

Finance and Public Administration Committee  
Tuesday 30 April 2024  
15<sup>th</sup> Meeting, 2024, Session 6

## Scotland's Commissioner Landscape: A Strategic Approach

### Purpose

1. The Committee is invited to take evidence from the following witnesses in relation to its inquiry into [Scotland's Commissioner Landscape: A Strategic Approach](#)—

#### Panel 1

- Ian Bruce, Ethical Standards Commissioner;
- Dr Brian Plastow, Scottish Biometrics Commissioner;
- David Hamilton, Scottish Information Commissioner; and
- Lorna Johnston, Executive Director, Standards Commission for Scotland.

#### Panel 2

- Nicola Killean, Children and Young People's Commissioner Scotland;
  - Dr Claire Methven O'Brien, Commissioner, and Jan Savage, Executive Director, Scottish Human Rights Commission; and
  - Rosemary Agnew, Scottish Public Services Ombudsman,
2. The witnesses each submitted [written evidence](#) to the inquiry. SPICe has produced a [summary of the written submissions](#) received, as well as a [briefing](#) to support the inquiry which maps the current Commissioner landscape and identifies other UK and international Commissioner models.

### Background

3. The above seven independent officeholders are directly responsible to the Scottish Parliament, with their terms and conditions of appointment and annual budgets set by the Scottish Parliamentary Corporate Body (SPCB). They are a mix of commissions, commissioners, or ombudsman, and range from having regulatory, complaints handling, rights-based, investigatory or advocacy functions.
4. Legislation creating a patient safety commissioner has also recently been passed by the Scottish Parliament. A further six<sup>1</sup> are being proposed or considered. The

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<sup>1</sup> The Parliament is currently scrutinising Bills that would also see a Victims and Witnesses Commissioner and Disability Commissioner being established. Draft proposals for Members Bills creating an Older People's Commissioner and Wellbeing and Sustainable Development Commissioner are under consideration by Parliament, while the Scottish Government is also looking at the possibility of creating a Future Generations Commissioner and a Learning Disabilities, Autism and Neurodiversity Commissioner or Commission.

Commissioners' budgets form part of the SPCB's own budget which is "top-sliced" from the Scottish Consolidated Fund.

5. In its [Report on the Scottish Budget 2023-24](#), the Committee expressed concerns regarding this potential significant increase in the number of SPCB-supported bodies and their associated costs. More recently, the Committee raised these broad concerns during scrutiny of Financial Memorandums (FMs) for Bills proposing the creation of a patient safety commissioner (now passed) and a victims and witnesses commissioner.
6. Following informal discussions with the Scottish Government's Public Bodies Support Unit, the Scottish Parliament's Non-Government Bills Unit, and SPCB supporting officials, the Committee launched an inquiry in December 2023 into [Scotland's Commissioner Landscape: A Strategic Approach](#), with the following remit—
  - to foster greater understanding of how the Commissioner landscape in Scotland has evolved since devolution,
  - to enhance clarity around the role, and different types, of Commissioners and their relationships with government and parliament,
  - to establish the extent to which a more coherent and strategic approach to the creation and development of Commissioners in Scotland is needed and how this might be achieved,
  - to provide greater transparency to how the governance, accountability, budget-setting, and scrutiny arrangements work in practice, and whether any improvements are required, and
  - to identify where any lessons might be learned from international Commissioner models.
7. The focus of the inquiry is on SPCB-supported commissions, commissioners, and ombudsman only. Other than as wider context, the inquiry will **not** therefore:
  - consider the overall public body landscape,
  - examine the role of those commissioners who report directly to the Scottish Government, or
  - make recommendations on the merits or otherwise of individual commissioners.
8. The inquiry's call for views ran from 11 January until 11 March 2024 and received [23 responses](#).<sup>2</sup> Questions were grouped around three broad themes: (a) the Commissioner landscape, (b) governance, accountability, and scrutiny, and (c) value for money and the effectiveness of the current approach.

## Previous evidence session

9. On 16 April 2024, the Committee heard evidence from Research Scotland on its May 2023 [Report on Commissions and Commissioners](#), which was commissioned by the Scottish Government to inform proposals to create a Learning Disabilities, Autism, and Neurodiversity Commissioner. The Report's introduction acknowledges that "there is very little published research in Scotland and the UK on commissions or commissioners, and little evaluation exploring the

pros and cons of different approaches, powers or ways of working for commissioners”. The Committee discussed Research Scotland’s findings, including the following issues—

- Most interviewees value the powers they have and see these as a key difference between commissioners and campaigning or lobbying bodies.
- Gaps in powers were highlighted by some interviewees, including the inability to self-initiate inquiries, to make binding recommendations or to share information.
- Most are content with their governance arrangements. The model of a single commissioner appeared to work particularly well given the clear lines of responsibility and decision-making.
- Interviewees value their independence from government and tend to have constructive relationships with government.
- There were mixed views on whether a commissioner is the best way to address the issues ‘on the ground’ for those with learning disabilities, autism, or neurodiversity, although there was broad agreement that additional support is needed in some form.
- Concerns were raised that “creating commissioners for particular groups would lead to a large number of commissioners and a complex landscape”, with many interviewees highlighting an already complicated picture. Some expressed concern that “people could end up being pushed between commissioners or being unsure which applied to them”.
- Interviewees suggested that other options for strengthening human rights for people with autism, learning disabilities and neurodiversity should be considered, including better resourcing for other bodies such as relevant existing commissions, and supporting good practice.
- Some interviewees suggested that a lead commissioner housed by an existing human rights commission or other organisation may be worth considering, as it could reduce costs through sharing services. Others however suggested this approach might divert resources and dilute the body’s focus on “human rights for everyone”.

## Written submissions

### Ethical Standards Commissioner

10. The Ethical Standards Commissioner<sup>2</sup> (ESC) investigates complaints about the conduct of MSPs, local authority councillors, public body board members, and lobbyists, and regulates and monitors how people are appointed by Scottish Ministers to public body boards. The Commissioner’s [written submission](#) states that—

“Independence from the Scottish Parliament and the Scottish Government appear to be key requirements for the adoption of a Commissioner model, although it is apparent that there must also be an element of independent oversight of any Commissioner in order to provide assurance that they are

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<sup>2</sup> The Commission for Ethical Standards in Public Life in Scotland was formed in April 2011, by merging the Chief Investigating Officer, the Scottish Parliamentary Standards Commissioner and the Commissioner for Public Appointments in Scotland. The functions of the Commission were transferred to the Commissioner in July 2013.

fulfilling their functions appropriately and using public funds economically, efficiently and effectively”.

11. In terms of governance, the ESC explains that “each year, I submit an evidence-based budget bid for scrutiny and approval [which] is based on the activities set out in the strategic and biennial business plan and includes indicative bids for the following two years”. He also meets quarterly with representatives of the SPCB “to discuss, amongst other matters, my governance and financial arrangements”.
12. On scrutiny, the Commissioner gives evidence on an annual basis to the Standards, Procedures and Public Appointments Committee and the Local Government, Housing and Planning Committee “on the exercise of my statutory functions”, and to other committees on an ad hoc basis. Finally, he states that “my performance is annually appraised by an independence assessor assigned by the SPCB to fulfil that activity”, with the results submitted to the SPCB.

### Scottish Biometrics Commissioner

13. The Scottish Biometrics Commissioner (SBC) is the newest Commissioner in Scotland, having been approved by Parliament in 2020<sup>3</sup> and it is also the smallest, with only three members of staff. The SBC’s functions include supporting and promoting the adoption of lawful, effective, and ethical practices in relation to the acquisition, retention, use, and destruction of biometric data by Police Scotland, the Scottish Police Authority and the Police Investigations and Review Commissioner.
14. The SBC notes in his [written submission](#) that “the current model appears to have evolved organically over time”, and “provides good value for money for the public purse, although ... further savings could be achieved through the development of a more coherent and strategic approach where certain prescribed back-office functions are in essence centralised as the model and landscape evolves in future”. He goes on to argue that “it would be a dangerous path for Scotland to view the value of independent officeholders solely through the lens of their operating costs”.
15. He also suggests that “there are opportunities for the Parliament (as distinct from the SPCB) to be far more proactive in both supporting officeholders and holding them to account”, as well as to keep all independent officeholder functions under periodic review to determine whether the original policy objective is still relevant. The Commissioner further notes that “the annual and ‘individual’ budget-bidding and award process is problematic but the arrangements for scrutinising budgets are otherwise robust”.

### Scottish Information Commissioner

16. Created in 2002, the Scottish Information Commissioner (SIC) is responsible for investigating Freedom of Information (FOI) appeals, promoting the public’s right to know, promoting good FOI practice to public authorities, and intervening when public authority practice is not compliant with FOI law.

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<sup>3</sup> Dr Plastow is the first Biometrics Commissioner to be appointed.

17. In his [written submission](#), the Commissioner welcomes the oversight and scrutiny received from both the SPCB and the SPPA Committee, who he indicates “consider both the corporate governance arrangements and operational activity in a complementary way”. He notes the “biggest difficulty is the annual budget process”, which limits the ability for medium-term financial planning and suggests that, with staffing amounting to around 90% of the Commissioner’s costs and staff paid according to SPCB pay scales and settlements, “in effect, ... I have little control over these costs”.
18. The SIC confirms that there is no overlap with any other Commissioner’s function or organisation, however, officeholders are exploring opportunities for further sharing of corporate services. He goes on to warn that any loose definition of future commissioners’ roles and responsibilities could lead to “conflict and confusion” and suggests that additional functions could instead be added to existing officeholders’ areas of work.

### Standards Commission for Scotland

19. The Standards Commission for Scotland (SCS) was established in 2000 and is responsible for encouraging high standards of conduct in public life in Scotland. Its remit is to promote high ethical standards and codes of conduct for councillors and members of devolved public bodies, and issues guidance on how these codes should be interpreted.
20. The Commission’s [written submission](#) highlights that it is based within the Scottish Parliament and accesses IT provision, internal audit, data protection, communication and financial processing services at no cost. It has a four-year strategic plan, which is delivered through annual business plans, along with a defined performance management framework and performance indicators.
21. The Commission gives evidence to the Local Government, Housing and Planning Committee each year on its annual report<sup>4</sup> and states it “has no reason to consider that the Parliamentary committee scrutiny of the performance of how it exercises its functions is anything other than appropriate”. It further sets out that its budget submission is scrutinised carefully by the SPCB each year, adding that “it has no reason to consider that the budget process is inadequate” and that it does not consider there is any overlap or duplication of functions with other commissioners or organisations in Scotland.

### Children and Young People’s Commissioner Scotland

22. The Children and Young People’s Commissioner Scotland (CYPCS) was created, by way of a Committee Bill, in 2003 and is responsible for promoting and safeguarding the rights of all children and young people in Scotland, giving particular attention to the UN Convention on the Rights of the Child. In her written submission, the CYPCS states that it is recognised internationally as an Independent Children’s Rights Institution, which “makes us distinct and different from [the] other types of Commissioner model”. The Commissioner has powers to review law, policy and practice and to take action to promote and protect

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<sup>4</sup> It also sits within the remit of the SPPA Committee.

children’s rights. The Commissioner’s [written submission](#) highlights that “the most important aspect of our model is our independence; this principle is essential for the office to fulfil its functions”.

23. The CYPSC argues that the “creation of a specific body or person to champion the needs of a particular group appears to be a reaction to ineffective policy implementation and access to justice”. She goes on to say that—

“Whilst we recognise that the Commissioner model can be very effective, there is currently a real risk of creating a further fragmented and ineffective infrastructure which would not only be costly but would actually serve to create more barriers to justice. Whilst it could be seen as a ‘symbolic’ easy win to create new issue-based Commissioner roles, the real impact lies in changing practice, budgets, and implementation.”

24. The submission sets out in detail the implications of “creating so many new Commissioner posts”, including overlapping functions, the potential to duplicate work, making the landscape more fragmented and complex for rights holders and duty bearers, and financial implications. It notes “little evidence of coherence to the approach [of creating commissioners] ... and little evidence of consideration about how new commissioners would work together or be resourced”. It goes on to say that “it would be further compromising to our independence to try and retrofit our model to a newly created template for commissioners as part of creating a more coherent system”. The Commissioner recommends that the Committee considers reinforcing and enhancing existing criteria for agreeing new officeholders, including “a detailed focus on the legislation creating the new bodies to avoid duplication and ensure an effective use of public resources”. Consideration should, she suggests, be given to enhancing the powers and resources of existing officeholders, rather than creating new ones.

25. The CYPSC considers the current governance arrangements in place to be robust and appropriate. She would welcome the Commissioner’s forthcoming strategic plan scrutiny session with the Education, Children and Young People Committee becoming an annual session.

## Scottish Human Rights Commission

26. The Scottish Human Rights Commission (SHRC) was created in 2006 and is accredited as ‘A Status’ National Human Rights Institution within the UN system and is able to report directly to the UN on human rights issues. The SHRC has a general duty to promote human rights and to encourage best practice in relation to human rights. It has a power to conduct inquiries and review and recommend changes to any area of law in Scotland or policies and practices of any Scottish public authorities, and has powers of entry, inspection and interview.

27. The SHRC’s June 2023 paper ‘[At a Crossroads: What next for the Human Rights Landscape in Scotland](#)’ identified some of the reasons behind the increase in proposals to create commissioners. This includes an “implementation gap between legislation and policy, the desire for a visible Champion, dissatisfaction with existing accountability mechanisms, a perceived ‘easy win’ for Government, and the influence of comparative policies elsewhere in the UK which have delivered commission/ers”. The paper suggested that the SHRC could

alternatively deliver a stronger monitoring function for the human rights of particular groups of people through a 'rapporteurship' model.

28. In its [written submission](#), the Commission suggests that "given the variation in the scale and mandate of new Commissions/ers as considered by the Parliament, it would appear that the [Session 2 Finance Committee's] criteria are not being applied well". It therefore suggests that "consideration might be given to a multi-Committee scrutiny process for proposals, which involves the lead policy Committee, the FPA Committee and SPCB to assess whether these tests have been met". It further suggests that the criteria is expanded to "consider whether the mandate of an existing Parliamentary Commission/er could be amended to achieve the policy intent via Committee initiated amendments, or via a regular mandate review process".
29. In terms of budget-setting, the SHRC states that "it may be helpful for the lead committee to also have a scrutiny role in respect of the budget too, as there is a disconnect at present between accountability for outcomes and finance [as ...] the current arrangement ... does not align necessarily with accountability for outcomes". The SHRC also suggests that regular review of officeholders' general duties, powers and resources would also provide for Parliament to consider whether any elements of the mandate require updating.

## Scottish Public Services Ombudsman

30. The Scottish Public Services Ombudsman (SPSO) was created in 2002 and its statutory functions include the final stage of complaints about most devolved public services<sup>5</sup> in Scotland, powers to publish complaints handling procedures, and an independent review service for the Scottish Welfare Fund. The SPSO is also the independent national whistleblowing officer for the NHS in Scotland.
31. In her [written submission](#), the SPSO suggests that the growth in proposals to create Scottish Parliament supported bodies (SPSBs) "is driven by a strongly held perception that the only way to guarantee independence from Government is to create a SPSB", and this can lead to little or no consideration of alternative models. The SPSO sets out her concerns about the growing Commissioner landscape, including—
- "lack of gap and overlap analysis before deciding on the Commission/er model,
  - complexity of the landscape that is challenging for service users to navigate,
  - complexity of the landscape that creates additional burden on the public purse through the cost of set-up and running of new organisations, knock on costs for existing schemes having to find ways of working together where there are gaps and overlaps, and the potential cost of people accessing multiple organisations about the same or substantially similar issues, and
  - that the proliferation of SPSBs undermines the ability of the Scottish Parliament to hold the Scottish Government to account."

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<sup>5</sup> Including councils, the health service, prisons, water and sewerage providers, Scottish Government, universities and colleges.

32. The SPSO elaborates that new SPSBs “may unintentionally increase costs for other organisations, such as information sharing agreements, understanding respective roles (sometimes requiring legal advice) and putting in place arrangements for how the organisations work in a complementary and collaborative way”. She further states that “it should not be forgotten that ultimately MSPs and the Parliament have the role of holding Government to account and SPSBs should not replace but support and enhance that role”, adding “I have a significant concern that a proliferation of SPSBs is undermining the ability of Parliament to hold Government to account”.
33. The SPSO further suggests that consideration could be given to separating financial (and possibly governance), performance and scrutiny, from operational and strategic performance scrutiny, and to whether there is a need for regular, periodic review of SPSBs. One option would be for the FPA Committee to hold the SPSBs accountable to “provide a more direct link between budgets and organisational governance and management”.

## **Next steps**

34. The Committee will continue taking evidence in relation to this inquiry at its next meeting.

**Clerks to the Committee  
April 2024**