

SPCB Supported Bodies Landscape Review Committee
Tuesday, 30 January 2025
2nd Meeting, 2025 (Session 6)



SPICe briefing on SPCB supported bodies

Today's meeting.....	2
Introduction	2
Previous reviews of SPCB Supported Bodies	4
Legal framework of SPCB supported bodies.....	6
The role of the Scottish Parliament Corporate Body (SPCB).....	6
The role of Parliamentary committees	7
Section 22 reports and enhancing governance arrangements.....	9
Alternative models for the commissioner landscape	11
Supporting information for today's evidence session	12
Commissioner for Ethical Standards in Public Life in Scotland.....	12
Standards Commission for Scotland.....	13
Theme 1: Role of SPCB supported bodies	14
Theme 2: Criteria for creating new supported bodies	16
Theme 3: Effective functioning.....	17
Theme 4: Accountability and scrutiny mechanisms	19
Theme 5: Sharing services and offices	21
Annexe A: Written submission, Commissioner for Ethical Standards in Public Life in Scotland	23
Annexe B: Written submission, Standards Commission for Scotland	31
Annexe C: Timeline of previous reviews of SPCB supported bodies	39
Annexe D: Letter from Liam McArthur MSP to the Presiding Officer regarding the written agreement.....	42

SPCB Supported Bodies Landscape Review Committee meeting, Thursday 30 January 2025

Today's meeting is the first of a series of evidence sessions with the SPCB Supported Bodies. In this session, the Committee will hear from the following:

- **Panel 1:** Ian Bruce, Commissioner for Ethical Standards in Public Life in Scotland
- **Panel 2:** Suzanne Vestri, Convener, Standards Commission for Scotland

The Committee will take evidence from the remaining SPCB supported bodies on the following dates:

- 6 February: Scottish Public Services Ombudsman
- 20 February: Scottish Information Commissioner, and the Scottish Biometrics Commissioner
- 27 February: Scottish Human Rights Commission, and the Children and Young People's Commissioner Scotland

Introduction

The SPCB Supported Body Landscape Review Committee has been established in response to a recommendation in the Finance and Public Administration Committee's (FPAC) report on [Scotland's Commissioner Landscape: A Strategic Approach](#). The FPAC called for a review of the SPCB supported bodies, drawing on the evidence and conclusions set out in its report, and that the review should be carried out by a dedicated Parliamentary committee.

As agreed by motion S6M-15753, this Committee's remit is to:

To consider, review and report on the SPCB supported bodies landscape in accordance with the Parliament's resolution of 31 October 2024 and develop a clear strategic framework to underpin and provide coherence and structure to the SPCB supported bodies landscape by the end of June 2025, including —

- (a) creating effective accountability and scrutiny mechanisms,
- (b) formalising strengthened criteria for creating new supported bodies; and
- (c) identifying and addressing any barriers to sharing services and offices.

To inform its inquiry the Committee is holding several evidence sessions with relevant experts including academics and SPCB supported bodies.

Background

The term 'SPCB supported bodies' will be used in response to findings of the FPAC that the terminology of commission, commissioner and ombudsman can be confusing.

Commissioners: latest position

Currently, there are seven SPCB supported bodies who are directly responsible to the Scottish Parliament, with their terms and conditions of appointment and annual budget set by the SPCB. These are:

- [Commissioner for Ethical Standards in Public Life in Scotland](#),
- [Scottish Biometrics Commissioner](#),
- [Scottish Commissioner for Children and Young People](#),
- [Scottish Human Rights Commission](#),
- [Scottish Information Commissioner](#),
- [Scottish Public Services Ombudsman](#), and
- [Standards Commission for Scotland](#).

Legislation has also recently been passed by Parliament to create a Patient Safety Commissioner, which has yet to be appointed. A Bill which would establish a Victims and Witnesses Commissioner is currently being considered at Stage 2, and a Members Bill which would create a Disability Commissioner is at Stage 1. Draft proposals for Members Bills would see a further two Commissioners being created, as follows:

- Older People's Commissioner (Colin Smyth MSP), and
- Wellbeing and Sustainable Development Commissioner (Sarah Boyack MSP).

The Scottish Parliamentary Corporate Body (SPCB) supports these independent officeholders and sets the terms and conditions of their appointment and annual budget. The [Officeholders' 2025-26 budget submissions](#) total £21.4m, this is £3.1m (17%) higher than the current year and £1.7m (8.6%) higher than the indicative plans. Individual officeholder budgets range from the smallest at £373,000 to £7,893,000. In a letter to the FPAC, the Presiding Officer states that the increase reflects additional costs in the Electoral Commission, inflation and the impact of the changes in Employers National Insurance contributions.

Office	Budget 23-24 £'000	Budget Bid 24-25 £'000	Budget Bid 25-26	24-25 Cash increase vs 24-25 approved budget	25-26 Cash increase vs 24-25 approved budget
Scottish Public Services Ombudsman (SPSO)	6,708	7,395	7,893	10.2%	6.7%
Scottish Information Commissioner	2,232	2,413	2,564	8.1%	6.3%
Commissioner for Children and Young People in Scotland (CYPCS)	1,536	1,687	1,763	9.8%	4.5%
Scottish Commission for Human Rights (SHRC)	1,341	1,456	1,557	8.6%	6.9%
Commissioner for Ethical Standards in Public Life in Scotland	1,606	1,818	1,913	13.2%	5.2%
Standards Commission for Scotland	338	363	373	7.4%	2.8%
Electoral Commission	1,933	2,165	4,306	12.0%	98.9%
Biometrics Commissioner (SBC)	444	499	529	12.4%	6.0%
Central contingency for legal action, staffing etc	500	500	500	0.0%	0.0%

Previous reviews of SPCB Supported Bodies

This is not the first time SPCB Supported Bodies have been reviewed. A key statutes/points timeline has been provided in Annexe C.

(i) 2008: Review of the SPCB Supported Bodies Committee

In 2008 the Review of the SPCB Supported Bodies Committee was established to consider “whether alterations should be made to the terms and conditions of the office-holders and the structure of the bodies supported by the SPCB”.

The Committee’s report generated statutory governance reform of SPCB Supported Bodies through **The Scottish Parliamentary Commissions and Commissioners etc. Act 2010** (“the 2010 Act”).

(ii) 2010: The Scottish Parliamentary Commissions and Commissioners etc. Act 2010

The 2010 Act standardised the accountability and governance arrangements of officeholders and bodies supported by the Parliamentary corporation and

harmonised the terms and conditions of appointment of all the officeholders and members of bodies supported by the SPCB.

In summary, the governance provisions introduced by the 2010 Act were –

- **Term of office** (single terms of eight years maximum)
- **Tenure of office** (2 possible grounds for removal, each subject to 2/3 vote of all MSPs)
- **Future employment restrictions** (period of restriction lasts until the end of the following financial year with possibility to vary if approved by SPCB)
- **Holding of other posts** while in office (restrictions on holding other posts determined by SPCB)
- **Salaries of officeholders** (SPCB to continue determining remuneration)
- **Appointment of staff** (Power to appoint and set T&Cs of staff subject to SPCB approval)
- **Financial provision** (SPCB must pay “properly” incurred expenses by officeholders and expenditure proposals subject to SPCB approval)
- **Strategic plans** (Officeholder must lay a plan before the Parliament and prior to that, a draft plan to SPCB for comment)
- **General powers to acquire and dispose of land** (Exercise of power subject to SPCB approval)
- **Location of office** (Power of SPCB to make directions)
- **Annual reports** (Power of SPCB to make directions on form and content)
- **Budgets** (Budgets must be prepared before the start of each financial year and sent to SPCB for approval)
- **Sharing of premises, staff services and other resources** ((Power of SPCB to make directions)
- **Witness expenses** (SPCB approval required)
- **Accountable officers** (SPCB must designate an accountable officer)
- **Appointment of advisers** (any payment to adviser subject to SPCB approval)

The recommendations from the 2009 Report were largely met in the 2010 Act. The exception to this is the “appointment of advisers” SPCB recommendation (contained in recommendation 11) which the Finance Committee voted to remove from the Bill during stage 2 amendments to the Scottish Parliamentary Commissions and Commissioners etc. Bill.1 More information on the reasons why is included in the footnote.

Since 2010, a further two Commissioners were created with the Scottish Biometrics Commissioner Act 2020 and the Patient Safety Commissioner for Scotland Act 2023. The governance provisions contained in those Acts largely match the governance provisions implemented by the 2010 Act. A few minor differences are noted as follows:

- **Term of office:** no provision in the 2020 and 2023 Act that explicitly say the Commissioner will not be reappointed (is ineligible for reappointment). The eight-year term is included.
- **Financial provision:** no explicit provision in the Acts which say the SPCB is to pay any expenses properly incurred by the officeholders. The Acts do contain budget provisions where the SPCB must approve the budget which details proposals for the use of resources and expenditure.
- **General powers – SPCB consent to acquire and dispose of land:** no provision in the Scottish Biometrics 2020 Act for this.
- **Appointment of advisers:** the 2020 and 2023 Acts provide for the Scottish Biometrics Commissioner and Patient Safety Commissioner to have advisory groups where appointment is subject to SPCB approval.

Legal framework of SPCB supported bodies

The legal framework in respect of SPCB supported bodies can be divided into 2 broad categories:

- Governance and scrutiny arrangements
- Control over the creation and functions of SPCB Supported Bodies

This paper focuses on the governance and scrutiny arrangements. Future papers will provide detail on the control over the creation and functions of SPCB Supported Bodies.

The role of the Scottish Parliament Corporate Body (SPCB)

Governance and scrutiny of SPCB supported bodies is split between the Corporate body and Parliamentary committees. The SPCB's role is to provide (and have administrative oversight of) the resources and services to enable the legislative requirements to be realised. The Parliament provides oversight of effective delivery of the policy objective through committee scrutiny.

The SPCB's focus and responsibility on funding, establishment of the Commissioner role and the administrative efficiency of services provided by each body, derives from the relevant legislation: proposed budgets are reviewed and agreed by the corporate body and they set the contractual terms and conditions of officeholders. The observance by individual officeholders of their terms and conditions, financial governance and the efficiency of their administration are matters for the SPCB (Legislation provides that it is for the SPCB to determine questions of compliance with terms and conditions).

Officeholders are accountable to Parliament for the performance of their substantive policy functions, in other words how the objectives of the role are being achieved. Parliamentary Committees have the role of scrutinising the delivery of outcomes which fall within the functions of each officeholder and they can consider the impact or success of what has been delivered by each SPCB supported body. To do so, allocated committees are provided with the annual reports of relevant SPCB supported bodies.

These governance arrangements are intended to secure an important principle of the Commissioner structure - their autonomy and independence in the delivery of their objectives from the organisations or performance they are intended to challenge or regulate. Legislation therefore restricts the SPCB's powers of direction to matters of administration and efficiency. Also, officeholders can only be removed if two thirds of Members of the Parliament agree that the prescribed legislative criteria of unacceptable performance are met.

The role of Parliamentary committees

The 2009 Report of the Review of the SPCB Supported Bodies Committee recommended that, given the important functions undertaken by SPCB supported bodies, they should be subject to committee monitoring and scrutiny on the exercise of their functions on at least an annual basis.

Changes were accordingly made to the Standing Orders of the Parliament (Rule 3.6) to provide that where an officeholder's annual report or strategic plan was laid before the Parliament, the Clerk would refer that document to the committee within whose remit the subject matter falls for consideration:

Rule 3A.6 Annual reports and strategic plans

1. Where a supported body's annual report or strategic plan is laid before the Parliament, the Clerk shall refer that document to the committee within whose remit the subject matter of that document falls for consideration.
2. Rule 14.2 does not apply where a supported body's strategic plan is laid before the Parliament.
3. In this Rule a "supported body" is any of the following Parliamentary corporation supported bodies—
 - (a) the Commission for Ethical Standards in Public Life in Scotland, established under section 1(1) of the Scottish Parliamentary Commissions and Commissioners etc. Act 2010;
 - (b) the Commissioner for Children and Young People in Scotland established under section 1(1) of the Commissioner for Children and Young People (Scotland) Act 2003 (asp 17);
 - (c) the Scottish Commission for Human Rights, established under section 1(1) of the Scottish Commission for Human Rights Act 2006 (asp 16);

(d) the Scottish Information Commissioner, established under section 1(1) of the Freedom of Information (Scotland) Act 2002 (asp 13);

(e) the Scottish Public Services Ombudsman, established under section 1(1) of the Scottish Public Services Ombudsman Act 2002 (asp 11); and

(f) the Standards Commission for Scotland established under section 8(1) of the Ethical Standards in Public Life etc. (Scotland) Act 2000.

The current SPCB supported bodies and relevant committees allocated are:

- **Scottish Public Services Ombudsman:** Local Government, Housing and Planning Committee
- **Scottish information Commissioner:** Standards, Procedures and Public Appointments Committee
- **Children's Commissioner:** Education, Children and Young People Committee
- **Ethical Standards Commissioner:** Standards, Procedures and Public Appointments Committee, and Local Government, Housing and Planning Committee
- **Scottish Human Rights Commission:** Equalities, Human Rights and Civil Justice Committee
- **Standards Commission:** Local Government, Housing and Planning Committee
- **Scottish Biometrics Commissioner:** Criminal Justice Committee

The SPCB has previously outlined key considerations for committees when scrutinising such bodies. These include:

Outcomes - What was their biggest success and why?

Where did they make a difference - Examples of where they make a demonstrable difference?

How they measure their success or otherwise - what processes and procedures do they use to obtain information about their impact; how can they improve.

Other reports laid - Did they lay any other reports and if so, why, and has it made a difference.

Strategic Plans/ KPIs - Were all their KPI's met; if not, why not

Details of petitions/complaints

Section 22 reports and enhancing governance arrangements

Section 22 of the Public Finance and Accountability (Scotland) Act 2000 enables the Auditor General to prepare a report on matters arising from the audit of the accounts of a public body. This type of report is known as a Section 22 report and such reports are prepared by the Auditor General if any specific concerns or issues have been raised in the audit of one of the public bodies for which he is responsible.

The 2020/21 audit of the Commissioner for Ethical Standards in Public Life in Scotland generated a Section 22 report and provided recommendations which were considered by the Public Audit Committee (“PAC”) in relation to the Ethical Standards Commissioner’s office. It also made wider governance observations:

Recommendation 3.4: The Commissioner’s Office should engage with the SPCB and Parliament to determine the reporting route for concerns about a Commissioner where that person is not responsive. Care will need to be taken relating to the independence of the Commissioner, however the power invested has clearly been abused and a process should be agreed to ensure this situation does not reoccur.

Recommendation 3.7. We recommend that the governance structures in place for this type of organisation are reviewed. The Commissioner’s Office needs to engage with the SPCB and Parliament to identify improvements. This should include improved communications between the different organisations who are involved in the governance of the organisation and stakeholders.

Recommendation 3.12. In view of the wider governance issues identified in this report, we recommend that the SPCB, in consultation with the Commissioner and other Officeholders, review whether the governance structure in place remains sufficient and appropriate

Considering these recommendations, and evidence considered by the PAC, the Presiding Officer wrote to the PAC on behalf of the SPCB, by [letter dated 6th May 2022](#).

The SPCB committed to enhancing some of the governance arrangements for SPCB supported bodies:

- reviewing all induction material provided to a new officeholder by their office to satisfy ourselves that the governance relationship with the SPCB/ Parliament is accurately stated
- introducing a Code of Conduct
- ensuring arrangements have been made by the officeholders to have access to an internal audit function
- seeking copies of external audit reports

- at official level, meeting formally with officeholders on an individual basis quarterly and arranging for the SPCB Portfolio Member and the Chief Executive to meet with the officeholders at least annually.

The written agreement

The SPCB also detailed that they were considering additional measures and proposed that a Memorandum (written agreement) between the SPCB and parliamentary committees be created to set out the roles and responsibilities of both parties, focussing on governance for the SPCB and scrutiny and accountability for committees.

The written agreement was considered and agreed by the Conveners Group in January 2023. In agreeing the written agreement, the Conveners Group highlighted to the SPCB that there was "...already a significant draw on committee time to scrutinise other matters and so carrying out any effective scrutiny work in the time available realistically could prove challenging" but agreed that arrangements would be reviewed after 12-18 months to assure itself that governance arrangements had been strengthened.

The written agreement is at Annexe D and places governance roles and responsibilities on the SPCB, Parliamentary Committees, and relevant Officeholders.

In summary, the agreement provides:

- For the SPCB, that external audit is undertaken by Audit Scotland, that the SPCB contracts with an independent assessor who evaluates each officeholder annually and prepares a report, that they ensure that all officeholders have an Advisory Audit Board, that all officeholders provide the SPCB's accountable officer with a certificate of assurance that they have followed good governance practices and that there are sound systems of internal controls, and that six monthly finance meetings are held with the officeholders' staff to discuss budgets, forecasting, contingency funding and the shared services agenda.
- Parliamentary Committees are to hold officeholders to account, in the exercise of their functions, on the Parliament's behalf and this can include the scrutiny of annual and strategic reports. It is for committees to decide the frequency and level of scrutiny they undertake. Committee scrutiny should focus on how officeholders are carrying out their functions at a high level and is not intended to review, direct or control specific decisions or actions.
- Officeholders have operational independence in carrying out their functions and report to the Parliament through annual reports and as appropriate other ad-hoc reports. Officeholders have terms of appointment approved by the SPCB which include the requirement to abide by a code of conduct. External stakeholders with concerns about the governance of a supported body can contact the SPCB secretariat to highlight their concerns. External stakeholders with concerns about the conduct of a supported body can share evidence of their concerns with the relevant committee(s) to inform their scrutiny work.

Alternative models for the commissioner landscape

With the rise in the number, and therefore cost, of commissioners, FPAC heard evidence about the [various alternatives to the SPCB supported model](#) during their inquiry. They included:

Fewer SPCB supported bodies with more powers and larger budgets

The New Zealand Model was suggested by Dr Ian Elliot as an example of a model with fewer supported bodies but with more powers and larger budgets. He suggested that this model budgets “might bring a more strategic approach” to the landscape. Additionally, some former SPCB supported Commissioners/ Ombudsman also favoured larger bodies and some went further to suggest that future bodies could fit into existing bodies similar to how other complaints and whistleblowing became part of the SPSO jurisdiction. [Other evidence highlighted](#) that there could be some benefit in grouping all the rights-based bodies together, and placing the more “transactional” organisations, including the SIC, SPSO and Ethical Standards Commissioner (ESC) in one place.

Champions within SHRC

During the FPAC Inquiry there was some [evidence suggesting](#) the SHRC should be expanded to include leads to represent and support the rights of specific groups as this approach could prevent people “falling through the gaps”. However, other evidence including from Research Scotland highlighted that this approach could create ongoing issues and “... if a lead was created for one group, leads would be required for all sorts of different groups and [they] were not sure where that would end”.

This model is seen internationally. In New Zealand for example, designated commissioners for race relations, equal employment opportunities, and disabilities. There is the potential challenge for each of these ‘leads’ to have visibility and autonomy in this model.

Government Champions

Another option highlighted by witnesses was for an individual to be appointed within Government that has responsibility for representing a specific group when policy is being developed or changed. In an [informal discussion with the former Commissioners/Ombudsman on 23 April 2024](#) it was highlighted that there were a large number of Government ‘champions’ who had successfully demonstrate their independence through holding government and public bodies to account. This model also allowed for clear lines of accountability to government, scrutiny by Parliament, and there is potential for efficiencies through sharing offices and services with government and public bodies. Disadvantages of this approach included the potential for “less dynamism, independence, and visibility”.

Supporting information for today's evidence session

Commissioner for Ethical Standards in Public Life in Scotland

The post of the Commissioner for Ethical Standards in Public Life was created by the [Public Services Reform \(Commissioner for Ethical Standards in Public Life in Scotland etc.\) Order 2013](#). The single commissioner replaced the Commission for Ethical Standards in Public Life in Scotland and its two members: the Public Standards Commissioner for Scotland and the Public Appointments Commissioner for Scotland.

Role and Responsibilities

- To investigate complaints about the conduct of Members of the Scottish Parliament (MSPs), local authority councillors and board members of public bodies. Where the Commissioner considers that there has been a breach of the relevant Code of Conduct, they will report:
 - in the case of councillors and members of public bodies, to the Standards Commission for Scotland (SCS)
 - in the case of MSPs, to the Scottish Parliament.
- To investigate complaints about lobbyists who have failed to register or provide certain information to the Scottish Parliament and, where there has been a contravention, to report to the Scottish Parliament.
- To regulate and monitor how people are appointed to the boards of public bodies in Scotland, and to promote diversity in that process. The key functions are:
 - To prepare, publish and, as necessary, revise a Code of Practice for Ministerial Appointments to Public Bodies in Scotland (the Code).
 - To issue guidance on the Code and to promote compliance with its provisions.
 - To examine the methods and practices employed by the Scottish Ministers when making appointments.
 - To report to the Scottish Parliament instances of material non-compliance with the Code of Practice; the Commissioner may direct the Minister to delay making the appointment until Parliament has considered the report.
 - To ensure that, as far as possible, appointments are made fairly and openly and allow everyone, where reasonably practicable, the opportunity to be considered for an appointment.

Statutory Powers of the Commissioner

The Ethical Standards Commissioner and their team:

- Investigate complaints about the conduct of MSPs, local authority councillors, board members of public bodies and lobbyists.
- Regulate how people are appointed to the boards of public bodies in Scotland.

Written submission is available in Annexe A

Standards Commission for Scotland

The then Scottish Executive introduced the Ethical Standards in Public Life etc. (Scotland) Bill to the Scottish Parliament on 1 March 2000. The [Policy Memorandum](#) on the Bill gives more information on the background. As detailed in this memorandum, on July 1997 the Committee on Standards in Public Life (the Nolan Committee) published its report, Standards of Conduct in Local Government in England, Scotland, and Wales. While the report concluded that most councillors were 'decent, hardworking and honest,' it also noted that a 'profusion of rules in local government,' had resulted in a 'growing lack of clarity of standards of conduct.'

The Nolan Committee favoured a continuation of a non-statutory system for public bodies to ensure standards of conduct, however the Scottish Executive preferred introducing a statutory system, stating in the memorandum that this would not be seen 'as a deterrent by anyone genuinely committed to public service values,' and that a 'clear and strong framework of control,' would offer assurance to councillors themselves.

The Bill was passed on 21 June 2000 and became an [Act on 24 July 2000](#).

Role and Responsibilities

The role of the [Standards Commission](#) is to achieve the highest possible ethical standards in public life so that the public in Scotland has confidence in those elected to local councils, and those appointed to the board of devolved public bodies. The Standards Commission promotes awareness of, and adherence to, the Codes of Conduct of councils and other devolved public bodies listed under Schedule 3 to the Ethical Standards in Public Life etc (Scotland) Act 2000, by providing guidance, support, and training. The Standards Commission reviews reports from the Ethical Standards Commissioner on its investigations into complaints about breaches of these Codes. The Standards Commission then determines whether to hold a Hearing, direct the ESC to carry out further investigations, or take no action. The Standards Commission can hold a Hearing to determine if a councillor or member of a devolved public body has contravened that body's Code of Conduct, and can determine what sanction will be applied, if the Code of Conduct has been breached.

Statutory Powers of the Commission

The Standards Commission's functions as provided for by the 2000 Act are to:

- Issue guidance to councils and devolved public bodies to assist them in promoting high standards of conduct.
- Review reports from the ESC on the outcome of their investigations and determine whether to hold a Hearing or to take no action. The Standards Commission can also to direct the ESC to carry out further investigations.

The Standards Commission will hold a Hearing to determine:

- whether a councillor or member of a devolved public body has contravened the Councillors' or the Members' Code of Conduct.
- the sanction to be applied where, following a Hearing, the Panel find that a councillor or member has breached the relevant Code of Conduct.

Written submission is available in Annexe B

Theme 1: Role of SPCB supported bodies

The FPAC inquiry sought evidence on the role SPCB supported bodies play in the current model and what role they should play in future. Following their inquiry, FPAC produced a report that highlighted several [conclusions and recommendations](#). They included but are not limited to the following:

- “The Committee notes that the SPCB supported body landscape was relatively stable until 2020, when an additional body was created, followed by another in 2024. Proposals for a further six new advocacy-type SPCB supported bodies are currently being considered. This proliferation appears to have been primarily driven by calls to respond to perceived systemic failures in the delivery of public services, to bring prominence to a specific issue or policy area, seeing similar high-profile Commissioners in Wales and England, and more awareness of, and expectations, around individuals’ rights.
- We tend to agree with witnesses that creating new Commissions or Commissioners under the SPCB supported body model has, in recent years, been seen as an ‘easy win’ for the Scottish Government; it can demonstrate that it is responding to calls for the creation of new ‘champions’, without the need to provide oversight or ensure effectiveness. We understand that creating new supported bodies can also seem appealing and attainable to individual Members through the Members Bill process.
- Continuing the trend for creating new advocacy-type SPCB supported bodies is not sustainable, especially at a time of significant pressure on public finances in Scotland. Before adding any more to the mix, we must first design a coherent structure, with enhanced accountability, budget-setting, and scrutiny mechanisms, as well as effective delivery and measurement of outcomes. We welcome the valuable engagement from campaign groups, SPCB supported bodies, the SPCB, the Scottish Government, Committees and Members, during the course of this inquiry and we now seek further support in taking forward these important recommendations. Collectively, we believe that we can design and deliver an SPCB supported body landscape that is fit for the future.”

In both their written response to the call for views and the FPAC meeting on 30 April 2024 the Standards Commission spoke to how their role supports public confidence in those elected to represent them. [Lorna Johnston stated](#) during the 30 April 2024 FPAC Meeting:

“Our role supports democracy because we are helping to ensure that politicians, as in councillors, are making decisions in the best interests of the public, rather than in their own interests, so that in itself supports democracy. Commission members are appointed by the Scottish Parliamentary Corporate Body, a cross section of MSPs, with the approval of the full Parliament, so they are not any kind of political appointment at all.”

Additionally, in their [call for views](#) response they explain:

“The Standards Commission’s work helps ensure awareness of, and compliance with, the rules and standards expected of those in public life in Scotland. It also allows the public to have confidence that allegations of misconduct will be investigated and that the rules will be firmly and fairly enforced. This confidence is important as a lack of trust and confidence in those in public life affects not only the reputation of any one individual. It can also erode confidence in public messaging and public bodies which, in turn, can have an adverse effect on the delivery of public services. A lack of trust in politicians and others in public life can also have an adverse effect on participation and diversity of representation as members of the public may be discouraged from standing for office if they have no faith in those in charge.”

The Commission for Ethical Standards in Public Life in Scotland highlighted the importance of independence as a key aspect of SPCB supported bodies in their [call for views evidence](#) stating:

“Independence from the Scottish Parliament and the Scottish Government appear to me 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 fulfilling their functions appropriately and using public funds economically, efficiently and effectively.”

Ian Bruce, Commissioner for Ethical Standards in Public Life in Scotland expanded on the role of SPCB supported bodies during the FPAC meeting on 30 April 2024 and the importance of considering intersectionality when looking at the expanding landscape as “People are not in wee boxes and it is wrong to think of them in that way.”

He questioned how an individual looking to a SPCB supported body for support may do so in a more disparate landscape:

“It is important for the committee and the Parliament to consider the intersectionality of individuals who want to access services. I know that there are proposals for some new commissioners, but the issue is having people in wee boxes. So, you are an older person, or you are a neurodiverse person, or you are a disabled person—you can be all three of those things. It is important to view all the proposals through that lens of intersectionality. Is it anticipated that an individual who is in challenging circumstances would approach all three commissioners, or are all three a champion for that individual?”

Theme 2: Criteria for creating new supported bodies

Following their inquiry, FPAC produced a report that highlighted several [conclusions](#) and [recommendations](#). They included but are not limited to the following:

- “We tend to agree with witnesses that creating new Commissions or Commissioners under the SPCB supported body model has, in recent years, been seen as an ‘easy win’ for the Scottish Government; it can demonstrate that it is responding to calls for the creation of new ‘champions’, without the need to provide oversight or ensure effectiveness. We understand that creating new supported bodies can also seem appealing and attainable to individual Members through the Members Bill process.
- The Committee is disappointed that the Session 2 Finance Committee’s criteria in developing and considering new proposals to create new SPCB supported bodies, does not, however, appear to be being used in the way intended when they were agreed by Parliament. We question whether some of the bodies that have been created, or are now being proposed, would meet the tests in these criteria, including clarity of remit, distinction between functions, and complementarity. We believe that these criteria must now be strengthened and consolidated into the Parliament’s formal practices. We also ask that proposals for new public bodies will be robustly assessed against the tests in the Scottish Government’s Ministerial Control Framework agreed last year, to limit further cluttering of the broader public sector landscape.
- The Committee shares the views of some witnesses who highlighted that the creation of new advocacy organisations within the SPCB supported body landscape presents democratic accountability concerns, as well as challenges in demonstrating effectiveness and delivery of outcomes. It is our clear view that this advocacy role is for MSPs to undertake, with Parliament holding Government to account on how it seeks to improve the lives of specific groups of society or develop and deliver effective policy, with the third sector continuing to play a crucial role. We also believe that the funding for new supported bodies would be better spent on improving the delivery of public services ‘on the ground’, where greater impact can be made.”

In previous evidence from Ian Bruce, he explained how the Commissioner for Ethical Standards in Public Life in Scotland came to be in its current iteration.

“My office was established following recommendations made by that Committee. In brief, the functions of what had historically been three separate officeholders were assigned to a single officeholder. In 2016, the investigation of complaints about regulated lobbying were added to my office’s regulatory remit as opposed to being assigned to a new Commissioner. It will be for the Scottish Parliament to determine whether options appraisals when proposing Commissioner related bills, such as those that led to the creation of my office, are sufficiently robust.”

This provides an example of how the landscape has evolved and remits updated rather than creation of a new SPCB supported body.

In the [FPAC meeting on 30 April 2024](#), Lona Johnston was asked in her capacity as Executive Director at the Standards Commission to reflect on the recent proposed increase in the number of SPCB reported bodies to which she explained:

“It may be because there is no clear rationale and a limited remit in terms of what each one is supposed to be doing. Some office-holders have quite a broad, undefined remit. I think that our governing legislation works well because we have such a limited and fixed remit. We know exactly what we are doing, it is easy for us to report on success against that or otherwise, and it is easy for that to be scrutinised. If the remit is broader and more undefined, that is obviously a lot harder to do.”

Theme 3: Effective functioning

Following their inquiry, FPAC produced a report that highlighted several [conclusions and recommendations](#). They included but are not limited to the following:

- “During our inquiry, the Committee heard compelling evidence that this model is no longer fit-for-purpose. In the absence of a clear and coherent framework underpinning how the overall landscape should operate, it has developed in an ‘ad hoc’ way with individual proposals being agreed on a case-by-case basis. This approach has led to a disjointed landscape comprised of a collection of individual bodies, with varying functions and powers.
- There is evidence of duplication and overlap between existing SPCB supported bodies and other public bodies in Scotland, which appears to be currently managed through collaboration and co-ordination of activities. We welcome the views of supported bodies that more work can be undertaken in this area, including sharing premises and back-office functions.
- Overall accountability, budget-setting, and scrutiny mechanisms, as set out in legislation and procedures, require an overhaul to ensure they are clearer, more robust, joined-up, and transparent.”

Additionally, during the FPAC inquiry several SPCB supported bodies shared that they had seen a rise in demand for their services. The Commissioner for Ethical Standards in Public Life in Scotland explained what this meant for them in their written evidence to FPAC:

“As with other office-holders, there has been a rise in demand for our services. There have been additional complaints and there are any number of things that drive those. You spoke about officers being in place for a long time, but I think traditionally people felt that we should have been getting through investigations much more quickly because people do not want complaints hanging over them. All the work that we have done, further to that planning exercise and recruitment, has been about improving the service that we provide.”

Additionally, in the FPAC meeting on 30 April 2024, Ian Bruce spoke briefly about the audit of the Commissioner for Ethical Standards in Public Life in Scotland by the Auditor General for Scotland. He stated:

“One of the key findings was that, in the view of the auditors, we did not have sufficient resources to fulfil our statutory functions. We were required to conduct an extensive workforce planning exercise and that is what we did, and it was extensive. We submitted a bid to the SPCB on the back of that. It was clearly an evidence-based bid and we said, “This is what we feel we need in order to acquit those statutory functions.” That bid was accepted.”

The Standards Commission also provided evidence related to the ability to carry out their functions effectively. Similar to the Commissioner for Ethical Standards in Public Life in Scotland, the Standards Commission highlighted their work is very demand driven.

Concerns of overlap between SC and the ESC

During the FPAC Inquiry [concerned were raised](#) through evidence about the potential for duplication and/overlap amongst SPCB supported bodies and across the wider public sector. Despite existing SPCB supported bodies stating that they work together to coordinate any overlapping activities, there are concerns that an increase in SPCB supported bodies would exacerbate these issues including [creating barriers for people who may not know who to approach for support](#). This was of particular concern surrounding [human rights related public bodies](#).

However, others saw overlap not as a problem but a way to ensure individuals do not fall through gaps in the system. A [similar point was made by the SPSO](#), who said that there should be more opportunities “to work together across the public sector more often, to work more collaboratively and to share information and intelligence more constructively”.

Given the similar remits of the Standards Commission Commissioner for Ethical Standards in Public Life in Scotland it is understandable that there may be concerns of overlap. However, the written [response from the Standards Commission for Scotland](#) to the FPAC call for views they state: “There is no overlap or duplication of functions between the Standards Commission and any other commissioner or organisation in Scotland. The Standards Commission’s remit covers the conduct of councillors and members of devolved public bodies. It does not cover their performance or quality of their decisions. The Standards Commission does not have any role or remit in respect of decisions taken by a council or devolved public body, the level of service provided or the conduct or performance of officers and employees.

The roles and remits of the Standards Commission and ESC are also distinct. The ESC is responsible (amongst other statutory functions), for investigating complaints about councillors and members of devolved public bodies, whereas the Standards Commission is responsible for:

- promoting the ethical standards framework;
- providing guidance and advice on how the Codes of Conduct should be interpreted;

- adjudicating on complaints that a councillor or member of a devolved public body has breached their respective Code, following a referral from the ESC post investigation; and
- applying a sanction should a breach of a Code be found.”

Additionally, Ian Bruce explained succinctly that “[the Commissioner for Ethical Standards in Public Life in Scotland’s] functions are very distinct from those of the Standards Commission. It is true that we look at the same cases, but I investigate those cases and report on them to the Standards Commission, which adjudicates on them. Those are clearly separate functions”.

Theme 4: Accountability and scrutiny mechanisms

Following their inquiry, FPAC produced a report that highlighted several [conclusions and recommendations](#). They included but are not limited to the following:

- “Overall accountability, budget-setting, and scrutiny mechanisms, as set out in legislation and procedures, require an overhaul to ensure they are clearer, more robust, joined-up, and transparent.
- Capacity issues present challenges for the SPCB in enabling sufficient time and resource to provide comprehensive oversight and governance of supported bodies. This function of the SPCB has evolved organically and is a role that sits uneasily alongside its other core purposes.
- Faced with busy workloads, committees also experience capacity issues in scrutinising the effectiveness of SPCB supported bodies and their delivery of outcomes. Enabling legislation must in future be much more tightly drawn, with specific functions, expected outcomes, periodic reviews, and regular performance reporting included, as well as sunset clauses to allow assessment of continuing need.”

Additionally, the FPAC put forward several considerations from witnesses for Scotland’s model of scrutiny. They include:

- The national performance framework could be better used to measure effectiveness.
- Setting out more clearly the specific functions and expected outcomes of SPCB supported bodies in the enabling legislation, which committees could then use as a way of measuring effectiveness and the delivery of outcomes.
- A “dual process”, which could involve committees scrutinising, and Parliament debating, supported body annual reports.
- The [Welsh model](#), which includes a specific requirement for committees to hold annual evidence sessions with officeholders
- In addition to holding annual evidence sessions, committees could undertake a more thorough review of these bodies once a session.
- A strong oversight committee responsible for scrutiny of all SPCB supported bodies, similar to the [model in New Zealand](#) which has a separate ‘Officer of the Parliament Committee’ including budget-setting and appointments, as well as the role of reviewing proposals to create new officers.

- Evaluating all supported bodies' effectiveness against the same common and consistent standards.

In previously given evidence, both the Standards Commission and the Commissioner for Ethical Standards in Public Life in Scotland describe how these organisations are scrutinised.

In their call for views response the Standards Commission describe its current governance and oversight arrangements as "adequate" and cites work done by Audit Scotland and SPCB's Head of Internal Audit. However, the Commission stated that accountability in practice is heavily dependent on how well the work and functions align to a relevant parliamentary committee.

Additionally, "the Standards Commission understands that its work falls under the remit of both the Local Government, Housing and Planning, and the Standards, Procedures and Public Appointments Committees. The Standards Commission consults with, and advises, both committees on its strategic plans and any key issues or work, such as the issuing of statutory directions to the ESC and its annual reports. The Executive Director is invited to appear before the Local Government, Housing and Planning Committee each year, to give evidence about the Standards Commission's annual report."

The Commissioner for Ethical Standards in Public Life in Scotland states that their "decisions are independently scrutinised by the Standards Commission for Scotland and the Scottish Parliament" which allows for "a measure of public assurance that I am fulfilling my statutory functions appropriately".

In describing this further in their call for views response they explain:

"We publish an Annual Report and Accounts each year, following completion of the work of the Auditor General, to provide assurance on financial regularity and our governance. Should the Auditor General have concerns he may lay a Section 22 report with the Scottish Parliament. In this event, subsequent scrutiny of our financial and governance arrangements is provided by the Public Audit Committee. We also submit an Annual Report to the Scottish Parliament, in accordance with the provisions of the 2010 Act, which must include information on the performance of my functions. We also provide an annual certificate of assurance to the Clerk/Chief Executive of the Scottish Parliament in his capacity as overall Accountable Officer for officeholder budgets. My office is funded through the Scottish Parliament and, each year, I submit an evidence based budget bid for scrutiny and approval."

Additionally, Ian Bruce explained:

"I give evidence on an annual basis to two subject committees on the exercise of my statutory functions, these being the Standards, Procedures and Public Appointments Committee and the Local Government, Housing and Planning Committee. I also provide evidence on an ad hoc basis to any subject committee with an interest in the work of my office."

As a result of this, Ian Bruce stated "I believe that the governance arrangements of my office and independent oversight of them are robust."

In their response to the FPAC call for views the Standards Commission states:

“The Standards Commission has performed effectively every year since its establishment, by achieving its statutory duties and by meeting, or exceeding, the objectives identified in its business plans.”

The response also explains:

“The Standards Commission has a defined performance management framework, with key performance indicators outlined in the annual business plans. Activities undertaken to progress the actions in the business plan are recorded on an ongoing basis, with performance being reviewed formally by the Standards Commission on a quarterly basis. A report on overall performance is then included both in its annual report and annual accounts.”

The Commissioner for Ethical Standards in Public Life in Scotland stated in their [response to the FPAC call for views](#), “My performance is annually appraised by an independent assessor assigned by the SPCB to fulfil that activity. The results of these performance reviews are submitted to the SPCB.”

Theme 5: Sharing services and offices

The concept of shared offices and back-office services came up frequently in previous evidence sessions related to Scotland’s SPCB supported bodies landscape. Proponents of this concept see it as an effective cost saving measure, and a way to potentially increase joint working and decrease any potential overlap. Ian Bruce highlighted in the [30 April 2024 FPAC meeting](#) that in relation to the Commissioner for Ethical Standards in Public Life in Scotland:

“There is clearly plenty of scope in relation to where a physical office is located. We will all be aware that there are any number of buildings in the public sector estate at the moment that are largely running empty, because things have changed a lot since the pandemic. Clearly, there are options to potentially share buildings and back-office services. All those things are possible, and I would be more than happy to work towards a position where we are sharing more services.”

The Standards Commission shared evidence with FPAC on how the Commission benefits from being located in the Scottish Parliament Building.

“We benefit from a lot of shared services, because we are based in the Parliament building. We get our IT provision and we have access to SP learning and the postal provision and all that kind of stuff. We are in a slightly different position from the other officeholders, but we certainly find it very helpful to be based in this building.

I think that we have all started looking at the shared services agenda. Two years ago, we entered a payroll contract with, I think, a couple of the other office-holders and a couple of other organisations. We also all have data protection officer services that are provided through that kind of shared service. I do not think that anyone is necessarily being protective and not looking to share services.”

Additionally, the Standards Commission shared that based on their experience with the other officeholders “Everybody is very willing to see what further can be done, so I do not think that office-holders are leaving it to the SPCB to look at this. I think that it is on everybody’s agenda as something that we need to work harder on.”

**Kelly Eagle, Senior Researcher, SPICe Research
January 2025**

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The Scottish Parliament, Edinburgh, EH99 1SP www.parliament.scot

Annexe A: Written submission, Commissioner for Ethical Standards in Public Life in Scotland

SPCB Supported Bodies Landscape Review

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

We measure outcomes through a combination of quantitative and qualitative metrics, designed to assess our efficiency, effectiveness and impact. These metrics are set out in appendix five to our [strategic plan for the period from 2024 to 2028](#), which we consulted on extensively with all of our stakeholders, inclusive of the Scottish Parliamentary Corporate Body (SPCB), the Standards Commission for Scotland (SCS) and the two subject committees that we report to, these being the Local Government Housing and Planning Committee (LGHPC) and the Standards, Procedures and Public Appointments Committee (SPPAC). A proportion of these outcomes are included in the framework agreement that we have in place with the SPCB, although we have chosen to identify additional ones in order to provide further assurance to the public about the way in which we fulfil our role.

The outcomes are selected and prioritised on the basis of the statutory functions that my office fulfils and on the views of stakeholders who responded to the draft version of the strategic plan during the consultation period.

My primary statutory functions are as follows:

- to investigate complaints about the conduct of Members of the Scottish Parliament (MSPs), local authority councillors and board members of public bodies. Where I consider that there has been a breach of the relevant Code of Conduct, I will report
 - in the case of councillors and members of public bodies, to the Standards Commission for Scotland (SCS)
 - in the case of MSPs, to the Scottish Parliament.
- to investigate complaints about lobbyists who have failed to register or provide certain information to the Scottish Parliament and, where there has been a contravention, to report to the Scottish Parliament.
- to regulate and monitor how people are appointed by the Scottish Ministers to the boards of public bodies in Scotland, and to promote diversity in that process. The key functions are:
 - to prepare, publish and, as necessary, revise a Code of Practice for Ministerial Appointments to Public Bodies in Scotland (the Code)
 - to issue guidance on the Code and to promote compliance with its provisions

- to examine the methods and practices employed by the Scottish Ministers when making appointments
- to report to the Scottish Parliament instances of material non-compliance with the Code of Practice; and
- to ensure that, as far as possible, appointments are made fairly and openly and allow everyone, where reasonably practicable, the opportunity to be considered for an appointment.

We have adopted a range of Key Performance Indicators (KPIs) to measure the extent to which we are fulfilling these functions appropriately and in accordance with the principle of Best Value.

To provide two simple examples, one of our KPIs includes the number of complaints that we investigate to a conclusion within target timeframes. For public appointments, we measure our impact by assessing the extent to which public body boards are reflective of the people that they have been established to serve. As with other elements of the strategic plan, these KPIs were consulted on.

We demonstrate the extent to which we are meeting KPIs by publishing this information each year in our annual report and accounts. We also publish standalone information on our website such as on complaint waiting times and on the views of applicants about the public appointments process.

We regularly review our KPIs to ensure they remain aligned with our priorities in our strategic plan and address the needs of our stakeholders more widely. As such, we also produced a [standalone document containing additional metrics](#) that we can refine during the period of the strategic plan, based on feedback from those who come into contact with our office.

My view is that the process used to select and prioritise outcomes is already a robust one inasmuch as it involves formally and proactively gathering the views of our stakeholders to inform outcomes for the coming four years, each time our office consults on its strategic plan for that period. In terms of scope for improvement, I believe that we could do more to engage with the general public in this area and we already have plans in place to do so.

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

It is a matter of public record that the Auditor General for Scotland laid a section 22 report on the work of our office in December 2021. Since that time, it is my view that parliamentary scrutiny of our work has been regular and robust.

Parliamentary committee scrutiny has provided valuable opportunities to ensure transparency and accountability in our work. In practice this has involved giving evidence at least annually to both the LGHPC and SPPAC at public sessions. Each committee's area of focus is aligned with the separate statutory functions that I fulfil; in this case, respectively, complaints about councillor conduct and complaints about

lobbying, MSP conduct and my regulation of ministerial public appointments. I also meet with Committees and Committee Conveners at informal ad hoc private sessions to provide briefings and/or to answer specific questions of interest to the Members.

The SPCB also scrutinises my governance, staffing and financial arrangements by way of quarterly meetings with SPCB representatives and an annual in person meeting with the Members of the SPCB itself.

As my decisions on councillor/member and MSP conduct are independently scrutinised by the Standards Commission for Scotland and the Scottish Parliament, and as both bodies may issue statutory directions to me, there is a measure of public assurance that I am fulfilling my statutory functions appropriately.

Over and above this my performance is annually appraised by an independent assessor assigned by the SPCB to fulfil that activity. The results of these performance reviews are submitted to the SPCB.

We welcome scrutiny of our work to enhance our own credibility and public trust by demonstrating transparency and a willingness to be held accountable. Scrutiny has offered us valuable feedback and recommendations, which have supported continuous improvement in our processes, decision making and delivery of our functions.

In terms of how scrutiny has impacted performance more directly – it does help highlight where issues lie and enables us to focus on addressing those issues, for instance relative to complaint wait times and measures introduced specifically to improve these remain an on-going feature of our work following previous engagement with the LGHPC, SPPAC and SPCB, which complements our external and internal audit recommendations, alongside workforce planning and strengthening corporate governance.

We have developed a Quality Assurance Framework to provide assurance on the quality of all our investigatory work. Through rigorous quality assurance measures, we seek to identify trends, be accountable for and prevent reoccurrence of issues, improve our service and provide assurance to stakeholders that our work is of the highest quality and stands up to external scrutiny. The framework covers key areas of our work including training, quality reviews and the on-going development and enhancement of our Investigations Manual.

We believe that parliamentary committees could play a valuable role in scrutinising our performance against this Framework as well as against the other outcomes identified in our strategic plan. Such oversight would not only reinforce transparency and accountability but also support the refinement of our practices to better meet the needs of stakeholders.

As to the final part of your question, as well as parliamentary oversight, I think it is important to highlight that we are subject to annual audits by Audit Scotland, which review both our governance and finances and that we also commission internal audits to examine aspects of the way in which we fulfil our functions.

My view is that improving scrutiny should involve the sharing of intelligence across all of the parties that oversee the work of my office. Doing this should reduce overlaps in scrutiny and the duplication of effort. It should also ensure that our auditors, the SPCB and parliamentary committees have a complete picture in respect of how we are fulfilling our role. I attach at Appendix One, for illustrative purposes, a copy of a diagram that demonstrates the number of the different bodies etc. that oversee my work. It is not exhaustive but does demonstrate, as it stands, the complexity of current oversight and reporting arrangements.

I am not persuaded that standardisation of scrutiny beyond this is appropriate as I anticipate that the subject committees that I report to will continue to have an interest in those aspects of my work that are relevant to them and will continue to wish to take evidence from and question me on my work in these areas.

The current officeholders are not a homogeneous group and oversight of each one should be tailored to ensure that the respective subject committees they report to continue to have a role in holding them to account.

I understand that the SPPAC is already looking at committee effectiveness as part of its current work programme and consider that this must overlap with your own review.

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

In respect of other SPCB supported officeholders we work together in practice in two main ways, over and above ad hoc contact on a range of issues of mutual interest.

Firstly, our corporate services team meets with their equivalents from each of the other SPCB supported officeholders on a quarterly basis. These meetings are run under the auspices of the Officeholders Shared Services Network (OSSN). Over the course of the last two meetings, the OSSN has discussed, among other things:

- sharing updated BSL plans and ways of mitigating the associated costs through shared learning and/or procuring shared services.
- sharing hints, tips and best practice around the practicalities of moving to Sharepoint and cloud-based IT services.
- combining resources when introducing and updating HR policies.
- the benefits of officeholders tendering together to reduce time and combine resources.
- hosting others in their premises (a number already share premises and back office services).

Secondly, I meet with my fellow officeholders on a regular basis to discuss issues of mutual interest and to explore other opportunities for us to work together and pool resources. Most recently, I circulated a database of all of the activities that my office

engages in – showing both “back of house” and “front of house” functions – to allow each of us to more readily identify areas in which services could be shared, pooled or outsourced as appropriate. As with the OSSN, we also discuss options relating to tendering jointly for training etc and pooling resources on activities such as policy work to reduce duplication of effort.

My office’s work with others is, of course, not restricted to working alongside my fellow officeholders. We work closely with our other statutory stakeholders including the Scottish Parliament, Scottish Government and the Standards Commission for Scotland.

By way of example, we assist the Standards Commission for Scotland with training and the development of its statutory guidance and advice notes on application of the Codes. We assist the Scottish Government in developing guidance and training on adherence to the Code of Practice for ministerial appointments to public bodies in Scotland. We also provide support for its aspiring NHS Chair’s programme.

For the Committee’s reference, we first mapped our key stakeholders in early 2021 and included all of the organisations in Scotland who have a clear interest in, or who may be affected by, the work that we do. The outcome of our stakeholder mapping is set out in our [Communication Strategy](#) that was republished on our website in November 2024. The strategy provides details of not only how we will communicate with our stakeholders but areas where we will work in partnership directly. In carrying out a stakeholder analysis and categorising our stakeholders into groups, we have sought new ways to communicate, engage and work in practice with other bodies.

One very positive example where we already seeing the benefits of engagement with other public sector bodies, relates to the work we have led on in recent months to re-establish a UK wide Ethical Standards Network (ESN) with colleagues at the Public Sector Ombudsman for Wales and Northern Ireland Public Services Ombudsman. We expect to see significant benefits from this approach, in terms of sharing best practice and enabling improved consistency and efficiency in complaint handling. This network approach also supports professional development through peer learning and enhances accountability by promoting high standards across the different bodies.

A practical example of shared service in this area is the joint delivery of training that we are engaging with other bodies on through the ESN. This approach offers several benefits which include financial savings as, by pooling resources and sharing costs, we have reduced the financial burden on each participating organisation, making training more cost-effective. We found that our own colleagues and those of other these organisations have benefited from the networking opportunity this has brought, which we hope will lead to further co-operation and innovation in the future. The ESN are already scoping for the next joint training opportunities likely to take place in the 2025/26 year.

In terms of barriers to working and engaging with other public bodies or services, we have sought ways to address these through our communications strategy and indeed wider strategic plan. However, on a more practical level, given the nature of our role, barriers can include maintaining impartiality and managing public perception while collaborating with other bodies. All of the SPCB supported officeholders are

statutorily independent and I am answerable to some of them. For example, the SPSO can investigate complaints about maladministration on the part of my office and the Scottish Information Commissioner can review and disagree with decisions I have reached about the release of information.

Over and above this, and as the Committee is already aware, the Commissioner landscape has developed in a piecemeal way over time and each officeholder has had to establish and run their offices, complying with all statutory obligations, based on the prevailing circumstances at the time. It is not straightforward to unpick this, although if one were starting with a blank piece of paper with the purpose of establishing all current officeholders from scratch, and with the powers now in place to direct them in respect of accommodation and other matters, I anticipate that a different approach would be taken.

The Committee will appreciate that these factors can at times complicate opportunities for collaboration or co-ordination of efforts towards a particular end. This doesn't, however, preclude our engaging in the types of activities I have described above, and I remain committed to exploring further opportunities to do so.

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

The criteria as developed by the Finance Committee provide a helpful framework for consideration when any new "Commissioner" (or equivalent) related bills are proposed. They should help to ensure a consistent and thorough evaluation and inform any decision making.

In terms of how these could be improved, we would suggest that "Affordability" should be considered for inclusion. It is clear that funding for new Commissioners has been a key consideration, given that it was the Finance and Public Administration Committee's review and recommendations which led in turn to the establishment of the SPCB Supported Bodies Landscape Review Committee.

"Best Value" and/or "Added Value" could be an additional criterion for the Committee to also consider including in deciding on the creation of new Commissioner posts. This would be with a view to ensuring that the posts will in some way enhance the effectiveness and impact of public services and deliver better outcomes and/or levels of accountability, where such posts are deemed to be necessary.

In combination these additional criteria could involve further assessment of where proposed posts address a clear need and fill a gap that cannot be met within any existing structures and also whether the value to be added is justified in terms of public spending.

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

We consider the model and structure of our office functions well. We have a small team dedicated to corporate governance covering a multitude of finance, IT, training and HR matters, whilst having support staff to assist teams dedicated to public appointments and investigations. These in turn support the senior management team who in turn support me to acquit my statutory functions appropriately.

We also have an agreed scheme of delegation in place which ensures that staff can provide cover wherever needed and are empowered to take action on matters as delegated to avoid 'bottle necks' in work flow. The external and internal auditors provide assurance that our processes in place are effective and ensure we improve where they are not.

All work within the office is aligned to achieving the objectives set out in the strategic plan and our performance framework is the mechanism used to ensure that our resources are dedicated to that end.

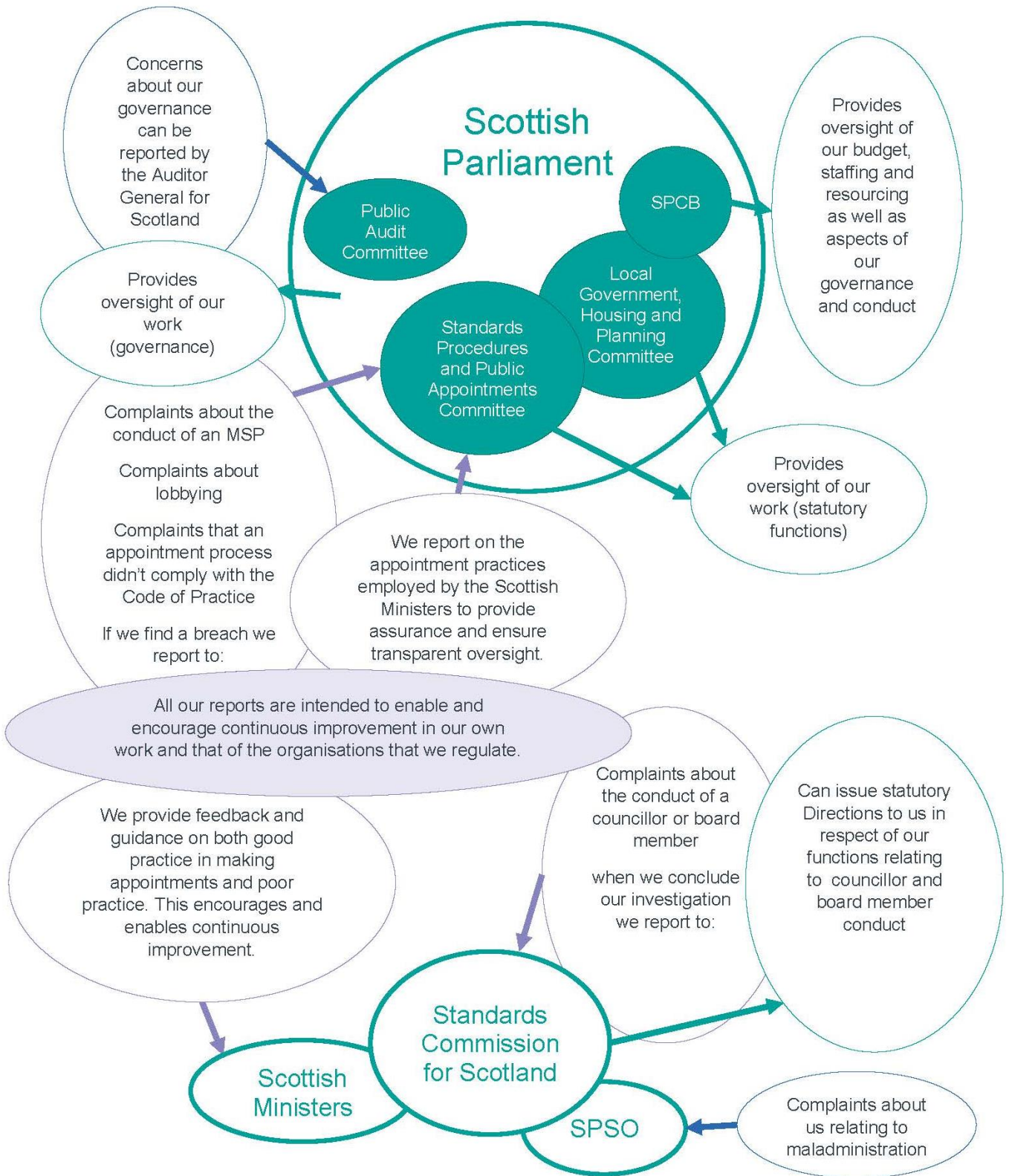
In terms of an optimal structure for Commissioners more generally, this will depend on their specific roles, functions and the outcomes they are tasked with delivering. This means that a one-size fits all approach may not be appropriate or feasible. However, it is important that key principles guide their design and the criteria as already established by the Finance Committee may be helpful in this regard. They could also act as a helpful reference point for consideration of the current landscape and how it might be adapted.

When looking across the landscape currently and in prospect, Simplicity and Accessibility are, in my own personal view, particularly important in this respect. Members of the public are not necessarily concerned to know whether there is a *specific* body that advocates for them or that handles complaints about, for example, the delivery of public services or the ethical conduct of their local councillor. They do however want to be able to complain about such issues, to have their concerns listened to and, where appropriate, investigated and addressed. They want to know that public bodies and the people elected or appointed to serve them will be held to account when things go wrong, and that services or conduct will improve as a consequence. They don't want to have to do research to find out who can help them. They don't want to have to be sent from pillar to post in pursuit of their quest for justice and answers. If the landscape isn't currently meeting all these needs, then we collectively have a responsibility to address the deficiencies in it. If any changes to the landscape are to be made, we collectively have a responsibility for ensuring that it makes the ability of the public to raise their legitimate concerns easier, not more complicated than it already is.

I trust that these responses will be of some assistance to the Members and look forward to giving evidence in person at the end of the month.

Ian Bruce, Ethical Standards Commissioner

Annexe: our oversight and reporting lines



Annexe B: Written submission, Standards Commission for Scotland

14 January 2025

SPCB Supported Bodies Landscape Review

Q1: How do you measure and demonstrate outcomes, and how are these outcomes selected and prioritised? What improvements could be made to this process?

How outcomes are selected and prioritised

The Standards Commission has a statutory responsibility to adjudicate on alleged breaches of the codes of conduct for councillors and members of devolved public bodies and, where a breach is found, to apply a sanction. Following the conclusion of any investigation he has undertaken into an alleged breach of the applicable code by a councillor or member, the Ethical Standards Commissioner (ESC) will send a report to the Standards Commission outlining his findings and conclusions. In terms of the governing legislation (the Ethical Standards in Public Life etc. (Scotland) Act 2000), the Standards Commission then must decide whether to hold a Hearing; direct the Commissioner to carry out further investigations; or do neither (which essentially means that no further action will be taken on the complaint). The Standards Commission is also obliged by the 2000 Act to issue guidance on how the Codes should be interpreted.

The Standards Commission has five part-time Members appointed by the Scottish Parliamentary Corporate Body (SPCB) with the agreement of the Parliament. One of these, the Convener, is contracted to work the equivalent of three days per month, while the remaining members work two days. Members also sit on Hearing Panels (consisting of three Members), as and when required. The Standards Commission has one full-time member of staff, being the Executive Director, who is also the Accountable Officer. In addition, it employs a Case Manager, an Office Manager and an Administrative Assistant, all of whom are part-time, (with the overall staffing complement being equivalent to 3.1 full-time members of staff).

The Standard Commission operates against a four-year strategic plan (currently its plan for 2024-28), the objectives of which are delivered through the implementation of annual business plans. Copies of the strategic and business plans are published on its website. All actions in the business plans are linked to one of the strategic objectives, with specific targets and measurements identified for each activity. Progress against the plans is reviewed regularly by the Executive Team and then formally by Members at least once a quarter.

When selecting outcomes to be included in the strategic and business plans, the Standards Commission gives priority to its statutory functions. Other outcomes connected to these functions, in respect of promoting high ethical standards and awareness, understanding and adherence to the Codes are identified in its strategic and business plans, following ongoing reviews and analysis of intelligence provided and gathered via:

- feedback and surveys;
- enquiries and requests for assistance received;
- cases referred and Hearings held;
- collaborative working and discussions with stakeholders (please see the response to question 3 below); and
- monitoring of the media, the public sector landscape, and work of equivalent bodies in other parts of the UK and Ireland and other analogous standards organisations.

It should be noted, however, that the process of identifying and selecting the Standards Commission's non-statutory outcomes and priorities also involves consideration of the limitations of its budget and the associated constraints on resources. As the Committee will be aware, the Standards Commission is funded by the Parliament and submits an evidence-based budget for scrutiny and approval each year. At present, staff and Member salaries comprise, on average, 87% of expenditure. The majority of the Hearings-related costs comprise of Members' salaries, so the budget submission is based mainly on projections of Hearings-related activity.

While the number of complaints made, the eligibility of those complaints for investigation, and consequent number of cases referred by the ESC to the Standards Commission is outwith its control, the volume of referrals impacts on the resources required (including Members' pay for Hearings, which is separate from their monthly salaries, but included in the overall salary costs). The anticipated number of Hearings is forecast using information relating to the previous year and estimates provided by the ESC. As the Committee will appreciate, it is not possible to accurately determine, before the start of any financial year, how many cases will ultimately be referred and, of those, how many will result in Hearings. The costs incurred in holding Hearings continues to depend on a variety of unquantifiable factors, some of which are, again, outwith the control of the Standards Commission, such as the location, potential duration and complexity of the complaint under consideration.

The fluctuations in the volume and timing of case referrals, and the impact of this on the budget and resources available, means the Standards Commission is required to plan ahead carefully, and to review and assess its priorities on an ongoing basis to ensure it achieves the outcomes identified in its strategic and business plans. As noted above, it does so by reviewing the business plan on a continuous basis.

In addition, the Standards Commission agrees its Risk Register at the start of the operational year to ensure that reasonably foreseeable risks to the implementation of the strategic and operational objectives are identified. The Risk Register contains a score for each risk, which reflects the likelihood of it occurring and the impact should it occur, in light of the controls in place and actions taken, and is reviewed and updated by the Executive Team on an ongoing basis. The Standards Commission has an Audit and Risk Committee, which formally reviews the Risk Register, including the score for each risk and the risk tolerance level, at each of its meetings

(held three times per year). A report of the review is thereafter provided for consideration by Members at the next available meeting of the Standards Commission. These review processes ensure that any risks to the achievement of the strategic and operational objectives are identified and monitored regularly.

How outcomes are measured and demonstrated

The Standards Commission has a defined performance management framework, with key performance indicators outlined in its annual business plans. These key performance indicators include measurements relating to the timescales involved in the disposal of cases and the achievement of the service standards outlined in the Standards Commission's Service Charter. Activities undertaken to execute the strategic aims and actions in the published business plan are recorded on an ongoing basis, with performance against this being reviewed formally by the Standards Commission on a quarterly basis. The Standards Commission also reviews progress against the key performance indicators formally three times a year to identify any trends and improvements that need to be made to processes, or changes to priorities and how resources are allocated, should there be any significant and / or consistent failure to meet targets. The key performance indicators are also reviewed and adjusted on an annual basis to achieve business objectives, drive performance and ensure the needs of service users continue to be met. A report on overall performance is included in both the Standards Commission's annual report and its annual accounts.

The Standards Commission meets ten times a year. Two Members of the Standards Commission are nominated to sit on its Audit and Risk Committee, with a further two on its Human Resources Committee. Minutes are taken of all meetings, with agreed actions recorded in a log of matters arising. Progress against this log is then reviewed as a standard agenda item at each meeting. As outlined above, the progress against the business plan is reviewed formally on a quarterly basis, with actions taken to mitigate risk being reviewed formally three times per year.

The Standards Commission also measures outcomes by seeking feedback from all service users and stakeholders on how it has made decisions on case referrals, conducted Hearings, dealt with enquires and on its training events and educational material. A review of all feedback received is included as a standard agenda item, and undertaken, at each Standards Commission meeting. In addition, following the making, issuing and publishing of a 'no action' or Hearing decision, a review of the particular case is undertaken at the next Standards Commission meeting, to check that it was well-reasoned, consistent and clear, and to identify any potential learning points in respect of how the referral and adjudication process was managed. The Standards Commission also undertakes a full annual review of all decisions made, and feedback received, in respect of case referrals and Hearings in the previous year, to identify any potential improvements to its case related policies, procedures and standard documents.

The Standards Commission conducts surveys of councillors, members of devolved public bodies, council Monitoring Officers and public body Standards Officers on a five-yearly basis (with the last ones being undertaken in 2021/22). The purpose of these surveys is to learn about stakeholder experiences with the ethical standards framework and their awareness of the provisions in the codes of conduct. The

Standards Commission also uses the surveys to measure its own strategic performance by asking questions about its educational material and training events, and the experiences any stakeholders have had in respect of its adjudicatory work.

Further ways in which the Standards Commission measures and demonstrates outcomes is by holding events and meetings with stakeholders (such as its annual workshops with Monitoring Officers and Standards Officers). The Standards Commission seeks feedback on its case related processes, educational material and future plans at these events. In addition, the Standards Commission further reviews questions posed, and suggestions made, by the Local Government, Housing and Planning Committee and the SPCB when it appears before them. It then demonstrates outcomes by circulating agreed actions and by subsequently advising stakeholders on progress against these in its annual reports and its quarterly professional briefings (which are published on the Standards Commission's website and circulated to all councillors and members of devolved public bodies through Monitoring Officers and Standards Officers). The Standards Commission also engages with stakeholders by consulting with them on any proposed new educational material or significant changes to its Guidance, Advice Notes and case related policies and processes.

The Standards Commission monitors the number and nature of complaints made to the ESC, cases referred to it, and enquiries and requests for training received, in order to understand awareness, understanding of, and adherence to, specific provisions in the codes of conduct, so that it can gauge the success of its promotional and educational material and identify whether further targeted guidance or a new approach may be required. It then demonstrates outcomes by recording, in the published minutes of its meetings, actions taken in this regard. This includes changes to policies, procedures and educational material; dissemination and publication of further advice; and the production of guidance in alternative formats (such as eLearning modules and videos).

What improvements could be made to the process for selecting and prioritising outcomes

Given the fairly limited extent of the Standards Commission's remit and, particularly, its statutory responsibilities, it considers its existing processes for selecting and prioritising outcomes is proportionate and appropriate. The Standards Commission nevertheless recognises that more work could be undertaken to measure and assess its outcomes, especially in respect of public understanding of, and confidence in, the ethical standards framework and those in public life. The Standards Commission acknowledges it would be possible to conduct research, albeit it notes that it would require further resources to be able to do so. The Committee may wish to note that the Standards Commission and ESC recently provided the Scottish Government with questions on public confidence in local councillors for potential inclusion in next Scottish Household Survey.

Q2: How has Parliamentary committee scrutiny worked in practice and how has this impacted performance? How could scrutiny be improved and/or standardised?

How Parliamentary scrutiny has worked in practice and how this has affected performance

The Standards Commission is accountable to the SPCB and to the Parliament via its Committees. The Standards Commission understands that its work falls under the remit of both the Local Government, Housing and Planning, and the Standards, Procedures and Public Appointments Committees. The Standards Commission consults with, and advises, both committees on its strategic plans and any key issues or work, such as the issuing of statutory directions to the ESC and its annual reports. The Standards Commission is invited to appear before the Local Government, Housing and Planning Committee each year, to give evidence about its annual report. As a public body, the Standards Commission is also subject to scrutiny by the Finance and Public Administration Committee, and the Public Audit Committee.

Standards Commission Members meet the SPCB on an annual basis, with the Convener's performance being appraised by an external assessor appointed by the SPCB. The Standards Commission's Executive Director attends formal quarterly meetings, and regular informal meetings, with the Parliament's Officeholder Services Team to ensure the SPCB is provided with updates on governance arrangements and expenditure against budget.

The Standards Commission considers that all scrutiny, whether by the Parliament (via its committees), through external audit or by the media, service users and other stakeholders, provides accountability and serves to encourage best practice and value for money, all of which have a positive impact on performance and service delivery. The Standards Commission has found that the questions posed, and points and suggestions made, by the Local Government, Housing and Planning Committee helpful in terms of planning and prioritising work. For example, the Standards Commission recently exchanged correspondence with the Committee in respect of making training on the Councillors' Code mandatory for elected members. Appearing before the Committee and SPCB also prompts useful critical thinking on the Standards Commission's annual progress, main achievements, key challenges and any notable trends.

How scrutiny could be improved and / or standardised

The Local Government, Housing and Planning Committee's remit does not cover the Standards Commission's role in respect of members of devolved public bodies. It may be appropriate, therefore, for the Standards Commission to also be invited to give evidence on its annual report and performance to the Standards & Public Appointments Committee. In order to enhance the benefit of committee scrutiny, the Standards Commission considers it may also be helpful for it to receive feedback on any committee deliberations on its work which are undertaken in private. The Standards Commission further considers that scrutiny could be improved by members of committees or the SPCB observing any of its public meetings or Hearings.

In terms of standardisation, the Standards Commission notes that the various SPCB-supported bodies have distinct operating models, with some being significantly

different both in terms of the scope of their remit and extent of their expenditure and budget. It may be, therefore, that the most suitable scrutiny model for one body may not necessarily be proportionate or appropriate for another.

Q3: How do you work in practice with other public bodies or services and what are the main barriers faced? How can these barriers be overcome to improve efficiency and reduce costs while ensuring that shared services maintain high standards of quality and accountability?

How we work in practice with other public bodies or services and what are the main barriers we face

The Standards Commission works closely with the ESC to identify and try to resolve issues arising in respect of the interpretation of the Codes. The Executive Team engages with the ESC's team regularly and receives fortnightly updates on the number and nature of forthcoming case referrals. The Standards Commission's Executive Director meets the ESC on a fortnightly basis, to discuss issues of common interest, including suggestions for improving the processes for the investigation and adjudication of complaints about councillors and members, in order to achieve efficiency, transparency and consistency in decision-making. Standards Commission Members hold formal meetings with the ESC twice a year to discuss complaint trends, matters concerning the ethical standards framework, and to exchange information about ongoing work and future plans.

The Standards Commission works with its other stakeholders to share information, best practice and to discuss and resolve any issues affecting the ethical standards framework. This includes engaging and holding regular meetings with the Scottish Government, the Improvement Service, SOLAR, Accounts Commission, COSLA, the College Development Network and NHS Education for Scotland. It also works closely with councils, public bodies, the Government and the Improvement Service to train and induct councillors and board members on the provisions of the codes of conduct, and to promote the importance of compliance with these and high ethical standards.

As noted above, the Standards Commission consults with the ESC and other stakeholders on any changes it is proposing be made to its case related policy and process documents, and educational material. It engages directly with councillors and members via quarterly standards updates, news updates and blogs, training events, and when dealing with enquires on how the codes of conduct should be interpreted. The Standards Commission also engages with other standards bodies in others part of the UK and Ireland to share best practice and learning.

As the Standards Commission's office is located in the Scottish Parliament building it does not pay rent or other utility or accommodation related costs. The Standards Commission has agreements in place with the Parliament for the provision of IT, internal audit, data protection officer, communication and financial processing services at no cost. Standards Commission staff also benefit from access to the Parliament's 'My Learning' portal. The Standards Commission shares a joint contract with three other officeholders for the provision of payroll services.

The Standards Commission's Executive Director attends meetings with other Officeholders to discuss issues of common concern and to explore the possibility of sharing services and procuring joint contracts. It has provided training to other Officeholders and assisted with mentoring new appointees and grievance investigations. The Standards Commission has benefitted from shared training opportunities arranged by other Officeholders and from taking part in various networking groups, such as the Part 7 Network, Officeholder Shared Services Network, DPO Officeholders' group, and training events organised by National Records for Scotland and Cyber Scotland.

The Standards Commission has not experienced any significant barriers in terms of its ability to work in practice with other public bodies or services. On the contrary, the Standards Commission considers it has developed strong and constructive relationships, which has enabled it to work effectively with its various stakeholders and other Officeholders.

As noted above, the Standards Commission benefits greatly from the location of its office and the service agreements in place with the Parliament. The Standards Commission is willing to explore any other opportunities to work and share services with other bodies.

How can these barriers be overcome to improve efficiency and reduce costs while ensuring that shared services maintain high standards of quality and accountability?

The Standards Commission considers there is scope for further shared services between Officeholders, possibly in respect of governance reporting, human resources and administrative matters. It would also be open to sharing contracts for the provision of training and services that may be of interest to all, such as on cyber resilience or the provision of design work.

Q4: Criteria were developed by the Session 2 Finance Committee to help guide decisions on whether to create a new commissioner. These criteria (Clarity of Remit, Distinction between functions, Complementarity, Simplicity and Accessibility, Shared Services and Accountability) are considered by the Scottish Government and Members when proposing Commissioner related bills. Are these criteria currently adequate and how could they be improved?

The Standards Commission agrees the criteria identified by the Finance Committee are appropriate. The Standards Commission considers they offer a standardised framework under which decisions are made, while nevertheless allowing for significant diversity to encompass any new and different remit and functions any new commissioners would be required to fulfil.

The Standards Commission would suggest that further criteria could be:

- demonstrable public need, with a clear link to the broader vision of focusing on 'human rights and equality for everyone' as mentioned in the "Commissioner Landscape Strategic Approach";
- affordability

- ability to provide value for money; and
- feasibility in terms of any new commissioner's likely ability to implement or deliver strategic change.

It might be helpful for consideration to be given, when commissioner-related bills are proposed, to comparable organisations or commissioners in other jurisdictions and the impact they have, as well as to whether any desired functions could be covered relatively easily by other existing organisations or whether an alternative model could meet the same public need (i.e. including an appraisal of other potential options as part of the decision-making process).

The Standards Commission further suggests that consideration should be given to the possibility of establishing a commissioner for a set period or purpose.

Q5: What should the optimal model and structure for commissioners look like, and what key features should it include?

The Standards Commission considers the optimal model and structure for commissioners may well depend on each individual organisation's remit meaning it may not be appropriate to take a 'one size fits all' approach. In contrast to a single officeholder, the Standards Commission has five Members who are responsible for leading the organisation, overseeing the systems of governance and internal controls and setting the strategic direction. The Standards Commission is satisfied that its model of five part-time Members, with an Executive Director as Accountable Officer, is the appropriate structure for its remit, given its Members have not only a strategic and scrutiny role (similar to a board), but also an operational one, in terms of its adjudicatory function (in making decisions on referrals from the ESC and in forming Hearing Panels). The Standards Commission notes, however, that this model might not suit a rights-based commissioner who is not expected to fulfil an operational role.

The Standards Commission nevertheless considers that key features of the model should include:

- having a clear remit and terms of reference (to avoid 'mission creep' and organisational expansion);
- a structure that enables the organisation to achieve its purpose and aims efficiently and effectively; and
- clear lines of accountability and means of measuring impact and assessing performance, including scrutiny of whether the purpose is being fulfilled and whether the organisation continues to provide value for money.

The Standards Commission further suggests that, depending on the nature and scale of a commissioner's remit, it could be helpful to have some representation from members of the public, (lay members) in addition to an appropriate balance of qualified professionals.

Annexe C: Timeline of previous reviews of SPCB supported bodies

Key: [1] - Existing Commissions/Commissioners; [2] – Legislation; [3] - Reports, agreements and letters; [4] - Proposed Commissioners; [5] - Bills and proposed Bills (not yet introduced)

2000

- Standards Commission for Scotland [1] - created by Ethical Standards in Public Life (Scotland) Act 2020 [2]
- Chief Investigating Officer - also created by Ethical Standards in Public Life (Scotland) Act 2020 (repealed with functions transferred to the Commission for Ethical Standards in 2010 - see below)

2002

- Scottish Public Services Ombudsman [1] - created by Scottish Public Services Ombudsman Act 2002 [2]
- Scottish Information Commissioner [1] - created by the Freedom of Information (Scotland) Act 2002 [2]
- Scottish Parliamentary Standards Commissioner - created by the Scottish Parliamentary Standards Commissioner Act 2002 [2] (renamed and transferred to Commission for Ethical Standards in 2010 - see below)

2003

- Commissioner for Public Appointments in Scotland - created by the Public Appointments and Public Bodies (Scotland) Act 2003 [2] (renamed and transferred to the Commission for Ethical Standards in 2010 - see below)
- Commissioner for Children and Young People [1] - created by the Commissioner for Children and Young People (Scotland) Act 2003 [2]

2006

- Scottish Human Rights Commission [1] - created by the Scottish Human Rights Act 2006 [2]
- Finance Committee Report 2006 [3]

2007

- Crerar Report 2007 [3]

2009

- SPCB supported Bodies review report 2009 [3]

2010

- Scottish Parliamentary Commissions and Commissioners etc. Act 2010 [2] which established the Commission for Ethical Standards in Public Life in Scotland (the 'Commission') and brought together the functions as follows: 1. the Public Standards Commissioner for Scotland who is responsible for the functions previously undertaken by the Chief Investigating Officer and the Scottish Parliamentary Standards Commissioner and 2. the Public Appointments Commissioner for Scotland who is responsible for the functions previously undertaken by the Commissioner for Public Appointments in Scotland. (Both posts were abolished and the Commission dissolved in 2013 replaced by the Commissioner for Ethical Standards - see below).

2013

- Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013 [2] abolished the posts of Public Standards Commissioner and Public Appointments Commissioner for Scotland, dissolved the Commission and created the post of Commissioner for Ethical Standards in Public Life in Scotland (ESC) [1].

2020

- Scottish Biometrics Commissioner created by the Scottish Biometrics Commissioner Act 2020 [2]

2021

- The 2020/21 AG audit of the Commissioner for Ethical Standards in Public Life in Scotland [3]

2022

- May 2022 - letter from SPCB to Public Audit Committee [3]
- Sept 2022 - Proposals for a Future Generations Commissioner and a Learning Disability, Autism and Neurodiversity Commissioner/ Commission [4] in the 2022-2023 SG Programme for Government
- Dec 2022 - Proposal for Wellbeing and Sustainable Development Commissioner [4] in the Proposed Wellbeing and Sustainable Development (Scotland) Bill (not yet introduced) [5]

2023

- January 2023 - Written Agreement relating to Parliamentary-funded officeholders between SPCB and Conveners Group [3]
- March 2023 - Victims and Witnesses Commissioner for Scotland [4] in the Victims, Witnesses, and Justice Reform (Scotland) Bill [5]

SSPCB/S6/25/2/1

- June 2023 - Proposal for a Commissioner for Older People **[4]** in the Proposed Commissioner for Older People (Scotland) Bill (not yet introduced) **[5]**
- November 2023 - Patient Safety Commissioner for Scotland created by the Patient Safety Commissioner for Scotland Act 2023 **[2]**

2024

- Feb 2024 Disability Commissioner in the Disability Commissioner (Scotland) Bill **[5]**
- Sept 2024 Finance Committee Report 2024 **[3]**

Annexe D: Letter from Liam McArthur MSP to the Presiding Officer regarding the written agreement

20 February 2023

Dear Presiding Officer

I am writing in response to your letter of 23 September 2022 in which you propose the introduction of a written agreement between the Parliament's Committees and the Scottish Parliamentary Corporate Body on their relationship with SPCB supported officeholders.

The Conveners Group signed off the proposed written agreement at its meeting on 25 January. During its consideration the Group also raised some issues which I have set out below.

Conveners are very keen to ensure that measures are in place to avoid any reoccurrence of the circumstances that gave rise to the Auditor General for Scotland's Section 22 report following the audit into the office of the Commissioner for Ethical Standards in Public Life in Scotland. This includes ensuring that early warning systems are in place so that any issues can be addressed before they become a problem. The written agreement is a welcome step towards achieving that.

The clarification the written agreement provides of the respective roles of the SPCB and committees and in setting out the expectations on committees in carrying out effective scrutiny is also welcome. The Group was pleased that further reassurance as to the SPCB responsibilities in terms of governance is provided. This includes human resources issues with officeholders, as well as the detail provided on the additional governance measures that the SPCB has in place.

These points, coupled with the work being taken forward at official level in raising awareness through guidance and training, provide welcome assurance that we are all working towards ensuring safeguards and effective scrutiny measures are in place.

Having said that, there is already a significant draw on committee time to scrutinise other matters and so carrying out any effective scrutiny work in the time available realistically could prove challenging. That does not mean that committees will not make every effort to carry out this scrutiny work. However, we need to acknowledge the challenge this presents for committees with busy workloads.

The Group has agreed to keep the operation of the written agreement under review and so we propose to return to this in 12 to 18 months to assess the effectiveness of these measures.

We will keep you informed of any issues arising from the review process.
Yours sincerely

Liam McArthur MSP, Chair, Conveners Group

Written agreement relating to Parliamentary-funded officeholders

Introduction

This Written Agreement between the Scottish Parliamentary Corporate Body (SPCB) and the Scottish Parliament's committees is intended to clarify the respective roles and responsibilities of the SPCB and relevant committees in the oversight of Parliament-funded officeholders. It sets out a robust governance role for the SPCB and promotes effective scrutiny by committees of how Officeholders carry out their functions. While the Agreement supports a clear separation of roles, there is scope, where relevant and appropriate, for SPCB staff and committee clerks to engage over common issues.

Background information

The Parliament/ Scottish Parliamentary Corporate Body (SPCB) oversees the following officeholders:

- The Scottish Public Services Ombudsman
- The Scottish Information Commissioner
- The Commissioner for Children and Young People in Scotland
- The Commissioner for Ethical Standards in Public Life in Scotland
- The Scottish Human Rights Commission
- The Standards Commission for Scotland
- The Scottish Biometrics Commissioner

The legislation establishing the officeholders provides that in the exercise of their functions (except where otherwise provided) they are not subject to the direction or control of the SPCB, any member of the Scottish Government or any member of the Parliament.

The role of the Scottish Parliament Corporate Body

The SPCB has a governance role for officeholders, covering areas including setting the terms of appointment of the officeholder; agreeing staff terms and conditions proposed by an officeholder, office location and approval of an annual budget. Along with committees, the SPCB is also consulted on the strategic plans for each officeholder.

The SPCB makes provision for personal accountability through annual evaluations and it scrutinises officeholders in relation to their financial accountability.

To fulfil its duties, the SPCB has put in place practical governance arrangements for the officeholders.

Officeholders are provided with an appointment letter when they take up office setting out their terms and conditions of appointment. It also sets out their functions and that it is a matter for them to familiarise themselves with their statutory powers and all other statutes applying to their office and to undertake any necessary personal development to ensure they can fulfil their functions and duties.

They receive an Accountable Officer letter and a detailed Memorandum setting out their duties. This appointment is a personal one and cannot be delegated to others. Accountable officers are directly answerable to the Parliament in the exercise of the following functions:

- a) signing their accounts of their expenditure and receipts;
- b) ensuring the propriety and regularity of their finances; and
- c) ensuring that their resources are used economically, efficiently and effectively.

The Memorandum sets out what governance arrangements should be in place including a sound system of internal control, strong corporate governance arrangements and access to an Advisory Audit Board for independent advice on their corporate governance and risk and financial management performance arrangements and internal control systems. Arrangements should also be made for internal audit which should accord with the latest standards and practices.

Officeholders Finance Manual – This sets out in detail a framework within which the accountable officer, and the SPCB, as the funding body, are required to operate to ensure that appropriate funding is available to enable them to undertake their statutory functions.

Officeholders Framework Document – This supports the efficient administration of the relationship between an officeholder and the SPCB. It sets out the roles and responsibilities which underpin the relationship and forms a key part of the accountability and governance framework.

How does the SPCB satisfy itself about the governance arrangements?

To support the SPCB in its governance role there are various means of assurance.

The primary one is external audit. This is undertaken by Audit Scotland.

The SPCB contracts with an independent assessor who evaluates each officeholder annually and prepares a report. In undertaking the assessment, the assessor will use several sources of evidence – such as annual reports, performance indicators, committee appearances and an interview. **Engagement with the assessor is a term of appointment.**

The SPCB ensures that all officeholders have an Advisory Audit Board. This provides officeholders with advice and support relating to the governance and financial performance of the office.

It is a formal requirement that all officeholders provide the SPCB's accountable officer with a certificate of assurance that they have followed good governance practices and provide assurances that there are no significant matters arising from an officeholder's annual accounts. They also provide an assurance that there are sound systems of internal controls and that they are working well. It is expected that these certificates are discussed with the external auditors prior to being submitted.

Six monthly finance meetings are held with the officeholders' staff to discuss budgets, forecasting, contingency funding and the shared services agenda.

The role of Scottish Parliamentary Committees

Scottish Parliamentary committees hold officeholders to account, in the exercise of their functions, on the Parliament's behalf. Committee work related to officeholders can include the scrutiny of annual and strategic reports prepared by the supported bodies, which are referred to the relevant committee(s) by the Clerk/Chief Executive. It is for committees to decide the frequency and level of scrutiny they undertake in relation to how the officeholders within their respective remits carry out their duties. Parliamentary is essential in ensuring public accountability of officeholders. Committees should therefore ensure their engagement with officeholders is meaningful and effective as an important part of ensuring their accountability to the Scottish Parliament.

Committees do not have a governance role in respect of officeholders, although they may consider governance arrangements as part of their scrutiny work. Committee scrutiny work focusses on how officeholders are carrying out their functions at a high level and is not intended to review, direct or control specific decisions or actions. These are properly matters for officeholders.

The role of officeholders

Officeholders have operational independence in carrying out their functions. Officeholders report to the Parliament through annual reports and as appropriate other ad-hoc reports. Officeholders can also engage and input with any committee consultations.

Concerns or complaints about officeholders

All officeholders have terms of appointment approved by the SPCB which include the requirement to abide by a code of conduct.

Functional decisions taken by an officeholder are deemed final and can only be challenged through the courts given the statutory independence of their office.

External stakeholders with concerns about the governance of a supported body can contact the SPCB secretariat to highlight their concerns.

External stakeholders with concerns about the conduct of a supported body can share evidence of their concerns with the relevant committee(s) to inform their scrutiny work.

Where relevant and appropriate, information on the work of officeholders will be shared between the SPCB and parliamentary committees.