



OFFICIAL REPORT
AITHISG OIFIGEIL

Finance and Public Administration Committee

Tuesday 28 May 2024

Session 6



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FINANCE AND PUBLIC ADMINISTRATION COMMITTEE
19th Meeting 2024, Session 6

CONVENER

*Kenneth Gibson (Cunninghame North) (SNP)

DEPUTY CONVENER

*Michael Marra (North East Scotland) (Lab)

COMMITTEE MEMBERS

Ross Greer (West Scotland) (Green)

*Jamie Halcro Johnston (Highlands and Islands) (Con)

*John Mason (Glasgow Shettleston) (SNP)

*Liz Smith (Mid Scotland and Fife) (Con)

*Michelle Thomson (Falkirk East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jackson Carlaw MSP (Scottish Parliamentary Corporate Body)

Maggie Chapman MSP (Scottish Parliamentary Corporate Body)

Patrick Harvie (Glasgow) (Green) (Substitute Member)

David McGill (Scottish Parliament)

CLERK TO THE COMMITTEE

Joanne McNaughton

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Finance and Public Administration Committee

Tuesday 28 May 2024

[The Convener opened the meeting at 09:30]

Scotland's Commissioner Landscape

The Convener (Kenneth Gibson): Good morning and welcome to the 19th meeting in 2024 of the Finance and Public Administration Committee. We have apologies from Ross Greer, in whose stead we have Patrick Harvie. Do you have any declarations to make, Patrick?

Patrick Harvie (Glasgow) (Green): I have no relevant interests to declare.

The Convener: Thank you very much.

Today we will take evidence from the Scottish Parliamentary Corporate Body in our continuing inquiry into Scotland's commissioner landscape. We are joined by Maggie Chapman MSP, SPCB lead on business support and office-holders; Jackson Carlaw MSP, SPCB lead on finance and organisational governance—I am impressed by those titles, I have to say; and David McGill, clerk and chief executive of the Scottish Parliament. I wish you all a good morning, and I welcome you to the meeting. I understand that Maggie Chapman wishes to make a short opening statement.

Maggie Chapman MSP (Scottish Parliamentary Corporate Body): I will be brief. I thank the committee for inviting us to give evidence for its inquiry into Scotland's commissioner landscape. As you are aware, the corporate body currently supports seven office-holders and funds the devolved Scottish activities of the Electoral Commission. We will also support the new patient safety commissioner for Scotland when they are appointed and their office is established.

As you know, we have previously raised concerns with the committee and with the Scottish ministers about the growing number of commissioners and the impact of that on the corporate body's workload, overall budget and staff. A lot of our responsibilities are reactive and responsive to decisions that are made by the Parliament. We are therefore grateful to contribute to the inquiry and to your work, and we look forward to the discussion this morning.

The Convener: Thank you very much. I am sure that you are well aware that we have taken

extensive evidence already, but I am keen to get the SPCB's view, because you are key to the whole discussion. Do you agree that the proposals to establish commissioners are driven by a perception of systemic failure and malfunctions in the system? If so, does the SPCB have any view on ways of addressing those systemic failures other than by establishing commissioners?

Maggie Chapman: When it comes to the commissioners whom we currently support and the proposals that come forward—those that have been enacted and those that are in the pipeline—campaign groups, individuals and organisations seek to establish commissioners for a variety of reasons. Some of those elements stem from systemic failure and from a recognition that maybe people's rights are not being realised or respected or that there are fundamental issues with how people are being treated, particularly in the justice and health sectors. We have already referenced the patient safety commissioner for Scotland; we are also aware of a victims and witnesses commissioner for Scotland, which is in a bill that is going through the Parliament.

Such systemic failures are for the Parliament and the Scottish Government to address. Often, people think that a commissioner can provide an independent and separate view as an advocate, a champion and a mechanism to remedy some of those systemic failures.

I do not know whether Jackson Carlaw or David McGill wants to comment further.

Jackson Carlaw MSP (Scottish Parliamentary Corporate Body): The question is, what is the genesis of the growth in advocacy commissioners? It used to be that elected representatives called for a royal commission; then they called for a summit on the issue that was of great concern to them; then they said that it would be useful if the Government appointed a tsar who had responsibility for that issue; and now they say that it would be useful to appoint a commissioner to represent views. Each stage has been seen as a panacea for greater accountability, but it has been succeeded by another level of request, because it was not such a panacea.

I was struck by Professor Alan Page's evidence to the committee last week, in which he said that his MSP is his commissioner. When it comes to advocacy, that is what MSPs were elected to do.

It is difficult to look at the landscape of advocacy commissioners and say that you cannot have an animal rights commissioner, a commissioner for the Scottish language, a commissioner for veterans or a commissioner for the incorporation of science into society. It is attractive to elected representatives to begin a campaign in an unstructured landscape, and the current

architecture by which such matters are judged by Parliament does not put any obstacle in the way of that proposal simply finding its way through the parliamentary system. I therefore think that there has to be a greater understanding of what a commissioner should be and whether there is a genuine reason for one to exist.

MSPs are there to be advocates for many of those matters. If we are failing in our duty—after all, this Parliament was set up so that members could be advocates on all those issues—that is a question for us.

The Convener: I could not agree with you more. What obstacles could be put in the way of the development of myriad commissioners over the next five years or whatever?

Maggie Chapman: There needs to be general acceptance across the whole Parliament of exactly the points that Jackson Carlaw made. What are commissioners for? Are they there as a last resort, or to provide particular independent regulatory or scrutiny functions? There is the acceptance that some are for that purpose and are required. However, on the issue of advocacy or champion commissioners, a key question for Parliament as a whole to understand is exactly what the issues are and whether an existing structure or mechanism would be a better route.

For example, we have seen an increase in rights-based questions coming in. We have a national human rights institution in the Scottish Human Rights Commission. What is it not doing? What does it not have the powers to do? What does it not have the resources to do effectively and appropriately that makes people think that we require additional rights-based or rights-focused commissioners? There are questions to be asked of existing structures in this place and in the existing commissioner landscape, but also of our public bodies more generally around their responsibilities and accountability. If accountability keeps coming back to Parliament and if scrutiny is for our committees and Parliament as a whole, are we doing that role effectively?

On obstacles for the generation of new commissioners, there is a body of work in this place to help us all to understand exactly what such bodies are for and, as your first question indicated, where the systemic failures are that people think commissioners are the answers to. Is that relationship, or the line of cause and effect, the correct one? Are there existing bodies—either in the scrutiny committees that we have already or in public agencies—that should be developing those lines of accountability and responsibility?

The Convener: When Jackson Carlaw was talking about summits and tsars, he did not talk about the need for some MSPs to feel that they

have a legacy. That used to be from members' bills. I remember that, in the last few weeks of the previous parliamentary session, a number of colleagues brought forward a member's bill, and I was the one who volunteered on behalf of my party to say to some esteemed colleagues who were retiring, "I do not actually think that your bill is that great and it should not progress." I hope that someone else will take on that role in this session.

I am making a serious point. In a private session, we heard from a couple of former commissioners who had proposed, for example, a victims and witnesses commissioner and an older people's commissioner, and who are now of the view that those should not progress, having looked at the matter from the outside. Are we at the cusp now where, as a Parliament, we should be deciding that, for example, on advocacy, we should perhaps pull up the drawbridge and say, "No, that really is an issue that should be addressed by ministers, the Parliament and individual MSPs," rather than expect someone else to fill the gap that you talked about, which is almost a cop-out from what we as MSPs are supposed to be doing?

Jackson Carlaw: The first thing to say is that there is my personal view and there is the view of the corporate body. The corporate body does not have an executive function in this regard. We are there to implement the will of Parliament as expressed. I noticed a suggestion from the Deputy First Minister that the corporate body could have a series of tests by which the establishment of a commissioner would be judged. That is not our responsibility. We in the corporate body do not have a party-political function. It is the will of Parliament to express whether it wants a commissioner and our responsibility is to facilitate that commissioner.

Professor Alan Page made a point about the complete volte face of the Government that is directly relevant to what you say. In 2008, I served on the committee that was established at the Government's instigation to rationalise the number of commissioners that we had. That was difficult because, once the recommendations that we made to rationalise commissioners—with all the support of colleagues as we did it—became public, the people who saw that their commissioner might be rationalised away started campaigns with MSPs, who then got cold feet about the idea of rationalising commissioners. The problem is that, once the commissioners are there, they are difficult to walk back from.

The Scottish Government now seems keen on the establishment of commissioners as an instrument of policy. Whatever has changed, the Parliament has never had an architecture by which it and MSPs independently judge whether the

establishment of a commissioner is a good thing. It is simply a proposal—for example, in a member's bill—that goes through the relevant committee without more general and rounded consideration of whether it adds to or hinders the overall architecture. If the Government is going to be keener on that, rather than unenthusiastic, Parliament has to consider whether it should set up the architecture by which such proposals are judged, before it even gets to the discussion in committee of what the individual's particular powers might or might not be.

In that sense, we have to be a bit keener on saying no to some things. David McGill always tells me that I am in danger of exaggerating these things but, wearing my finance hat, I think that it is about 12 per cent of our budget now.

David McGill (Scottish Parliament): Yes—that is right.

Jackson Carlaw: The figure could easily become 15 per cent. It is 12 per cent of our budget. We are spending £18 million on the current raft of commissioners and the amount is only going to get greater. You have to ask yourself whether those people—who are not elected—are being properly held to account. Was there a proper structured architecture by which they were appointed in the first place? That is what we should be considering putting in place.

Maggie Chapman: With the proposals that are going through now, one of the questions that we have discussed—again, it is not for us to dictate or mandate—is whether, if a commissioner is proposed to deal with a particular systemic failure, there should be a sunset clause that limits the lifetime of that office to deal with that specific issue and then that is the end of it.

As Jackson Carlaw said, where is the on-going accountability? Commissioners are accountable to Parliament and committees but, in terms of role expansion and role creation, if they are established to do a particular piece of work, how do they grow, expand and take on more responsibilities? Never mind the work that they do—where is the accountability for the overall role changes that happen over time?

The Convener: This meeting has already generated so many questions and I am keen to let my colleagues in, so I am not going to ask many more.

Your point about a sunset clause is one that I brought up with the SPCB some months ago. I have always thought that a commissioner comes in with a big head of steam and all the ideas, wanting to deliver this and deliver that. One would have thought that, over a period of time, the bulk of what they were set up to achieve would either be achieved or they would hit a wall and not be

able to take their role forward. To me, it has always seemed bizarre that commissions, once established, seem to go on for ever. When we ask the commissioners about a sunset clause, they say that it costs so much to set them up, so it is more value for money if we just let them roll on. Understandably, they have some self-interest in that.

Incidentally, on the financing, I do not think that the commissioners that we have spoken to are happy about the £18.2 million spend. Just so that you know for when the next budget bid comes through, they think that they could spend a lot more than that if they were given the opportunity to do so.

09:45

Jackson Carlaw: You will notice that the percentage allocated for commissions in next year's budget increases by considerably more than any other headlined increase, because we will have to fund an additional commissioner.

I sound a note of caution on the point about a sunset clause. I had thought that that would have been achieved through the inquiry conducted by the committee that was set up in 2008, but the problem that we found was that, when there is any suggestion that a commissioner might not be renewed or that it could fall, MSPs find themselves lobbied considerably about not allowing such a heinous act of violence to be visited on the very valuable individual's work. That is the obstacle that I think that colleagues would face.

The Convener: I think that we are aware of that.

I will finish my questions by asking about scrutiny. From what I am hearing, I do not think that the SPCB is particularly enthusiastic about having such a role. Certainly, the evidence that we have been given is that committees should be more widely involved.

Could you take us through how you scrutinise these roles? When we have taken evidence from the SPCB in the past, we have been told that the body has only one-and-a-half people who can fulfil the scrutiny function. When we look at the depth and breadth of work that some of the commissioners do and the number of staff that they have, it seems as though they are not scrutinised as well as they could be, although they will tell us that they are scrutinised in a robust way. How do you scrutinise the commissioners? Perhaps David McGill is the best person to provide us with an idea of that.

Maggie Chapman: I will kick off, then David McGill can come in.

The Convener: I just want to get an idea of what scrutiny means with regard to commissioners.

Maggie Chapman: For all commissioners, there are written agreements between ourselves and the relevant committees that clearly outline the different roles and responsibilities of the corporate body and the subject committees. Those agreements set out a robust governance role for the corporate body and support the effective scrutiny of committees in their respective functions. The corporate body has responsibility for funding the various office-holders, as you have already heard, as well as oversight of the governance arrangements, which includes ensuring that the office-holders follow the appropriate practices for employment and standards as employers. The corporate body sets those conditions.

Office-holders are accountable to the Parliament for the functions laid out in legislation, and they do so by providing annual reports. Committees will also call in office-holders on an annual basis for scrutiny sessions. The corporate body's role is discrete: it looks at funding and at how the governance arrangements are set up. We appoint the accountable officer for each of the commissioners; we also receive the annual reports and discuss the budget asks, given our role with regard to funding. There is a separation between the funding and governance aspects, and the scrutiny and accountability of the commissioners' functions—the corporate body scrutinises funding and governance while committees scrutinise their functions.

Jackson Carlaw: As someone who has served on the corporate body since 2016, I would, in response to the convener's question whether we are enthusiastic about this responsibility, probably say, "Not particularly." Our first responsibility is to recruit the commissioners and recommend that they be appointed by the Parliament. I hope that I am not denigrating anyone, but the committee might be surprised to learn that, for quite a number of the positions for which we are required to make recommendations, there are very few applicants. To my mind, that is an issue.

In addition, we appoint an independent assessor, whose job is to annually review the work of the commissioners and come back to us in as to whether they are satisfied with the execution of the governance function for which we are responsible. Until he retired, Huw Williams, one of the Parliament's most experienced officials, was, along with Janice Crerar, dedicated to this area and met the commissioners regularly to try to identify any organisational or operational problems relating to the governance aspect of their responsibilities.

We are conscious of the fact that we now have quite a big galaxy of commissioners. Nonetheless, we, as a corporate body, have decided that we need to carve out time—even if it means having exceptional meetings—for more structured and regular meetings with each of the commissioners to understand exactly what they are doing and how they are going about these things. However, as Maggie Chapman has said, the responsibility thereafter lies with the committees.

Of course, there is not necessarily an even spread of accountable commissioners across the committees. As convener of a committee, I appreciate that a committee's other responsibilities are such, what with the legislation that they have to scrutinise and other initiatives that they might want to undertake on their own account—never mind its responsibility for scrutinising a commissioner—that finding time once a year for this kind of scrutiny must feel like a brick in a bucket in terms of its relevance to everything else that they do. I wonder, therefore, whether scrutiny is genuinely being underwritten.

The Convener: Thank you very much. I do have lots more questions, but I will open the session out to colleagues.

Liz Smith (Mid Scotland and Fife) (Con): I will set out what I think the main challenge is—namely that, as quite a lot of our witnesses, particularly Professor Page and Dr Elliot last week, have been very intent on making it clear to us, we should be thinking about overhauling the existing commissioner structure completely. However, as Mr Carlaw has rightly said, there is an issue with trying to remove existing commissioners, as it would be quite difficult to do.

Therefore, we have the existing commissioners—plus the commissioner for patient safety, which has already been confirmed in legislation—and we have proposals for new commissioners. Do slightly different arguments need to be made in relation to those existing and proposed roles? Do we need a different focus when it comes to proceeding with demands for new commissioners?

Maggie Chapman: I am not sure that there is a shared corporate body view on that. It depends on how quickly we want to get to the point of looking at the architecture and structure within which the functions sit, as Jackson Carlaw has highlighted.

It is perhaps more difficult to deal with the commissioners that already exist; indeed, the 2009 review of SPCB-supported bodies found exactly that. Lots of work went into that, and it made very clear recommendations with well-justified rationales, but the Parliament decided not to go ahead with them. It would be strange if there were not the same resistance now.

As for new and proposed commissioners, there is an opportunity for us to have conversations with the individuals who might be proposing them, with members, with campaign groups and with the committees that would be responsible for the functional scrutiny of those roles. The questions that we need to ask are: are they the best option, and what is the problem that you are trying to fix?

Liz Smith: In your opening remarks, you made it very clear that proposals for new commissioners are largely for commissioners with an advocacy role. A big question is why that has come about. Not all the existing commissioners have a regulatory or a complaints role—or whatever it might be—but most do; they are not generally on the advocacy side of things, with one or two exceptions.

If we are trying to change the structure, we need to ask whether we should be concentrating on that advocacy perspective. Speaking personally, I think that that flags up failures in the delivery of public services. You have talked about people not feeling that their rights are being respected properly, so is that a line of thought that we should be looking at in more depth?

Maggie Chapman: I think that that would be helpful. It is also clear—indeed, you have referred to it—that the proposals that are coming forward in the rights and advocacy spaces might be closely linked.

Last year, the Scottish Human Rights Commission itself produced a report on the potential expansion of the commissioner landscape into rights spaces. I think that none of us would wish our national human rights institution to be hollowed out by siphoning off its roles and responsibilities, and powers, to other parts that do not sit within it.

One of the challenges relates to some of the proposals that we see in the advocacy and rights spaces. Some would give the commissioners more rights, and more powers, than the national human rights institute currently has. We should probably all be thinking about that: why does our national human rights body not have greater powers and authority to act in comparison with other bodies, whether they be commissioners, non-departmental public bodies or whatever?

There is also a question around independence. In addition to the systemic failures that we have addressed, one of the reasons for people considering that an advocacy and rights-based role is required is that it would be independent from Government and from the control of, and framework setting for, public services. There is a tension in that respect that perhaps comes from not only the failure to get the service, but a lack of

trust that those services can deliver what is needed.

Liz Smith: Does the corporate body have any views on the potential for merging existing commissioner roles? I am sure that some of my colleagues will question you further on that. In general, though, do you think that there are possibilities for merging the roles of some commissioners?

Maggie Chapman: Yes—we probably share that view across the corporate body with regard to mergers or amalgamation. There was a clear suggestion in that respect in 2009.

Liz Smith: Would you make that point on a financial basis, as it might save us money, or because you genuinely think that there is too much overlap?

Maggie Chapman: I think that it is about governance and accountability. Jackson Carlaw and I probably come at this issue from opposite sides—Jackson in his finance role and me in a more governance-focused role—but I think that there is a mutuality there. If we get a better structure of commissioners—or whatever those roles turn into, if they are not office-holders—will it deliver better for people? That is ultimately what we should be ensuring.

From my point of view, the financial aspect is a concern and a worry, but we need change, because at present we are not necessarily giving the commissioners the scrutiny that they require across Parliament, and they are not necessarily undertaking functions in a way that meets the hopes and wishes of the people who established them right at the start. There is an opportunity to restructure and amalgamate, and I would welcome the space in Parliament to have those discussions in a comprehensive way.

Jackson Carlaw: I will comment briefly, just to add to what Maggie Chapman has said.

I certainly would not begin by reverse engineering the position that we have just now. Equally, although I have listed the different advocacy commissioner roles that there could be, it is not the corporate body's responsibility to decide whether those would be a good thing. Nevertheless, given what I said earlier, I think that the corporate body would welcome the Parliament's establishing the architecture by which these things could be properly evaluated and deciding what it would like in that respect.

As for your question whether some commissioners could be merged, in the conversations that we have been having in our meetings with them, the existing commissioners themselves have indicated where they think there is potential for mergers. It might be that you first

establish the architecture to judge whether and how future commissioners are appointed and subsequently look again at the existing commissioners to establish whether they comply with whatever that architecture has evolved into after a certain period, when it has been properly tested.

10:00

Liz Smith: That is an interesting and very important comment that you have just made.

It all comes down to the question of accountability. Two weeks ago, we took evidence from somebody who said that he had been required to put only one report before a committee. I was very surprised by that; in fact, I found it extraordinary that that was the level of accountability for that particular commissioner. In trying to restructure things and ensuring that we have greater efficiency, we must ensure, too, that there is greater accountability to the Parliament for any job that a commissioner has. It is my view—again, it is a personal one—that we are not doing that very well just now. Some commissioners are not having to go before committees too often to put forward their views and be questioned about them. I wonder whether that is something that the SPCB would agree with.

Jackson Carlaw: I do not think that it comes as a surprise. Whenever a new cohort of MSPs is elected, as it will be in 2026, they do not come through the door beating their breasts, saying, “I’m looking forward to holding the commissioners to account.” They come here on the back of their respective manifestos, and then they go into committees, where they get confronted with whatever the Government’s legislative programme is. A committee might want to initiate an inquiry on a particular area of policy, and the clerks will probably then tell the members, “Oh, and by the way, you’re responsible for some commissioners, too.” I say this with the greatest respect, as I do not know whether the public know that all these commissioners even exist, but I suspect that some newly elected MSPs are bedazzled by the commissioners that there are, and by the fact that, suddenly, they are responsible for them. Their first question will probably be, “What do they do?”

Given that, we do not have a proper, structured way of scrutinising the work of commissioners. I do not know—you might have been on committees where you have been presented with a commissioner—but I suspect that it is a case of “How quickly we can get through this item and on to the one that we are all more enthusiastic about?” That might be unduly cynical of me, but I fear that that is the current level of genuine scrutiny of the commissioners. I am therefore not altogether surprised to hear that some of them feel

that they have not been asked to present terribly much by way of information on what they do.

Liz Smith: Which raises the question whether we need any of them at all. I will leave that there, though.

Michelle Thomson (Falkirk East) (SNP): Thanks for joining us this morning, Jackson. Following on from that thread, is the public sector bold enough, culturally, to do what needs to be done, bearing in mind the vested interests that you set out in your earlier evidence?

Jackson Carlaw: Sorry, but could you expand on that slightly? I do not want to waffle, so I had better understand exactly what you are asking me.

Michelle Thomson: I often reflect back on my previous experience. In the private sector, if somebody new came in and said, “Frankly, I think we all agree that this is a bit of a mess,” with cost overruns, as you have set out, and a burgeoning set of commissioners, they might then say—even if they did not follow it through—“I tell you what: I’m going to get rid of them all.” Then, they would listen to the squeals.

What I am asking is whether the public sector is bold enough, in any of the component parts that we are discussing—we realise that there are different bodies—to take the steps that are really required, given our broad agreement about inefficiency and, sometimes, ineffectiveness, lack of governance, lack of scrutiny and so on.

Jackson Carlaw: I do not know that the corporate body would have a view about that in particular.

Michelle Thomson: Is that to say, “I couldn’t possibly comment”?

Jackson Carlaw: I would say that, in general, there is more risk-averse complacency about challenging than there has been before. I would look, for example, at the NHS compensation fund. I can recall being a health spokesman here in 2007, and I think that the compensation fund was then a couple of million pounds or something. When I last looked at it, the compensation fund was £53 million or something of that order. Why? It is because it was easier to pay out compensation than to challenge what had happened and hold people to account.

I suspect that commissioners might have a role if there is a lack of boldness in the public sector, as you identify. It is also important to say that, as we know, each commissioner is created as a result of the bill that has progressed in respect of that commissioner. The patient safety commissioner for Scotland is a case in point. There was no consensus across the Parliament. As the bill went through, there were clear divisions

on what the level of responsibility, authority and powers of that commissioner might be.

The public might assume that the word “commissioner” has a common standard in respect of it that allows commissioners to act in a particular executive function, which might not even be the case. Part of the difficulty is that it will be difficult to judge whether the commissioners have been able to execute what the public expected when they were appointed.

Michelle Thomson: You make a fair comment. We use the term “Parliament”, and rightly so, but I am wondering where the leadership will come from. We will produce a report and I am sure that it will be a good report, but what will come out of it? Where should the leadership come from?

When we have discussed the issue with our witnesses, they have looked at their own area in a silo, in effect, and it has been quite hard to get them to step out of their particular interest and look at the entire landscape. The commissioner landscape is a fundamental part of what we are trying to make sense of. So, my question is: where will the leadership come from, or, rather, where should it come from?

Jackson Carlaw: The point that I have been trying to make is that Parliament itself now has to take a role in that. By that, I mean the politicians in Parliament who discuss these things in a transparent and open way and not the corporate body, whose job it is simply to execute the will of the Parliament. As a Parliament, we need to consider what the architecture of those positions should be.

The leadership for the actual political execution within public services comes from Government. It should be holding the public services to account and politicians should be holding the Government to account to ensure that those public services are held to account. To my mind, that is the democratic route for taking forward these things. I have always been concerned that, with this raft of commissioners, we are creating a new level of Government that did not exist when the Parliament was established. It is not elected, and it is not properly accountable, but there is a danger that the elected representatives who are challenging the Government are saying that it is not their job but the commissioners’ job to take these things forward, and we are all then left wondering what we do in that regard. Parliament has to understand the beast that it is creating, because it is Parliament that is creating it.

Maggie Chapman: Michelle Thomson talked about siloing and how witnesses have spoken about their patch. There have been a couple of exceptions to that, and I refer again to the Scottish Human Rights Commission review report from last

year, which looks at the landscape as a whole, from an external, non-Government, non-Parliament point of view, and says that it will cause a problem if it carries on. There are certainly areas of concern, maybe specifically within the rights and advocacy space, but there are concerns beyond this place about the proposals that we might have to consider in the coming months and years. I do not think that there is necessarily the antagonism to have those discussions on a broader holistic footing.

Michelle Thomson: We heard some good examples last week from Lynda Towers that fleshed out gaps in rights.

I want to pick up on something—

Jackson Carlaw: David McGill was hoping to come in.

Michelle Thomson: Oh—sorry, David. Do come in.

David McGill: It is quite all right.

It is difficult to see where an inquiry of this nature would sit within the existing committee structure, had it not been the case that this committee has had public administration added to its remit.

Jackson Carlaw referred to the committee that he sat on 14 or 15 years ago, in 2008-09; that was an ad hoc committee that had to be established especially to look at such matters. Without that mechanism, it is difficult to see where the parliamentary scrutiny of, and the leadership on, the commissioner landscape would come from, other than through piecemeal scrutiny of individual office-holders under the specific remits of existing committees.

Michelle Thomson: Thank you for that.

I move on to a comment that the former Deputy First Minister made on this area some time back. When she was asked about the role of the SPCB, she noted that there was a ministerial control framework for appointing commissioners and said that

“Introducing a best value assurance process ... could be a viable option for the SPCB”.

Do you have any thoughts on that?

Maggie Chapman: As Jackson Carlaw has already outlined, the limitations of the corporate body’s role are set out in the legislation that was passed that establishes each of the commissioners.

Our role comes into effect to enact the will of Parliament; it is not a pre-judging role. If we were to establish those processes, it would not be for the corporate body to do so, but for Parliament. It might then give those functions to the corporate

body, but we do not have within our remit the ability to create that kind of assessment framework.

If such a framework were to be created, we might have a view as to whether we were best placed to fulfil that role, depending on what it was. At present, however, we do not have the powers to create that role; it would have to come to us from Parliament.

Jackson Carlaw: Although it was very generous of the Deputy First Minister to consider papping the whole responsibility for this on to the corporate body, I do not think that the corporate body is the appropriate body in Parliament to take on that role. We are there primarily to establish the functioning of the Parliament and the wellbeing of the people within it, including the MSPs.

With regard to the addition of office-bearers, there were two of them when the Parliament was established; I do not think that it was ever envisaged in particular that that aspect would become the much greater responsibility that it now is, or could yet become, and nor do I think that it is the appropriate way forward.

The corporate body is not like a committee, where we are on camera and such matters are being openly and transparently examined; it is more like a business executive managing the estate. I do not think that increasing the powers of the corporate body in that respect is the right route for these matters to be progressed.

Michelle Thomson: I come to my last wee question. I have asked something similar previously, going back to the issues over the top-slice on funding and the figures that have been quoted. Is it possible to make the budget for commissioners fixed in the way that the Scottish Parliament's budget is fixed, as a potential mechanism for controlling costs?

Maggie Chapman: One challenge that we have had in looking at that bit of our overall budget is that about 80 per cent of the budget is staffing costs. As staff costs increase, there is very little wriggle room, because of the substantial proportion that staffing costs make up.

If we were to fix that, that would, over time, be expected to result in a reduction in the number of staff carrying out the same number of duties. Unless there is a consequential change in the duties that office-holders are required to perform—some of which are in legislation—there would be significant challenges in that regard.

10:15

Jackson Carlaw: In the previous session of Parliament, we did everything that we could to rationalise costs by bringing together as many of

the commissioners as possible. From memory, we saved about £0.5 million through that work.

I know that additional space has become available and that there is the possibility of consolidating. That would work, because it would allow the commissioners to share some back-office functions, which would certainly save money. One or two other commissioners are located in places with quite long leases attached to them, so it will be longer before those can be looked at again.

We are pretty rigorous. The corporate body does not roll over and say, "You asked for another £1 million, how about £2 million?" We are more inclined to say, "Hang on a minute: you asked for another £1 million but can you explain why?", and we have declined some requests.

It is also the case that some commissioners have had additional responsibilities placed on them that come with a consequent requirement for additional staff so that those can be fulfilled. I come back to the fact that it is the corporate body's responsibility to ensure that office-holders who have been established by the will of Parliament are adequately resourced to undertake their functions. It would be difficult to apply a fixed budget, given that, even as we speak, additional responsibilities are being attached to the commissioners that we currently have and that those responsibilities will bring additional burdens with which they will have to cope.

David McGill: The £0.5 million figure that Jackson Carlaw referred to is the projected saving over a 10-year period from 2020, but as it stands, we are performing better than that and the projection is that we will comfortably meet and exceed that target.

My colleagues are right: the corporate body spends a lot of time bearing down on additional costs. One example of that is that we handle in-year cost increases through a centrally held contingency budget. Office-holders can make a call on that budget, but we do not issue that money until the end of the financial year, once it is clear that they cannot meet the additional costs from their existing budgets. That ensures that those additional costs do not become baselined into routine budgets. The money is held in that way so that those costs are dealt with as an ad hoc expense and are not surreptitiously added to baseline budgets.

John Mason (Glasgow Shettleston) (SNP): I am struggling to work out a neat and tidy way of going ahead with everything that will please people.

I am leaning towards the idea of the Scottish Human Rights Commission being given more powers and towards the suggestion of having a

rappporteur or lead model, with someone leading on children, someone else leading on animals, someone leading on older people and so on. I have had a little experience of rapporteurs at United Nations level. They seem to be pretty effective and they write reports that have quite an impact.

Would it be easier for the corporate body to work with that model and to deal with an enlarged SHRC, instead of with all the commissioners?

Maggie Chapman: The corporate body has responsibilities for funding and governance, and it would be easier to deal with one contact than with several. That is a pretty clear line.

We have an interest in, if not a responsibility for, scrutinising the commissioners' functions. Alongside any changes that the corporate body might have to make, there would be consequential changes to how committees function and how they deal with their scrutiny role. As Jackson Carlaw said, we are not convinced that that happens as robustly as it ought to now, so how would that change, what would be put at risk and what might be improved if there were a different model?

A reduction in the number of commissioners would make it easier to deal with funding lines and budget requests. We might ask slightly different questions to help us understand how the different rapporteurs would fit together within that structure, but any questions about commissioners' functions would probably sit better with committees.

John Mason: There was a fear that some issues, such as autism, would get lost in a huge human rights commission. That may be not so much a question for you as for the committees.

Jackson Carlaw: That would not necessarily follow. There is some sympathy for the suggestion that you raise from within the current architecture of commissioners, who are concerned that clear lines of responsibility and authority are potentially being diluted by having additional advocacy commissioners. Where does the human rights commissioner sit within that structure? Could the approach that you suggest have been a better way forward?

I go back to my earlier point about architecture and how these things are established. That comes about because an organisation engages the support of an MSP, who makes a proposal for a bill to create a commissioner, but any suggestion that that commissioner might fit within an existing structure is not really something that you can create a bill for—it does not fit our current structural arrangements.

Parliament has to get that right first, and then judge how to go forward. We may well go from royal commission, to summit, conference, tsar and

commissioner and end up with all of us wanting a rapporteur for our particular cause. I do not know what will happen, but it would be reassuring if the architecture around that were more robust.

John Mason: My understanding of the rapporteur model is that someone might be appointed for, say, five years. There might be an emphasis on children for five years and then perhaps an emphasis on older people.

Liz Smith suggested that we could somehow freeze the system, so the present unfairness would carry on but we would at least stop more unfairness coming in. We heard Age Scotland and others saying that if children need a commissioner, older people need one too—although it has to be said that older people have a vote. I am reluctant to go down that route and will not ask your opinion.

Jackson Carlaw: I think that I have suggested a phased approach. My first step would not be to reverse engineer the system but, in any structure that I created, it would be understood that, at some point, the existing appointed office-holders would be required to fit within that new structure. However, that would not be my starting point.

John Mason: That is fair enough.

We have looked at scrutiny. The committees are meant to scrutinise each of the commissioners. There are seven commissioners at the moment, but there are also other outside bodies. For example, the Economy and Fair Work Committee scrutinises the Scottish National Investment Bank, and we scrutinise the Scottish Fiscal Commission—although, technically, it is not a commission for the purposes of our inquiry. It is not the case that each committee has just one or two such bodies to look at; there is already quite a landscape of bodies out there.

Does whether a body is called a “commission” or a “commissioner” make a difference? Children have a commissioner, rather than a commission. Does it matter whether it is a Government commission, such as His Majesty's Inspectorate of Constabulary or His Majesty's Inspectorate of Prisons for Scotland? Those are Government commissions, whereas we have Parliament ones. That would make a difference from your point of view, because the corporate body would not scrutinise a Government commission, but would it make any difference in practice?

Maggie Chapman: The corporate body recognises that there are different models. You mentioned the police and the prisons inspectorates, which might fulfil part of the role that some of the commissioners fulfil.

You asked about the difference that it would make to us. We do not have any role or

responsibility in relation to the inspectorates that you have mentioned or bodies such as the Scottish National Investment Bank. Our role kicks in once an office-holder is identified and created. There are clearly other models where the Government has responsibility for the establishment of the body and retains that responsibility, and committees engage and scrutinise as they see fit.

John Mason: In those cases, the budget comes from a different place. Do we know whether it is a parallel process? Do the other commissioners go to the Government and ask for a budget, in the same way that the parliamentary commissioners come to you and ask for a budget? I presume that that is what happens.

David McGill: The functions will still have to be financially backed, but I do not think that the corporate body has information on whether the budget would be significantly different if it was handled separately, rather than through the corporate body's budget.

John Mason: We have referred back to previous recommendations, to the committee that you were on, Mr Carlaw, and to the Finance Committee in 2006, I think it was. The recommendations that were made at the time seem to be fairly clear—in 2006, 2008, 2009 or whenever. Why do you think that they have been ignored?

Jackson Carlaw: You are asking me to draw on nearly 50 years of involvement in politics.

John Mason: If I cannot ask you, I cannot think who else I would ask.

Jackson Carlaw: I would say that the common thread in everything, when I have been on the ground floor of any decision that has been made, is that the people who make the decision move on, and other people come in behind them, who, in turn, are succeeded by other people again. Those people who understood the what, the why, the where and the when have disappeared, and the agenda of the people who are there subsequently is different.

There are lots of things in public life that any one of us might have been involved in, and we might look at what is being done now and think, "That's very different from anything that was going on when I was involved in it. I'm not sure that's why it was there or what it was there to do."

I think that that is just the natural process. The Parliament is not a fixed body; it is a body of parliamentarians. As I have observed before, I think that we had 50 new parliamentarians in 2016 and 40 new parliamentarians in 2021. Of the 129 current MSPs, very few of them were here before. The number who were here when the Parliament

was created, or even when any of the decisions about commissioners were taken in 2006 or 2008, is very small. I do not think that people are reminded of the institutional memory of Parliament in any respect whatsoever. Everybody just lives in their current stream and operates within it. That is how we function. That is not to be recommended, but it is as it is.

John Mason: I suppose that that is democracy.

Is it the case, then, that if we do not legislate by 2026, whatever the committee decides will be forgotten about?

Jackson Carlaw: I would hope not. There is a characteristic history of legacy reports from one parliamentary session to the next, with those legacy reports forming the basis of understanding as to how Parliament will proceed. I do not think that there is any political ill will on that point, but nobody has actually thought about it. The control that there was previously, with the Government being very reluctant to facilitate the establishment of such bodies, has changed. Therefore, if there was an agreed architecture, most MSPs in a future Parliament would be quite happy to operate within whatever that architecture was. That is my own view.

John Mason: I understand that the Citizen Participation and Public Petitions Committee has been considering the role of the Scottish Public Services Ombudsman and the possibility of a review. The suggestion was made that the Government was not particularly keen on having a review. Should it be the Government that reviews all the bodies, or should it be someone else?

Jackson Carlaw: As convener of the Citizen Participation and Public Petitions Committee, I can say that we received a petition that sought a review of the Scottish Public Services Ombudsman, because the articles under which that office was established included a provision that there would be a review. We were quite surprised that the Scottish Government acknowledges that but does not want to have such a review. Rather embarrassingly, I think, the ombudsman has said that she would welcome a review.

It comes down to the issue of transparency. That is the case even within the existing architecture. I should say that the objectives of the petitioner and of the ombudsman herself in relation to what that review might achieve might be very different. Nonetheless, that points to a reluctance to look in detail at what we have created and how it is functioning. If it was envisaged that a review should take place, then a review should happen.

10:30

Patrick Harvie: Good morning. A few of you have talked about this already, but it seems to me that we are using the term “commissioner” to mean very different things. There are those that carry out significant functions on an on-going basis; it is clear that the Scottish Information Commissioner, for example, needs to be a public body with serious resources, and most people would think it inappropriate for that to be part of Government. In other areas, however, what a commissioner does might be a piece of policy work that would happen within Government anyway, and it is all about carrying that out separately, perhaps beyond the Scottish Government, and bringing in the wider public sector.

As Jackson Carlaw has described on a couple of occasions, there is the slightly more amorphous space of advocacy, in which a call for a commissioner lands in much the same way as calls for other kinds of interventions to elevate the status of an issue. That seems an entirely legitimate thing for people to advocate for; indeed, it is consistent with the notion that we had 25 years ago that this would be a Parliament that shares power with the people, whether through citizens assemblies, which have been tried a few times, or the older idea of a civic forum, which was not brilliant but was abolished instead of being improved. There are various ways for that sort of thing to happen, and the creation of commissioners is a legitimate way of filling that space.

However, if the worry is that commissioners are proliferating and costing too much, I wonder whether, instead of closing them down, we should give them their space, but in a lighter-touch way. It would be like the difference between, say, an ambassador and an honorary consul. At the moment, the corporate body gives committees resources to appoint committee advisers on particular issues. Is there not space for something with a bit more status?

Such a person could be the Parliament’s adviser on a particular issue, who could perform some of the advocacy role and help to bring in marginalised voices, without the need for a public body in its own right. They would undertake that role and have a degree of status with Parliament directly. That would avoid the need to create a big range of new public bodies that need constant resourcing. The corporate body might even decide to cap the amount of money that was provided in each session of Parliament for appointing such people, and we could start each new session with a clean slate. Would that be one way of giving legitimate space to the very reasonable argument

for a connection with civic society and a role for advocacy, but without all the baggage?

Jackson Carlaw: Again—I am looking at Maggie Chapman here—that is not something that the corporate body has discussed, but I have to say that the idea that you articulate is a very interesting one. It would create the advocacy opportunity that you have identified, but perhaps with a beginning, a middle and an end in terms of clear accountability through the committee structure. You have presented a very interesting alternative way of considering how the advocacy functions might be taken forward.

Patrick Harvie: Thank you. That was easy.

The Convener: Is that you, Patrick? My God—I thought that you would be asking questions for a good 10 minutes yet. It is clear that you are new to the committee.

Jamie Halcro Johnston (Highlands and Islands) (Con): Good morning. My first question is along similar lines. There has been a lot of talk about how Parliament functions and, indeed, the role of committees and how they function, too. Following on from what Patrick Harvie has been saying, do you think that, as part of any reform of Parliament, we should consider the committees having more teeth to hold the Government to account on some of the advocacy issues in a way they might not have been able to in the past?

Jackson Carlaw: I am tempted to say that you are inviting us to rush in where angels fear to tread. I am not entirely sure that it is the corporate body’s responsibility to consider whether that would be appropriate. Such issues of reform are being considered more widely by parliamentarians generally, and I would hesitate to identify an alternative architecture for committee accountability and authority. Maggie might be happy to rush in where I, as an angel, fear to tread.

Maggie Chapman: I suppose that this partly answers Patrick Harvie’s earlier question, too, but I come back to why the corporate body is concerned about the current situation. Yes, the issue is about burgeoning costs—or potential burgeoning costs—but it is also about accountability. Why are these bodies set up? Why are they established? What is the underlying cause? Can that cause be addressed in a better way, whether by having somebody specific to advise committees, by giving committees additional responsibilities and powers, or by having different lines of accountability and redress within existing public service structures and how those relate to Government? I think that we need to look at those things, but it is not for the corporate body to say, “This is what we should do.” Instead, it is for us, as we are doing this

morning, to say, “These are our concerns, and this is where we see things going if we don’t do anything about them.”

It is for us to point out the financial consequences, the consequences for accountability and the consequences in terms of disappointment, disillusionment, failure and trust being broken even further. After all, if the commissioners do not sort out the problems that people think that they are going to sort out, people are not going to trust them. They play a legitimate—and, as we have outlined, very important—role with regard to regulatory issues and complaints and, I would argue, in relation to some rights and advocacy issues. If the whole suite is brought into doubt or question because they are not achieving what they set out to achieve, that is not good for any of us.

Jamie Halcro Johnston: Thank you. We seem to have avoided the controversial split—

Jackson Carlaw: Perhaps I can make a point about what I think was a missed opportunity. I was invited to serve on the previous Presiding Officer’s commission on parliamentary reform; this issue could have been part of that commission’s remit, but it was not. With hindsight, especially given the potential proliferation of commissioners, which is becoming a bigger issue for the Parliament, that is perhaps something that that commission should have looked at.

Jamie Halcro Johnston: Thank you—that was helpful.

I want to focus a little bit on some areas that have already been covered. Maggie Chapman mentioned the oversight and scrutiny role, and as far as governance is concerned, there is an assessor who keeps an eye on things. However, do you have any oversight of committees calling in commissioners? Are you able to say whether all the committees have called in and interviewed the commissioners, as they are supposed to as part of their remit?

Maggie Chapman: We can certainly ask for that information, but there is no power to compel committees to provide it. One of the reasons for establishing the agreement between the Conveners Group and the corporate body last year was to address some of these issues and to open a line of communication that had perhaps not been as effective as it might have been in the past. It was also about supporting committees in understanding where the different responsibilities—that is, the corporate body’s responsibilities and their own—lay.

As Jackson Carlaw said initially, it is probably the case that not many MSPs come into Parliament with a desire to scrutinise the work and functions of a commissioner or a commission, and

when they understand that such scrutiny is among the responsibilities of a committee, I would not say that it comes as a shock or a surprise, but people just do not seem to be aware of such things. The agreement, therefore, was an attempt to try to strengthen that awareness.

I also point out that, as Jackson Carlaw outlined, we have changed the way that we call in commissioners and commissions; we now do so at least annually to hear about issues—that is separate from the budget scrutiny and the annual report stuff that we do. There are mechanisms in that respect.

Does the corporate body routinely get told when committees call in office-holders? No. Can we ask? Yes, but there is no obligation on committees to let the corporate body know what they have done in a particular year.

Jamie Halcro Johnston: John Mason made the point that committees have a number of organisations that they have to hold to account. We have legislation and so on to run through. With some of the commissioners, there is sometimes a feeling that we need to get them in, or that we ought to get them in. That is concerning for scrutiny, because it feels as though it is of secondary importance, despite the huge and increasing amounts of money that are involved.

This is perhaps a difficult question, but surely the whole point of commissioners is to deliver a solution to a problem. They might not always deliver the solution and they might not always identify the right problem, but we are spending just over £18 million on them. Do you feel that we are getting value for that money? Do you think that we are getting value for money in the outcomes, or is that a difficult question to answer?

Maggie Chapman: We have already discussed the range of commissioners’ roles. The regulatory commissioners have very particular roles, as do the complaints-handling commissioners. Many of us might have questions, such as whether we are getting value for money out of the Electoral Commission, for example, but the answers to those questions are not necessarily ours to give. The corporate body is tasked with ensuring that there is compliance around governance, employment, accountable officers and those kinds of things, and that we understand what the commissioners are trying to achieve and, therefore, what resources they require in order to do that. Without simply giving them what they want without question, we are trying, as best we can, to give them the resources to carry out those roles.

The question about outcomes and operational functionality would be a question for the scrutiny committees. Do they think that the office-holders and commissioners are delivering what they were

intended to deliver? The corporate body and the committees have a clear joint responsibility to answer that question.

Jackson Carlaw: That is a fair assessment. It is not for the corporate body to judge those things. My own enthusiasm for such bodies is palpable, in that I am lukewarm about what we have created. I have referred to the beast that is growing and the fact that it is a completely unelected level of government. If you were to ask any MSP to give a five-minute talk on the outcomes that have been achieved by the commissioner landscape in Scotland, I do not think that it would be very informed.

Jamie Halcro Johnston: It is probably more concerning that, if you were to ask them to speak about the commissioners that their committee was responsible for, they might have the same difficulty.

Jackson Carlaw: Do not get me wrong—some of those things are required, and we have distinguished between the different operations that we have. It is important to say that we talk about commissioners, but in some cases we are talking about a commission full of commissioners. Even the language that is used for the office that people occupy is not equal.

David McGill: The written agreement that we have referred to a few times tries to clarify the respective roles of the corporate body and the parliamentary committees, but one of the things that it does not do is set out which committee remits are engaged by each of the office-holders, so a bit more work could probably be done on that. I hope that that would prompt those committees to be more active in the area in which their remit is engaged.

Jamie Halcro Johnston: That is helpful, David, but who would you suggest does that work?

David McGill: That is something that could be done at an official and administrative level, and I would be quite happy to take that forward.

Michael Marra (North East Scotland) (Lab): I will continue in the same vein for a short period, if that is okay. The idea of assessing the outcomes is important. Jackson Carlaw said that MSPs would not be able to describe the activities or outcomes of a commissioner. It seems, from the evidence that we gathered, that the commissioners themselves are not particularly able to describe the outcomes of what the commissioners do either, and neither are some of the advocates who are asking for new commissioners. It appears, from the work that we have done, that the relationship between outcomes and the commissioners is a slightly vexed one.

10:45

On your earlier point about transparency, there is, in my view, no real transparent, vigorous holding to account of commissioners for outcomes, is there? You are telling us that when they come to the corporate body and ask for budget and you do not drill down into what they have done with the money that they have been given. Are you saying that that should happen in other committees, but it simply does not?

Jackson Carlaw: Yes, I think that that would be the case. Those budget requests are largely about requirements for additional staff to exercise functions. In some cases, it can be that the work of the commissioner has become better known, which has prompted many more public inquiries of that commissioner, and those inquiries have to be tackled. It could be that a commissioner has been given additional responsibilities by the Government and they have to have the resource in place to tackle those responsibilities.

With regard to scrutiny of the outcomes for public benefit, the corporate body takes the view that it is very much the responsibility of the subject committees to take that forward. Our responsibility is to ensure that the housekeeping within the actual commission is effective, that it represents a good use of public money, and that public money is being carefully managed.

Maggie Chapman: In addition, there is perhaps a distinction between how we view our role in respect of the different types of commissioners. For instance, some of the complaints-handling commissioners report to us a significant increase in complaints, and a lack of resources to deal with those complaints in a timely way. We would then say, "What is it you need? How can we make this work within budget? Do you need to draw on the contingency budget?"—that is the budget that David McGill mentioned earlier.

With regard to outcomes, we have done numbers tracking in quite considerable detail, with the complaints-handling commissioners, but I think that that is of quite a different quality to the outcomes that we might expect to be delivered by the Scottish Human Rights Commission or the Children and Young People's Commissioner Scotland, for example.

Michael Marra: That is certainly stood up by evidence that we have had from the Scottish Information Commissioner, who told us that he has to deal with complaints, and it depends on how many complaints he gets—

Maggie Chapman: It is a numbers game.

Michael Marra: It is not really up to him in that regard.

As we have gone through this process, looking at what is almost a taxonomy of the different forms of commissioner and, at the start, rejecting the word itself as being pretty useless—it does not really describe the landscape, which is, as John Mason pointed out, so diverse—we have focused quite a lot on issues of advocacy and rights-based areas.

We also have technical commissioners, in particular, the Scottish Biometrics Commissioner. In evidence to the committee, Dr Brian Plastow said:

“I have been in post for three years. I have been called before the committee once in three years and that was to discuss the passing of the statutory code of practice back in 2022. In those three years, I have submitted seven reports to Parliament: two annual reports and accounts, one operational report, a code of practice and three separate assurance reviews. My expectation would have been to have been called before the Criminal Justice Committee more often than I have been”.—[*Official Report, Finance and Public Administration Committee*, 30 April 2024; c 14.]

Do you have any reflections on that with regard to whether the system is fit for purpose?

Jackson Carlaw: I think that we would agree with him. It is interesting, because the Scottish Biometrics Commissioner is one such commissioner, and I put to him the following question: should the public know that he exists, or is his function to ensure that his responsibilities are properly executed? In many respects, it is the latter.

His is not a responsibility that needs to be advertised in the press: “You’ve got the Biometrics Commissioner—rush off to speak to him.” His function is to analyse what is going on and ensure that it is being implemented correctly, and that people’s rights are being properly respected.

That draws me to make this point: we have been pretty fortunate in that the individuals whom we have managed to appoint as commissioners have, by and large, in my experience, all been deeply impressive and committed. In the absence of proper scrutiny, we have been fortunate that that has been the case.

On the one occasion when that proved not to be the case, the lack of scrutiny exposed the weaknesses of our arrangements, and the corporate body and others in the Parliament have been considering the ramifications of all that for our overall operation. We cannot just rely upon the good will and good management of individuals. Parliament, having created the operational structures, has a duty to put in place a much more robust form of scrutiny.

Michael Marra: There is a point here about technical expertise. To my mind, there is a distinction where Parliament is establishing a commissioner to deal with something that we

would not necessarily have the technical expertise to deal with, but which is required to analyse something. For instance, I could easily see a role for a commissioner for artificial intelligence, which would be in the public domain, to understand where closed algorithms are used within public services and how that relates to public policy and a time-limited group of things that we cannot do. There is also a question there about whether we have the technical capacity to scrutinise.

Jackson Carlaw: That is a fair point, and that is why I think that Parliament has to decide on and design the architecture of all this and, by a deliberate act of policy, identify the very point that you make and thereby decide, if that type of commissioner is created, what the accountability route should be. At the moment, everything is simply consequential on a commissioner being appointed without proper thought having been given before the post is created to what the commission would do or how it would be properly held to account.

Maggie Chapman: That is right. There need to be differences in what “accountability” even means. It is not possible for 129 MSPs to have the technical expertise that is necessary for some functions, but it is possible for 129 MSPs to understand what rights realisation outcomes look like. There would be very different routes and requirements for accountability in that different architecture.

Michael Marra: In giving that quote earlier I was not being critical of the Criminal Justice Committee. We all recognise the scale of the legislative burden that it has before it at the moment. Similarly, for a committee that was scrutinising the performance of the patient rights commissioner, say, the budget for that is likely to be £2 million or a little bit less, whereas it might also have somebody in front of it from the national health service talking about spending of £22 billion. There is a question there about the level of function that a committee should give in proportion to the scale of expenditure from the public purse.

Some people would be asking the Finance and Public Administration Committee why we are so concerned about £18 million when we have a budget of £30 billion for the various parts of the public services that we should be scrutinising: £18 million is a small proportion of the overall budget.

Maggie Chapman: There are a couple of different points in that. Overall, £18.2 million is not a large proportion of the overall budget. It is the expectation of members of the public for such bodies to deliver for them that is of interest to us, however. The resources enable commissioners to carry out their role, but it is the task that should be of primary interest. When there are disparities in resource—with £640,000 as the expected budget

for the patient safety commissioner, I think David McGill said—what would that office be able to do in comparison with some of the similar mechanisms that might already exist within the NHS, with all the financial and institutional backing that it has? There are legitimate questions around those issues.

Jackson Carlaw: It is important to say that the budget for that commissioner at inception was £640,000. In my eight years of experience on the corporate body, no commissioner has ever come to me and said, “I think I could cut my budget in half.” They have always said that the demand is such that they need to expand, and I can see the patient safety commissioner being a case in point. What they effectively mean by that is additional staff, and it is very easy to see how such budgets can multiply quickly.

Michael Marra: The last area that I want to address is the relationship between the politics and the process in the Parliament. Listening to you talk this morning about what mechanisms might be put in place—and we are all keen to know—I reflect that we all arrive here with manifestos, as was highlighted by Mr Carlaw, some of which will say that we will have commissioners, because the people writing those manifestos will have listened to third sector organisations that have been campaigning for them. Would you, as the corporate body, consider writing to the party leaders to set out some of your concerns to them ahead of the manifesto process for 2026, and state to them the problems that are going to present in relation to manifestos if they are approached by bodies outwith the Parliament?

Jackson Carlaw: I would very much welcome this committee taking a lead in that regard, which I am sure the corporate body would be happy to endorse.

Maggie Chapman: When these discussions started a couple of years ago, the corporate body did discuss how best to start such conversations. Would it be through mechanisms such as you outline, Mr Marra—letters to party leaders, for example? Would it be through direct approaches to committees or to members who are proposing commissioners or backing proposals for commissioners? Given the way in which our responsibilities are currently outlined, they are post-event. That is the politics of it. I think that we at the corporate body do a pretty good job of not engaging in those kinds of discussions.

The Convener: I have a final question about the existing commissioner landscape. We took evidence from some commissioners, and there seemed to be a kind of drawbridge mentality along the lines of “Our commission’s great, actually. In fact, we need more resources and more powers, and we don’t think there should be any more

commissioners”—and it was then a case of them pulling up the drawbridge behind them. There is an element of tension between the commissions themselves, certainly when it comes to new commissioners.

We have discussed rapporteurs for the Scottish Human Rights Commission. How clear are you about the efficiency and effectiveness of the delivery of the Scottish Human Rights Commission’s remit? Do you feel that that commission is in a position where it can proceed with rapporteurs, should resources be made available, or do you think that it must do more to ensure a more effective and efficient delivery of what it is already responsible for?

Maggie Chapman: I would make two points on that. First, at the corporate body, we have had conversations with the Scottish Human Rights Commission about the level of resourcing and the expected additional resources that the commission considers might be necessary should proposed legislation go through the Parliament.

As for what that would mean, we have received requests for additional resources, we have knocked some of them back and we have granted some of them—or granted them in part—depending on what has been going on. If there were a change in the structure and responsibilities of the Scottish Human Rights Commission, with a rapporteur or similar model, there would be a fairer expectation of redesigning how the commission’s resources are allocated. If some of those additional people—the rapporteurs—came with powers and additional functions, it would be safe to assume—

The Convener: Do you feel that that commission is efficiently and effectively delivering what it is responsible for at the moment? Is that the SPCB’s view? If we are talking about the SHRC becoming the core in future, it is interesting to look at where we are at present in terms of what it is delivering.

Maggie Chapman: My overall assessment is that it is delivering on what it needs to do. It wants to do more, and we in this place might wish it to do more, but it cannot necessarily do more without additional support.

However, that question is not for the corporate body; it is probably better addressed to the Equalities, Human Rights and Civil Justice Committee, which scrutinises the commission. As deputy convener of that committee, I know that it has regular conversations with the commission, but the matter itself is beyond the corporate body’s remit.

11:00

Jackson Carlaw: I am possibly less sanguine about this, in as much as it is important to remember that most, if not all, of these commissioners are part time, not full time. It has been quite a challenging period for human rights, and the common feature over the past few years is that, when additional responsibilities have been allocated, it has been quite a milestone for the organisation. In the event that such an architecture was deliberately put in place, with a proper design for how things might operate, it would have to be introduced on a phased basis over a particular timeline. I do not think that we could say, "From January 2025, you are going to do this"—I do not think that that would work. Indeed, if we are talking about having rapporteurs and a more expanded human rights commission, some of the part-time nature of its activity might have to be reviewed, because it would have a much larger and more important function.

Therefore, I do not think that it would be safe to say that we can move from where we are to where we might be, simply by allocating immediate responsibility to the existing infrastructure. I am just not sure that it would cope.

The Convener: Okay. I see that David McGill is taking the fifth.

Thank you very much for your evidence today, but before we wind up, I give you an opportunity to make any final points that you feel have not been covered, or which you are desperate to convey to the committee.

Jackson Carlaw: You have probably exhausted the potential to draw the corporate body's experience and views out any further. However, I am grateful to you for this opportunity to give evidence to the inquiry, particularly given that it arose from an initial approach to you, through the budget process. We very much welcome the fact that it is taking place. I do not know how else it would have happened, and it is taking place in time for a proper conclusion to be reached that could have implications for the next session of Parliament. I very much hope that that is the case.

Maggie Chapman: I would reiterate those comments and thank you for taking up this issue. What exercises us in the corporate body is our ability to provide the resources and governance support required, not only through the corporate body itself but by the offices that provide the ongoing, routine, sometimes daily but more often weekly or monthly support to the different office-holders. The question for us is how sustainable the current system is if we keep adding office-holders. Thank you, again.

The Convener: David, do you wish to say anything?

David McGill: I do not have anything to add, convener.

The Convener: Thank you very much for that. We will continue our evidence taking next week with the Cabinet Secretary for Finance and Local Government, so watch this space. I thank the witnesses very much for answering our questions, and thank colleagues, too, for asking them.

We now move into private session to allow our witnesses and the official report to leave.

11:03

Meeting continued in private until 11:41.

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