OFFICIAL REPORT
AITHISG OIFIGEIL

Finance and Public Administration Committee

Tuesday 25 June 2024

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 25 June 2024

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FINANCE AND PUBLIC ADMINISTRATION COMMITTEE

23rd 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:

Liz Anderson (Scottish Parliament)
Jeremy Balfour (Lothian) (Con)
Nick Hawthorne (Scottish Parliament)

CLERK TO THE COMMITTEE

Joanne McNaughton

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Finance and Public Administration Committee

Tuesday 25 June 2024

[The Convener opened the meeting at 09:30]

Disability Commissioner (Scotland) Bill: Financial Memorandum

The Convener (Kenneth Gibson): Good morning, and welcome to the 23rd meeting in 2024 of the Finance and Public Administration Committee. The only public item on our agenda is to take evidence on the financial memorandum for the Disability Commissioner (Scotland) Bill. We are joined by Jeremy Balfour, the member in charge of the bill. He is accompanied by Nick Hawthorne, senior clerk, and Liz Anderson, assistant clerk, both of whom are from the non-Government bills unit. I welcome Jeremy to the meeting and invite him to make a short opening statement.

Jeremy Balfour (Lothian) (Con): Good morning, colleagues. I introduced the Disability Commissioner (Scotland) Bill in February this year, having previously obtained the right to introduce a member's bill.

The bill would establish a disability commissioner for Scotland, whose primary function would be

> "to promote and safeguard the rights of disabled people."

To achieve that, the commissioner would

> "promote awareness and understanding of the rights of disabled people ... Keep under review the law, policy and practice relating to the rights of disabled people ... promote best practice by service providers"

and

> "promote, commission, undertake and publish research ... relating to the rights of disabled people."

The commissioner would also be able to investigate

> "by what means and to what extent a service provider has regard to the rights, interests and views of disabled people in making decisions or taking actions that affect those disabled people."

The financial memorandum that accompanies the bill was drafted by the non-Government bills unit on my behalf. In developing the financial memorandum, the NGBU consulted Scottish Parliamentary Corporate Body officials. A draft financial memorandum and draft bill were shared with SPCB officials prior to the bill's introduction. In addition, the NGBU drew information from recent financial memorandums for bills that establish commissioners, as well as the annual accounts of existing commissioners. The policy behind the bill and the details of the financial memorandum were developed using the criteria in the session 2 Finance Committee's report as valuable context.

The financial memorandum sets out my strong preference that, wherever possible, commissioners should share accommodation and services with other public bodies to reduce costs. However, provision for

> "the location of the Commissioner's office"

and

> "the sharing of premises, staff, services or other resources"

would be subject to any direction from the SPCB and the availability of such premises and services at the point at which the commissioner was established.

The financial memorandum estimates that, initially, the commissioner would have four staff members. The estimated remuneration for the commissioner and their staff is based on information provided by SPCB officials. I consider it appropriate to provide estimated costs for four staff members, as that is in line with the staffing numbers of recently established or soon-to-be established commissioners. Should the commissioner seek to employ additional staff, approval would be sought from the SPCB. As the committee will be aware, the financial memorandum contains the best estimates based on the information available at the time.

I note the three responses to the committee's call for views on the financial memorandum and take on board the points that were made in them. I further note the Scottish Government's correspondence with the Equalities, Human Rights and Civil Justice Committee, in which the Cabinet Secretary for Social Justice noted:

> "The cost estimates seem to broadly reflect what would be expected with the introduction of a new Commissioner role."

I consider the costs incurred in establishing a disability commissioner to be an investment in disabled people that is long overdue. Establishing such a commissioner would ensure that disabled people had a champion who would promote and safeguard their rights. In focusing solely on the needs of disabled people, rather than having a remit spread over various protected characteristics, the commissioner would give disabled people the prioritisation that they need and deserve.

As always, I am happy to take questions from the committee.

The Convener: Thank you very much for that opening statement, Jeremy. Our first question is why you feel that a commissioner is the best route forward to promoting and safeguarding the rights of disabled people. What gaps are there in current Government provision that make you feel that that is the best way forward?

Jeremy Balfour: Pre-Covid, there was quite a strong argument for a disability commissioner. During the Covid period, and since then, the evidence points to disabled individuals having been left behind more than any other sector in society. If we look at the services that are currently being provided for disabled people and, often, the lack of engagement locally, the need for that voice to be heard in civic society has grown more and more.

It is often said to me by disabled people—and, in particular, by the parents of disabled children—that it takes them all their energy to get out of bed in the morning. The thought of having to campaign, lobby and promote disability issues goes beyond the average—if there is such a thing—of what a disabled person can deal with.

Different commissioners have been around for 10, 15 or 20 years, but their work has rarely focused on disability issues and rights. As has come out strongly in the evidence sessions before the Equalities, Human Rights and Civil Justice Committee, the disability community feels that it is not being heard and that it is being left behind. It is therefore time for a commissioner to have that voice, to speak to not only Government and Parliament but local authorities and national health service boards.

The Convener: Is it not the role of councillors, MSPs and MPs to advocate for constituents who are disabled and to work with community organisations and others to advocate for their rights? One issue in our inquiry on the commissioner landscape has been complexity and duplication, and there are concerns that having a disability commissioner would add to the issue without delivering what you want to do—it would be just another advocacy body, rather than people being able to go directly to ministers, parliamentarians and so on. What do you say to that?

Jeremy Balfour: I absolutely agree that MSPs, MPs and local councillors should be advocating on behalf of constituents, but that does not deal with the broader policy issues that come out of the Government and the Parliament. We need a co-ordinated voice—somebody who can bring together the disability community so that it can speak to the Parliament.

In the eight years that I have been here, it has been noticeable how very infrequently you hear the disabled community speaking as one voice. Part of that is because it is very difficult for disabled people to find that energy—or even the availability and accessibility of places.

I am not here to write the job description of a disability commissioner, but there will be a role for them beyond just advocacy. They have to look at where policy is and where it should be going, and engage with Government, Parliament and other public bodies to produce that—in a similar role to that of the Children and Young People's Commissioner Scotland.

I absolutely welcome your review of commissioners. We as a Parliament have to address that. However, it needs to be done holistically and in a way that goes back and looks at what previous commissioners have done and are doing. Also, I am slightly concerned that, due to timing, we are now saying, "Let's pull up the drawbridge and stop at this point."

Let us have a holistic review. Within the past year, the Parliament has created a commissioner for patients' rights; probably before the end of this year, legislation will come through to give victims and witnesses a commissioner for their rights. As a Parliament, therefore, we are not necessarily saying that having commissioners is wrong. My concern is that we need to do things holistically and come up with an all-round approach. The Government itself has at least one or two other commissioners planned before the end of this parliamentary session.

The Convener: It remains to be seen whether the Government will proceed with those commissioners. You talk about there being a community of disabled people, but there is a vast array of disabilities and a colossal number of people in Scotland have one disability or more. How would a commissioner prioritise? There are many groups that advocate for specific types of disability, as we all know. A commissioner could suddenly have an incredibly wide range of organisations, people and issues to deal with.

Jeremy Balfour: That was one of the questions that I had in mind as I worked on the bill. I worked on a pre-bill consultation and, last year, I spent the summer doing a bit of a tour around Scotland talking to different disability groups and individuals. The experience of someone who is in a wheelchair would be very different to someone who has a hidden disability, and the experience of someone who has a visual impairment would be different compared with someone who has a hearing loss, for example. Although the issues that they face are very different, the areas in which they are being discriminated against, including education, health and transport, are almost identical. That has become clear from my experience and in the evidence that we received in the consultation.

I do not see there being some kind of list for the commissioner. They would not be saying, “I spend 20 per cent of my time dealing with physical disability, another 20 per cent of my time dealing with this or that,” and so on. They would be looking at the issues that affect most disabled people in Scotland. You are right: one in five people have a disability. If you go beyond that and look at the effect of that on their friends and families, we are looking at a high proportion of people.

The Convener: Human rights is one of the issues that has come up in our evidence sessions. Perhaps, rather than having commissioners that look after a number of different areas, beefing up the Scottish Human Rights Commission so that it could look at some of the rights-based issues might be a more effective way forward. A rapporteur could look at specific issues, such as disability. What is your view on that?

Jeremy Balfour: I have heard that suggestion and I have read the submission on that. My concern would still be that disability would be left behind compared with many of the other protected characteristics, because of the reasons that I have outlined. Many disabled people find it very difficult to engage and to have the energy and the ability to advocate for themselves. There are many good third sector charities that work in the space already, but the approach is not often holistic and sometimes, there can be conflicting views—and rightly so. I would be deeply concerned, if we simply gave more powers to a commission that already has a lot of powers and has not focused on disability, that disabled people would be left behind again. That may not be the case next year, but we have to future proof this for five, 10, 15 or 20 years down the road.

The Convener: I am intrigued as to why you think a commissioner should be established for a period of up to eight years. Why was that time period selected?

Jeremy Balfour: I will turn to Nick Hawthorne, who may want to come in on that. My understanding is that that is the normal period of time.

Nick Hawthorne (Scottish Parliament): We took that from the standard process for other appointed commissioners that are supported by the SPCB.

The Convener: So it was not specific to the bill.

Nick Hawthorne: No.

The Convener: Fair enough.

There is quite a big variance in the financial memorandum. Some of the evidence that we have received has suggested that the costs that it sets out are a conservative estimate with a small c. The costs vary from £574,000 to £878,000 on an on-going basis once the commissioner has been established. How robust are those figures? Disability Equality Scotland is concerned that the bill

“could have an indirect indication of reduced funding”

for the organisation as funds may be diverted to the commissioner.

Jeremy Balfour: I will take the second question first, if that is okay, and will leave the detail to Nick Hawthorne and Liz Anderson.

09:45

I have heard that argument being used by a number of third sector charities that are worried that the money would be diverted from what they get to fund the commissioner. That is a political choice. I would be deeply concerned if any Government said that it would do that. The funding for children’s and young people’s charities has in no way been changed because we have a children’s commissioner—and rightly so. I would be deeply disappointed and I hope that other MSPs would challenge it if money were to be taken away from disability organisations simply because we had a disability commissioner. The commissioner’s role would be very different and we would still need to fund the third sector.

I will bring in Nick Hawthorne or Liz Anderson to talk about the robustness of the figures.

Liz Anderson (Scottish Parliament): As Jeremy Balfour said in his opening statement, the costings were estimated after conversations with SPCB officials. We also looked at recent financial memorandums for office-holders that had been set up or are in the process of being set up, as well as the annual accounts of office-holders that are already established. That was the basis of the evidence that we used for the FM.

The Convener: The FM does not include provision for participation, legal or investigation staff, and the costs that are associated with that engagement and participation are considered to be conservative.

Liz Anderson: We decided how many members of staff were going to be provided for in the FM in consultation with the member. Commissioners that have been more recently established have four staff members as standard, which is what we based our cost estimates on. It could employ more staff, but it would always be for the commissioner to consult the SPCB on that.

The Convener: Would I be correct that the cost of those four staff members would be just short of a quarter of a million pounds a year and that there would be a cost of just over £130,000 for the commissioner?

Liz Anderson: That sounds right. That is what we have in the FM.

The Convener: I take it that those costs include not only salaries but other costs?

Liz Anderson: Yes.

The Convener: On the overall picture, the SPCB has raised concerns with us about the proportion of its budget that is being used to pay commissioners and fund these bodies. As you know, the budget has increased from about £16.2 million to £18.2 million in the current financial year. The proposed disability commissioner would add to that, even if the fairly modest figures in the financial memorandum are accurate. Jeremy Balfour said earlier that funding is a political choice. Does that mean that the Scottish Parliament's budget should be increased, or do you think that other areas of the Scottish Parliament should have to cut their cloth in order to fit in the commissioner and others?

Jeremy Balfour: That is a good question for the Finance and Public Administration Committee to address. My view is that if, as a Parliament, we believe that having a disability commissioner is the right way forward, it has to be appropriately funded. I think that that should come from an increase to the Parliament's budget, but that debate can happen elsewhere.

In an evidence session on the bill at the Equalities, Human Rights and Civil Justice Committee last week, it was interesting that one of the speakers powerfully said that a disability commissioner is an investment in our society. If an investment is worth making, it is worth making. I think that we would be making an important investment in a group of individuals—ultimately, it is individuals who we are looking at—who, in many cases, are marginalised and left behind in society.

The Convener: Do you not think that funding would be removed in any way, shape or form from front-line services? You said earlier that money had not been reduced from other charities and other organisations because we have the children's commissioner.

Jeremy Balfour: I would hope that that would not be the case. That would be a choice for the Parliament and, ultimately, the Government to make when it sets its annual budget. I would be very disappointed if that were to happen.

The Convener: I am going open up the session to colleagues around the table.

John Mason (Glasgow Shettleston) (SNP): To follow on the convener's point, you are saying that the money for the children's commissioner has not been diverted from elsewhere, but it does mean that the Parliament's, the Government's and Scotland's budget is reduced by that £1 million or £2 million. Inevitably, there will be less money for other things. You might argue that that money would be better used for a commissioner, but would you at least accept that it would not be available for other things?

Jeremy Balfour: You are right in that regard, Mr Mason. It is about what our priorities are as a Parliament and as a society. I am sure that I could reasonably easily find an amount of money that could be better prioritised. That is a decision that we have to make, but if we see it as an investment in society, I think that it is a justifiable amount.

The figures are robust and, because we already have commissioners, they are not figures that we simply plucked out of the sky. This is probably one of the most robust finance memorandums produced for a non-Government bill.

John Mason: The committee will have a view on that. As has been mentioned, there are lots of strong advocacy groups out there—RNIB and lots of other groups—that are doing really good work. I get your point that that work could be more joined up, and that could be one of the reasons for having a commissioner.

The other thing that you mentioned is investigations. I wonder whether you could explain a bit more. I do not think that there is a huge budget for investigations, so can you explain what would be involved in that? Would it be quite limited or extensive?

Jeremy Balfour: As you say, the budget in the financial memorandum is a fair amount of money that would allow the commissioner to do some form of investigation work, but I hope that it would not exceed that budget. For example, a current issue that is clear for many disabled people, whatever their disability, is day services. Post-Covid, we have seen a lot of local authorities not reopening the day services that were there before Covid. No committee of the Parliament has looked at that, and there has been no real debate in Parliament about it. That is perhaps my fault and the fault of others, but it is the reality. Many disabled people, particularly parents, are struggling because they have to do much more hands-on care throughout the day.

That type of investigation would not take a lot of money, but it would be more likely to be picked up on by politicians and by the media if it was done by a disability commissioner than it would be if it was done simply by one charity.

John Mason: If we take that forward, so that the commissioner produces a report that says that day services have been cut and that is a bad thing, I presume that councils and others would comment in the investigation and there would be a bit of a cost there, but where would we go then? The commissioner would have no powers to enforce. Would the idea be to embarrass the local authorities so that they had to spend money on day services?

Jeremy Balfour: The idea would be to highlight to us as politicians and to the Parliament that this is an issue and ask what we are going to do with it. Partly, it would also be to give people a voice; in my opinion, that voice is not being heard in Parliament or in Government as effectively as it could be if it was targeted.

Ultimately, the choices that we make come down to Government, Parliament and local authorities, but in the case of the children's commissioner, we have seen that issues that were not on the agenda a number of years ago are now on the agenda, because the commissioner has highlighted them and kept on highlighting them over and over again. There is a role for simply bringing issues to people's attention. Ultimately, it is up to the Parliament to decide what we do with that, but at least it would be in the public domain.

John Mason: It seems to me that, if we have a reasonably fixed pot of money—I know that we can change the budget a little bit—that means that either the Parliament or the local council would shift resources to wherever the louder voice was. If disabled people have not had a voice, they would now have a voice, and councils might take money out of schools and put it into more services for disabled people—or money might be taken from colleges or from somewhere else. That is where we are going and then, presumably, we would need a commissioner for schools, colleges or other areas, because everybody would feel that their voice was not loud enough. Where do you think we are going with all this?

Jeremy Balfour: Well, I am here to debate a disability commissioner; I am not here to look into a crystal ball. Given your rationale, why did you vote for a patient safety commissioner? Why have we, as a Parliament, voted at stage 1 for a commissioner for people who are victims of crime? We have taken a view as a Parliament—once at stage 1 and once through an act—that we think that those voices need to be heard. I suppose that, if we were to follow your logical argument, we would get rid of all voices and hear no voices.

John Mason: Yes, that is one argument.

Jeremy Balfour: I would argue that 20 per cent of the population is simply not being heard, and we need that voice to be heard. We can say, "Let's get rid of all commissioners and have no voice," but we must not pick on and pull up the drawbridge on one of the most vulnerable parts of society.

John Mason: I understand your argument, and the committee will look at its wider report in due course. Unfortunately, there are other groups. Women are 50 or 51 per cent of the population, but I do not think that they have a commissioner as yet.

Jeremy Balfour: They have a very strong voice, and there are people out there advocating on their behalf on social media. There are champions for women in the Parliament—people around this table have been championing women's rights for many years. We have to look at the individuals who we are talking about and their lived experience, history and reality. That voice is not being heard in society, compared with those of people of many other protected characteristics.

John Mason: I will move to another specific area. The Scottish Courts and Tribunals Service has predicted—if I understand it correctly—that there will be a low number of prosecutions. Is that a good thing or a bad thing? Do we not want lots of prosecutions?

Liz Anderson: The offences under the bill relate to the investigations. The commissioner would be able to ask someone to provide information for an investigation, and the bill would create an offence if they failed to do so without a reasonable reason. The hope would be that people would provide that information, so the offence would not need to come into force very often.

Liz Smith (Mid Scotland and Fife) (Con): Good morning, Mr Balfour. In looking at the whole question of commissioners, we have looked at those who have a regulatory role, those who are complaints commissioners, those whose role is investigatory and those who are advocacy commissioners. Commissioners have a broad range of roles.

One of the interesting things that the committee is facing is that the increasing demand for commissioners—as in your proposal—relates much more to the advocacy role. That has led us and some witnesses to question whether the demand for advocacy is increasing because the existing public services and facilities that are available to support people are not doing their job adequately. I ask you to reflect on whether that is the case for a proposed disability commissioner—namely, that public services are not looking after disabled people very well. If the answer is that they are not looking after them very well, is that related to cost or to a lack of understanding of the role that they should have—or perhaps both?

Jeremy Balfour: That is an interesting question. Undoubtedly, public services are failing disabled people in regard to many issues, and it is not just the big headline-grabbing issues—it is often the small issues that local authorities in particular and health boards, too, are not picking up on.

There is a big debate going on about the type of transport systems that we should have in city centres. I do not want to go down that road, but I note that, fairly often, the disabled voice is not heard, and it is disabled people who are most affected by the changes.

10:00

There is a lack of understanding. Many people will do a tick-box exercise, but they will not actually engage with the disabled community. Let me give you a very basic example. It is great that we keep the main roads clear when it snows, and it is really important that the buses run, but I live 200 or 300 yards from my nearest bus stop and, if those 200 or 300 yards of pavement are not cleared, I cannot get to the bus stop, which means that I cannot get to work. Obviously, I can work online, but many people cannot do that.

The policy that many local authorities have is that we keep the main roads open, but we never clear the side streets—we wait until it all melts away. That means that you are saying to somebody who has a wheelchair or a mobility issue that they are housebound for a longer time.

Liz Smith: That is a valid point, and constituents in some of my areas in Mid Scotland and Fife have made exactly that point. However, do you think that that difficult scenario—you are quite right to say that, in some cases, that approach means that those in disability groups are housebound for that period—comes about because of a local authority's failure to address the problem adequately and because of certain cutbacks? Earlier, you mentioned Covid, which, as we all know, has been a particularly difficult period for local authorities with regard to their financial arrangements. The point is whether we can solve those genuine issues by looking at the services that are provided by local authorities and, in some cases, by the Scottish Government, rather than by having a commissioner. That is the key question.

Jeremy Balfour: I think that it is not an either/or situation, but the problem is that, if there is no voice to speak to local authorities or the Scottish Government—at the moment, there is no voice that is really shouting about this—those issues will not be raised and they will not be dealt with. That is the frustration of the disability community. I do not think that it is a perception; it is the reality that people are often just not being heard by those organisations, and nothing will change unless someone is advocating for those issues to be dealt with.

If you had another protected characteristic with a different issue, that voice would be heard. You would have much more coverage in the media and social media and within the doors of local authorities and this Parliament. Because many disabled people cannot do that, that voice is not being heard. Yes, we need to change attitudes in local authorities, but I am not sure that that will happen unless we have a much stronger voice that is holding local authorities and the Government to account for making those changes.

Liz Smith: May I offer a view in relation to the patient safety commissioner? In my opinion, the demand for that commissioner came about because of failings in health boards. I speak with considerable experience of the Eljamel situation; people affected by that are very clear that they want a patient safety commissioner. That has come about because of failures in a particular health board. To my mind, a commissioner is not necessarily going to solve that problem. You have to go to the root of the problem, which is about the way in which the health board was being run. To reflect on that from the angle of the need for a disability commissioner, are there problems that we could solve about the delivery of public services that do not really need a commissioner but could be addressed through other aspects of the delivery of public services?

Jeremy Balfour: To some degree, yes—I think that there could be—but I am not sure that that will ever happen unless you have a disability commissioner because, once this debate goes away, local authorities will move on and deal with other things. There are also issues beyond that.

There is still a societal issue. When it comes to issues of employability and employment, those who have hidden disabilities in particular have many fewer opportunities to be in employment. The same is true of those with certain physical disabilities. It is not just that we need to change things; there is a societal issue, and somebody should be able to advocate on the perceptions that people still have about disabled people and what such people can do.

I will be absolutely honest. Before I came to this place—having been born disabled—I thought that my experience was the same as that of most people who have a disability. Mine was a very positive and inclusive experience. My eyes were opened when I came here and had the opportunity to speak to far more disability charities and individuals with disabilities. We would not accept their experience for women or LGBT people, but we still seem to accept it for people who have a disability.

Liz Smith: That is a very fair point. I put it on the record that you have been a wonderful champion for disability groups in all their differences.

To finish, I will pick up on the point that the convener raised—that there is potential for considerable overlap in the commissioners that we currently have. Some disabled people are children, and some older disabled people are patients. How would you address the potential for such overlaps, which could be financially as well as administratively difficult?

Jeremy Balfour: The reasons for trying to get all the commissioners into one office are not purely financial. It is an opportunity for them to meet much more regularly. In my thinking—this is only my thinking—there should be some kind of memorandum of understanding between the different commissioners. A child with a disability could walk into the office of the children's commissioner or the office of the new commissioner for disability. It would not be both commissioners who did the work; there would be some kind of agreement that one or the other would deal with the issue.

The honest answer to your question is that there is plenty of work to go around. I have met the children's commissioner and other commissioners. They are having to lay aside lots of work because they do not have the time to deal with it. I therefore do not think that any disability commissioner will struggle to find enough to fill their Monday to Friday calendar. I can already list enough issues that are not being picked up on but that such a commissioner could deal with.

There needs to be some kind of understanding that we do not all follow the same issues. I hope that that can be done by sensible people sitting down and discussing it.

Jamie Halcro Johnston (Highlands and Islands) (Con): Good morning, Jeremy. On the points that you have just made, I was contacted by constituents about local roads in their area that were not suitable and were preventing them from leaving their homes, because of their limited mobility. I contacted the council and, remarkably, the council went out and sorted the situation. As you have been in many cases, I was the advocate, and I got that situation sorted out. Do you hope that a commissioner would deal with larger, wider and more general issues, and that we would still be the advocates on the smaller level? Large charities already come together on issues such as shared surfaces, so why would the suggested approach be a more effective way of dealing with those larger issues?

Jeremy Balfour: On your first point, the commissioner would not be able to pick up on every local issue across all 32 local authorities. It simply would not work in that way. There would still be a vital continuing role for councillors, MSPs and MPs to advocate on local issues. What needs challenging is that, although you did well to get that local street cleared, what about the street next door? We need a policy change on that from local authorities.

The third sector charities do an amazing amount of positive work. It is interesting that they themselves are in favour of a disability commissioner. They do not see it as some kind of threat that will take away from the role that they play. There is still a wee bit of saying, "This is my disability, so I bring together other people who have it." I want a much more holistic approach, so that everybody is brought together on a certain issue. A disability commissioner can help in that. There would still be a role for all the third sector organisations, but a commissioner would be an amplified voice and, I hope, would have better access to those who make decisions in different areas.

Jamie Halcro Johnston: I do not want to put words into anyone's mouth, but when we were talking about staff salaries earlier, Liz Anderson suggested, almost, that this was standard and that this would be the number of staff that people thought would be needed. What roles would those staff play?

Jeremy Balfour: We have deliberately not broken that down, because we are not here to write individuals' job descriptions. Once the disability commissioner was appointed—if that were to happen—it would be for them to decide, first of all, what their own strengths and weaknesses might be and then what strengths would be needed in bringing the team together. Nevertheless, that would be the budget that they would have to play with. We are not saying that one person will be a researcher, say, or that one will do this and another do that; it will be up to the commissioner to decide what they think that they will need, once they are appointed.

Jamie Halcro Johnston: I get your earlier point about taking a more holistic approach, but a lot of very good third sector organisations that are obviously specialists in their areas are already working together, as we have said, and they will be far better resourced to do that work than this role will be. We are talking about a disability commissioner with only four staff, whose roles are still to be determined; I imagine that there will be a communications person in there to get messages out, as well as an office administrator, but that starts to reduce the number of people doing direct advocacy and investigation. How will they be able to deliver more than far better resourced third sector organisations?

Jeremy Balfour: First, any commissioner doing the job properly will want to engage with third sector charities. When I have been going around, talking to people, what has been made clear is that the first thing that the commissioner needs to do is to get out there and hear what the issues are, hear what people are saying and hear about who is already doing what in this area. The commissioner, whoever he or she is, can be the individual who brings groups together, gets them to work together and helps them to run and focus on their campaigns. They do not necessarily have to do all the work themselves—they can be a facilitator, too.

We have seen that with the children's commissioner, who has been very good at bringing and binding together children's charities. I hope that the disability commissioner will have a close working relationship with the third sector and any campaigns; they might be running those campaigns or simply facilitating them and bringing people together to run them.

Jamie Halcro Johnston: I know that you do not want to write the commissioner's role or their responsibilities for them or, certainly, do the recruitment, but what background would you expect the commissioner to have?

Jeremy Balfour: I have thought fairly long about that question, because I think that it is a genuine one. We have not said in the bill that the commissioner must have a disability themselves; after all, many good people out there have experience of disability through family, work or other areas. Clearly, they will have to understand disability and the issues that are faced by people in a disability context. If I were to write down who the ideal person would be, I would say that they would have lived experience of disability themselves, but I do not think that that has to be in the bill.

Jamie Halcro Johnston: Would you expect them to come from the charity sector?

Jeremy Balfour: No, they could come from a number of sectors. They could come from many different backgrounds, but they would see this as a role that they could play. They might come from the third sector, or they might come from other professional backgrounds; indeed, they might not have a professional background at all, but still have the skills that are set out. If this happens, we will want to throw the net as wide as possible and not limit ourselves with regard to who can apply for the job.

Jamie Halcro Johnston: In earlier discussions or exchanges, you talked about the number of new commissioners that have been suggested or which might be taken forward. However, there are concerns about how they will deliver. How will you measure outcomes in that respect? Will there be a process by which, say, the disability commissioner will say in a report at the end of each year, "This is what we have achieved, and this is how we have made things better"? Moreover, how do you think things will have changed by the end of the commissioner's eight-year term?

10:15

Jeremy Balfour: Clearly, the commissioner must be independent, so we cannot tell them what to do, but they will produce an annual report that will come to the Parliament. That will provide an opportunity for, perhaps, a number of committees to scrutinise the work that the commissioner has done over the previous year.

I suppose that we would all say this, but it would be great if there was no need for a disability commissioner in 10 or 15 years' time because disability was not seen as an issue and disabled people were getting the services, employment opportunities and everything else that people in the rest of society get. In an ideal world, the commissioner would work themselves out of a job.

We can measure the progress that is made. There are issues relating to transport, health and social care and employability, so, if nothing had changed in four years—the commissioner could be appointed for eight years, but there will be a gap at four years—there would be questions about whether that individual should be reappointed for a second term.

Jamie Halcro Johnston: We heard from a number of people who gave evidence in previous sessions on the commissioner landscape that one of the plus points would be if commissioners did their job in making things better, but no commissioner seems to be anywhere close to being able to, on the advocacy side, say, "That's me done. I've achieved everything, so we can move on." Outcomes are key, and our concern is that, after proposals are made and commissioners are put in place, they are not able to measure outcomes and what they have achieved. That is a real concern.

Jeremy Balfour: I would be deeply worried if that happened. We absolutely need to set some goals or criteria by which we can measure progress. One of the problems in the public sector in general is that it is very difficult to measure such things.

Jamie Halcro Johnston: Should measurable outcomes be included in the bill? Should those be very clear before the bill is passed? As I have said, that has been a concern with other pieces of legislation.

Jeremy Balfour: You have raised a really important issue, which I would like to reflect on. When we get to stage 2, I would be open to those types of discussions and amendments.

Jamie Halcro Johnston: I have a final quick question—there was not really any order to my questions as I scribbled things down. You talked about the relationship between charities and others. Do you have a concern that, unless the disability commissioner takes forward an issue, that issue might be ignored by the Government?

Jeremy Balfour: No, I hope that that would not happen. As you said, many third sector charities are quite well resourced, and they will still see such issues as for them. Some of the issues are quite complex. Disability is not like some other protected characteristics, in that there is no one answer.

The example that I always give relates to dropped kerbs. A dropped kerb is really helpful for individuals with certain disabilities—for someone in a wheelchair, it means that they can get across the road. However, for someone with a guide dog, a dropped kerb is a nightmare, because the dog does not know when they are coming to the edge of a pavement. Those are two slightly conflicting interests, and it will be for the disability commissioner to work through such issues. Not every issue will be the same for every disabled individual, so we might want the disability commissioner to advocate in two areas, whereas a charity with a particular interest will advocate on only one issue.

Ross Greer (West Scotland) (Green): Good morning. I will follow up on Jamie Halcro Johnston's initial question about an individual MSP advocating for a disabled constituent. I will move the discussion to a whole-Parliament level and touch on some of the points that you have made. I understand entirely what you said about the difficulties that disabled people face in advocating for themselves and using their own voice in settings such as the Parliament, but there is a question for us as an institution. In our inquiry into the wider commissioner landscape, we touched a few times on wider issues relating to effective parliamentary scrutiny and questions of reform 25 years into devolution.

I presume that part of your motivation for bringing the bill forward is that Parliament, as a whole, has not been effective enough in, for example, advocating and legislating for disabled people. Why do you think that that is? If we can move from Jamie's example of the individual MSP level to that of the institution as a whole, what is holding the institution back from effectively fulfilling that job—and what is holding it back so far that there is a need for an independent commissioner?

Jeremy Balfour: I think that that probably goes back to one of the points that I made earlier. Getting out of bed takes 90 per cent of my energy. I am not sure that the fault is totally the Parliament's issue, because there are so many voices that we hear day in, day out. However, for many disabled people, getting to Parliament, sending an email or phoning an MSP to advocate is very difficult, because of the time and energy that that takes. That is particularly true for parents, who are trying to get their child out of bed, dress them, feed them and care for them. Having to write an email to an MSP or come to a protest outside the Parliament is just beyond the ability of most individuals.

As a Parliament, we have to keep reflecting on whether we are engaging with the community, but the community also has to have the energy and the ability to do that and many people with disabilities find that very difficult to do. Your disability comes with other issues and other things that you are trying to deal with.

Ross Greer: I appreciate that and I realise that this is somewhat going back to ground that has been covered. There are already, as has been mentioned, a range of third sector organisations and charities that advocate effectively on behalf of disabled people and particularly those who find it most difficult to do that for themselves. They lobby us and give evidence very regularly—there are some very effective organisations. What you are proposing would add something new to the landscape.

I get the logic that, if there was not that landscape of organisations that are already advocating for disabled people, there would be a very clear case for having somebody to do that and to gather those voices and experiences and bring them to Parliament. However, I am not sure why there is a case for that when we already have that wider landscape of people who do that. That is where my question comes from. Is Parliament not responding to them effectively enough?

Jeremy Balfour: I get that. It is very interesting to see that, if you go back and read the stage 1 evidence that was taken for the creation of the children's commissioner, exactly the same questions were being asked then: there are lots of children's charities out there who are advocating for children to Parliament—why do you need a commissioner?

I think that there is something to be said for bringing things together. I think that you can see the effectiveness of the children's commissioner, compared to children's charities, over the past number of years. The questions that you are asking are absolutely legitimate. I think that they were asked and answered with the children's commissioner. I would want to draw a line between those examples and say that they are very similar. In no way are we trying to push out or minimise what the third sector does, but there is a place for an individual or a commission to have that collective voice, which is really important. They can also look forward, consider legislation and see what issues people are facing, which charities often do not have the time to do.

Therefore, I would answer by saying that we should look at the fact that the same arguments were made with regard to the children's commissioner. I think that we can answer in the same way with regard to a disability commissioner.

Ross Greer: That is a good point, thanks.

Finally, on a point of process, you are aware of our inquiry into the wider commissioner landscape. Would it make sense for Parliament to consider the report and the recommendations that the committee produces before moving ahead with not just your bill but the range of proposals for the creation of new commissioners? Would it make sense for Parliament to consider what this committee ends up recommending before proceeding further with any of the range of individual commissioner proposals, to avoid a potential mismatch between what we end up agreeing for the landscape overall and what we do on a case-by-case basis over the rest of this parliamentary term?

Jeremy Balfour: We are 15 months or whatever away from Scottish Parliament elections, which is not that far down the road. I wonder whether we will get that consensus within that period of time. I do not think that, this session, the Government—whoever was in government—would have the time to turn your recommendations into legislation in 15 months. We should therefore proceed with a disability commissioner at this point, because the issues that disabled people face will not go away.

With due respect to this committee, it will be for the next Parliament to look at your report and decide what it wants to do with it. I just cannot see the timescales fitting in for you to produce your report, for the Government to reflect on it and for consultation with lots of groups and individuals before we face the electorate in 15 months. If the issue was put on hold for us to come back and look at it in the next session of Parliament, I would be very worried. Who knows who will be here? Who knows whether somebody will want to take the issue forward? We should push ahead.

I welcome your 360-degree review. Let us see what you as a committee come up with, then let us see how Government and civic society respond to what you have said. However, that will not happen in 15 months, unless there is a miracle.

Ross Greer: Thanks—including for that distressing reminder of how close our next election is.

The Convener: It is 23 months, not 15, so there is still a wee bit of time.

Jeremy Balfour: My apologies.

The Convener: I will follow up on just a couple of points from colleagues' questions. You raised a couple of issues. First, you talked about day centres not reopening after Covid. I know that that is a concern but, in my area and others, people say that that is due to a shortage of staff and cash resources.

Secondly, you raised the practical issue of people being unable to leave their homes because the council focuses on arterial routes—which, obviously, it has to do for emergency services, public transport and enabling people to get to work. In our area—and, I am sure, in many others—grit bins have been put in the streets, so that some people can at least grit the areas in front of their homes.

How would either of those issues be improved by a disability commissioner? Even if he or she highlighted them, it would not make a material difference on the ground. For example, on the snow issue, the local authority will not necessarily have more depots full of trucks and salt and staff to put the stuff out on the streets. It is one thing to highlight an issue, but, as Jamie Halcro Johnston pointed out, how do you change the outcomes?

Jeremy Balfour: The disability commissioner would get in at an earlier stage, to raise policy issues rather than implementation issues. Certainly, in my local authority, and, I think, in other local authorities, there is a high-level debate about what types of day centres are appropriate. For example, should people go to one place, or should they have individual care? That much wider philosophical debate is happening at the moment. However, often, I think, the disabled voice is not being heard on that. It is about getting in at an early stage of policy, and raising some of the issues.

Again, I will take a local issue—albeit one that will happen across other towns and cities in Scotland. In Edinburgh, we have George Street, which many of you will know. There is an issue of whether we should stop cars from driving on George Street. That is a really important debate. However, I heard about the consultation only very late on, and many disabled groups had not heard about it at all. There was a real danger that, because of a policy, we would prevent people from being able to access their places of work. Before that policy is implemented, the disability commissioner needs to be at that level. When Government brings forward ideas—for example, on transport or education—we need a disability commissioner, advocating with a disabled voice, at the philosophical level of that policy. I do not think that that happens at the moment.

The Convener: Given the intricacy of some of the issues that you have talked about and how very localised they are, how could a commissioner with four staff possibly deal with that?

Jeremy Balfour: They cannot deal with every issue, but they could highlight the issue to charities that work in that local area. There will be a role for information sharing—for asking whether people know about something that is happening in Ayrshire or on Arran, for example, and whether they have responded.

10:30

Michelle Thomson (Falkirk East) (SNP): Good morning. I am making a late entry.

I will pick up on that theme. Councils will do their equality impact assessment for exactly that sort of thing, so does what you outline not simply suggest that existing functions and processes are not necessarily being followed properly rather that make a genuine argument for a commissioner?

Jeremy Balfour: It is both. I think that, often, it is not being done properly—it is often a tick-box exercise. A lot of what happens in regard to policy is driven by public opinion—we have seen that. That public opinion, for many people, does not involve a disability voice. Part of the role of the commissioner would be to provide that voice, not just to Government and civic society but to address the societal issue. We need to challenge that societal issue.

We should be asking, “Can this person work?” To give a very personal example, when I went for my first job, they were only concerned about whether I could use a photocopier with my disability. That was the deciding factor in whether I got the job. Such societal issues need to be challenged—it is not about what you cannot do but about what you can do.

Michelle Thomson: I have listened to the session with great interest, and there is no denying the power of your advocacy for disabled people. In general terms, I am hearing a lot of arguments to which I would take a slightly counter view, similar to what I said about EqIAs. In all the various forms of government, there are issues with processes not being undertaken because they are time consuming, expensive and often difficult, particularly where there are competing rights. We have seen that before, and it has proven quite difficult.

To what extent have you considered that although you are operating with the best intent, in reality, you are desperately seeking to plug a gap that is there? If that is the case, why cannot we—all of us in the Parliament—plug that gap without a commissioner?

Jeremy Balfour: We have not done that for 25 years, so the gap is there. That gap will continue, because who will do that advocacy? We all move on to different issues when something else hits our email or something else hits the media. That is the point that the disability community is making. There are organisations out there that have been running for many years—there are many commissions that could have done that work, but they have not. We have given civic society and other organisations the opportunity to do it, but the evidence is clear that they have not done it, so let us use this commissioner as someone who can be really positive and who can challenge Government, local authorities and health boards in order to see that change in society. If we do not do that, the landscape will not change and we will leave people further behind.

Back in 1999, in year 1, we could have given the Parliament, the Scottish Government and all the organisations—even the different commissioners that we have introduced in the past number of years—the opportunity to do it. However, we have not done that. My point is that you will move on to another inquiry and other committees will move on to other issues, so that voice will still not be heard.

Michelle Thomson: Again, I hear a very powerful argument and advocacy for that. From my perspective as a woman—I am just playing devil’s advocate—I point out that women have been disproportionately discriminated against for thousands of years. With each gain that we make, it feels as though we slip back—if you look at the pay differentials, for example. Even women’s rights has been a matter of discussion and dispute in the past few years. Should I not therefore be thundering out and making an argument for a women’s commissioner? I am saying that about women, and there are a multitude of other groups, so you would end up with a Parliament that is run by commissioners rather than by the democratically elected people.

Jeremy Balfour: I hear your point, but I think that there is a difference here. I would argue that there are very loud voices advocating on behalf of women. Clearly, that does not always bring the change that you want, but I do not think that anyone is unaware of the issues that you are addressing with regard to women and with regard to other protected characteristics.

My point is that disabled people do not have those voices. Due to the disability and the effect that it has on the day-to-day life of many people, they will never have the strong advocacy voice that other people in society have. To take your argument to its logical conclusion, a bit like Mr Mason said, you would want to get rid of all commissioners. That might well be where you want to go. My point is that, until we get to that point, let us not discriminate against some of the most vulnerable people in society whose voices are not being heard and who do not have the champions that other groups in society have.

The Convener: Do you have any final points that you want to make, before we wind up?

Jeremy Balfour: No, convener; I am content.

The Convener: Thank you very much. I thank you and the officials for the evidence that you have given this morning.

The next item on our agenda, which is a consideration of our work programme, will be discussed in private.

10:36

Meeting continued in private until 10:58.

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