



OFFICIAL REPORT  
AITHISG OIFIGEIL

# SPCB Supported Bodies Landscape Review Committee

Thursday 6 February 2025

Session 6



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Pàrlamaid na h-Alba

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**SPCB SUPPORTED BODIES LANDSCAPE REVIEW COMMITTEE  
3<sup>rd</sup> Meeting 2025, Session 6**

**CONVENER**

\*Ben Macpherson (Edinburgh Northern and Leith) (SNP)

**COMMITTEE MEMBERS**

\*Murdo Fraser (Mid Scotland and Fife) (Con)

\*Richard Leonard (Central Scotland) (Lab)

\*Ash Regan (Edinburgh Eastern) (Alba)

\*Lorna Slater (Lothian) (Green)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Rosemary Agnew (Scottish Public Services Ombudsman)

**CLERK TO THE COMMITTEE**

David Millet

**LOCATION**

The James Clerk Maxwell Room (CR4)



# Scottish Parliament

## SPCB Supported Bodies Landscape Review Committee

Thursday 6 February 2025

*[The Convener opened the meeting at 09:30]*

### SPCB Supported Bodies Landscape Review

**The Convener (Ben Macpherson):** Good morning, and welcome to the third meeting in 2025 of the SPCB Supported Bodies Landscape Review Committee. I have received no apologies for today's meeting.

Under agenda item 1, the committee will take evidence from the Scottish Public Services Ombudsman, and I am very pleased to welcome Rosemary Agnew to the meeting.

We move directly to questions, and I will ask a general question first. What do you consider to be the SPSO's role, and how does it differ from the role of ministers, MSPs and other public bodies?

**Rosemary Agnew (Scottish Public Services Ombudsman):** Gosh—we have only 45 minutes. *[Laughter.]*

As the ombudsman, I have quite an unusual collection of duties. I have the traditional duties that you would expect an ombudsman to have, in that I deal with the final stage of complaints about public bodies that are under my jurisdiction, including the corporate part of the Parliament and the Scottish Government.

My second broad set of duties relates to the fact that I am the independent national whistleblowing officer for the national health service in Scotland. That is a uniquely Scottish role, and my duties combine the handling of the final stage of whistleblowing concerns and the setting of standards, which I will come to. We deal with the review stage for the Scottish welfare fund, which is administered by local authorities, and we are, in effect, the appeal route for crisis grants, so we can overturn decisions and give feedback.

The third set of duties involves setting complaints-handling standards and principles. That is probably the smallest area in terms of resources, but it can often have a huge impact. Those standards and principles are laid before the Parliament for approval. Alongside them are model complaints-handling procedures. Broadly speaking, anybody under our jurisdiction should be following a model complaints-handling procedure. That team deals with communications

and provides an advice service for public bodies on complaints handling, training, data monitoring and those sorts of functions. That is all underpinned by our statutory duties, as all other public bodies have, relating to climate change, employment and so on.

Fundamentally, the biggest difference between me and MSPs is that I am not voted into office but appointed through a Crown appointment via the Parliament—a process with which you will all be familiar. However, my decision making on complaints and complaints handling is completely independent. Obviously, I do not operate in a vacuum, but the decisions that are taken are mine or are taken under my delegated authority. The same applies to decisions relating to the welfare fund and whistleblowing.

You could feasibly say that there is some overlap with the role of MSPs, because I am aware from my contact with them that MSPs are also asked to look into things for constituents. The big difference is that I have the power to require information, and I can go all the way to the Court of Session for such information. That means that we can look at things in detail and get all the information that we need, which might not be possible for MSPs if they have more of an advocacy role.

My role differs from that of ministers in much the same way. I am not a policy maker, as ministers are, but I would contribute data, learning and things that I know, and I would share themes and trends with ministers, if I thought that something was emerging from our complaints handling.

I hope that that is enough of a run-through of my role.

**The Convener:** That was very helpful and succinct. Of course, those of us around the table in the Parliament are aware of what you have said, but it is helpful to get that on the record for our inquiry and our work.

The origins of your organisation are interesting. We can look back to the beginning of devolution, when there was a local government ombudsman, a health service ombudsman and a housing association ombudsman. In time, those roles came together. How does your organisation find operating across different policy areas? In local government, you look at the welfare fund and other issues, and you have functions relating to whistleblowing in the NHS. It would be interesting to hear any comments about public trust in that regard.

**Rosemary Agnew:** The welfare fund is probably a good place to start, because the service that we deliver comes under the Scottish Government guidance that local authorities follow. Our role is very much about ensuring that local

authorities have followed the guidance appropriately and that there is good decision making. We can overturn decisions and ask for awards to be made.

In the area of whistleblowing, trust is building not only in us but in whistleblowing in the NHS. That is a cultural issue, and we have a leadership role in that regard. Part of that is about ensuring that we follow our guidance on confidentiality and the way in which information is shared. There is a very tricky balance between transparency and confidentiality. We have separate handling standards for whistleblowing cases, and that work is within one sector—health.

There has not really been an issue or challenge in that regard with public service complaints relating to housing, health and local authorities—there are lots of functions even within local authorities. Fundamentally, we must ensure that we have good complaints processes, so investigatory skills are really important. In areas such as health and planning, I have a pool of contractors who are experts in their fields, so we have access to technical advice if we need it. They are not decision makers—we consider their evidence along with other things—but they are critical, particularly for clinical cases in which that level of expertise is needed. The expertise in my team lies with asking questions and weighing and balancing evidence, which it is very good at.

Is that enough, or do you want me to say more?

**The Convener:** That provides really helpful context. Thank you very much. That leads us nicely to questions from my colleague Murdo Fraser.

**Murdo Fraser (Mid Scotland and Fife) (Con):** Good morning. I was very taken with what you said about your right to require information from bodies, including the Scottish Government. Opposition members of the Parliament will feel very jealous that you have that power and we do not, although my colleagues around the table who are former ministers might take a different view on that matter.

I want to ask about the setting of criteria for the creation of new supported bodies. One of the primary reasons why this committee was established was to look at the demands—as you know, there are a number of proposals in the parliamentary pipeline to establish new commissioners—and whether they would provide good value for money, given that the Finance and Public Administration Committee, in its report, came to conclusions about whether that would be an appropriate way to proceed with the public sector landscape.

I read your submission, in which you made some interesting comments around how the

current criteria for creating new supported bodies might be enhanced, including the need for there to be a demonstrable gap in service or oversight. Will you explain how you think the criteria could be amended?

**Rosemary Agnew:** We should start at the end point and think about what needs to be achieved, rather than starting from the position that there is a lot of concern about an issue and that, if we were not underresourced or had different legislation, we would be doing more. There is often a risk that something is created as a reaction to things that already exist not working as well as they might, for whatever reason. That is not a critical comment; it is just a comment.

That is how we tend to try to address a problem, whereas there should be criteria based on analysis of there being a clear gap. What is the issue? Do we need to invest a much more modest amount in existing oversight bodies? I do not mean just office-holders but other oversight bodies. Do we need to amend existing organisations' remits slightly? If we do that, we do not create a whole administration or corporate entity. Is there genuinely a gap that does not fit with existing organisations? If so, it is that gap that should be filled.

There should also be criteria to check the ability of others to work with a new body. In relation to our legislation, we need to have a good look at information-sharing powers with other organisations, because, collectively, we could cover a lot of the things that need to be covered if we could work differently.

The original criteria—the ones about hearts and minds—are important, but there needs to be a hard look at what we are trying to achieve for public service, particularly for public service users, that is not currently being delivered at all or to the required standard.

**Murdo Fraser:** That answer goes to the heart of why this committee has been established. Such issues are at the root of our discussions.

I want to ask about the specific example of the patient safety commissioner. This morning, when I was listening to "Good Morning Scotland" on the train, I learned that the latest round of recruitment—the second attempt to recruit someone to be the patient safety commissioner—has been unsuccessful. I am a bit surprised by that, because it sounds like a very attractive salary and package, but apparently the recruitment has not worked. Even though someone was identified through the process and offered the position, they turned it down, for whatever reason, so the Scottish Parliamentary Corporate Body will have to look again. Clearly, there is an issue.

The FPA Committee suggested that, if the existing criteria had been properly followed, a patient safety commissioner would not, in fact, have been established. It suggested that such a commissioner could have sat in your office with the SPSO. I am interested in your thoughts on whether your office could have accommodated that, rather than a new office being created, given that we cannot even find someone to do the job.

**Rosemary Agnew:** That is a very interesting question. You are probably aware that I am demitting office, as I will have done my eight years by the end of April—I will try not to get too upset—so, in a way, that perhaps enables me to be quite forthright in what I say.

**Murdo Fraser:** Please be so.

**Rosemary Agnew:** I tend to agree with the gist of what you have said. I can reflect on my experience of being part of the consultation for the patient safety commissioner. It was a good example of people wanting a commissioner and wanting them to be independent. I completely understand that, but there could be other criteria in that regard, because creating parliamentary office-holders is not the only way of creating independence. Independence can also be created through non-departmental public bodies.

09:45

Fundamentally, when we started to look at what a patient safety commissioner would do, we found that, in many areas, there would be slight overlap or their work would abut right up to that of other NDPBs and office-holders. My personal conclusion was that, if the ombudsman had been given own-initiative powers to investigate issues in the public interest rather than having to wait for complaints, the gap would have been plugged.

**Murdo Fraser:** That is interesting. As you are stepping down as the SPSO, did you think about applying for the job yourself?

**Rosemary Agnew:** I could not possibly comment. [*Laughter.*]

**Murdo Fraser:** Thank you very much.

**The Convener:** Before I go to Lorna Slater, I have a question on the same topic. My other committee—the Criminal Justice Committee—is considering the Victims, Witnesses, and Justice Reform (Scotland) Bill, which includes a proposal to establish a victims and witnesses commissioner for Scotland. There has been discourse in Parliament and beyond about such a role. If you were inclined to speak in similarly candid terms, given your experience and understanding, is that an area that you as an ombudsman could encompass as well?

**Rosemary Agnew:** You could potentially encompass anything and make it work. However, the proposed victims and witnesses commissioner is coming from a slightly different place. The similarities are that it starts with people, and if they are not getting the support that they need from existing organisations, somebody has to be held to account. An ombudsman model is a very good way of holding people to account.

The one thing that I would say, though, drawing on the experience of whistleblowing, is that a point comes when you can add on too many things and you end up with silos. Those might achieve well overall, but you are almost creating mini-organisations. There must be some form of close scrutiny of the sector in which that would be sitting. You need to bear in mind that I do not have any jurisdiction over the police, or over the Crown Office and Procurator Fiscal Service other than at a very high level. Prisons are within my jurisdiction.

I do not know whether the underlying issues that would need to be looked at would sit as comfortably with my role. That does not mean that it has to be a victims and witnesses commissioner that does that, but the same question applies as to whether the role could sit in another organisation. In many ways, it would very much have a rights-based remit, so it would be worth looking at that aspect in trying to identify somewhere. I am not entirely certain that it would fit well with us.

My office previously vacated part of Bridgeside house, where a number of commissioners are based. We had already created accommodation space on the basis that two more commissioners would be coming in. We provide shared services to other office-holders on some corporate and administrative elements. We had already put in place measures based on the expectation that we would be at least providing that shared service to them.

**Lorna Slater (Lothian) (Green):** I am very interested in what you are saying. It is really useful, and thank you for being so candid with us.

You mentioned in your opening remarks that some of your work is similar to the casework that MSPs undertake when supporting our constituents. In that sense, I suppose that we can imagine that you are facing in the same direction as Parliament, which is holding Government and public services to account and supporting people with their interactions with them. You also report to Parliament. Do you see yourself as an extension of the capabilities of Parliament? Where do you think that you fit into the wider landscape and in the structure of public trust?

**Rosemary Agnew:** I do not think that I sit within the structure of Parliament. I am accountable

through Parliament, and I would like to think that I am accountable to the citizens of Scotland through Parliament, through the elected members who represent them. I have no issue with being accountable through the committees. That has worked very well for the SPSO and for the accountability of the SPSO.

We sit—quite rightly—outside all those structures, so we can take a very different look at the way in which a complaint is handled. I do not get that many complaints about the Parliament. If we are looking at complaints about Government, for example, we are independently looking at how it is responding to citizens. That outsidership is the really valuable thing about a parliamentary office-holder.

However, I do not think that level of independence is necessarily always required to be through a parliamentary office-holder. For example, the Scottish Legal Complaints Commission is a non-departmental public body, but it is independent of Government in the way that it operates in its decision making.

Sometimes, there is a bit of an overlap in my role as an accountable officer. I am accountable in the same way as any other public body. I have to say that, with regard to some of the budget negotiations and discussions, there is often a bit of a disconnect between the delivery and performance of our statutory functions. That budgetary side is probably where the relationship with the Scottish Parliamentary Corporate Body is very important.

In relation to similarity in how we hold people to account, we all do so in slightly different ways. It is that triangulation and holistic holding to account that is the important thing that we achieve between us through our relative functions and independence.

**Lorna Slater:** You said that you do not get a lot of complaints about Parliament. We have taken evidence from the Ethical Standards Commissioner and the Standards Commission for Scotland, and they told us that they get quite a lot of them. That interesting point is a large part of what we are discussing—that is, there are different places to go depending on who someone wants to complain about, but clearly there is overlap if someone can bring a complaint to more than one of those bodies.

**Rosemary Agnew:** Yes, and it also depends on what someone wants to complain about. The difference between us and the Ethical Standards Commissioner is a good example. I do not look at the conduct of elected members—the Ethical Standards Commissioner does that. Therefore, jurisdictionally, I could not do that anyway.

That is the other difference between me and perhaps MSPs who are supporting constituents. I do not really perform an advocacy role, and there are very clear jurisdictional restrictions around that.

The Ethical Standards Commissioner example shows that, in reality, the SPCB supported bodies all perform different functions. Holistically, we are looking at different things from different perspectives. Ombudsmen traditionally are viewed as being part of the alternative dispute resolution. I personally do not like the word “alternative”; it should just be “dispute resolution”. However, a lot of our complaint work is focused on an individual. Without having own-initiative powers, we can simply pass on what we have seen trends in.

Often, one of the temptations is to think that if we are all doing similar things, we can all sit together when looking at Parliament. It is almost like the gap analysis issue that was mentioned. Are all the gaps being filled? If so, the next question is, is there a more efficient model? Being efficient is not necessarily the same as making sure that all the bases are covered. I do not know whether that answers your question or whether we need more discussion.

**Lorna Slater:** It leads me on to my next question, which is exactly on that point. This inquiry has been prompted by a concern about proliferation of commissioners, in which there are overlaps and gaps. We need to understand the current landscape so that we can identify overlaps, gaps and inefficiencies—not to get rid of them just for the sake of efficiency but for the sake of effectiveness.

You have already made a suggestion as to how a gap in patient safety could have been filled. Are you aware of other overlaps and gaps that maybe we are not?

**Rosemary Agnew:** I am not so much aware with the parliamentary office-holders, because we are set up to be very different entities. One of the things that makes it more complex—I do not envy you your job in this—is that you cannot really look at, say, an ombudsman or some of the other organisations without looking at the wider oversight and scrutiny landscape. As a stakeholder, I engage with people like Health Improvement Scotland. In theory, it can take on whistleblowing concerns, but we make our remits on whistleblowing work. We keep each other informed as far as we can. I do not take anonymous concerns, so we work out the signposting between us.

At this point, I would be more interested in the things that enable or restrict the ability to work together differently. If I identify a theme or a trend through complaints work, I might not be able to

look at it, but even if I had own-initiative powers I might be able to get another organisation or an office-holder to do something jointly, or I might want to hand over more information than I actually can. I would suggest looking at some of the underlying elements of our legislation—beyond that which applies to office-holders—and enabling us to work together. If you asked the office-holders, we would probably be able to give you a pretty good list of what would help us to work with other organisations. That would still be independently—that is the critical bit. Our decision making is our decision, but some of the enabling things need to be looked at. I have pretty much been saying that about my own legislation for a few years now.

**Lorna Slater:** That is very helpful. I have one last question. If we look at this from the perspective of someone who wants to make a complaint and from a the customer experience perspective, the landscape is quite complicated as to who to go to if someone wants to whistleblow, to complain about a parliamentarian and so on. We have discussed with previous witnesses the idea of having a one-stop shop for complaints as a hypothetical umbrella office of public trust. It does not matter what has gone wrong, people would have one place to go to. That organisation would combine all the supported bodies and the whistleblowing functions. All those things would be in one place. What is your view of a hypothetical one-stop shop as an office of public trust that combines some of those functions?

**Rosemary Agnew:** I will come at that from two angles. One is about accessibility. We are not just talking about the parliamentary office-holders; there are all sorts of organisations. If someone wants to complain about care, would they come to us or would they go to the Care Inspectorate? Actually, it does not matter which one someone goes to, because we will signpost them to the right place if they come to us. We almost act as a mini-portal. That is true of our front-line services—they are very good at signposting and what have you.

Secondly, in terms of putting them all together, I would never say never, but it would have to be feasible. I am trying to think of a good analogy. It would be a bit like a large corporation that has several businesses sitting below it. I am not entirely sure without having looked in more detail at the idea as to whether that would achieve anything better for service users, including with regard to the support aspects such as accessibility and advocacy.

Advocacy and support is not just for making complaints. If someone wants to make a complaint about a health service, they can go to patient advisory services. They do a fantastic job and that works well. Once someone is in the system, they

tend to get signposted to the right place. I am more concerned about people in vulnerable situations who never complain. I do not think that a single entity would necessarily alter that because there might be different reasons why people are not accessing complaint systems but, more critically, why they are not accessing the public services that they should be accessing in the first place.

10:00

That was discussed a lot during the consultation on the national care service. One of the recognitions was that advocacy is very patchy across Scotland. This is about, I think, giving people support rather giving them than a single point of contact. That said, not everyone knows about the parliamentary office-holders. On the Parliament's website, there is a page that lists all the committee. There could be a parliamentary office-holders page on it, too, so at least people could quickly identify whether an issue is us or the Ethical Standards Commissioner to deal with for example.

**Lorna Slater:** Thank you very much.

**The Convener:** Thank you very much. Those were very helpful questions and responses.

**Richard Leonard (Central Scotland) (Lab):** Good morning. You have mentioned powers a couple of times already. You have spoken about the possible benefit of having more information-sharing powers and you have alluded to own-initiative powers. You notably told the Finance and Public Administration Committee last year:

“We are not doing the job that we think we should be doing because we do not have the right legislative remit.”—*[Official Report, Finance and Public Administration Committee, 30 April 2024; c 37.]*

Can you elaborate on what you meant by that? Is it about those own-initiative powers or about information-sharing powers or about more than that?

**Rosemary Agnew:** It is a combination of all three. Probably a better way to say it is that we are doing the job that we want to do but we think that we can do more. For example, I can do research—if I have enough resource to do it—on any subject I like. With own-initiative powers—and I am drawing on the experience of my fellow ombudsmen in Northern Ireland and Wales, who already have those powers—you can take a different approach to what you investigate. You can identify things through themes or trends or through some obvious questions such as, “Why do I never get complaints from that demographic?”.

The difference between own-initiative powers and researching something is that with those

powers come information-requiring powers. I could research something that I thought was an issue across all NHS boards and I could make use of freedom of information legislation. However, that would not get me everything that I needed, because I would also need to look at sensitive data. Own-initiative powers would enable us to look at things that go across services.

I can follow a complaint to the extent that, if it brings up something else, I can follow that up. However, at the moment, if I make a finding against a local authority about a significant issue in relation to children's services and I think that the issue might exist across all local authorities, I cannot go and look into that. That is the element that, as ombudsmen, we have fallen behind on. My European colleagues do much less individual complaint handling; I would not want to lose that element because I think that personal redress is vital, but they can achieve wide impact with one investigation. I would dearly love to have that for my organisation, whether or not I am there.

**Richard Leonard:** That is interesting because one of the questions that we are asking people when they appear before us is to what extent they are reactive and to what extent they are proactive.

**Rosemary Agnew:** On balance, we are more reactive than proactive, but within the powers that we have, we are getting a lot more proactive than we were.

The reactive bit is about reacting to complaints. In any organisation that is volume based you get complaints, then you react to them. The proactive bit is in relation to complaint-handling standards. We can be differently reactive because, over the past 10 years, complaint handling at the local level has improved. We can point you in the direction of things that we see. We cannot always, because of our reporting powers, tell you about them, but we see some good complaint-handling practice, which makes us more efficient at the other end of that process.

The proactive bit is about driving standards, but we are also increasingly looking at whether and how we can make better use of our own data. We are in the second year of a data strategy and we are looking at triangulating our data and trying to see where there are themes that we can report on without having to have the own-initiative powers. A good example is our recent spotlight report, "Spotlight on the impact of the Scottish Welfare Fund High Most Compelling priority rating". The proactive bit is the most underresourced bit of my organisation. If you can imagine being able to do something like that spotlight report and really get under the skin of something, that is the proactive bit that we cannot quite achieve yet.

**Richard Leonard:** You have powers of statutory investigation. Do you have powers of statutory enforcement?

**Rosemary Agnew:** No, and it is not something that I would seek.

**Richard Leonard:** Sorry—it is not something that you would seek?

**Rosemary Agnew:** No. I am happy to explain why. I am lucky enough to have had the experience of being the Scottish Information Commissioner as well, and that role comes with statutory enforcement powers.

We will always look to see whether we can resolve a complaint because it is better for everybody if a complaint is resolved, as long as we capture learning. At the end of the process, if we make a finding, we will make a recommendation. The way that we make recommendations is slightly different to other ombudsmen. We will make a finding and then define an outcome that we think needs to be achieved. We then ask for evidence to show that the outcome is being achieved or that work is progressing to do that.

When we make findings, we share them in draft form with both parties so that there is a chance for public bodies to say, "We can't argue with your finding, that is your finding, but there may be a better way of delivering an outcome." We are always open to that, because ultimately it is about delivery for the person and that wider public service.

I can put a special report before Parliament if there is unremedied injustice because a recommendation has not been implemented or if I have other concerns about complaint handling. Neither I nor my predecessors have ever had to do that. I have come close a couple of times, but by not making them enforceable, you can write your recommendations in such a way as to achieve something wider and more human facing than something that is required through legislation or policy. To lose that would mean losing a great deal because it also enables us to track where people might need support. We have a support and intervention policy that underpins a lot of this. Where we identify a theme, we might be able to provide some extra support, training and advice. In my view, if you have true enforcement powers, you become a regulator rather than an ombudsman.

**Richard Leonard:** Okay. I was going to ask about the extent to which you see yourself as being a regulatory or advocacy agent.

**Rosemary Agnew:** I do not think that we are either. I think that we are an ombudsman.

**Richard Leonard:** That is fine. To go back to your previous answer, does that situation not get us into events such as the recent controversy about the recommendations over the women against state pension inequality at a UK level? The Parliamentary and Health Service Ombudsman made a recommendation around maladministration by the Department for Work and Pensions and called for universal compensation payments to be made. Of course, to its shame, the Labour Government has decided not to pay out compensation but simply to issue an apology.

**Rosemary Agnew:** There is a huge difference in our relative positions. I would say that we have a professional relationship with public bodies. Ombudsmen are very dear to my heart. As ombudsmen, we know that we operate in a political environment but we are apolitical. On that particular recommendation, we focus on learning, improvement and personal redress, but our complaints are from individuals. I am not sure that I would even have been able to make the same type of recommendation in the same way.

As to the recommendation not being fulfilled, that is probably straying into politics rather than ombudsmanning in many ways. If I had an unfulfilled recommendation, I would be reporting to Parliament whether or not it was over the front of the newspapers. It would become a parliamentary issue rather than a party or Government issue, if that makes sense.

**Richard Leonard:** Yes. We are allowed to comment on that, but I recognise that you may not be.

I will turn to a couple of more technical questions that I hope that you will be able to answer in full. There are issues around measurement and reporting mechanisms. What are the gaps in the current reporting mechanisms that you use? Are there obstacles that you have identified? How are you, as the ombudsman, addressing those?

**Rosemary Agnew:** The things that we publish and measure are the obvious things that any volume-based organisation would. For me, the gaps come in some of those wider issues of information about the good things that we find—the things that work well. We sometimes have to pick our way through how we can do that. In terms of measurement, it is not an issue of measuring in the sense of capturing our own data. Because of the environment in which we operate and our wide jurisdiction, there is also a wider public sector question about whether we are collectively using data and information well.

As for casework, there are some things that I would like to be able to share more information about. This is the technical bit, and it is a

communication challenge as much as anything. Technically, under the Scottish Public Services Ombudsman Act 2002, there is a starting point for an investigation—that is, the point at which I have served notice on the public body concerned. That was, which is part of the issue, in place before model complaints handling. It is technically not called an investigation until that point, when I have issued a decision. That is fine—we can draw a lot from that—but many of our cases are not technically investigated in the everyday sense of the word. There is a huge amount of work that goes into them. We do not just take things at face value. We test the issue and, if something is health related, we will often get advice, but we cannot share a lot of the things from that in quite the same way. In a wider sense, it is about recognising that the world has changed considerably and data and information are everyday things, yet there are public bodies, ourselves included, whose legislation is based on a paper-based society. The requirement to submit a complaint in writing is a great example of that, and is something else that I would change.

The issue is one of those things that enable us to be more proactive about things that work well and things where the commentary could have a wider impact, so it is not all the doom and gloom and dissatisfied people who did not like the answer at the end of it.

10:15

**Richard Leonard:** I will be a bit more granular in my question. You have key performance indicators. What are they? In your written submission, you have mentioned qualitative indicators. What are those? You write about benchmarking against other organisations. Which organisations? Which KPIs do you benchmark against?

**Rosemary Agnew:** The things that we measure in our key performance indicators are fairly traditional things that you will see in all ombudsmen and other volume-based complaints bodies—the number of complaints received, what the outcomes are, how quickly the complaints are handled and decided and so on. They are very much about the measurable factors—the ones that are clear and that can be counted. That is probably the best way of putting it. We have a KPI type for all of our business areas.

Where there is more of an issue is in measuring impact, because that is much more on the qualitative side of things and involves us looking at issues such as the quality of our own work. We have internal audit and we also have a quality assurance programme, and some of our measures are things that we have put in place to

demonstrate that we are testing the quality of our work. We also use trends over time as measures.

Where it is difficult—and this is still a dilemma—is in benchmarking against similar-sized organisations. We often benchmark against other ombudsman services—that answers your question about who we benchmark against. For example, the Information Commissioner has on its website quarterly data for all FOI activity across Scotland, and we benchmark ourselves against that.

On the impact side, we publish information such as our case summaries, our themes and trends and our annual report and financial statements, which is a key one. However, these qualitative things are something that we still are learning about and trying to do more on. Developing ways of showing impact is a key part of the current strategy. We can hint at it by saying how many public bodies we gave advice to about good complaint handling and how many training courses we delivered. However, although that is a measure of what we did, it is not necessarily a measure of the impact that it had. It is probably a bit unrealistic for us to come up with a number-based outcome in that regard, which is why the communication aspect and the stakeholder engagement is so important.

**Richard Leonard:** Is your performance captured, recorded and publicly available?

**Rosemary Agnew:** Yes. Our complaint statistics, external audit reports and so on are all published on our website. You would expect a former Information Commissioner to be publishing as much as possible, which we do.

**Richard Leonard:** Yes, I would expect nothing less.

**The Convener:** Do you want to ask your question about the Children and Young People's Commissioner Scotland at this point, Richard?

**Richard Leonard:** Yes. The other question that I wanted to ask if we had the time is about the measures that you have implemented to make sure that your office functions well within the landscape around public bodies, commissions and commissioners. Can you comment on that?

**Rosemary Agnew:** Do you mean in terms of a corporate entity or in terms of our statutory functions, such as complaint handling? We all do different things.

**Richard Leonard:** I think that I am asking more about the operational aspect than the statutory aspect.

**Rosemary Agnew:** I suppose that, operationally, we also have key performance indicators, which involve things such as paying our suppliers in line with good practice and within the

right number of days. We have external audit scrutiny of those sorts of things and we keep our own policies and procedures under review. I think that we are very efficient at what we do. We also monitor some corporate issues, such as absence and sickness rates and compare those with national public sector data.

One shift in recent years is that there are now four office-holders in Bridgeside house. That has given us an opportunity to start thinking more about the shared-services approach, with a focus on corporate issues—the accountable officer sort of things. We already provide services such as human resources support, advice, recruitment and finance administration for the Scottish Human Rights Commission and the Scottish Biometrics Commissioner, and we have the Bridgeside house shared service itself. That has some unexpected benefits as well. For example, on climate change, which we were asked about, the SPSO monitors the carbon footprint for everyone in Bridgeside house.

That does not mean that there is a service at nil cost. For example, when the Scottish Biometrics Commissioner was created, there still required to be some corporate function. The commissioner is the budget holder and the decision maker, but that does not mean that they have to do all the invoice paying on a transaction. There is still a bit of that there, but there is a benefit for the small organisations, most of whom currently have somebody who is multifunctional, because we are of a size in which we could have a dedicated HR person anyway, and the shared-service approach means that we have been able to take on HR administration, which represents a much lesser cost than there would be if all the new commissioners had done something for themselves on that.

The concept of shared corporate services is absolutely the right one, and we office-holders are constantly looking for things we can do in that regard. We understand how we need to balance the things that we are accountable for and the things that we are responsible for, because the things that we are accountable for have to sit with us.

There is a risk that the shared-service approach might suddenly be viewed as a universal panacea, with people saying, "If everything is shared, we will save loads of money." It would save money but it would not necessarily save loads of money. Of course, in the current climate, money is money and, if you can have a junior person being paid from parliamentary budget rather than a senior person, that has to be to everybody's benefit.

One of the areas in which there has been the most impact has been in relation to shared accommodation. That certainly achieved for the

corporate body when it was put in place, but there probably needs to be a bit of a shift in thinking because, in this post-pandemic period, we are all working in a hybrid way, so our accommodation is not always full all the time and, as a result, the office-holders could collectively think about ways of working differently.

I think that it was the Scottish Information Commissioner who commented on City of Edinburgh Council accommodation sitting empty, but I would raise a question in that regard. One of the things that is important to preserve in what we are doing is the idea of independence in relation to where you sit. If Parliament had the aim of having all office-holders together, we would still be independently together. Once you start looking at using wider public sector accommodation, we have to be careful that, visually, we are not eroding some of that independence. However, the idea is a good one to explore.

**Richard Leonard:** My next question is for clarification. We have been told that you have 80 full-time equivalent staff, which is quite a large number of employees compared to some of the other commissions and commissioners. Presumably, it therefore makes some sense for you to lead on things such as HR functions.

**Rosemary Agnew:** Yes. The other thing about shared services is that, as a model, it makes sense because of the concentration of expertise. However, shared services do not necessarily have to sit with one office-holder. They have to be shared among the office-holders, whereby one is delivering a service for the others. The shared service is a service for the office-holders; it is not the office-holder service. There is a lot of sense in the idea of having the focus where the expertise is.

I will use HR as an example. My HR manager is a qualified HR professional—a member of the Chartered Institute of Personnel and Development. We work towards and have Investors in People status. That level of expertise is not something that you could necessarily build up in the same way if your job was a bit of HR, a bit of finance, a bit of building management and some information technology, which people often have to be forced into.

IT is another interesting area. The cyberenvironment that we are in is changing the game. It is not just about technology expertise, but about being able to afford good cybersecurity. We are on Government's SCOTS network, which works very well for us and gives us a lot of access to expertise. Effectively, we are buying a shared service in that way.

The concept is important, but your comment about following the expertise is also a valid aspect.

**Richard Leonard:** Thank you very much.

**The Convener:** I will build on some of that before I bring in Ash Regan. You said earlier that it would be helpful to be able to share information between ombudsmen and commissioners. You may have said everything that you want to say in response to Richard Leonard, but is there anything more that you want to add on barriers to sharing services?

I know that Richard Leonard touched on the Children and Young People's Commissioner Scotland, and I am interested in the Scottish Human Rights Commission, too. I would be interested to know how you work with those bodies. For example, last week they published a bit of work on independent living, which, of course, is related to local government. I wondered how you collaborate, given that there is some overlap there, although obviously you deal with complaints and they are more proactive and investigatory. I am interested in any thoughts that you may have on that.

**Rosemary Agnew:** On the information side of things, we are always open to providing data and sharing our learning from complaints. However, we would not be able to provide the detail on individual cases because of the requirement to investigate in private. If other office-holders were looking at a theme, we could give anonymised examples and we could give general data.

The wider context is more about collaborative working on identified themes. We all come at our functions from the perspective of what they are, our lens and the strategic aims behind them. In some ways, a report might have the same title, but we would be looking at very different aspects.

There are potential opportunities for individual pieces of work—for example, a common theme that we want to look into—but those would tend to be more ad hoc. Then you get into the realms of the SPSO only having a limited resource. If my business plan has set out to do particular pieces of work this year, do I have the resource to be able to abandon some of them and perhaps do some more collaborative work? We do that where we can.

10:30

Office-holders could discuss looking at one another's two-year and three-year plans and asking whether there is likely to be something down the line that we can work on together. That has always been a bit of a struggle because of the cyclical annual nature of our budgeting, but we are moving down that route now. As office-holders, we certainly meet, we talk and we share things. If we identify something that we think will be of interest,

we will raise that and share it with the other office-holders and contribute what we can.

**The Convener:** That is very helpful. I appreciate that you handle final-stage complaints about the Scottish Human Rights Commission, for example. How do you go about dealing with complaints about other SPCB supported bodies?

**Rosemary Agnew:** We are not really investigating how a body has applied its statutory powers; it is about how it has delivered its service, so we are able to differentiate. I think that my next statement probably comes in the box marked “I will be frank at the end of my term”, but I am not sure that parliamentary office-holders should be in my jurisdiction. If they were not, I think that there would be a different mindset around how we might work together, certainly as far as the rights-based organisations are concerned.

When it comes to the Ethical Standards Commissioner, for example, or the Scottish Information Commissioner, it is more about how they have delivered the service; it is not about the decisions that they have taken. That is true of all public bodies. We will not tell a local authority that it has made the wrong planning decision; we will look at the process that led it to make that planning decision. If there was no fault or maladministration, the local authority is doing its job—it is there to make those decisions. However, the issue is one that is probably worth exploring further with the parliamentary office-holders.

**The Convener:** Thank you. If you want to follow up in writing with any further thoughts on that, that would be very helpful. I now turn to Ash Regan.

**Ash Regan (Edinburgh Eastern) (Alba):** Good morning. I want to cover issues around accountability and scrutiny mechanisms. In your submission to the committee, you set out the various different interactions between those scrutiny mechanisms. Can you explain those a little bit for us and say how they work together and whether they are effective and robust?

**Rosemary Agnew:** I am broadly accountable in two ways. I am accountable in terms of my statutory duties as the ombudsman, but I am also accountable as an accountable officer in the same way that an accountable officer in any other public body would be, so I am accountable through the Scottish public finance manual.

Our ombudsman-type work is scrutinised by the Local Government, Housing and Planning Committee. That is historical, I think—it goes back to when we were in the local government realm. However, we do not just appear before it once a year. We send a six-month update, we answer questions, and we will look at specific themes if there is a question about that. A good example is when there was the issue with mould. We were

asked whether we were tracking that and our answer was, “We are now”—and we still are.

I think that that element of it works well, because preparing to speak before the committee—to give evidence—is a very good opportunity to have some self-reflection as an organisation. I do not want to go into these meetings being defensive. If there is an area that we are challenged on, it is right that we go away and think about that. For me, that side of it works very well.

I am less certain about the challenge or scrutiny that we get in relation to the link between our performance and our budget. For example, coming back to the KPIs, I know that, for the year that we are just coming to the end of, the chances are that we will miss one of our KPIs. We know why that is, but in an accountable-officer type context, we need to be able to say what the reasons were in response to someone saying, “You were given this budget. You did not achieve this KPI. Why?” There are very good reasons—not defensive reasons, just very good reasons. Perhaps we could think differently about that side of it. Obviously, we have to submit our budget bids and contingency fund bids and explain why we need the money.

At the other end, we have an audit advisory board, which is a shared service with Parliament. We also go through external audits, which is an area where you could save some money if the rules between the office-holders were a bit different.

On the link between performance and budget, that is not really what I would expect the Local Government, Housing and Planning Committee, or any other subject-based committee, to be doing in quite the same way. I think that there is potential there.

**Ash Regan:** You mentioned the Local Government, Housing and Planning Committee. It held additional scrutiny sessions, as I understand it, involving academics and additional organisations. Did that approach improve the scrutiny? What else could we be doing to improve the level of scrutiny and accountability?

**Rosemary Agnew:** I feel that the scrutiny through that committee was appropriate, although I am not sure that, by the time that everything got translated into questions, it necessarily added a huge amount. Certainly, the committee called publicly for evidence. I do not have a preference one way or another, but as a citizen I like the idea that I could go and give my evidence if I have had an experience with a particular office-holder.

When it comes to the effect on us, in a way some of it was quite reassuring. For example, Professor Chris Gill basically said that we should

get service-user feedback more widely. In fact, we had taken on board something that had already been said and were in the middle of reviewing how we got feedback, which we have relaunched. It was quite reassuring that something that an academic said was something that we were already doing. The approach was perhaps more helpful for the committee itself, because it heard from a wider group of voices.

**The Convener:** I will bring Richard Leonard back in, in a second. You mentioned that currently all office-holders are individually audited and that there could be a saving if there was an opportunity for doing one audit for all office-holders. What challenges or opportunities in doing that do you want to highlight to us today, or as a follow-up, if that is more appropriate?

**Rosemary Agnew:** I think that two things are in play. First, it is in legislation that our accounts must be audited. The ombudsman, or someone else in our organisations, is the accountable officer. I would have to ask an auditor, but I am not sure that it would be possible, technically, to have the various accountable officers all through the same audit.

I cannot remember the exact amount that we pay for external audit. If I am honest, what is galling is that we are a one-line item of a very small collective amount of the Parliament's budget. Individually, we are audited, then the SPCB looks at what we are doing, then the Finance and Public Administration Committee looks at it, then the Parliament's accounts are audited.

A lot of money is being spent on audit, but to have one audit is maybe not the only way of looking at the matter. Another way would be the audit costing model. I note, to reflect on the Scottish Information Commissioner in particular, that it is a small organisation, so often the amount that is to be paid is disproportionate to the accounts and budgets. I would look at whether there could be a discussion with Audit Scotland about the auditing model.

The concept of audit is critical in terms of accountability, though, because it enables me, as an accountable officer, to be aware of issues. The SPSO's audits go well and we do not have issues, but audit is a form of assurance; it is part of assurance and scrutiny that we are audited.

We also get good advice from our audit advisory board. The concept of audit is very helpful in accountability terms.

**The Convener:** That is very helpful. Audit Scotland will give evidence to us and you have given us information that we might want to raise.

Richard Leonard wants to come back in.

**Richard Leonard:** Yes. I declare an interest as the convener of the Public Audit Committee.

I am not sure that where you finished up was the same place as you started, because you seem to be suggesting—quite rightly, in my view—that external audit by Audit Scotland gives you a certain validation. I think that your last audit included an unmodified opinion and accounts, that said that there was regularity in expenditure and income, and that you were working effectively. Those are all positive things.

**Rosemary Agnew:** Absolutely.

**Richard Leonard:** Of course, the converse of that is that last week we heard from the Ethical Standards Commissioner. Two years ago, that office was the subject of a section 22 report because of major failings in the organisation. Do you think that external audit is extremely valuable in highlighting what is working well and in identifying where things are not working well at all?

**Rosemary Agnew:** I do. I think that the question is about the model of how audit is done—whether there should be one audit of all of us and whether we look at the costs that we all pay for individual audit. I think that a single audit could not be achieved without legislative change, but there is scope for looking at the amount of money that is spent on gaining assurance relative to budget size.

**Richard Leonard:** Do you mean the fees that are charged?

**Rosemary Agnew:** Yes.

**Richard Leonard:** That is a different question, is it not?

**Rosemary Agnew:** It is, but discussion is often prompted by a look at how much collectively is spent on external audit by parliamentary office-holders, which is part of the accounts of the Parliament that are also audited. You could look at the costs and think about those layers of audit.

However, I agree that, for an office-holder, audit is important for accountability. To be honest, I think that we have to spend too much on it.

**Richard Leonard:** The price of the audit might be a separate point from the point about organisation of the audit.

**Lorna Slater:** We are auditing audits.

**Richard Leonard:** Yes.

**The Convener:** We will consider that further. Thank you very much.

Richard Leonard raised a point about other ombudsman functions—both reserved and devolved. This is just a question of curiosity more than anything else, but are there cyclical moments throughout the calendar year at which you sit

around a table together or have a call that the Government convenes? There must be so much opportunity for shared insight and learning. It is a cluttered landscape, which is partly why the committee has been charged with this SPCB work. I am interested to hear how you collaborate and communicate on a wide scale.

10:45

**Rosemary Agnew:** The public service ombudsmen across the United Kingdom—myself, the offices in Northern Ireland and Wales, the Local Government and Social Care Ombudsman, the Parliamentary and Health Service Ombudsman and the Housing Ombudsman—meet periodically, two or three times a year. That is a very good opportunity in terms of having a resilient support network, and in terms of discussing common themes, such as the rising volume of complaints: we all experience the same things, to varying degrees. We use those opportunities to discuss—I was going to say “nick”—good ideas from each other, but if it is a good idea and we think that it will work and help with efficiencies, we share what we are doing.

UK bodies are not all directly comparable: we are probably closer to the offices in Northern Ireland and Wales because we have a very diverse jurisdiction, rather than dealing with a single subject, but the group meetings are very valuable.

Our officers also talk to one another. If we want to know what somebody else’s human resources policies are, we might ask them when we are reviewing ours, so we have something to compare it with.

We also interact with the Ombudsman Association, which is a slightly different entity that covers private sector ombudsmen, as well. Certainly, through some of the special-interest type of groups, we look at things like first contact and we ask whether we are all experiencing the same issues and what we are doing about them. A very collegiate approach is taken.

We all know that we do ever so slightly different things—our jurisdictions are slightly different—but on top of that, we are sometimes approached by the different Parliaments or Governments. For example, I have given evidence to the Welsh Senedd and I expect to do that again, if I am asked. From your perspective as the Parliament, hearing from it would probably be quite a good way of hearing what else is going on. I would certainly say that we are actively in contact with one another.

**The Convener:** That is helpful.

You talked earlier about how many of the organisations are based in Bridgeside house in my constituency, and how that creates almost organic dialogue and sharing of insights. What about bodies like the Police Investigations and Review Commissioner and the Care Inspectorate? Are you ever in dialogue with them?

**Rosemary Agnew:** We talk to everybody, particularly where our functions may abut on one another’s or slightly overlap. The Care Inspectorate is a good example: private care homes come within its jurisdiction, but local authority-owned care homes are in our jurisdiction. We have to talk to one another because we want to make the landscape work.

There are two different types of stakeholder analysis. Some of it is about analysing how we contact service-user stakeholders—for example, we are doing a lot more on trying to contact and have interaction with the third sector because such bodies often represent both those who do and those who do not complain.

Another thing that we do, for example, is that we are members of what I think is called the sharing intelligence for health and care group. That is about triangulation of data and about identifying areas of risk and trends, because something that our complaints tell us might not be the experience of other oversight bodies.

That happens both proactively and reactively and is part of the recognition that we all have that we need to be aware of what we are all doing. We ask other organisations and they ask us. We do as much as we can.

**The Convener:** That is very helpful. Colleagues, are there any further questions that you would like to ask?

**Members indicated disagreement.**

**The Convener:** Ombudsman, is there anything that you would like to say that you have not had a chance to say in answer to any of our questions?

**Rosemary Agnew:** No. I think that we have explored matters and you have our written submissions. I do not envy you, having to pull together all the various office-holders’ submissions. If you have any additional questions, you are very welcome to write to us and we will get back to you in writing.

**The Convener:** Thank you very much, Rosemary, for your time today and for sharing your insights and answering our questions.

The next meeting will be after recess, colleagues, when the committee will hear from the Scottish Information Commissioner and the Scottish Biometrics Commissioner. We will conclude the public part of our meeting. As was

previously agreed by the committee, we move into private session to consider today's evidence.

10:50

*Meeting continued in private until 11:09.*



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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