted with regard to the finance committee, which is, after all, a specialist in this area. The issue for the committee is about good practice and rigour in the face of chronic funding constraints on the public purse.

Angela Constance: I certainly accept that the committee is getting its teeth into financial memorandums and framework bills, although let me repeat that this is not a framework bill—

Michelle Thomson: I heard that very clearly.

Angela Constance: Thank you for that. We are in the terrain where increased scrutiny all round is absolutely imperative, bearing in mind that every public pound is a prisoner. I am not going to make promises on the hoof. However, as I hope that I have managed to demonstrate, we will always give matters further consideration.

Michelle Thomson: You have made it very clear that you are accountable for only those areas for which you are accountable. However, I wonder whether I can press you, with regard to some of the evidence that is emerging today and from our previous evidence session, to cascade throughout the entire body of the civil service the need for the processes for the devising of framework bills to be consistent and rigorous.

I say that because we are seeing an emerging pattern that the committee has been driven to write about. I myself have raised the issue in the chamber. That is more in relation to framework bills. I appreciate that you are accountable only for what you are accountable for. However, in your capacity as a cabinet secretary, it would be helpful if you could you see your way to raising that matter generally.

Angela Constance: If I may reply generally, Ms Thomson, I do not think that anyone has missed the committee's views.

Michelle Thomson: Thank you.

Jamie Halcro Johnston: I will go back to some of the previous questions. The bill was introduced on 6 June 2023, and at the September Scottish police consultative forum, concerns were raised that the costs for Police Scotland would increase. Were you advised of those concerns or those potential increased costs at that time?

Angela Constance: I was advised of two things. In November, I was advised that Police Scotland had revised its costs upwards. I was always aware that officials were regularly engaging with partners and regularly asking for specific data, particularly on the number of potential misconduct cases.

Jamie Halcro Johnston: Okay. In March, I said to Mr Bunch:

“in September 2023, Police Scotland raised concerns ... Did it give you a figure at that point, or did you go back to Police Scotland and ask it to revise the costs and provide you with updated parameters, in effect?”

Mr Bunch replied:

“No. We did not know the figure until it was published as evidence to the committee.”—[*Official Report, Finance and Public Administration Committee*, 26 March 2024; c 21.]

It appears that you were not aware of any increase for a long time. You said that you asked your officials to interrogate the figures. When did you ask them to do that?

Angela Constance: I did so once I knew in November that the figures had been revised upwards. I do not want to irritate the committee by repeating myself, but I will say that I and my officials do not just accept it when significant stakeholders revise costs. I accept the reasons why they have done so and the final position in this instance, but there was a period of discussions and testing between publication of Police Scotland's evidence to the committee and officials coming to the committee.

Jamie Halcro Johnston: In the committee meeting in March, I asked Graham Thomson:

“Did you have no idea at any point that the £5 million potential cost would be presented? Did that come as a complete surprise to you?”

He said:

“The exact figures were a surprise to us.”—[*Official Report, Finance and Public Administration Committee*, 26 March 2024; c 22.]

If the figures had been interrogated properly, should they really have been a surprise?

Angela Constance: I will bring in Mr Bunch in a minute. The facts of the matter are that officials did not know the precise figures until November, so Police Scotland, after intimating—

Jamie Halcro Johnston: So, officials were aware of the precise figures in November.

Angela Constance: Mr Bunch will correct me if I am wrong, but the evidence that my officials gave to the committee was that the Scottish Government was provided with Police Scotland's evidence to the Finance and Public Administration Committee on 6 November, two days before its evidence was published on 8 November. Mr Bunch can confirm that that was when he knew the figures. Prior to that, Police Scotland had intimated, at the Scottish police consultative forum, that it was relooking at the figures; it thought that they were wrong. Our reading of that was that the figures would not be revised down because they could not be.

Jamie Halcro Johnston: I appreciate that they were not going to be revised down, but Mr Thomson

said that the £5 million figure was “a surprise”. Obviously, that was when they were presented as evidence to the committee. That was not in November or September, when there were discussions. It seems that there was no real understanding that the figures were going to be so substantially increased.

Angela Constance: I do not think that it was expected that there would be a substantial increase. I reiterate that officials’ understanding from the Scottish police consultative forum was that Police Scotland was working through internal processes before it approved a figure; it has its own internal processes to go through before it gives evidence to a parliamentary committee. It is not a matter of someone sitting in an office and just saying, “Actually, I think those figures are wrong.” That has to be signed off at senior level in Police Scotland.

11:30

Jamie Halcro Johnston: I appreciate that, but you have told us that you did not just sit back and accept the figures. You wanted your officials to interrogate the figures—

Angela Constance: From November.

Jamie Halcro Johnston: The fact is that the revised costs came out at about £5 million. Even one of your own officials said that that came as a surprise. It is clear that Police Scotland’s figures were not interrogated, if they came as a surprise.

Angela Constance: The figures were not there to be interrogated until my officials were informed on 6 November. That is when the interrogation took place.

Jamie Halcro Johnston: Should part of the interrogation process not have involved you saying to Police Scotland, “We appreciate that the costs are going to go up. By how much do you think they will go up? What parameters are you working within?” I appreciate that you can look at figures line by line when they come out and ask why that has happened, but given the extent of the increase, surely you should have done some work with Police Scotland to identify by how much the figures were likely to increase.

Angela Constance: Extensive work has been done with Police Scotland—

Jamie Halcro Johnston: So why was it a surprise when the revised costs came out? Surely your officials should have had an idea that the costs were going to increase substantially.

Angela Constance: That is not the case. People are not informed until they are informed. Police Scotland has its own internal processes to

go through. Forgive me, but I think that I am being really clear here.

Mr Bunch, is there anything that you would like to add that I have not communicated?

Steven Bunch (Scottish Government): No—I think that you are completely correct in what you have said. We were told that the figures were going to be higher, but we did not expect them to be revised—

Jamie Halcro Johnston: You did not expect them to be revised, but did you ask for any—

Steven Bunch: We did not expect them to be revised to that level. We were able to see the full detail of the revised figures only when that information was provided to the committee. It was given to us just two days before it was published on the committee’s website.

Jamie Halcro Johnston: I might be being unfair, but I think that people who are watching these proceedings will find what has happened hard to understand. There has been a threefold increase in the costs, to £5 million. Officials were talking to Police Scotland and were aware that the figures were going to increase yet, in March, prior to giving evidence, they were still surprised by the level of the increase. Surely an approach should have been taken that at least gave you an idea of by how much the figures were going to increase. Surely you should have been engaging with Police Scotland on that. It sounds as though those figures were not interrogated and that not enough questions were asked.

Do you think that where we are now with the figures is acceptable? Have any lessons been learned by officials, or are there any lessons that you will ask Police Scotland to learn in relation to the disparity between the figures that they initially suggested and those that they submitted?

Angela Constance: It is important—I am very much in favour of this—that Police Scotland has revisited its policies and procedures in and around how it assesses the impact of proposed legislation on its organisation, bearing in mind the fact that Police Scotland is best placed to provide information on impacts on operational matters. That is a significant change, which I am reassured by.

As I said to one of your colleagues earlier, you should not think that I am in any way cavalier about public money. I am not content that there has been such an increase in the costs associated with the financial memorandum. We interrogate information as it becomes available to us, but I take considerable heart from the fact that Police Scotland has a new process in place to better assess the impact of legislation on its operations. I do not want the situation that has transpired in

relation to the financial memorandum that is before the committee to transpire again in the future in relation to the financial memorandums to any of my bills.

Jamie Halcro Johnston: So, you are suggesting that the situation that has arisen is purely a matter of Police Scotland needing to revise how it considers such matters, rather than its being a result of its not having been provided with enough information to make the calculations accurately in the first place.

Angela Constance: Some of the information that is required for the calculations comes from justice partner organisations—it does not come from the Government. There was key information that we were relying on Police Scotland and other partners to provide.

Jamie Halcro Johnston: I will ask my last question. We have talked about increased costs—obviously, that discussion went on considerably. Do you have an estimate of the impact on front-line policing time that the changes will make, given that the costs have gone up because of additional training needs?

Angela Constance: I will bring in officials in a moment.

We have increased the budget for this financial year to prioritise front-line policing. Obviously, Police Scotland has operational responsibility for training. Part of its costs relate to abstraction of officers when they undertake training, as would be the case for any training.

Jamie Halcro Johnston: I am sorry, but this is additional training: it is new training that Police Scotland will have to provide and for which, you said, it has revised the figures. The costs are new costs, because they arise from the new bill. The fact that the costs have gone up considerably will surely impact on the ability to deliver front-line policing, as will taking off the front line officers who are required to undergo the training.

Angela Constance: I absolutely understand your point that the training is not wrapped up in existing training, but is new and additional. I accept that there has been a not insignificant increase in the costs that are associated with the training. However, it is still only 0.23 per cent of the overall Police Scotland budget.

Jamie Halcro Johnston: I understand that it is zero point whatever of the budget, but given the pressure that Police Scotland is under, that will still have an impact. Do you have any estimates—

Angela Constance: No, I do not. I will get officials to talk about abstraction—

Jamie Halcro Johnston: You are suggesting that £4 million is an inconsiderable—

Angela Constance: No, I am not. As I have said, I am less than content with events; however, I am certainly content with the commitment to investing in training for new and existing officers. Our budget this year, which I have no reason to believe will change, has continued to prioritise policing overall, including the importance of front-line policing. I therefore do not accept the point about additional training, notwithstanding the fact that any training involves operational opportunity costs. Your point is overinflated. I am not trying to be rude.

The Convener: Earlier, when I asked a similar question, you gave a completely different answer, cabinet secretary.

Angela Constance: Did I? I said no to you, that I did not anticipate—

The Convener: Aye, indeed.

That concludes questions from committee members. I have a couple more questions.

I am sure that I asked this earlier, too. Did your officials interrogate the figures that were given by the police, to check that they were an accurate reflection? My understanding is that officials just accepted the updated figures from the police.

Angela Constance: Yes. We interrogate the figures and information that are provided to us.

The Convener: I did not see any change in the figures.

Angela Constance: Which figures?

The Convener: It appears that the updated figures that the police gave you were accepted as read, and I am pretty sure that that was said by your officials in evidence. Rather than their saying to the police, “Hold on a second, how do you come to this sum and that sum,” it seems as if the police have said, “These are the updated figures,” and the bill team has said, “Okay, fair enough.” That is not usually what happens. Usually, whatever the bill is, people query the costings.

Angela Constance: We accepted the figures from Police Scotland in March, and there had been substantive discussions since its written evidence to the committee in November. The figures were interrogated.

The Convener: Okay. I have a final question and point. Obviously, we have had a detailed discussion today, as we had on 26 March, but it all stems from the fact that the Government presented to the committee figures that it knew were completely inaccurate. The costs of the bill have evolved hugely since we were given the figures. We are talking about one-off costs tripling from £800,000 to £2.356 million, and recurring costs more than quintupling from £613,000 to £3.443 million. Would not it have made the

Government's life a lot easier if accurate figures had been presented at stage 1?

I hear what you have said about stage 2, but you cannot build a house on sand. If the figures are not accurate prior to stage 1, it just means that they will be even more inaccurate further down the line. Surely, given that the committee is quite tenacious in interrogating financial memorandums, it would have been a lot easier if, knowing that the figures that were going to be given on 26 March were not accurate, they had been updated prior to that date?

Angela Constance: The Government knowingly published a financial memorandum last June, based on the best information that we had at the time. The Government did not knowingly present information to this committee that was wrong.

The Convener: I am sorry, but it did, because nine months later it came to committee with all the additional information. That is why we are here today, because we were unable to scrutinise figures. I know that you do not like us to refer to other bills, but when other ministers and bill teams have come to us and it is clear that the financial memorandum bears no relationship to reality, they have gone away and redrafted it. Given that that has been the case, surely it would have been a lot simpler for the Government to decide that, because there has been a huge difference in the proportions and total sums involved in the bill, it should revise the financial memorandum before coming to the Finance and Public Administration Committee in March. There is no sense in coming to the committee with figures that are wrong, just because they were right nine months earlier.

You have said that stage 2 will not be until after October, so there will be a further difference between the figures in the financial memorandum that was presented in June last year and the figures that will apply in October this year. Surely, therefore, it is common sense to decide that, because the figures have completely changed, you will come to the Finance and Public Administration Committee with a revised financial memorandum. If that had happened, it is unlikely that you would even have had to give evidence today.

Angela Constance: It is always a pleasure to be at the Finance and Public Administration Committee, Mr Gibson, and I hope that I can end on a note of some consensus and at least some contrition by saying that, if I had my time over again, the thing that I would do differently would be that we would write to the committee in advance of officials giving evidence—that is for sure.

The Convener: We will leave it at that. I thank the cabinet secretary and her officials for their evidence this morning and I thank colleagues for their questions and contributions.

Are members content for me to write to the lead committee to provide an update on the evidence that we have received in relation to the bill, so that it can take that into account in its stage 1 scrutiny?

Members indicated agreement.

The Convener: Thank you. I now close the meeting.

Meeting closed at 11:43.

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