

FINANCE COMMITTEE

Tuesday 6 June 2006

Session 2

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FINANCE COMMITTEE 16th Meeting 2006, Session 2

CONVENER

*Des McNulty (Clydebank and Milngavie) (Lab)

DEPUTY CONVENER

*Mr John Swinney (North Tayside) (SNP)

COMMITTEE MEMBERS

Ms Wendy Alexander (Paisley North) (Lab)

*Mr Andrew Arbuckle (Mid Scotland and Fife) (LD)

*Mark Ballard (Lothians) (Green)

*Derek Brownlee (South of Scotland) (Con)

*Jim Mather (Highlands and Islands) (SNP)

*Mr Frank McAveety (Glasgow Shettleston) (Lab)

*Dr Elaine Murray (Dumfries) (Lab)

COMMITTEE SUBSTITUTES

Robin Harper (Lothians) (Green)

Janis Hughes (Glasgow Rutherglen) (Lab)

Alex Neil (Central Scotland) (SNP)

John Scott (Ayr) (Con)

Iain Smith (North East Fife) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Professor Arthur Midwinter (Adviser)

THE FOLLOWING GAVE EVIDENCE:

Professor Alice Brown (Scottish Public Services Ombudsman)

Kevin Dunion (Scottish Information Commissioner)

Dr Jim Dyer (Scottish Parliamentary Standards Commissioner)

Kathleen Marshall (Scotland's Commissioner for Children and Young People)

CLERK TO THE COMMITTEE

Susan Duffy

SENIOR ASSISTANT CLERK

Rosalind Wheeler

ASSISTANT CLERK

Kristin Mitchell

LOCATION

Committee Room 2

Scottish Parliament

Finance Committee

Tuesday 6 June 2006

[THE CONVENER *opened the meeting at 10:03*]

Accountability and Governance Inquiry

The Convener (Des McNulty): Welcome to the 16th meeting of the Finance Committee in 2006. We have apologies from Wendy Alexander.

Under item 1, we will take evidence as part of our accountability and governance inquiry. The basis of this inquiry is to examine the accountability of and budgetary control over bodies that are set up to be independent. Specifically, the inquiry is examining whether there are differences in accountability and controls and trying to ascertain why such differences exist and determine how accountability and budgetary control can be ensured while maintaining the independence of the individual officers.

Today, we will take evidence from the parliamentary ombudsman and commissioners in order to examine their lines of accountability.

On our first panel of witnesses, we have Professor Alice Brown, the Scottish public services ombudsman, and Kevin Dunion, the Scottish information commissioner. Members have copies of submissions that have been sent in response to our call for evidence, including those from the witnesses who are present today. In addition, the Scottish Parliamentary Corporate Body's original submission to the inquiry and the Audit Scotland report on behalf of the SPCB on shared services of ombudsmen and commissioners have also been provided to members to inform this session.

Before we move to the question-and-answer session, we will give our witnesses an opportunity to make short opening statements to the committee.

Professor Alice Brown (Scottish Public Services Ombudsman): I will keep my remarks short, as the committee has already received a submission from me. As I said in that submission, I welcome the inquiry, which will provide greater and wider understanding of the issues involved and greater clarity for the commissioners and for me and others who are involved in the process.

Our evidence draws attention to the role of our office and to the fact that there has been a reduction rather than growth in the number of officers. It also draws attention to what has been

done so far to share services. We have said that there have been constraints in moving forward, which I think we shall discuss.

We see the inquiry as a great opportunity to review the current position and to consider and plan future developments so that we do not move forward on an ad hoc basis. The inquiry can be viewed as the next stage of devolution. Prior to the referendum, there was a lot of discussion about the electoral system and the Parliament's powers and, post-referendum, in and around the consultative steering group, there were big discussions on the Parliament's procedures. Given what had to be done, it was understandable that less attention was paid to the wider governance framework and institutional design in Scotland.

There are extremely useful models in countries such as New Zealand, Australia and Canada from which we can draw. Closer to home, members will remember that the Public Administration Select Committee recently visited the Parliament to discuss what it was doing in considering similar issues. However, we are looking—as the consultative steering group did—for Scottish solutions that reflect Scottish conditions, the political context here and the size of the country. There is an opportunity to seize the initiative and to be creative in design.

A key point is the need to design in fundamental accountability and governance principles and simple, open and transparent rules at the beginning. It is therefore important that financial memoranda are closely scrutinised when offices are being established. There must be clear agreement on co-responsibilities and operational priorities; no gaps or overlaps in jurisdictions; effective, simple and robust governance; proportionate scrutiny; and agreement on measures and measurability. The opportunity also exists to consider how different objectives on efficient government, deregulation, shared services and co-location can be met. Those objectives—which link with the better regulation task force principles and the Hampton report principles—are not necessarily contradictory. However, agreement on the institutional governance framework, design principles and templates is required as well as leadership and commitment, followed by effective management.

The first steps are to map the existing bodies, clarify their respective important functions and roles, identify overlaps and gaps and then plan a coherent framework that recognises the complementarity of those roles. In that context, I welcome the Scottish Executive's initiative in which inspection, regulation, audit and complaint-handling improvements will be considered, but that initiative must be directly linked to the Finance Committee's work.

In conclusion, I see the debate as a positive development that is directly linked to the public service improvement agenda. The inquiry is not an exercise in a vacuum or an exercise for its own sake—it is about delivering better public services. The challenge is to develop institutional architecture that will be committed to advancing effective reform and improvements in service delivery.

The Convener: Thank you very much, Professor Brown. The framework of governance has certainly been central to the inquiry.

Kevin Dunion (Scottish Information Commissioner): I, too, will keep my remarks short, as Alice Brown has raised many of the points that I wanted to raise.

It is illuminating to look back over the three years that I have been in my post and consider where we started and where we are today. To be frank, when I came into my new post, there was no road map for being a commissioner. It was not entirely clear how we could get from where we were to where we are now—there was a suck-it-and-see approach—but my staff and I undertook the work with great enthusiasm and a lot of support from the SPCB.

I welcome what the committee is doing because we need to formalise matters to ensure that the circumstances in which we operate are the most efficient and effective that they can be to ensure the accountability of our functions and we need to ensure that any new positions that the Parliament is minded to create have something to draw on and do not need to start the process all over again.

We have made considerable progress over the past three years. We have taken on the financial management of our own resources, which was passed over to us from the SPCB, with the approval of Audit Scotland. Our accounts for the past two years have been passed without any negative comment. We have put in place systems of internal audit to advise me and my management board. An external audit function is provided by an audit advisory board. We have also put in place measures for risk assessment and risk management.

We look to other organisations to see what experience we can draw on and what support we can gain. We certainly look to organisations in Scotland, in particular the offices of the Scottish public services ombudsman and Scotland's commissioner for children and young people, but we also look to organisations outside Scotland. It is often more useful for me to consider what is happening with commissioners in nearby countries such as Ireland, as well as south of the border. We can draw heavily on the work that they have done,

taking into account their legal advice, which we share on common issues, their management systems, their investigations and the efficiencies that they have made. We also draw on their experience of what does not work, and we try to avoid the pitfalls that they might have experienced—they have been in place longer than I have been in post.

My hope is that the outcome of the committee's inquiry will be proportionate to the size of our organisation. The committee should be mindful of the fact that we are now operational, and of the improved effectiveness of the financial scrutiny that is placed on us, through the SPCB, by the Finance Committee. We hope that a clear framework can be provided, as Alice Brown has said, so that everybody knows what is happening and what is meant to be happening, and we hope that any new appointees will be able to draw from that.

Unfortunately, I must leave the meeting by 11.30. I think that the clerk will have told you that, convener. My apologies for that, especially if it impinges on the committee's questioning—although I hope that I am not still sitting here taking questions at 11.30.

Mr Andrew Arbuckle (Mid Scotland and Fife (LD): I am pleased to hear about the positive way in which you are looking forward and acknowledge what you say about recognising that your respective organisations are quite young and that there will be changes. It would be helpful for the committee to hear your views on the clarity and appropriateness of the existing lines of accountability.

Kevin Dunion: I will describe the approach that is taken with lines of accountability as I have come to understand it. I put my budget to the SPCB, which then discusses it. Often, there are some quite robust discussions with members of staff. In the past, elected members of the SPCB have themselves been involved in prior discussions. I am questioned on the budget at full meetings of the SPCB. It is ultimately up to the Finance Committee to decide whether or not the budget is approved.

The accountability for my functions is to Audit Scotland. Audit Scotland appoints an auditor to look at my accounts and to consider corporate governance as a whole. I am an accountable officer, appointed by the Scottish Parliament at the end of 2003. I am personally responsible for the governance of my institution. Those are the two present lines of accountability.

Professor Brown: I will not repeat all that, because the arrangements are exactly the same for my office. I have told the committee that I saw some potential tension in those arrangements.

They have worked well, but there could be tension if, one minute, we are dealing with a complaint about the Scottish Parliamentary Corporate Body and, the next day, we have discussions with the corporate body about our budget. However, that has not presented a problem.

Beyond strict financial accountability, another way in which Kevin Dunion's office and my office are accountable is through laying our annual report. There has sometimes been frustration that we have not had an opportunity to discuss that annual report in any detail, but we got that opportunity last year at the Local Government and Transport Committee; I found that extremely useful for the purposes of getting feedback on the work that we had done and of considering our priorities for the following year.

There are other ways in which we try to make our work and our office accountable to the Parliament. We are there, after all, to serve the Parliament in many ways, by providing information and data that are of value to parliamentary committees.

We have given evidence to different committees—notably the Health Committee—on more than one occasion in relation to their inquiries. That is another important aspect of our accountability. In addition, my office has to lay its investigation reports before the Parliament, as well as any special or other reports. Special reports are reports whose recommendations might not have been accepted by the body concerned. It is then for the Parliament to enforce those recommendations if it wants to do so. That shows that, in addition to financial accountability, we are more generally accountable for the priorities that we set as offices and for our processes and procedures.

I could go on to talk about accountability to our complainants and to the listed authorities under my jurisdiction, but that might come up in other questions.

10:15

The Convener: I want to pursue the issue because your organisation is complaints driven, just as Kevin Dunion's is, although in a different way. Kevin Dunion has provided evidence that there has been significant growth in the number of applications that are made to your offices. Ultimately, there must be a limit to that. As we have discussed in the past, some of the applications that are made will be vexatious or simply continuation by another means.

I presume that under the freedom of information regime, there should be a set of principles according to which authorities respond—there should be a complaint-management framework in

place. How are you accountable to Parliament for the way in which you identify which complaints it is necessary to pursue, how quickly you deal with them and how effectively you respond to them? There must be some mechanism beyond financial accountability that shows whether you are doing the job that Parliament intends. That is what I am not clear about from the responses that you have given.

Professor Brown: Some of that information is contained in our annual report and we can supply additional information if people want to access it.

Although our main focus is on responding to complaints that come to our office—in that sense, we may be demand led—we also have a proactive function, which is to work with the bodies under our jurisdiction to help them to deal with complaints much more effectively so that the number of complaints does not escalate. One might say that our long-term aim is to work ourselves out of a job because by introducing much better complaint-handling processes in the bodies concerned, we should reduce the number of complaints that are made.

We have been doing as much work as we can—I think that Kevin Dunion's office has had to do the same balancing act—because as well as dealing with the high number of complaints that come through the door, we need to do preventive work and good lesson-learning work. We have produced a model complaints process for the public services in Scotland, which we will discuss this afternoon with the Convention of Scottish Local Authorities and the Society of Local Authority Chief Executives and Senior Managers.

Local government accounts for about half the complaints that come to my office. There are 32 variations of complaints processes in local government. In addition, the complaints process for social work is separate and some councils have separate complaints processes for education. If we could simplify that, we could start from a common basis. There is also the complexity of delivering services jointly with the health service and other bodies. It would make sense to make the system clear and simple.

We advocate that complaint handling should involve three simple steps. First, the complaint should be raised formally with the body that is being complained about. Secondly, that body should have some kind of review process. Finally, if that does not succeed, the complaint should come to our office. You are right to make the point that we have to examine all the cases that come to us because they are not all the same. They cover a wide range of issues, including some that we have the discretion to consider. We also need to assess whether pursuing a complaint would be a good use of public money. All those judgments

have to be made with all the cases that come through the door.

Kevin Dunion: My perspective is slightly different from Alice Brown's. I am statutorily obliged to determine every appeal that is made to me, so I am not in a position to manage away my case load. If someone makes a valid appeal to my office, according to the statute set down by Parliament I must come to a decision on it. I could seek to have the applicant settle with the authority and over time, as more mature relationships develop, perhaps that is something that we can aspire to. However, if we consider what has happened in other countries, it will be a decade before the majority of cases are settled in that way rather than by a formal decision.

The major demand on my resources is the number of appeals. Before my post was created, it was difficult to know how many appeals would be made, as legislation was not yet in effect north and south of the border. Research had been carried out that suggested that between 150 and 300 appeals would be made in Scotland in the first full year. However, in less than the first full year—the first appeals did not arrive until March or April last year—we received 600 appeals. This year, the level is approximately the same. It works out at around 10 or 12 a week, which is significantly more than we had expected, and significantly more, proportionately, than south of the border.

There is nothing to suggest that those appeals are vexatious. Indeed, the charge of vexatiousness is covered specifically in the legislation and has to be drawn quite narrowly. It is not a question of our saying, "We don't think you should be making this kind of request." Rather, it is a question of whether the applicant's intent is to impact on the authority and to be vexatious. Very few authorities have told me that that is happening; very few have turned down requests because they considered them vexatious. Moreover, very few of the appeals that come to me have been vexatious, although some have been.

For the foreseeable future, unless something alters, high numbers of appeals will come to my office. That will demand a lot of staff time in investigations.

We are also a source of advice to applicants and public authorities. We receive more than 2,000 inquiries a year, mainly from applicants and public authorities seeking a view on an issue or information about their people's rights. I would like that role to increase. I would also like us to have an increasing role in proposing good practice both to applicants and to authorities. We are doing some of that kind of work this year—indeed, much of my promotional budget this year will be spent on assisting applicants and authorities to get

things right first time and therefore reduce the friction that can lead to later appeals.

In my annual report, I am required to say how many cases exceeded four months before a decision was reached. Parliament has made it clear that it would like decisions to be taken as quickly as possible but, sensibly, the statute allows me to determine how long it takes. It would not be right for Parliament to insist on a cut-off point or to direct me in my findings on any particular class of case. From our experience so far, the vast majority of appeals will certainly not be determined within four months. Any complex appeal will certainly take longer.

The Convener: It is difficult to pursue this point because the roles and responsibilities of your two offices are different. However, have your statutory responsibilities to deal with complaints got out of balance? There is a tendency among certain groups to complain about decisions with which they disagree. Is there therefore a focus on the process rather than on making decisions? That question may relate more to Alice Brown. For Kevin Dunion, a more important question may relate to people using freedom of information as a short cut to information that they could have obtained through other routes.

Are you being scrupulous and hard about ensuring that you focus your offices' resources on legitimate issues? In other words, are you focusing on the cases that need your attention the most, or the cases in which people cannot obtain information through other routes, rather than focusing on providing a generalised demand-driven service, which would not be what Parliament intended? How are you exercising your responsibilities to control your budgets, and to set priorities within them, so that you can fulfil Parliament's requirements?

Professor Brown: I can give you some reassurance. We received about 1,700 complaints in our first year and the figure increased to about 2,300 to 2,400 in the second year and almost 3,700 this year. Clearly, we cannot treat all the cases as if they are the same, because they certainly are not.

One of the biggest challenges when a complaint first comes to the office is to make the detailed decisions right away. Is the subject within our jurisdiction? Is the person who is making the complaint able to do so under the legislation? Those tests must be applied, whether we like it or not. We cannot just reject the complaint. The next big test is whether the complaint has come to us prematurely. Is someone trying to jump through the process too quickly? About half of the complaints have come to us too early, so we spend time rerouting people. The proportion is not as high in some areas: it is nearly half for

complaints about local government, but it is not nearly as high for complaints about the health service, which are much better directed.

We often spend time helping people to go back through the appropriate route, as we do not take the complaint on at that stage. An advantage of building up positive relationships with bodies under our jurisdiction is that we can put a complainant back without disadvantaging them in any way. If people feel that we are making them go over another hurdle, that is not very constructive. We try to follow up the cases to ensure that the complaint was addressed.

We deal with the cases left after the filters of jurisdiction and prematurity have been applied. Given the range of services that we cover, you can imagine the variety of complaints that come to us. We receive complaints about, for example, the health sector, local government, housing and the Scottish Executive. We deal with straightforward cases of service failure in delivering a repair, which can be dealt with very quickly, but we also deal with cases that might involve the death of a child, which might take months and continue for some time. One of the key principles that we apply is that of proportionality as, clearly, those cases are not the same. The resources that we apply to the cases will depend on that principle. Some cases that we deal with are becoming increasingly complex because they cross boundaries of bodies under our jurisdiction. It is probably right that we should get more complex cases, because the straightforward ones should be settled by the bodies.

We can reassure you that a lot of attention is paid to the cases that come in. They are not all treated in a blanket way although they are all, of course, treated in a uniform way in respect of fairness of approach and basic principles. Clearly, the next big test is one of proportionality and the type of resources that we have to apply, depending on the complexity and so on of the case that is in front of us.

Kevin Dunion: My situation is a little different. I take the point that the convener makes, but the bottom line for me is that the first sentence of the Freedom of Information (Scotland) Act 2002, which this Parliament passed, states:

“A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.”

I am dealing with a rights-based piece of legislation. The person does not have to prove why they want the information, how useful it would be to them or whether any detriment would occur to them if they did not get it. They have a right to the information, so the authorities should give it to them. If the authorities do not do so, the person can write to me and I take an independent

decision as to whether the information should be released to them. It is not the case that the process is being used by people who could get the information through some other route. They are not getting the information under the act, which is why my position has to exist.

In 30 per cent of the cases that I decided on last year, I found entirely in favour of the applicant—the authority was entirely wrong to withhold the information. I do not make a big issue of that. We would expect such a figure in the first year of the act's operation. Authorities will continue to argue about whether an exemption should apply.

The intent of the act was to move Scotland to a more comfortable culture in which information is given out as a matter of course, but we are still a long way from that. Authorities are examining the exemptions in the act and are trying to justify withholding information that should be released. Of course, some people who request information are frequent requesters, but they do not lose their rights because of that. Many are individuals who are making a one-off application to me. More than 55 per cent of the appeals that come to me are from ordinary individual members of the public who did not get a piece of information that they wanted. They appeal and that is the last we hear from them.

My approach is that people have a right both to the information—unless the authority can prove otherwise—and a right to independent scrutiny of the case by me. However, we try to manage the workload by packaging together requests for the same type of information to a number of authorities—such as the same request to a number of local authorities—and seeking to determine all the appeals at the same time. Those can be complex inquiries that deal with all the local authorities, health boards or police authorities in Scotland, for example. That can wrap up a lot of the appeals that we get. Otherwise, it is difficult to say to somebody that I am putting their request to the back of a queue; I have not yet worked out a fair way of doing that.

10:30

Mark Ballard (Lothians) (Green): I will take you both up on something that Alice Brown said. She mentioned situations in which she might be asked to rule on a complaint against the SPCB while it was taking financial decisions about your offices. What protocols or systems have been established to deal with such situations, should they arise?

On the wider point about accountability, you both mentioned financial accountability to the SPCB and to the Parliament as a whole through the laying of your annual reports. Do you have any thoughts on what you would do if there was a

conflict between the messages that the Parliament sent you in response to your annual report and the messages that the SPCB sent you in response to your budget submissions?

Professor Brown: That gets to the heart of the question of for what and to whom we are accountable. We must be, should be and want to be fully accountable for all the costs of running our offices. There is no doubt about that; it is beyond question. We also want to be accountable for our performance more generally—there is no doubt about that either. However, once we get into the independence of the role and the exercise of judgment on individual cases, it starts to get tricky.

I would strongly defend the independence of the office. The Scottish Public Services Ombudsman Act 2002 says that the ombudsman should decide what cases they should investigate and give reasons to the complainant if they decide not to investigate a case, but it also says that the ombudsman should determine how they go about their work. That is absolutely appropriate.

We must remind ourselves why offices such as the Scottish public services ombudsman and the Scottish information commissioner are created. That relates to Kevin Dunion's point about changing the culture. The office of ombudsman is an old institution. The first one was established in Sweden in 1809; it took the United Kingdom somewhat longer—until 1967. The idea of establishing an ombudsman was to provide members of the public with an opportunity to raise grievances about the Government and have them considered by an independent person who would reach an independent judgment.

The ombudsman is not on anyone's side in doing that. There is often confusion about that. Spain talks about the defender of the people, but the UK and Scottish tradition is that the ombudsman exists to be impartial and independent and not only to take on the complaint but to examine the evidence from the body that is complained about. It is stressful to be complained about as well as to raise a complaint. That balance is crucial to the ombudsman's independence of judgment on cases. We both feel that that is the starting point of what the legislation requires us to do and that the independence of the offices flows from that.

I view the ombudsman's office in a broader framework of administrative justice. It is not a regulator or an inspectorate; it exists to provide justice for the individual where that is appropriate and is one of the alternatives to going to court. As such, we learn from the individual complaint. That is part of our founding principles. The office exists to provide justice for the individual who raises a complaint, but we must also consider the broader

issues that the complaint raises about improving the delivery of services more generally.

That is the point at which we can feed back information to the Parliament, as we do commentaries on our reports. Our most recent compendium of reports was laid only last week, and the short commentary on that compendium focused mainly on health complaints. It addressed some big issues on the delivery of health policy in Scotland. In that commentary, we made some big suggestions and proposals for change, for example on the protocols for identifying and managing deep vein thrombosis and on the nursing care that is provided in some hospitals. Therefore, we need to make linkages not just with the Parliament but with other agencies. For example, we have drawn those matters to the attention of NHS Quality Improvement Scotland so that any inspections that it carries out can benefit from the evidence in our individual reports. It is important that the whole system works together and that we have the right balances.

Kevin Dunion: Mark Ballard raises a good point about the conflict that could exist if the SPCB was scrutinising our financial bid while I was taking a decision that did not accord with the SPCB's view, as has happened, on the release of information held by the SPCB.

I must say that, so far, the system has worked fine. We take the same approach to the SPCB as to any other public authority, in that we conduct our investigations in the same manner. We do not meet the SPCB, or other public authorities, to discuss cases unless as part of the investigative process that is carried out by my investigators. We have a similar situation in respect of the Scottish Executive's freedom of information unit, which is responsible for the implementation of the legislation and for the codes of practice, on which it is required to consult me. Again, we do not discuss specific cases with the Scottish Executive, although we will discuss the progress of the legislation and its implementation.

The critical thing will be not what we do but how we are seen to do it and the perception of what we do that exists outside our buildings. That is why I think that it is essential to stress a distinction that is made in the Audit Scotland report but is not expanded on. We need to ensure that any systems of financial accountability and corporate governance do not impinge on our independence and impartiality in carrying out our statutory function of taking decisions, given that those decisions could impact on the SPCB and the Scottish Parliament. I think that we will need to explore that further if the Audit Scotland report is taken forward.

Mr John Swinney (North Tayside) (SNP): I want to explore that strand, as it gets to the nub of

the issue. Do you accept that the Scottish Parliamentary Corporate Body has a right to give financial direction to your respective offices in setting a budget?

Kevin Dunion: So far, that is not embodied in any document that I have. I believe that it is correct that we should have discussion with the SPCB and that it should scrutinise our budgets, but to say that the SPCB should have a right to direct me on how I spend—

Mr Swinney: No, I am talking about budget setting. Do you accept that the SPCB has a right to say that the information commissioner will have a budget of £2 million?

Kevin Dunion: Yes. If that is what the Finance Committee charges the SPCB to do, as seems to be the case, that is fine. However, the consequences of that need to be understood.

Mr Swinney: Do you think that that constrains your independence?

Kevin Dunion: If the SPCB sets a headline figure, that might not constrain our independence. However, our independence might be constrained if the SPCB directed spending below that headline figure.

Let me give a practical example. The SPCB has said that it does not want commissioners to hold contingency funds for expenses that might or might not be incurred during the course of the year. I have an agreement with the SPCB that the cost of defending or pursuing cases at the Court of Session should not be included in my core budget bid. If I want to pursue such cases, I give an indication to the SPCB of the likely cost, which is then met by the contingency that covers all the commissioners and the ombudsman or, if necessary, by the Parliament's own contingency fund. If the costs of those cases were hugely excessive, there would be a need to go back to the Scottish Executive directly. If the SPCB was able to tell me, "You will spend this amount and no more on defending or pursuing cases," in the knowledge that it was minded to challenge one of my decisions at the Court of Session—in other words, if such a direction were to make it impossible for me to pursue or defend my position—I would see that as crossing over from proper financial scrutiny and accountability into interfering with the independence of my statutory function. We need to bottom out that issue as we properly go down this road of scrutiny.

Mr Swinney: Another reading of what you have just said is that a commissioner or the ombudsman should be entitled to spend what he or she likes.

Professor Brown: I do not accept that. You asked whether the SPCB should give financial

direction. There has been an iterative process so far, because, as Kevin Dunion said, it was difficult to know exactly what our budgets would be—the financial memoranda to the bills that established our offices were certainly wanting in that regard. Therefore we have had to have a dialogue with the SPCB about the type of work that we do. We have clear strategic objectives and business plans and we have made clear the work that we will focus on and the money that we need to fund that work.

Most additional funding has related to the increase in the number of cases that come through the door. The Scottish Executive agreed an extension to my budget when we took on additional areas of jurisdiction to do with complaints about health and further and higher education. The additional work was discussed with the Executive and the SPCB, agreement was reached and funds were transferred, which was an adult way of approaching the matter. If our jurisdictions are to be extended, funding must be provided in advance.

There is no way that we can operate with a blank cheque—I take John Swinney's point about that. We are mindful of the need to operate in accordance with best-value principles and to consider the most effective and efficient way of running our offices. John Swinney identifies a tension between how we interpret our roles and responsibilities, how clear they are and the amount of budget that we might need.

Mr Swinney: I am trying to get at an issue that needs to be fleshed out and which might not have been fleshed out in the parliamentary processes that led to the establishment of your offices. None of us wants to question the independence of the various ombudsmen, but we are responsible for the financial scrutiny of all public services that are funded by the Scottish block. That tension is central to the committee's inquiry. How do we get to the bottom of understanding how effective financial scrutiny can be undertaken without questioning commissioners' independence or resigning ourselves to paying for whatever comes our way? We need a framework that enables us to do that, but I do not think that such a framework exists. Currently, discussion takes place between the SPCB and individual commissioners, which is not a particularly robust process, from what I have seen so far.

Professor Brown: You are right to say that the process has not been explicit; there is room to make it much more so. As I said in my introductory remarks, the framework should be designed into the office from the beginning. Financial memoranda should clearly state commissioners' core responsibilities and functions and where the boundaries lie. If such parameters were set, budgets would have to be defended on that basis,

because there would be an implicit contract to deliver X for Y. A commissioner would therefore have to make a robust case for straying away from that contract.

As Kevin Dunion said, the establishment of our offices was a new experience for everyone—the SPCB certainly had no experience of setting up such offices. We had much to learn as we worked together, but we are all much clearer about the ground rules that are needed. I hope that as a result of the committee's inquiry new offices that are created will not have to go through the pain that we suffered, because we have learned from experience and will have a more transparent and robust system of financial accountability.

10:45

Kevin Dunion: I will pick up on the second part of Mark Ballard's question, which was about what happens if there is a variation of view between the Parliament and the SPCB. My comments might also address John Swinney's point.

There is no capacity to spend profligately and without scrutiny on the assumption that the tab will be picked up. The major costs that I and most other commissioners and ombudsmen have are staff and associated costs. The statute makes it clear that I cannot appoint additional staff members without the explicit approval of the parliamentary corporation, which takes that responsibility seriously. Therefore, in relation to the majority of our costs, the explicit approval of the parliamentary corporation is required.

What flows from that is that we have to justify any expenditure that we have. It would be impossible for me to increase my rent or telecommunications costs without establishing why I was going to spend more money. I have no doubt that, if I did not spend the money, or if I spent it unwisely, Audit Scotland, in its report to me and to Parliament, would take me to task. However, if the SPCB withheld approval or directed me to spend in a way that meant that I could not fulfil my functions—so that I could not determine all the decisions that came through the door or defend or pursue my decisions in the Court of Session—I would report that to Parliament in my annual report. If I felt that the matter was of sufficient gravity, I would make a special report to Parliament. We are nowhere near such a situation, but that is a possible remedy for me to ensure that the Parliament has a locus in the decision-making process.

Professor Brown: Could I add to that briefly, convener?

The Convener: I will let Mark Ballard come in first.

Mark Ballard: There has been talk of special reports and annual reports. However, I am concerned that, as you both said and as we have heard from all the commissioners, the annual reports do not seem to be considered in an organised way and no procedure exists for the consideration of special reports. A contradiction arises between the talk of a £2 million limit from the SPCB and the potential for concern in the Parliament if, because of that capped budget, rising numbers of complaints lead to delays in consideration such as those that have occurred in Ireland. I do not suggest that this should happen but, as an example, MSPs might question the 14 per cent of the information commissioner's budget that goes on promotional work. That is where the direction issues come in. If MSPs said that the information commissioner should spend less on promotion and more on court cases, what would happen seems unclear. As John Swinney said, a large part of our concern is to do with the lack of clarity about what will happen if we get into problematic situations. We are where we are. In the case of your offices, we have the financial memorandums and the existing design of the organisational infrastructure, although we might want to design that better in future.

Professor Brown: We expect to defend our spend when we go in front of the SPCB. I assure the committee that the SPCB asks robust questions about the percentages of our budget that we spend on different items. Compared to Kevin Dunion's office, my office spends a smaller proportion of the budget on promotional work, but my remit is different from his. One example of such a tension arose several years ago in the Republic of Ireland. An ombudsman's budget was capped, so he went to the Parliament there to make the case that he could not carry out his functions under the legislation that created his office because of the financial restriction. In that case, the ombudsman got the money that he needed to carry out his functions. The issue goes back to the legislation that creates the office and what each ombudsman is required to do.

Tension over timescales can arise when the level of demand for our services is uncertain. We are both struggling with timescales as a result of higher numbers of cases than were anticipated. We cannot ask for more resources until we are absolutely sure that our investigation processes are as robust, professional and efficient as possible. Any request would be based on a sound business case. However, there must be flexibility, because, further down the line, the number of cases might drop. That has happened to the financial ombudsman service south of the border. Its budget increased enormously as a result of endowment mis-selling, but the number of complaints levelled off and is beginning to go

down. The service no longer replaces staff who leave.

The science in our area is very uncertain. As Kevin Dunion said, we are in the early days of the creation of our offices and we expect activity to level off in the long run, but we are not in the long run yet.

Derek Brownlee (South of Scotland) (Con): I will pursue with Kevin Dunion one of the points that Mark Ballard raised. I understand from your remit that the main influences on your costs are your case load and the extent to which you decide to fulfil your promotional role. Am I correct in saying that those are the main variable costs with which you operate?

Kevin Dunion: Yes. One other major undertow that comes around cyclically is that we must approve publication schemes for all 10,000 public authorities in Scotland. That is a lumpy piece of work. Before the Freedom of Information (Scotland) Act 2002 came into force fully, we could devote all our staff resources to that work. We are due to do it again in 2007, but the resource simply is not available to accommodate it. However, by and large and day to day, what you said is correct.

Derek Brownlee: You said that your case load was about twice that of England and Wales per capita. Is that because Scottish public bodies are not complying with freedom of information legislation as well as their counterparts in England and Wales are, or is it because of greater awareness or a difference in the framework of the legislation? What drives that?

Kevin Dunion: I honestly do not know. The question warrants proper academic research, but I cannot afford to pay for that. I should make it clear that I have a statutory duty to promote the 2002 act—I do not volunteer to do that; Parliament has charged me with that. I am one of the few freedom of information commissioners in the world who has been given the job of enforcing and promoting legislation, which I welcome because we are trying to change a culture.

Because of that duty, we have directly raised people's awareness of the legislation. Scottish authorities are doing a good job. That means that when they refuse to provide information, they are required to tell applicants of their right to appeal and of how to exercise it. If authorities do a good job, people know how to approach me, which they do not know if authorities do a poor job.

Journalists have used the 2002 act extensively—I do not know whether members welcome that. When journalists write stories that say, "Under freedom of information legislation, we got the following information," that also increases public awareness of the information that people

could obtain. Something different is happening in Scotland, but I do not know why.

Derek Brownlee: I would probably plead the fifth amendment on that point, although it does not apply in this country.

When I read of your promotional duty in the 2002 act, I thought that it was rather vague. I understand that your duty is to promote best practice among public bodies and to disseminate information to the public about their rights under the act. I in no way dispute whether the amounts to which Mark Ballard referred for promotion have been spent properly under the act, because the provision is widely drawn.

The most recent accounts show that you spent £195,000 on promotional activities, including television advertising. If you spent £500,000 or £1 million on that, that would not be contrary to the 2002 act. In such circumstances, when you demonstrably comply with the act, I do not see Audit Scotland intervening unless you go over the score in a way that no one could justify. That grey area could be significant. That is my key concern. How do you negotiate over the grey area between small-scale promotion and very expensive promotion? You are the accountable officer. If you spent more than was reasonable, who would rein you in?

Kevin Dunion: I return to the point that I made earlier. Somebody ultimately approves my budget. Until now, my view was that the Finance Committee ultimately approved my budget. If the committee gives that responsibility by and large to the SPCB, the SPCB will approve the budget and question me on its contents.

The critical point is that if the SPCB disliked the way in which the legislation was panning out, because it was generating too many inquiries, and if it cut the promotional budget to zero to try to reduce awareness and stifle demand, we would be talking not just about costs, but about implementation of the legislation—that is a discussion that would have to be held. I do not have an answer to your question. All that I do is try to produce a reasonable budget that is reasonably constrained and on which I can deliver.

Derek Brownlee: I am not necessarily saying that your budget is not reasonable. However, a credible argument could be made that, in fulfilling your statutory functions, your independence would not be constrained if the SPCB or anyone else said to you that your budget for promotional work would be X. You would still have range of activities to undertake. Is that a fair point? It might not necessarily compromise your independence if we were to influence that particular budget line.

Kevin Dunion: If you were to go down the line of directing me as to what I should spend, I

suppose that that argument could be made for almost any element of the budget. At the moment, rather than getting direction, I am happy to justify my spending and listen to any queries or criticisms. We are all mindful of the fact that we are public officials, that we have to justify our budgets and that a spectacular and unjustified increase would not be appropriate.

However, let us say that the purpose of promotion is to deal with a particular problem; for example, if 20 per cent of our cases were mute and therefore deemed to be refusals—in other words, if the authorities did not reply to the applicant at the first request or when the applicant suggested a review. Would it not be useful to spend some money to ensure that the authorities do that basic thing right? That would also cut 20 per cent of our workload. I would be happy to have a discussion about whether that is how we should use the budget.

Derek Brownlee: Exactly, but I presume that promotion is about best practice and that any promotional activity for that particular part of your duty must be significantly cheaper to implement than your dissemination role, simply because we are not talking about the whole Scottish public but about a much smaller number of bodies.

Kevin Dunion: Yes. One of Audit Scotland's good recommendations is that, rather than work on an annual basis, we should perhaps begin to work over a five-year period. In other words, I should take an overall view of what would be appropriate promotional activity over that period. If you were to ask me, I would say that over that period, I would expect to spend much less on general promotional work and more on either targeting groups that clearly were not taking advantage of the legislation and did not know their rights, or on dealing with specific problems with specific authorities. However, no one has ever asked me that question. I think that that might be a reasonable way to go.

Dr Elaine Murray (Dumfries) (Lab): In relation to governance, both the SPCB and Audit Scotland have suggested that the SPCB could have a more formal statutory role in approving budgets, which might require changes in legislation. Would it cause you concern if the role of the SPCB was more formalised and its ability to approve budgets was strengthened?

Professor Brown: I would have no difficulty with that approach, with the provisos that I have made about balancing it with independence. However, I would like there to be a debate about other possible models. The committee has been examining the situation in New Zealand and Australia. I am not saying that those models would necessarily transfer but there are other models available.

If the SPCB took that role, it would clearly need the resources to be able to do so. That would have to be costed. What kind of expertise would require to be added to support the SPCB in that work, given that it is already stretched with all the other demands on its time? I do not think that that work could be done as well as everything else that the SPCB has to do, and it would have to be done in the way that we would all want it to be done.

However, I am very open-minded about yourselves and others deciding on solutions. I am just enjoying the discussion about what would be the most appropriate model for the context in which we find ourselves and for our particular parliamentary system. Something along the lines of a committee of office-holders would be another route. Such a committee could have a much more robust and effective dialogue with us about our annual reports and the other reports that we publish because it would take an interest.

It is quite interesting to note that when the Public Administration Select Committee cross-examined Ann Abraham, the parliamentary and health service ombudsman south of the border, members understood her work but there was still a testing dialogue about it and her priorities. A different arrangement is in place whereby she gets her money via the Treasury.

Therefore, there are different models and I am completely open-minded. Members will debate what is most appropriate, but I am happy to contribute to that debate.

11:00

Dr Murray: Another suggestion from Audit Scotland was that an accountability group could be constituted separately. It sounds as though you would prefer that option, which would be more like the Scottish Commission for Public Audit—its remit could be extended and we could have something similar for the other commissioners. Would that overcome some of the concerns about your independence?

Professor Brown: It could overcome some, but we will never remove them entirely because there will always be a tension. Members of the public say to us quite often, "We are coming to you because you are supposed to be independent, but you get your money from the Parliament. How does that make you independent?" There will always be an element of that. We answer that question from different perspectives in different arenas. As we said already, we are operating to much broader rules about best value and the good use of public funds, so there is absolutely no question of our not being accountable.

What Audit Scotland suggests could be another route, but we have to weigh up the pluses and

minuses of the different models, and the outcome will depend on what for you are the core objectives.

Dr Murray: Concerns arise from the possibility that you or Kevin Dunion might have to investigate the SPCB. It is probably less likely that you would receive a freedom of information request about a group of MSPs.

Professor Brown: Yes—that is the point. As Kevin Dunion pointed out, he might have to apply for additional funds to defend a judicial review to the very body that is involved in the judicial review. That would put him in a rather interesting position.

The Convener: I pose a hypothetical question. Suppose that I, as an individual MSP, or a significant number of parliamentarians felt that the operation of the freedom of information legislation was becoming counterproductive because public bodies were putting into their minutes—or however they conducted their business—less than full disclosure of the basis on which they made decisions such that, paradoxically, the public interest in transparency was being undermined by the requirements of the act. How would we have a dialogue with you about the way in which you undertook and exercised your role and the impact that that was having on the intentions behind the legislation?

Kevin Dunion: As you probably accept, you raise an interesting question about whether we can have that discussion without influencing specific appeals that are before me.

If any specific decision gives rise to concern, the route is through either judicial review or appeal to the Court of Session. However, you are talking about a discussion about the culture of freedom of information and how it has panned out in Scotland compared with what might have been thought when the legislation was passed.

The Scottish Executive took a decision to carry out a review of the legislation after the first year. That is now in place and a number of public bodies have made representations about the changes that they might like to see.

If you were asking about the impact of my specific decisions with a view to getting me to take different decisions, we would be in a sensitive area. Although I am interested to hear commentary on that, it would be difficult to expect me to go back and justify in a quasi-judicial capacity how I arrived at certain decisions and their consequences as you see them.

The Convener: As a politician, I offer as a parallel that I might have views about how the courts exercise their functions and the consequences of that. From my point of view, that is no different from the issues that you just

described. The Parliament passes legislation on sentencing and so on not by interfering in individual cases but by setting a broad direction.

I am not clear about how Parliament can influence the direction of your policy. All the commissioners seem to be saying, “We are the arbiters of the legislation that set up our posts; Parliament is finished with it and we now decide.”

Kevin Dunion: Parliament said, quite rightly, that there would be a procedure for the independent review of public authorities’ decisions. The choice was whether to allow individuals who were unhappy with the decisions of public authorities to appeal to a tribunal or court, which happens in the United States; to a commissioner, such as me; or to an ombudsman who does not have enforcement powers, which happens in New Zealand.

Parliament considered those options and delegations went to New Zealand and Ireland to consider the appropriate model for Scotland. Parliament decided that an independent commissioner with enforcement powers to take decisions and pursue them through the Court of Session was needed.

It is not my job to interpret policy but to take decisions on appeals in the light of the statute. I do not have a policy that applies to appeals; I take decisions on a case-by-case basis. I make it clear in every decision that I take that the public interest and the application of any exemptions change by case and over time. It would be unfortunate if anything was seen to intrude on that independence. I am more than happy to be part of a discussion, but if the purpose of it is for Parliament to say that it wants to change the policy of the commissioner in relation to commercial interests or vexatiousness, for example, that would be an infringement.

The Convener: I am sorry, but I do not see that. Parliament must always respond to its interpretation of what the public wants. It does not make decisions once and for all, after which there is no process of change. If Parliament were to consider the 600 cases—as opposed to the 150 that were expected—and accountability in relation to public bodies’ recent decisions and came to the conclusion that the Freedom of Information (Scotland) Act 2002, rather than enhancing public openness, was creating precisely the wrong kind of culture from both our points of view, how would it have a dialogue with you about how you operate and how we could move towards the culture that the act tried to create? That is not about the independence of your judgment in individual cases, but about how you exercise your function, for which the Parliament has a legitimate responsibility. Ultimately, you are accountable to Parliament, not to yourself.

Kevin Dunion: I accept that entirely. I am glad that we are dealing with a hypothetical situation, to which you have obviously given a lot of thought. On the accountability of the commissioners, which is what we are discussing, Parliament makes recommendations for our appointment and, through the Finance Committee and the SPCB, determines our budget. However, it has said explicitly, "You are an independent appeals mechanism that conforms to good international practice." As far as I can tell, we take decisions on a case-by-case basis.

I am up for discussing what has happened two or three years on from the implementation of the act. However, I might not share the view of certain parliamentarians. Either I could change the way in which I interpret the legislation, or authorities could be directed, through some kind of public records requirement, not to decide to withhold information from minutes. There are a series of remedies to deal with problems.

You are asking whether there is a forum to have such a discussion. It seems to me that there is not. One of the frustrations that I have is that when Parliament discusses FOI, the commissioner is entirely absent. There was a parliamentary discussion of FOI, but we were not asked to speak to or make any further representation on our annual reports. I think that it would be useful for Parliament to discuss the annual report, either in the chamber or in committee. If the discussion was in committee, the commissioner or any other interested party could be invited to participate—I would welcome that.

Professor Brown: I endorse that point. In answering Elaine Murray, I indicated that the Public Administration Select Committee plays the kind of role that we are discussing because it has a dialogue with the ombudsman about particular issues that arise. The core responsibilities of an ombudsman's job are laid down in statute, but the context in which we operate changes all the time.

I very much support the broader principle in Scotland of trying to open up the pre-legislative process, but another fundamental principle is to consider the post-legislative process. We have been a bit patchy in doing that. Certainly, one frustration in our area is that bits of our legislation are composed of two old pieces of legislation combined with Parliament's aspiration, which means that there are anomalies in the legislation. We would welcome a review of our legislation, not least to address ambiguous areas, which is where Parliament wanted certain things to happen but the legislation does not say that. There is no mechanism for raising such issues and getting parliamentary time to revisit them. Three and a half years down the line, therefore, we have a list of amendments that we would like. We, too, are

interested in having the useful dialogue to which Kevin Dunion referred.

Jim Mather (Highlands and Islands) (SNP): I refer to the earlier conversation about the balance between financial scrutiny and independence. I am keen to add a third component to that, which is outcome scrutiny. In particular, I refer to issues such as, on Alice Brown's side of the fence, the incidence of premature complaints and, on Kevin Dunion's side, FOI compliance by organisations. Do you see any movement on those issues? Do you keep statistical control of your scrutiny? How is such scrutiny being developed? Indeed, do you seek to put other measures in place?

Kevin Dunion: We keep good records on the nature of the appeals that come to us. We can tell, for example, which exemptions public authorities most commonly cite when they withhold information and which authorities are most regularly appealed against. We record issues such as mute and deemed refusal. We can assess when appeals are invalid—for example, if people come to us when they should have appealed to the commissioner in England because the appeal concerns a non-Scottish public authority. We can also assess what issues are about fee charging.

Of course, we do not have a good handle on the number of requests that are being made to Scottish public authorities or the number that are not being responded to but in relation to which the applicant does not feel moved to appeal to me. Parliament took the decision—I believe it to be largely sensible—that, given that every request to a public authority is an FOI request, it would be onerous to ask public authorities to keep information on them. Nevertheless, we are slightly hamstrung because we do not know, for example, that public authorities deal well with 99.9 per cent of requests or that a high volume of requests is generating the number of appeals. In addition, we cannot make international comparisons. In many countries, authorities are required to make an annual return to the commissioner of how many FOI requests they have received, how many they have granted in full or in part, and how many they have refused. We simply do not have such information in Scotland.

Professor Brown: We record and analyse all the information about the complaints and inquiries that come through our office. The complaints and inquiries fall into different sectors. At the end of each financial year, we try to provide statistics for each local authority, so that we can ask, for example, why one department seems to have had more complaints than another. We can indicate any systemic issues that we have identified, and we can identify and share much good practice. It is important to note that not all complaints are upheld. In the past year, we have invested a lot in

the management of our information and data, so we have a much better sense of all that.

The key challenge for us is timescales. We have much better data on the number of cases that come into the office and on what happens to them once they go through the office. Therefore, we have a better sense of why it takes longer to deal with some issues than with others. We want to drive forward improvements in that area. Especially in complex cases, instead of a lone person dealing with the case, perhaps two or three investigators will work together to reduce the timescale because they can deal with it more effectively. We are trying and testing different ways of working, because we recognise that timescales are a big issue. When people bring a complaint to us, they do not want us to take a long time to deal with it; they want to get a result. Also—crucially—the body that is being complained about wants to know what is happening, too.

11:15

Jim Mather: I am interested in whether, rolling forward, you plan to keep a time series of performance by organisation, lest any of the organisations is starting to use your organisation as a kind of front-end filter—a complaints bureau—and is exporting its costs into your budget.

Professor Brown: That is a good point. We have asked bodies why we are receiving so many premature complaints. It may be that people hear the word “ombudsman” and come to us first. The onus is on the organisations to be more proactive in handling their complaints well.

We do quite a lot of work to support front-line staff in handling complaints. We bring liaison officers into our office and talk to them, making the point that they should not encourage people to come to us just to get the matter off their desk. We start from the principle that the best time to handle a complaint is before it escalates to become a formal complaint. The first point of contact and how the complaint is dealt with set the scene for what happens next.

From a best-value point of view for local government, and from a customer-focus point of view, thinking about the type of things that an Auditor General might look at, if local authorities invest in their front-line customer service, that should reduce the cost to them of complaints escalating and should prevent the transfer of complaints costs into our budget. There is a little bit of that at the moment, and that is where we want to see the figures start to go down.

On the other hand, we know that a lot of people who should raise complaints do not do so. The most vulnerable and those who depend the most

on public services are the least likely to complain. That takes us back to targeting. We do not advertise, because a lot of our awareness raising takes place through the bodies that are under our jurisdiction; nonetheless, there may be room for targeting.

We try to benchmark ourselves against other ombudsmen’s offices in the United Kingdom and Ireland. Like Kevin Dunion, we find that that is a good reference point for our own practices and procedures. We are trying to be clear about common language across the boundaries, because the current statistics are not very meaningful. We have started an exercise in that, so that we can share that information with one another; testing one another on how well we are doing is also an effective measure.

Wales has followed the same line as Scotland in creating a one-stop shop and we did a bit of work to support the Welsh ombudsman’s office when it started up. We try to support one another in embedding good principles and we work with the other ombudsmen’s offices in an honest and open way with the objective of improvement. We have to practise what we preach; we cannot say that others must do certain things if we are not doing them ourselves.

Jim Mather: You also act as a catalyst to ensure that other organisations are improving their performance.

Professor Brown: Absolutely. Kevin Dunion and I agree that that is the area in which we can add most value. It is about a culture shift in how people share information and how people deal with things when they go wrong. We have advocated a change in the legislation in Scotland to allow apologies to be made early on without fear of litigation or negligence claims.

Jim Mather: Is there any one place that we could look to see where performance is improving over time, vis-à-vis the downstream organisations that create the workload?

Professor Brown: The UK parliamentary ombudsman has a lot of resource that she has been able to put into looking at some of those measures. She has been generous in sharing the experience of that with us so that we, as a much smaller office, can learn from the kind of investment that her office makes. It has a budget of £22 million just to deal with parliamentary and health complaints, so it has the kind of resource—

Jim Mather: But will you publish a statement of where your workload comes from, by organisation?

Professor Brown: Yes, we do.

The Convener: Can I just cut across a wee bit? I am conscious that Kevin Dunion has to leave us soon and time is pressing on.

A theme of our inquiry has been the scope that exists for shared services and what barriers there are to the sharing of services between what are, in effect, investigatory organisations. Is it possible that the commissioners and ombudsmen could share services much more effectively, especially in the context of the availability of new technology and the development of related skills?

Kevin Dunion: We have actively addressed the issue and, through Alice Brown's leadership, we commissioned an independent view of the financial and shared services that we could reasonably explore; however, there is no huge scope for that. The big ticket numbers do not lend themselves particularly to that. We need the staff to do the job, and that is the biggest cost to us. By and large, we use the same pensions provider, so there can be no economies of scale there, and we have to have separate banking arrangements.

We have adapted the platform of Alice Brown's complaints-handling process to suit our needs, so we made some saving there. However, we certainly could not amalgamate the complaints-handling process and our case-handling process into one platform. We must also be mindful of the fact that we are two entirely separate bodies. I am particularly mindful of the fact that it would be a criminal offence for me or my staff to release any information that we have gathered in the course of an investigation. The need for us to keep information secure and to regulate access to the information that we hold means that it is difficult to imagine sharing services or premises with a separate body. We need to protect the information that flows from the public authorities, which is often extremely sensitive and meant only for the purposes of our investigation.

Nevertheless, we are continuing to look into the matter. I do not know whether this is what the committee has in mind, but we get a lot of benefit from working with the Irish commissioner and the commissioner in England. We can benefit from some of the managerial investments that they have made in terms of the legal advice that they get. The English commissioner has a good set of performance indicators, which we are going to draw down, and for which it has paid the up-front cost. Although that is not a Scottish public authority or a parliamentary budget, we intend to draw down the information as part of the effective and efficient government programme.

Professor Brown: We have done quite a lot to share services where we can in the absence of the design that I talked about at the beginning of the meeting. There is potential for more of that, with the provisos that Kevin Dunion has made. We

must start by being clear about the different functions of the different offices—the regulatory functions, the complaint-handling aspects and the investigatory aspects. We have done quite a lot on human resources and procurement—the obvious areas—but you are right to say that technology offers other opportunities.

We have had discussions with Karen Carlton, the commissioner for public appointments in Scotland, about her sharing premises as well as services with us. We need to do that in consultation with the corporate body, because we all need to sit round the table and plan such things—we cannot do them overnight. There are real opportunities there, especially in the light of the creation of new offices. We must not miss a trick if new offices are created; we must design in such efficiencies right from the beginning.

The two most obvious new offices on the horizon are the Scottish human rights commission—we will wait and see what happens on that—and the commission for equality and human rights, which will be based in Glasgow. We have entered into discussions with the equality organisations in Scotland—the Commission for Racial Equality and so on—to ask them to build us in at the beginning. We are now having discussions with their transition team, as we would like to co-locate with them, in Glasgow, in order to free up space in our office in Edinburgh to allow Karen Carlton or anyone else to come into our office.

The other big potential surrounds police complaints. There is absolutely no doubt that there should be an independent police complaints system; however, again, we should think about how we can build in at the beginning the sharing of services in a way that makes sense.

The convener made the key point that we have an investigatory function. We need to build in some flexibility so that, if the workloads changed in our different offices, we could have something that we might think of as an investigation pool. That might allow certain things to be shared between certain offices—again, with provisos in terms of legislation—to allow flexibility with regard to resources, particularly in relation to those that will not be conducting inquiries and investigations on a regular basis. There must be opportunities to tap into that, not least for staff. We have tried to have more sharing of staff training, working through the British and Irish Ombudsman Association, to achieve core skills and competences for investigators and to deliver ways of training and updating of skills that will ensure that there can be transferability across offices.

One of my hopes for this inquiry and the review that is being undertaken by the Scottish Executive is that people will be quite imaginative in thinking

about how we can move beyond the obvious ways of sharing and find much more strategic ways of sharing expertise in a relatively small country.

The Convener: Kevin Dunion should feel free to leave whenever he has to; I know that he has a plane to catch.

I have one more question for Alice Brown. Mark Ballard, too, has a question—is it for Kevin Dunion or Alice Brown?

Mark Ballard: It was for both of them, but I am sure that Alice Brown can handle it on her own.

The Convener: We thank Kevin Dunion for his attendance.

The Swedish ombudsman has taken the human rights role in Sweden. Could we do that in Scotland rather than creating a separate institution? Would that be possible or would you find it difficult for your organisations to encompass that role?

Professor Brown: I gave evidence on that point to the Justice 1 Committee at stage 1 of the Scottish Commissioner for Human Rights Bill. I said that I could see a role for a human rights commission—or commissioner, as it was at that stage—in terms of advocacy. I said that we had to be very clear about our terminology and the function of the role. Many of the cases that we deal with concern human rights issues. The lack of dignity and care in a hospital, for example, is a human rights issue. We should be embedding human rights into the delivery of our day-to-day services. In theory, there is a possibility that that function could work alongside our office. One has to distinguish between the function and the role, and the office-holder and the office. You do not necessarily need a separate office for all the various functions, roles and office-holders. Our challenge is to find a design that allows a more coherent system and which also allows the things that Scotland wants to highlight to be achieved.

Expertise could be brought closer to us because we are dealing with the day-to-day cases, but it would be separate from the advocacy role, if there were an advocacy role in relation to the promotion of human rights.

The Convener: You are saying that there should be an advocacy organisation, but that it would be best if it were not combined with the ombudsman's role because your role relates to complaints handling.

Professor Brown: Sweden started with a traditional ombudsman model. Countries that started early in this area were a bit resistant to seeing organisations such as the one that I head as human rights organisations. However, that is what we are, because we are involved with getting justice for individuals whose rights might have

been violated as a result of the treatment that they have received in the delivery of services. As the debate matures, people accept that that area can be incorporated into the role of the ombudsman. Human rights are already embedded in the role of the ombudsman but that needs to be made more explicit. If you want to have someone who has a specific advocacy role, they could work either alongside us or with the Scottish human rights commissioner. That would allow human rights issues to be articulated, best practice to be identified and advice on that best practice to be given to, for example, local authorities.

The Convener: Is there a risk that, if a human rights commission is set up, the human rights element of your role could be further overlooked? If we set up more and more discrete organisations, the danger is that they might be seen to be overspecialised or that people might use them as their first port of call for complaints, despite the fact that other agencies have those functions.

11:30

Professor Brown: That is my main concern. Our office was created as a one-stop shop to simplify and clarify the system and make it much more accessible to members of the public. The notion of a single gateway has a lot to commend it. Whether, after going through the single gateway, a person should then speak to a specialist is a question for those who are designing the system, but our challenge is to be very clear about the existing system, the different agencies' roles and functions and, crucially, how the agencies complement one another.

Mark Ballard: I want to follow up the point about the current system's coherence and the complementarity of the different roles. In its submission, the Association of Scottish Colleges wonders whether the functions of the Standards Commission for Scotland, the Office of the Scottish Charity Regulator and your own office overlap; it feels that there is a lack of clarity about which regulator will be responsible for complaints, for example, against colleges. Given that your office plays a key underpinning role, it might be the appropriate one for dealing with many complaints. Do you think that, in the round, overlaps exist or could emerge in the system? If so, could they be dealt with either by looking at the work of the current commissioners and ombudsman or when we come to consider proposals for any future commissioners and ombudsmen?

Professor Brown: You have highlighted a good example. When further and higher education were added to the Scottish public services ombudsman's remit last October, the organisations expressed concern that they would

have to account for their action to even more bodies. I have had discussions with Jane Ryder from OSCR on any potential overlap of functions with regard to further and higher education. We have managed to get round such problems with other bodies by drawing up memorandums of understanding, which means that I see any complaints that come to my office. I think that Ms Ryder would agree to such an approach; in her evidence to the committee, she seemed to be arguing more or less along the same lines. We are simply trying to anticipate any tensions that might arise.

We might overlap with the functions of the standards commissioner with regard to local government. For example, complaints about councillors were dealt with by the previous commissioner for local government administration in Scotland. However, when the new code of conduct for councillors was introduced, it was decided that any complaints should be dealt with by the separate standards commissioner.

I think that this links to the convener's earlier question on investigation. The classic complaints in local government are about planning and might involve not only the way in which the authority has handled a particular matter, but how a councillor has conducted himself or herself. I can see how members of the public might find the process very confusing; indeed, they have said to us, "Why do I have to go to another body?" We try to simplify things by, for example, transferring papers between offices, but Lorne Crerar and I have certainly examined ways of rationalising and reducing overlaps by conducting joint investigations and so on.

The issue has been raised with regard to the water industry, in which the different tiers of complaint handling are very confusing for members of the public. My basic principle is to keep things simple and to have as few layers as possible. I am not suggesting that we deny members of the public any choice—different routes should be open to them to address administrative injustices—but we must remember that there is also a public accountability issue to deal with. The danger is that if the initial issue has not been resolved, people might start to try many different doors.

As I said, we must keep things simple. For example, last April, the health service removed a tier of complaint handling. Under the previous system, a complaint would be dealt with by an internal process, an independent review panel and then the ombudsman. That system was changed and we now say to organisations that if a complaint is not resolved by a body, it should be subject to one review and then referred to the ombudsman for his or her decision.

John Swinney and I have discussed legal services. The creation of a new commission to look into complaints against lawyers could lead to tension between that body and my organisation because, when solicitors work in public service, we deal with complaints against them. John Swinney was concerned that there should be no duplication, with people taking the same issue round different routes. We have to strike a balance. The public have to have forms of redress for genuine grievances, but the public purse should not have to answer the same questions a number of times.

We come back to design principles. This is a small country and we should keep things simple. When possible, we should cluster similar activities. In the meantime, I think that most of us are working as effectively as we can through memorandums of understanding. There will always be some tensions and overlaps, but we are all keen to reduce the burden.

The real point is that we do not exist for our own sake. We are not working in a vacuum. The objective is to improve the delivery of public services. When I speak at local government or health events, for example, I make the point that we are not trying to draw resources away from the delivery of services. We should be minimising any such drawing away of resources so that people can deliver better services. That is the objective, but the design needs to improve.

The Convener: Okay, I think that we have kicked the ball around a good deal. I thank Alice Brown for answering our questions.

11:36

Meeting suspended.

11:38

On resuming—

The Convener: I welcome our second panel of witnesses. Dr Jim Dyer is the Scottish parliamentary standards commissioner and Kathleen Marshall is Scotland's commissioner for children and young people. I give both witnesses the opportunity to make brief opening statements, after which we will move to questions.

Kathleen Marshall (Scotland's Commissioner for Children and Young People): I would echo many of the points that were made by Alice Brown and Kevin Dunion—especially the one about there being no road map.

We have been trying to establish clearer lines of accountability—for example, through the financial memorandum that we have negotiated with the Scottish Parliamentary Corporate Body—and to

establish clearer expectations, through our annual report. However, that work has reached only a certain stage, so I welcome the opportunity to contribute to the development of clearer lines of accountability.

In the course of members' questions, it will become evident that my office is quite different from the Scottish public services ombudsman or the Scottish information commissioner—we are not demand-led, as they are in responding to complaints. The case is therefore strong for setting out clear expectations for the scale of our operations. I will be happy to discuss such issues with the committee.

Dr Jim Dyer (Scottish Parliamentary Standards Commissioner): I said earlier that I was not going to make an opening statement, but I would now like to comment briefly. My comments will follow on from my submission and from what I have heard this morning.

I agree with the other commissioners and the ombudsman—and, I think, with everybody else who has been involved—that the full governance framework for our posts was not in place as the posts were created one by one. I therefore welcome this move by Parliament to take stock and to address issues of accountability, governance and so on, which we have been discussing for some time. In March 2004, I presented a paper on accountability and governance to the SPCB via the Parliament's chief executive.

In my submission, I say that it is a pity that the exercise's main impetus seemed to be financial. I illustrate that point by mentioning the Scottish Parliament press release of 1 March 2006, which had the headline:

"Costs and accountability of commissioners to be investigated".

Note that the word "costs" came first.

I am concerned not only about what is happening in Parliament but about how what is happening in Parliament is being transmitted to the general public. The overwhelming approach in press articles on the issue has been somewhat negative. They talk about "budgetary control" and "soaring costs of tsars"—that lazy and inappropriate word that journalists seem fond of. None of us sees himself or herself as a tsar.

The problem is that public confidence in the posts may be undermined if Parliament seems to be concerned about the posts. That in itself would reduce some of the value of the constitutional watchdog posts to the public, who are supposed to be the beneficiaries. What I am saying is that there is more to governance than budgetary control—I am sure that committee members would be first to

agree—but that does not always come across in the coverage.

I am not for a minute saying anything against the need to account for the use of public funds; I have been used to accounting for public funds for 15 years, in various guises. However, I want to emphasise that there is a more positive element. Whatever body undertakes a role in relation to the commissioners or the ombudsmen, whether it is the SPCB, the Scottish Commission for Public Audit or some other committee that might be set up, it will be important for it to understand the work of the commissioners and the ombudsmen, to take an interest in that work, to ensure that annual reports are debated, to explain the roles of the office holders to Parliament and to protect the office holders against unwarranted financial constraints. Those points have already been discussed.

From what I have heard, I am encouraged that the committee is taking a broad and comprehensive approach and not a narrow financial approach. I hope that that gets over to the wider world.

The Convener: Obviously, we cannot control what items in our inquiries the press will pick up on. I suppose that, when they do pick up on certain issues, they are reflecting what they think their readers will be interested in.

You are right to say that the committee's interest is in accountability and governance and, perhaps, particularly in what the proper relationship should be between the various commissioners and ombudsmen. Commissioners' posts have been set up with a focus on the need for independence. That is right and proper at one level, but not enough consideration has been given to the relationship between the commissioners and Parliament, or to accountability and how it is exercised. As you suggest, it is a two-way mechanism.

What I expect to come out of the committee's deliberations—it has already come out in evidence—is an acknowledgement that we have to focus on the relationship in greater detail.

11:45

Mr Swinney: Far be it from me to talk about the negative tone of the Scottish press corps, but I want to pursue with Dr Dyer what I thought was a contradiction in his opening remarks. He seemed to say that the inquiry will provide a welcome view of the overall architecture of the ombudsman structure in Scotland, but that it focuses on money and how money is used. Is not there a contradiction in welcoming the process while being concerned about its consequences?

Dr Dyer: I do not think so. I absolutely welcome the process of taking stock and considering the range of accountability and governance questions, including financial accountability questions, relationships with Parliament and how connections with Parliament can add value to posts and help to bolster their independence. People may ask why the Finance Committee is carrying out the inquiry, but it has the perfect right to do so, of course; indeed, perhaps it would be inappropriate for any other Scottish Parliament committee to carry it out because, for example, there is no public administration committee. My concern is simply that the focus might, especially when things have been filtered through the press, be seen to be on budgetary control rather than on the wider process, which encompasses all the issues that I mentioned.

I am aware that journalists are sitting behind me listening to the discussion, but there is a problem with the negative tone of articles. Such articles are seldom counterbalanced by articles by people in Parliament who can explain why Parliament thought that setting up the posts was valuable, what value they add to the governance of Scotland and why the country needs constitutional watchdogs or, indeed, why any mature democracy needs such constitutional watchdogs.

Mr Swinney: Okay.

I have a question for both witnesses. Will you say something about the current accountability processes that exist between your organisations and Parliament or any other agencies or organisations? Do you consider the level of accountability to be appropriate and effective?

Kathleen Marshall: The current accountability mechanisms, which have been developed in collaboration with the office holders since the offices were set up, are probably clearer in principle than in practice. For example, the financial memorandum with the SPCB on scrutinising our budgets is quite a good model, but I do not think that the process has ever been completely followed through, for whatever reason. I would prefer there to have been more rather than less scrutiny in the past year. As I say in my submission, one of the problems that I had in presenting my previous budget was that there was not as much early scrutiny and dialogue as the financial memorandum anticipated. Everything was squeezed into a 10-minute meeting about a week before the information went to the Finance Committee. There is a mechanism that can be developed, but things are not working as was expected.

On political as opposed to financial accountability, no process has been set out for scrutinising annual reports, as many people have said. I would relish being questioned about my

annual report and being given an opportunity to explain what I am doing and why I am doing it. At the moment, the annual report is simply mentioned in the *Business Bulletin*. I have negotiated a protocol with the Education Committee so that it will look at our annual report, but last year, for various reasons that were connected with the timing of the SPCB's submission of accounts, things were done so late that the process did not make much sense and therefore I did not have the opportunity that I wanted. I think that there are seeds in what currently exists that could be developed to produce a more robust form of accountability, more robust scrutiny and more opportunities for dialogue, which I would very much welcome.

Dr Dyer: My position is somewhat different from that of the other witnesses because I am not a Crown appointee—I am appointed by the SPCB with the agreement of Parliament, which means that there are issues to do with my accountability.

I scrutinise MSPs—that is what my job is about—but I am appointed, reappointed and can be dismissed by votes of MSPs. That highlights the tension between independence and accountability. I could perhaps highlight some ways in which I think independence could be improved. I am actually accountable to Parliament through the corporate body. My budget is, in effect, agreed by the corporate body at present. I need the agreement of the corporate body to employ staff—although to date I employ no staff—and to engage any services; for example, I engage the services of a firm of lawyers for legal advice and support. I am therefore accountable to Parliament financially and, as the terms and conditions have it, in relation to my suitability, ability and willingness to do the job.

Like others, I am also required to produce an annual report, which is delivered to Parliament and goes to the Standards and Public Appointments Committee. It has been discussed by that committee, although I think it is fair to say that, to date, that has been more at my initiative than at the committee's initiative. I welcome the opportunity to discuss my annual reports. I also feel a strong sense of accountability—or at least of responsibility—to the public, because the whole *raison d'être* of my position is to be an independent investigator of complaints against MSPs.

The public must have confidence in my independence, which takes me back to the paradox of my being appointed and reappointed by MSPs who can also dismiss me. In a sense, independence is not fully built into the architecture of the post, although I understand the reasons for that, given the legitimate desire of any parliament

for autonomy. I feel that there are ways in which that could be improved.

I am the only commissioner who has been through the reappointment process, which is one of the things that could create pressures that might affect independence. It would be preferable in the future not to have a reappointment process, but to have a single longer term of five to seven years, as was the recommendation that the Committee on Standards in Public Life made on the United Kingdom parliamentary commissioner for standards at Westminster. The public's need to feel that I can do my job without looking over my shoulder to see whether members are content that I am doing my job properly is somewhat undermined by the need for reappointment, which is why I have recommended that consideration be given—certainly for my post and perhaps for others that scrutinise aspects of Parliament's functioning—to there being a single term, rather than two shorter terms. That would be especially preferable for my appointment, which has three-year terms.

Mr Swinney: Does Kathleen Marshall agree?

Kathleen Marshall: I entirely agree with that. In fact, you will see from my submission to the Justice 1 Committee on the Scottish Commissioner for Human Rights Bill that, when I and the other UK children's commissioners—those in Wales and Northern Ireland—were giving evidence on the English commissioner proposal, we were all of one mind that the best model was the Welsh one, which uses one seven-year term with no reappointment. That recommendation was not taken up, so the English commissioner's term of appointment is the same as mine. I agree entirely with Jim Dyer, for the reasons that he has given, that there should be a single term of appointment with tenure long enough to be able to make some sort of impact. Seven years seems quite a good length of tenure for the kind of strategic role that my office has.

Mr Swinney: On the wider question of the independence of commissioners, what aspects of the current process of accountability do you believe constrain your independence?

Dr Dyer: I have not felt my independence to be constrained from the point of view of financial accountability, although there is always the potential for that. There is tension there—my budgetary needs have been very limited.

Mr Swinney: My question was not just about finance, but about the elements of the current arrangements for accountability that give you a sense that your independence is constrained.

Dr Dyer: I described one element, which is the reappointment procedure, although I hasten to add that—of course—one resists any such pressure.

However, given how the post is set up, the resisting of such pressure depends on the independence and robustness of the post holder rather than on the institutional architecture.

The inescapable fact is that we are appointed and can be dismissed by members. On dismissal, we suggested that there should be an independent ad hoc external panel, as is provided for in the Scotland Act 1998 for the dismissal of judges, so that, if there is any possibility of dismissal, Parliament can be advised by the conclusions of a panel that has considered whether the criteria for dismissal have been met. It would be for Parliament to make the final decision—it is for the monarch in relation to Crown appointees—but the inclusion of an independent element in the process would bolster the public's perception of the independence of the post. However, I have experienced no constraint to date that has posed a serious threat to my independence of operation.

Kathleen Marshall: I would echo what Jim Dyer said. Reappointment is not a matter that I take into account in my work, but I can understand that onlookers might be concerned that commissioners are looking over their shoulders.

In general, the Scottish model is good. When proposals for a children's commissioner were debated in England, the Scottish model was held up as a good example in respect of independence. I have no concerns or complaints in that regard; I can act independently and am pleased with the route that the Scottish Parliament took. However, I acknowledge members' concerns about the need to balance independence with accountability.

Mr Swinney: How can we provide stronger and clearer lines of accountability while preserving independence?

Kathleen Marshall: I discussed financial accountability in my written submission. As I said, my office is different from the other commissioners' offices in that it is not demand led. I have no statutory duty to respond to complaints, the number of which is outwith my control. I must have a reasonable expectation of the scale of my operation and I must work within the remit that Parliament sets. I have tried to do that and I respect Parliament's right to determine the scale of my operation, given that it is potentially open ended. Greater clarity on that might be welcome. I suggested in my written evidence that provision be made for a core budget allocation that would not be questioned; if I wanted more funding I would have to ask for it and my request would be subject to scrutiny.

Mr Swinney: You propose a structure in which you would be guaranteed a core administrative element, to ensure that you could fulfil the statutory functions that are conferred on you by

the Commissioner for Children and Young People (Scotland) Act 2003, but in which you would be required to make a separate bid if you wanted to take forward other policy initiatives or investigations. Would that requirement be an intrusion on your independence?

Kathleen Marshall: You suggested that the core funding would cover only the administrative element of my work, but the core budget should also cover policy work. For my office in particular there are many policy issues on which I might focus. The independence of the office must be such that the commissioner can identify such policy issues and areas of investigation; the core budget should be able reasonably to accommodate that activity.

In the model that I propose, I would come back to Parliament only if I thought that there was a need to upgrade the scale of my operation. For example, during the debate that led to the establishment of my post it was suggested that there should be regional offices of the commissioner for children and young people—people have raised that with me. If there were regional offices, that would have big financial implications and would require an increase in the number of staff. I would have to come back and argue for the scale of the operation to be upgraded to that extent. However, I should not be given money for particular, pre-identified policy areas; I should have the independence to identify which issues I want to focus on, which I should do in consultation with children and young people in Scotland—as the Commissioner for Children and Young People (Scotland) Act 2003 says. I should have a core budget that allows me to do that within the scale that is envisaged. That is the scale on which I have set up the operation at the moment.

12:00

Mr Swinney: Would such a structure, whereby the budget was split into two components—a core amount and an element that was biddable for, if I can use that expression—compromise your independence to execute your functions?

Kathleen Marshall: I do not think so, provided that the core budget was sufficient to do a reasonable amount. I think that we covered some of that debate in November.

It is difficult to identify the exact point at which consulting children and young people and getting them to participate becomes merely a ticking-the-box exercise. For example, I could have said that I had consulted children and young people if I had put an advert in the papers that said, “Please send me your views,” but that would not have been

terribly effective. There are various ways in which I could consult.

There will always be an argument about whether it is enough simply to support the core functions that are set out in the Commissioner for Children and Young People (Scotland) Act 2003, but the scale on which I am operating now is the scale that was identified by Parliament after it had conducted an inquiry into the need for a children's commissioner, in which it examined international models and consulted children and young people and interested agencies. I am working within that broad template and making decisions, in consultation with the people whom I must consult, about which avenues to pursue. As long as the core budget was not too restrictive and gave the commissioner a reasonable opportunity to exercise the functions that are in the 2003 act, that would be acceptable.

Dr Dyer: I would like to respond to that question, too, which was about how accountability can be improved. I have two points. First, for the posts as a group, it would be desirable to have clarity on the signing off of budgets. That is not such an issue in my case because I am not an accountable officer—the chief executive is my accountable officer.

Secondly, as I said, regardless of which body carries out the financial function, there needs to be a body that takes an interest in the role of the post holder, that understands that role and which asks questions about how it is being conducted. I mean that not in relation to individual cases, but more generally. Some of that function might need to be split. For example, in my case there is a natural link with the Standards and Public Appointments Committee, which is in a position to discuss issues that I raise in my annual reports. In other cases, there may not be such clear links. For each post holder, as well as there being a body that has responsibility for budget scrutiny, there needs to be a body within Parliament that holds the wider responsibilities that I have described.

Mr Swinney: I want to move on to duplication of function, which is another issue that the committee is concerned about. The evidence from the children's commissioner mentions that there could be an overlap of function in a number of cases. It cites the example of an investigation into a residential home and the welfare of the children in those circumstances. Would another organisation that had the statutory power to conduct such an investigation be able and equipped to undertake it without the children's commissioner having to replicate the inquiry?

Kathleen Marshall: The children's commissioner's investigative role has always been considered to be something that would be exercised rarely—it is really a backstop. For the

most part, I would hope to work with people collaboratively, by supporting them and encouraging them to respect the rights of children and young people.

However, that backstop is important. The fact that such a role, with the associated legal powers, has been established as part of the post of children's commissioner raises the status of the United Nations Convention on the Rights of the Child. As you will be aware, although the European convention on human rights was incorporated into United Kingdom law through the Human Rights Act 1998, the UN Convention on the Rights of the Child did not have such status. The fact that there is an investigatory power associated with the children's commissioner post gives it such a status. The experience of other children's commissioners is that that power does not have to be used often, although the fact that people know it exists is helpful. My role is not investigation focused.

On the roles of the other bodies, there could occasionally be the potential for duplication, although their focus would generally be quite different to mine. For example, if I had an interest in an organisation, it might be about the extent to which it had taken account of the views of children and young people on a matter that was important to them. The Office of the Scottish Charity Regulator, for example, would have a different focus. There could be cases in which our focus is the same as that of another organisation, but the Commissioner for Children and Young People (Scotland) Act 2003 anticipates that, and one of the restrictions on carrying out a formal investigation is that we must consider whether it is properly the function of someone else, which I do not envisage happening often.

Mr Swinney: Can you identify, either at present or in the legislative intentions of the Executive, areas of activity for which you have legislative responsibility that might be duplicated by other organisations that exist or are likely to be legislated for?

Kathleen Marshall: In my written evidence, I said that there is a clear commonality of interest with some aspects of the work of the Scottish commissioner for human rights. The main focus of the commissioner for human rights is the European convention on human rights, but it has a voice on other issues. My main focus is the UN Convention on the Rights of the Child, but I have a voice on other issues. That different voice is critical.

In recent debates about the children of drug misusers, there have been different voices about the relative weight that should be given to the rights of children and the rights of parents. Children and young people in this country are the

only group that does not have a vote; they do not carry political weight and are inherently subject to the authority of others. It is therefore important that they have a strong voice to advocate for them, which is not going to be crowded out by other interests. There are common interests, but there is a strong reason for having a special voice for children and young people in this country. Parliament has recognised that.

The Convener: As I did with Kevin Dunion, I shall ask Kathleen Marshall a hypothetical question. If I—or a significant group in Parliament—took the view that the core priority for the children's commissioner for the next year or two should be the situation of looked-after children, how would that view be influential or persuasive to you in setting out your programme of work?

Kathleen Marshall: It would certainly be persuasive—I would certainly listen to it, but it would prejudice the independence of my role if I had to take that kind of direction. An issue that arose in the debate on the bill to establish the children's commissioner for England was the extent to which there should be a power of direction. It is especially the case when one has limited staff and resources that direction to take on issues that have political implications or media associations, for example, reduces the possibility that the commissioner will take up other issues.

The issue of looked-after children is high on my agenda. I know that the question was hypothetical, but it is not possible to consider that group in isolation; we must consider such children's lives before they were looked after and what happens to them afterwards. Not to consider the wider perspective would not be particularly helpful. The role of the Welsh children's commissioner—the first children's commissioner to be established in the UK—started with the focus on looked-after children, before it was felt that the role should be extended.

Perhaps the question was about a point of principle in respect of Parliament or others saying that a particular issue exists. I am always open to that, but I must balance that with the fact that one of my post's main aims is to try to put children and young people's issues on the agenda. As the committee may know, I recently consulted children and young people throughout Scotland and identified policy priorities on that basis. It is important that their voice is not diluted.

The Convener: I suppose that I am getting at the point that the defining characteristic of a parliamentary commissioner, which you both are, is that they serve Parliament and add in some way to Parliament's work. If a parliamentarian, a group of parliamentarians or Parliament as a whole decided on a priority for your post and the

resources that are allocated to it—I chose looked-after children as an example—you seem to be saying that you might listen to them a bit, but you would ultimately resist the idea that Parliament could direct you.

Kathleen Marshall: I did not say that I would listen to them only a bit; I would seriously consider what they said. However, I would resist direction. Resources are available to Parliament. Parliament can conduct inquiries—for example, it is inquiring into family support services and disability at the moment. Parliament has other ways to operate, as does the Scottish Executive. My organisation is not very big. I have 14 staff and Audit Scotland admits that my budget is not huge.

In establishing my office, Parliament did not say that it was an agency that necessarily serves Parliament in a functional way. The organisation serves children and young people. Its purpose is to provide a mechanism for children and young people to have their issues put on the agenda and to feed them into the parliamentary process. In that respect, my post brings added value. Other mechanisms are available for people in powerful positions to raise matters. My job is to raise the issues that are important to the citizens of our country who have no vote.

Dr Dyer: I, too, take issue with the construction that parliamentary commissioners serve Parliament; I would say that they serve the country. They are linked to Parliament, rather than the Executive, which is the more normal link, to protect them from any perception of undue interference from the Executive when they may scrutinise the actions of the Executive or ministers. Similarly, despite the link to Parliament, commissioners need to be protected from undue interference by Parliament, especially when their actions involve scrutiny of Parliament—100 per cent of my actions involve that.

A conceptual issue is that because commissioners are linked to Parliament, they are seen as constituting part of the Parliament's budget. I know that a mechanism is needed in the Parliament to limit budgets, but conceptually, we are not part of Parliament's operation. We provide a sort of national service that the Parliament hosts for the country's benefit. To place commissioners in that context might help people.

Ultimately, the Executive and Parliament legislate to establish our roles. If the Executive and Parliament became dissatisfied with any aspect of those roles or decided in the light of experience that amendment was needed, the Executive and Parliament could change the legislation.

The Convener: That is a strange doctrine of government that I do not recognise. My view is

that, ultimately, your offices were explicitly set up by Parliament. Dr Dyer's post might have been set up by Parliament under the implied pressure that, if a post such as his was not established, scrutiny of parliamentarians would be inadequate, but it was nonetheless Parliament that set up the post.

In a sense, both commissioners are accountable through Parliament, because you lay your reports before Parliament. The idea that some third element or separate element of accountability applies to commissioners, whether it is direct accountability to the public or the idea that children are a separate constituency to whom the commissioner is more accountable than she is to Parliament, is not recognisable as a constitutional reality. That is something that you are creating; it does not exist in the legislative arrangements.

12:15

Kathleen Marshall: I would say that I am accountable to children and young people in Scotland. That is what Parliament expects. The Parliament set up my role specifically to provide a mechanism to promote and safeguard children's and young people's rights because Parliament recognised their vulnerability and disfranchisement. I am accountable to the Parliament for being accountable to children and young people—that is the way I see it. If I do not operate in a way that responds to the needs, voices, rights and interests of children and young people in Scotland, and if I do not form that public service function, Parliament would be right to call me to account for that. The Parliament has arranged it in that way. In my view, that is the will of Parliament and that is what I am trying to carry out.

Dr Dyer: Parliament operates my appointment, but in setting up my appointment and passing the legislation that led to it, Parliament made a great deal of the independence that it was giving to the investigatory role and the confidence that that would give the public that complaints about members' conduct would be impartially and independently investigated. It is in that spirit that one feels that there is accountability to the public and that one is performing a service to the nation, rather than a service to the Parliament, although Parliament operates the levers of the appointment.

Kathleen Marshall: Children and young people were involved in my appointment specifically to make that point. Before I was interviewed by a panel of MSPs, I was interviewed by a panel of primary school children and then by a panel of older young people who wrote a report for the MSPs. Throughout the development of my post there was a commitment to involving children and young people in it. To me, that is the Parliament's will. If I suddenly just followed official lines and did

what the adults wanted me to do or what adults thought was important, I would betray the trust that has been put in me. That is the way in which Parliament wanted me to do the job, and I hope that that is what I am doing.

The Convener: I have to say that I am finding this quite difficult, Kathleen. If I went into any school in Glasgow and asked a group of schoolchildren how involved they felt in the appointment and activities of the commissioner for children and young people, I am not sure that they would feel any sense of ownership. You imply that the process was inclusive and I accept that there was an attempt to involve children in the process, but it does not seem to me that your accountability is guaranteed by that process or that it gives you a separate, independent accountability to children and young people. Your day-to-day accountability is to the Parliament.

In exercising your functions you should, of course, be involved with children and young people and begin to draw in their needs and requirements, but to me it is a step too far to claim that you somehow have an element of independent accountability to children and young people because of the mechanisms that you have put in place. Intellectually, I do not see the logic of that.

Kathleen Marshall: I fully accept that I am accountable to the Parliament, but the way in which the Parliament set up my role gives me a responsibility—we can call it that, if you like—to children and young people.

In a sense, I agree with you. The fact that children and young people were involved in my appointment does not give me a democratic mandate of the type that members of Parliament have. However, it was a symbolic action to say, “This is what it is about.” Part of my role is to create some of the structures that will, for example, make the interaction between MSPs and their younger constituents more possible—not just on a geographical basis, but across particular sectors. We are doing stuff on health and groups for the looked-after population and so on. Parliament wants me to perform that role. In carrying out that role, I am of course accountable to Parliament, but I have a responsibility to children and young people to promote and safeguard their rights. That is the core function that Parliament said I have to carry out, and that is what I am trying to do.

The Convener: I accept that you have a responsibility to children and young people, but my view is that you are accountable to Parliament. If Parliament accepts your argument, it is not doing its job as fully as it should, because it is Parliament’s job to do part of what you are suggesting.

Dr Murray: I wish to press you further on that point. If you see yourselves as accountable to bodies outside Parliament because of the way in which your posts were set up, how do you demonstrate best value and accountability, and to whom, if it is not to the SPCB?

Kathleen Marshall: There is a danger of getting caught up with particular words. There is a moral accountability. The lines of formal accountability must go through Parliament, of course, and I expect that I will be asked questions about that in the course of the scrutiny of my annual report—which I hope the Parliament or a committee will carry out. The Commissioner for Children and Young People (Scotland) Act 2003 set out the structure of my annual report. I must carry out a review of the issues that have arisen for children and young people over the previous year, and I must write down explicitly what I have done to meet each of the objectives set out in the 2003 act, including the raising of awareness, the promotion and safeguarding of rights and so on. Parliament is, in a sense, the voice of children and young people at the point at which it calls me to account and asks me whether I have actually fulfilled the role that it set me up to do.

Dr Murray: In that case, I presume that you see yourself as being accountable to the Education Committee, rather than to the SPCB, as it would be the Education Committee that would question you on the contents of your annual report.

Kathleen Marshall: I am accountable to Parliament as a whole. Because there was no mechanism for holding a debate or having a dialogue with Parliament as a whole, I started off by developing a protocol with the Education Committee. However, I am open to using other mechanisms if the Parliament wishes that. I would love to have an annual debate on the state of Scotland’s children or something similar, in which the Parliament could consider the issues and decide where the matters that I had addressed in my report could be debated and given prominence. I am very open to other suggestions on how we could do that.

Dr Murray: Although the Education Committee could debate your annual report, it cannot approve your budget. It has no role there.

Kathleen Marshall: Yes. We seem to be conflating these two issues at the moment. I see the link between them, but financial and political accountability seem to be being conflated, which might be leading to something that is relevant to what Jim Dyer has been talking about: if everything is considered in terms of cost and best value, that misses an important dimension. We need both strands of accountability, but we must seek to deal with them more effectively.

On best value, I think that I mentioned the United Nations Convention on the Rights of the Child the last time that I appeared before the committee. Article 3 says:

“the best interests of the child shall be a primary consideration”

in decisions taken by all bodies, including “legislative bodies”. I would be interested in pursuing the question how the interests of children influence or shape decisions. There are two routes: financial accountability and political accountability, and we must be clear about what it is that we are assessing at any point. I am open to scrutiny and accountability on both those points, but we need to clarify the mechanisms.

Dr Dyer: Let us not get too hung up on the word “accountability”. There is a clear accountability under the parliamentary mechanisms. I prefer to talk about a responsibility to the wider public. In my case, that includes demonstrating impartiality and independence in how I go about my complaints investigations. People can judge that from those complaints investigations that are published. If complaints get past the admissibility stage, they are generally published by the Standards and Public Appointments Committee.

As for my annual reports—which are available on my website—I am rather limited in what I can say publicly by the legislation that set up my role, the Scottish Parliamentary Standards Commissioner Act 2002. That causes some difficulty. As the Committee on Standards in Public Life pointed out when it was considering standards of conduct at Westminster, people only know about the parliamentary commissioner for standards from what they read in the newspapers, see on the television or hear on the radio. There are not many other ways for them to get an impression of how such people go about their work, and that is why I am concerned about negative publicity, as I said earlier. It is important to make available to people—albeit by limited means—information from which they can judge whether the promises that have been made by the Parliament about independence are being kept or not, so that they can have confidence in the post of commissioner.

Dr Murray: The SPCB and Audit Scotland have suggested that, for financial accountability, the SPCB may need to be given statutory powers to strengthen its role of scrutinising the ombudsman and commissioners. An alternative suggestion is that a separately constituted group, such as the Scottish Commission for Public Audit or a similar body, should take on that scrutiny role. How do the commissioners react to those suggestions? Would the fact that those MSPs might be the subject of an investigation cause problems for Jim Dyer?

Dr Dyer: It would not make much difference to me which body of MSPs was involved, as the same difficulties would arise. I might have, or might have had or might have in future, complaints about MSPs who are members of the corporate body or the Finance Committee or the Scottish Commission for Public Audit. That issue will inevitably arise in my job.

As I said, I do not mind whether that role is carried out by the corporate body—which, in effect, carries out that role for me at present—or the Scottish Commission for Public Audit. However, I see from previous evidence that there are difficulties of transparency and lack of clarity about what would happen in the event that a disagreement between the SCPA and the Finance Committee needed to be resolved. Nor would I mind whether the scrutiny role was carried out by a new committee, such as a committee for the commissioners.

However, the committee that scrutinises the commissioners must have the time and resources to carry out not only the appropriate budgetary scrutiny, but the wider aspects of scrutiny that we have discussed. For example, the committee that scrutinises the commissioners might not discuss our annual reports if they were more appropriately considered by a subject committee, but it should ensure that they are discussed and that we have a forum for discussing not just financial issues, but issues that are relevant to the conduct of the post.

Kathleen Marshall: I do not have strong feelings about the particular format of scrutiny. For me, the important thing is that whoever carries out the scrutiny has the time to get to know the offices and what we are trying to do. That is especially important in the case of my role because we will be involved, I hope, in many cutting-edge initiatives that may not have been tried before and that are a little bit adventurous. That is what I was expected to do. I will welcome whatever scrutiny and budget setting process is set up if the people have the opportunity to get to know the work that we are doing and can comment on it on that basis.

The Convener: You will probably have different answers to this question. What distinct criteria make it particularly appropriate for you to be parliamentary commissioners, rather than just bodies with functional independence without any parliamentary element? What is the connection with the Parliament?

Dr Dyer: I think it is different for me. I anticipate that the main answer would be, “removal from perceived influence by the Executive”. For me, that is not an issue, although I guess that Parliament would want me to be removed from the Executive. That issue actually came up in the Standards Committee’s discussions on the appropriate methods of investigation and was

dealt with in that committee's fourth report in 2000. The Standards Committee considered whether the Standards Commission for Scotland could carry out my role but it decided against that, partly on the ground that the commission's members are appointed by the Executive and it would be inappropriate to have Executive appointees scrutinising the conduct of members. Therefore, there is some rationale for the current set-up.

I can understand why Parliament wanted my role to be contained within parliamentary mechanisms, but in my case there is a particularly acute need to ensure that there are mechanisms for bolstering my independence of operation and that Parliament is not able to interfere improperly in operational issues, so that the public does keep confidence that I am—as I am—an independent investigator who is not influenced by the pressures attached to the processes by which my job was set up and under which my appointment operates.

The Convener: I should probably declare an interest, in that I was a member of the Standards Committee when the post of the parliamentary standards commissioner was set up. I feel some ownership of that.

Dr Dyer: Then you will be well aware of those issues.

The Convener: I suppose that the issue is what distinguishes the parliamentary commissioners from other commissioners. For example, would it be a big problem for the operation of the children's commissioner if her organisation was in a similar position to that of the Standards Commission or the proposed police complaints commissioner? Why should she be a parliamentary commissioner?

12:30

Kathleen Marshall: The Parliament chose this model as it felt that it was the most appropriate one. The decision to choose this model predates my involvement. Other models are possible, but the one that Scotland has adopted is in line with the best standards recognised internationally. There should be independence from the Executive because my role essentially relates to the human rights of children. I may, therefore, be critical of the Executive and must not be subject to its power of direction. The current model is perhaps more satisfactory as a matter of principle and it accords with best practice. Another issue is that, as a matter of principle and as a symbolic matter, there is a presence in Parliament for those citizens who do not have a vote. There are pros and cons to all the other models that exist and operate. This is the model that Scotland has decided to adopt, so unless there is a specific reason for changing it I think that in the early stage of the development of

the office it would be better to let it mature a little bit.

The Convener: The issue that I am pointing to, which comes out in your answer, is whether the parliamentary commissioner is seen to represent the independence gold standard plus or whether another argument in respect of the relationship between the commissioner and Parliament means that it is particularly appropriate that the post is a parliamentary appointment. For example, the Auditor General for Scotland is the source of the reports to the Audit Committee, so he has a defined role in relation to the Parliament. I am not sure that the same necessarily applies in your case.

Kathleen Marshall: It might do, but we will have to see how the office develops. For example, the fact that the Commissioner for Children and Young People (Scotland) Act 2003 stipulates that I can lay a report on any matter before the Parliament is very useful. It is a matter of symbolic importance for the children and young people of Scotland. The fact that Parliament set the role up to promote and safeguard their rights and that it has a direct link with Parliament will enhance their status. There are other models, but it would seem strange to change the system at this point, before we have had a chance to explore fully the implications of having this model.

Dr Dyer: I will add one further comment. It is right to say that the parliamentary connection gives an extra stamp of independence, but at the same time value could be diluted if there is not a limit to the number of such posts included. It is necessary to define a boundary. It is particularly important to include posts that have a refereeing or scrutiny feature, whether they scrutinise the Executive, Parliament or public services, in order to give a stamp of independence. One would not want to go on and on uncritically adding to the Parliament-related office holders.

I also agree that Parliament could make more use of the existing posts. The most obvious example of the benefit that could be gained is the reports that the Scottish public services ombudsman gives to Parliament, which it could use in its discussions on health, social services and so on. That is another benefit to the link with Parliament.

Mr Swinney: I will pursue Dr Dyer's comment about the proliferation of commissioners. I suspect that I know the answer to the question, but I will ask it anyway. Is the profile, status or significance of commissioners enhanced if we continue to legislate for further commissioners? Specifically, will the commissioners be enhanced in those ways if we legislate to have—we understand that such a proposal will be introduced in legislation—a commissioner for road works?

Dr Dyer: The answer is not yes or no; it is that each case must be considered on its merits.

Mr Swinney: What is your view on the merits of that particular case?

Dr Dyer: I have given no consideration to the desirability of having a commissioner for road works. I have thought more about having a human rights commissioner. Personally, as an individual—rather than as the holder of my post—I see the need for having what is now likely to be a human rights commission in Scotland. I would support such a commission. My basic point is that each case should be considered on its merits. Devolution gave rise to a need to set up such constitutional watchdogs and other roles in Scotland as there are in any other mature democracy. Where there is a legitimate need, Parliament should not hesitate to add to their numbers, but it should not do so uncritically, and it should not necessarily accept that they should all be Parliament-related.

Mr Swinney: On your point about a human rights commission, do you acknowledge that there is an issue about the territories and jurisdictions of current or potential commissioners and concern about potential overlap and duplication?

Dr Dyer: Yes, indeed. I have followed the debate on that, and I followed what Alice Brown said about it today. There are legitimate issues for discussion and I agree that when any new post is to be set up, there should be careful thought about how it fits into the existing framework and whether any aspects of the role can be shared, down to the more nuts-and-bolts issues such as the sharing of services, accommodation and so on. Clearly, that is desirable on the ground of efficiency.

Mark Ballard: I have a question about contracts. The Scottish legal services ombudsman gave evidence about risk to the individual in having to enter into contracts because of your status as a creature of the Parliament rather than the Executive. Have either of you had any issues about entering into contracts?

Kathleen Marshall: I have been raising the legal status of the commission since the very early days of my appointment. I looked at the legislation for the other children's commissioners and they all start with the words:

"The commissioner shall be a corporation sole."

That is corporate status for an individual that does not exist in Scots law. As there is no equivalent statement in the Scottish legislation, I wondered about the liabilities and responsibilities of the office holder. I read the evidence that the legal services ombudsman gave and many of the issues that she identified and seemed to think

were peculiar to her also apply to the commissioners.

At one level, we have some advantage, because my legislation says that the commissioner can enter into contracts and acquire and dispose of property, but there is a lack of a broader legal and philosophical context in which that can be understood. I can enter into contracts, but what does that mean for the capacity in which I am the employer and the leaseholder, and in which there are issues of liability and indemnity?

I have tried to clarify that, but have had no success. I tried to clarify it before I entered into the lease for my office, but the response that I got was that it was up to me to take individual legal advice before entering into a contract.

Mr Swinney: Where did that advice come from?

Kathleen Marshall: It came from the SPCB.

There is a lingering issue about the legal status of commissioners, which I think would also apply to some of the other models. I do not know whether the resolution to the problem is that the lack of such a status as "corporation sole" should be filled, or whether there is another mechanism. Entering into contracts could raise problems with personal liability, but the fact that there is no corporate status means that when I leave, or if I go outside and get knocked down, although the act says that Parliament can appoint an acting commissioner who might or might not be a member of my staff, there will be a lacuna in which no one is the employer and no one is holding the bank accounts. There is definitely a legal issue to be considered.

Dr Dyer: I have experienced no difficulty, but I employ no staff and I have no lease for accommodation, being based at home, at some economic benefit to Parliament. I engage a firm of solicitors and I suppose that I do so as postholder, but the actual accounts are paid via the corporate body.

Jim Mather: Dr Dyer made a comment about there being more to governance than budgetary control. I am sure that you would agree that there is more to governance than budgetary expansion and that it should always be about incrementally achieving better outcomes over time.

To what extent can the witnesses capitalise on what I call the auditor effect, which is a catalytic multiplier effect through which you can leverage the brand of your office and the legitimacy of Parliament and have an effect that does not require you to take on onerous, time-consuming and expensive administrative burdens?

Dr Dyer: I can say little about that, because my operation is a simple one that is very much demand led—it depends on the number of

complaints that I get. In the past financial year, my expenditure went down 25 per cent compared to the previous one. I have always lived within my modest budget, which was first set in 2003. Of course, that could change, influenced partly by members' conduct but, admittedly, also by complainers' conduct. If the number of complaints increased substantially, I would need to ask for an increase in my budget. However, at current levels, I have been able to operate within budget. By far the biggest part of my budget is my salary and associated costs. The second biggest aspect is the employment of legal advisers, which I consider highly necessary for the effective and challenge-proof conduct of my job. I therefore have limited scope for reducing expenditure further, but I am a small operation, in budgetary terms.

Kathleen Marshall: I am not clear whether the question on leverage was about financial resources or policy development.

Jim Mather: It was about the effect that you are trying to have in raising awareness, improving rights and increasing the level of activity among children. There is a wonderful book out just now called "Bowling Alone: The Collapse and Revival of American Community", which is about the collapse of the sense of society in America. People have become less involved in community councils and parent-teacher associations. It strikes me that one of your objectives might be, over time, to have future generations more involved in Scotland.

Kathleen Marshall: Absolutely. One of my roles is to develop active citizenship. We recently identified our policy priorities through a consultation that involved 16,000 responses from children and young people. The plan is to make progress on those priorities locally. The media liked my statement about issuing a detective kit to children and young people to map out what there is to do in their area and what they want to do. We want children and young people to link with local representatives, as well as sending their responses to us, and to monitor what happens. That is one way in which we are trying to work incrementally to mobilise groups of children and young people and make them realise that they can make a difference.

Another example is the care action group for which we are recruiting in conjunction with the Scottish Throughcare and Aftercare Forum. We want to work with a group of young people who have experience of the looked-after system to try to make progress on issues and to show them that they can make a difference. We are making gradual progress. I hope that we can work with the Parliament, its education service and members of Parliament. MSPs have used our offices for question-and-answer sessions with some of their

young constituents. I hope that we can develop that link more in the coming years.

Jim Mather: Would it be reasonable for you or your successors to be measured on the proportion of 18 to 22-year-olds who turn out to vote?

Kathleen Marshall: It may well be. I hope that we are successful. If young people feel that they are being heard and making a difference, that should contribute to the active citizenship that we all want.

The Convener: You do not have an influence on how they vote, which may be a different issue.

Jim Mather: We do not want to go there.

The Convener: Absolutely.

On the committee's behalf, I thank the witnesses for coming along. The next evidence session in our inquiry will be on 13 June, when we will take evidence from the permanent secretary to the Scottish Executive. The final evidence session will be on 27 June, when we will take evidence from the Minister for Finance and Public Service Reform and the SPCB. Our report will follow that.

Dr Dyer: Thank you for the opportunity to give evidence.

Financial Memoranda (Post-enactment Scrutiny)

12:45

The Convener: I invite Professor Midwinter to join us at the table. The second agenda item is to consider a paper from the Scottish Parliament information centre and the clerk on the post-enactment scrutiny of financial memoranda. The paper outlines the recurring concerns that the Finance Committee has raised on the standard of information that is provided in financial memoranda. It also notes the difference between the cost of pieces of legislation proposed in financial memoranda and the subsequent actual costs. Options for further action on the issues are detailed in paragraph 15. I propose that we follow all the courses of action that are suggested. Do members agree?

Mark Ballard: One issue that has struck me in my limited experience of the Finance Committee is that many of the financial burdens of legislation are borne by local authorities. Local authorities are often concerned about potential cost implications. I suggest that we have an evidence session with COSLA or local authority representatives to consider specifically how legislation impacts on local authority budgets.

The Convener: We can add COSLA to the list—that is covered in the second bullet point in paragraph 15. One caveat is that COSLA is notorious for not being as good at responding as timeously as it might to proposed legislation that will have a significant financial impact. COSLA has often come in late in the day or has not flagged up the issues. The evidence session might be an opportunity for us to raise those concerns.

Jim Mather: I suggest to Ross Burnside from SPICe that he might like to read a book by Bob McDowell, who is on Scottish Enterprise's international advisory board and who is the senior vice-president of Microsoft, on the subject of post-implementation audits. It has a lot of good pointers.

The Convener: Do members agree to follow the course of action that is laid out in the paper, with the suggested change?

Members indicated agreement.

The Convener: We now go into private for agenda item 3, which is consideration of a paper from the budget adviser on the review of the Scottish Executive's management of public finances.

12:47

Meeting continued in private until 13:06.

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