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Committee  
The Scottish Parliament  
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Dear Kenneth,

## **SCOTLAND'S COMMISSIONER LANDSCAPE: A STRATEGIC APPROACH**

I note that the Committee has commenced an inquiry examining Scotland's Commissioner landscape. I am writing to offer my reflections on the points raised by the inquiry regarding whether a more "coherent and strategic approach" is needed for the creation of any further Commissioners.

As Parliamentary Commissioners and Ombudsmen typically cover Scottish Government activity it is important to ensure independence from the Scottish Ministers. While established Commissioners are independent of central government, there is some limited influence government can have in the creation of new public bodies.

As agreed by Cabinet on 9 May 2023, the Scottish Government's Ministerial Control Framework (MCF) aims to ensure that decisions around the creation of new public bodies are made based on evidence and value for money against the backdrop of significant pressure on public spending. The MCF includes the following three principles:

1. The Scottish Government's policy is that any new public body should only be set up as a last resort;
2. Only after consideration of all other delivery mechanisms has been exhausted, should the approval process for setting up a new public body through the Ministerial Control Framework be followed; and
3. Approval for setting up a new public body must be sought formally from Cabinet before any decision or announcement is made.

The MCF ensures there is a rigorous, consistent and transparent decision-making process for the creation of new public bodies should a proposal or consideration come from within government. Where this concerns the potential creation of a new Commissioner, MCF guidance stresses that the merits of that decision must be discussed with the Chief

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Executive's Office of the Scottish Parliamentary Corporate Body (SPCB) at the earliest opportunity.

While the Scottish Government has the MCF, I am aware there is not a similar control mechanism available for public bodies being proposed from outside government. Were a Bill proposing the creation of a new public body, be it a Commissioner or otherwise, to come forward from an MSP outside of government there would be no place for the MCF to act as a control mechanism ensuring best value. Instead, government can take a position on Bills that arise from out with government during the consultation stage and throughout the passage of a Bill. At these points we can outline any concerns with proposals, particularly in relation to the costs involved. However, if MSPs decide to have a Commissioner, it will be for the Scottish Parliament to determine if it is being done in a way that is most effective. Introducing a best value assurance process for proposals coming from outside of government would be a decision for Parliament and would need to go through a Parliamentary process. It could be a viable option for the SPCB to take on that role as sponsor.

Given the current financial constraints the public sector is facing I understand the desire to consider best value when taking decisions on the establishment of new Parliamentary Commissioners. While I appreciate there has been little research in Scotland, or the UK, on Commissioners which evaluates their powers or ways of working I am aware this is not the first time these matters have been considered. Following consideration by the Finance Committee of the 2006-07 public spending budget process and its concerns about rising costs, the Parliamentary corporation requested that Audit Scotland undertake a review of the opportunities for Commissioners and the Scottish Public Services Ombudsman to share services, including the associated issue of office location. Audit Scotland also reviewed the processes for scrutinising the budgets of the Scottish Public Services Ombudsman and Commissioners, including an examination of the then existing lines of accountability and how this worked in practice. The 2009 *'Review of SPCB Supported Bodies'* also looked at the possibility of shared services across Parliamentary Commissioners, as well as the option of merging the Commissioner for Children and Young People in Scotland with the Scottish Human Rights Commission. These points are reflected in the findings of both the Scottish Human Rights Commission report *'At A Crossroads - Which Way Now for the Human Rights System in Scotland'*, and Research Scotland's report *'The Role of Commissions and Commissioners in Scotland and the UK'*.

On the back of these reports and in the context of the wider Public Service Reform programme, there are a number of options available to ensure evidencing best value is embedded as best practice within the Scottish Parliament. While the Scottish Government does not have the responsibility to put in place control mechanisms on the creation of new public bodies coming from outside government, I can see a lot of similarities between the issues raised and those that lead to the creation of the MCF. As such, I would like to restate that my officials are happy to, and have, offered support to Parliamentary colleagues by sharing their learning and understanding. However, it will ultimately be for Parliamentary colleagues to decide how to proceed.

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