

Background

1. To inform the Committee's inquiry into [Scotland's Commissioner Landscape: A Strategic Approach](#), the Finance and Public Administration Committee held an informal session with the following MSP and former MSPs on 14 May 2024 to discuss their experiences of proposing Members Bills' that include the creation of new Commissioners—
 - Sarah Boyack MSP, who submitted a [final Members' Bill proposal](#) this parliamentary session which seeks to create a Wellbeing and Sustainable Development Commissioner,
 - Alex Neil, who introduced the [Commissioner for Older People \(Scotland\) Bill](#) in Session 2, and
 - David Stewart, who introduced the [Commissioner for Victims and Witnesses \(Scotland\) Bill](#) in Session 3.¹

Note of issues discussed

2. Former MSPs discussed the following issues—
 - Their position regarding the proposal of new, distinct Commissioners had changed over time.
 - One proposal was, at the time, based on discussions with support groups who felt that an advocate/champion was needed and having seen similar models created in other areas of the UK. One former MSP added that he was very much influenced by the SPCB Commissioner model of independence from government.
 - The model of rapporteurs within the Scottish Human Rights Commission (SHRC) was highlighted as an alternative approach which would minimise overlap and duplication. It was suggested that post-legislative scrutiny should be carried out in relation to the enabling legislation creating Commissioners to assess whether they are performing against their legislative functions. Sunset clauses could be added to any new legislation that establish Commissioners.
 - The Committee heard that there is merit in having regulatory bodies such as information commissioners, Ombudsman who can look at any type of injustice and individual cases, and Commissioners such as the SHRC, where technical expertise is required. However, while recognising decisions around Commissioners were for the Parliament, it was suggested that there should be no 'champion/advocate' type Commissioners, as that model had limited power to act and is "largely

¹ Members' Bills proposing an Older People's Commissioner and a Victims and Witnesses Commissioner both fell at the end of the relevant parliamentary session, after the lead committees had no capacity within their respective workloads to consider them.

unaccountable". This role, it was argued, is "the job of Parliament" and the electorate can vote for other candidates at elections if parliamentarians have not undertaken that role effectively. There is a danger in expanding the Commissioner model as that can "almost displace the democratic element". It was suggested that the existing Commissioners should also be reviewed for impact and cost-effectiveness.

- The evidence received by the Committee suggesting that people are attracted to creating a new Commissioner in response to failures in the delivery of services was discussed and it was noted that "the Commissioners have been and will be scapegoats for other problems". Government can see value in creating something new rather than resolving difficult issues. While a strong, vocal Commissioner can make a difference in relation to their role and impact, this can have the opposite effect with Ministers, who have a better platform to "make things happen".
- The Session 2 Finance Committee criteria should be enhanced beyond being guiding principles and used to assess all proposals that would create new Commissioners. It was suggested that the criteria might be consolidated into legislation.
- It was noted that the role of the SPCB is limited; it does not have the remit or capacity to properly hold Commissioners to account. Historically, it was also challenging to move towards shared premises and services for Commissioners, and while progress has been made in this area in recent years, more action is required. Scrutiny also requires to be enhanced and should be based on how effectively Commissioners perform against the functions in their enabling legislation and whether they deliver value for money.
- The Children's Commissioner's advocacy role was discussed. Their ability to make a difference to endemic issues such as child poverty was also questioned. It was suggested that the enabling Bill should have included a sunset clause to enable their effectiveness to be measured before deciding whether the role in its current form is still needed, as "if the job is done, then why have one?".
- It was noted that it is for Parliament to decide what brings most added value: spending resources on Commissioners or on the delivery of services.

3. Sarah Boyack MSP discussed her proposed Members' Bill—

- She suggested that the proposed Wellbeing and Sustainable Development Commissioner is distinct as it would embed futures thinking, joined-up thinking across government, preventative approaches and best practice and do the "heavy-lifting" in achieving progress towards net zero and against sustainable development goals.
- The proposal is based on a successful model in Wales and is seen by the Member as essential against current pressures on public finances as it "can save money in future".

- Accountability to Parliament, she argued, is crucial in raising standards and ensuring transparency.

Committee Clerking Team
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