



OFFICIAL REPORT
AITHISG OIFIGEIL

SPCB Supported Bodies Landscape Review Committee

Thursday 13 March 2025

Session 6



The Scottish Parliament
Pàrlamaid na h-Alba

Thursday 13 March 2025

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SPCB SUPPORTED BODIES LANDSCAPE REVIEW COMMITTEE
6th 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:

Jeremy Balfour (Lothian) (Con)

Sarah Boyack (Lothian) (Lab)

Stephen Boyle (Auditor General for Scotland)

Colin Smyth (South Scotland) (Lab)

CLERK TO THE COMMITTEE

David Millett

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

SPCB Supported Bodies Landscape Review Committee

Thursday 13 March 2025

[The Convener opened the meeting at 09:30]

SPCB Supported Bodies Landscape Review

The Convener (Ben Macpherson): Good morning, everyone, and welcome to the sixth meeting in 2025 of the SPCB Supported Bodies Landscape Review Committee. I have received no apologies.

Today, the committee will take evidence from the Auditor General for Scotland, and then from MSPs who have proposals for bills that would create new Scottish Parliamentary Corporate Body supported bodies. I am pleased to welcome Stephen Boyle, the Auditor General for Scotland.

Auditor General, in the past few weeks, an emerging theme of the committee's work has been the number of public bodies. We know what the role of each body is, and we know how people can get an understanding of that. In an evidence session that we had with the Scottish Information Commissioner a few weeks ago, he referred to the number of public bodies and to the discussions that he had had with you about that. Do you want to touch on that first, and feed back anything that you wish to say to us and to the Parliament in that regard?

Stephen Boyle (Auditor General for Scotland): Many thanks, convener—I am delighted to be with the committee and I look forward to the session. You are right—I had an introductory meeting with David Hamilton a few weeks ago. I meet public leaders across Scotland, especially when they come into post. We talked about a range of different topics, but in particular we talked about something that is, as Mr Hamilton said in his evidence, most directly relevant—the range, and the different scale and size, of the public bodies that exist in Scotland and our respective responsibilities in that regard.

In particular, we looked at where our powers do and do not go. For example, Mr Hamilton mentioned the ambiguity with regard to general practitioner surgeries. My powers are a bit clearer. I am responsible for auditing all of Scotland's public bodies that are not local authorities, which are the responsibility of the Accounts Commission for Scotland. My own responsibilities encompass organisations as large as the Scottish Government

itself down to organisations of varying scale and size, including some of the bodies that the committee has been considering and has taken evidence from.

We also talked, to an extent, about the challenges in public finances. I have been clear in my own reporting and in evidence that I have given, primarily to the Public Audit Committee, about the challenges in the fiscal position that Scotland is dealing with and the importance of public service reform.

Finally, I highlight to the committee the evidence that the Public Audit Committee took last week from the permanent secretary and his team of directors general about the pace that we are beginning to see around public service reform and around addressing some of the fiscal challenges that I have been setting out in my reports for a number of years now.

I hope that that is helpful, convener.

The Convener: It is very helpful—thank you. This committee has been tasked with looking at the SPCB funded bodies, but it is important for us to look at that in the wider context of the landscape of public bodies in Scotland. It is good to have you here today, given your wide remit, although I appreciate what you said about the Accounts Commission. That is an important and interesting clarification and point of emphasis, because one could ask why there is a divide between what you audit and what the Accounts Commission audits. Have you ever considered why everything does not sit with you, as the Auditor General?

Stephen Boyle: It is important to have clarity around that. Of course, it is a policy choice; it is likely that I will frame many of my answers today in the same way. These are policy decisions for the Parliament, especially with regard to the SPCB supported bodies.

On the specific public audit model that we have in Scotland, much of that is legacy. As you will know, convener, Audit Scotland was formed at the time that the Scottish Parliament was established. The role of the Auditor General was set out in the Scotland Act 1998, and that was accompanied by further detail in the Public and Finance Accountability (Scotland) Act 2000. The Accounts Commission predates Audit Scotland—it goes back to the Local Government (Scotland) Act 1973. It was the body that audited local government; it employed its own staff and sat as an organisation that held local government to account on spending and issued assurance on that.

I spoke relatively recently to some of the architects of Audit Scotland and, as I understand it, the intention at the time was to preserve the

distinct democratic responsibilities of central Government and local government. Were that not the case, it would lead to a perception, or a risk, that local government was held to account by the Scottish Parliament. The Accounts Commission serves, therefore, as an offshoot branch to audit local government.

Having said all that, there are other models, as we see in various other jurisdictions. Scotland's model is quite unusual in that there are two bodies working with a statutory body in the form of Audit Scotland, as Scotland's national audit agency. We are now 25 years into that model—my view is that it works, and that it preserves the range of those interests and responsibilities.

If the Parliament—or indeed the Government, because it is ministers who appoint the chair and members of the Accounts Commission—were to decide that an alternative model was appropriate, that would be entirely within its gift.

The Convener: As the former Minister for Social Security and Local Government, I am very aware of that. It is helpful of you to set it all out for our evidence and as part of the discussion on the wider landscape, so I thank you for detailing the legacy and the nuance. Much of the scenario that the committee is considering relates to the position that has built up through legacy; we will get into more of that shortly.

In your written submission, interestingly, you categorise SPCB bodies as “less complex” in relation to audits. Can you comment further on how Audit Scotland ensures that the audit process for those less complex bodies is proportionate to their size and their complexity?

Stephen Boyle: I am happy to do so. I have mentioned the Accounts Commission a number of times this morning. Every five years, the Accounts Commission and I produce a code of audit practice, which forms the basis for the auditors that we appoint to discharge their responsibilities. In the Scottish public audit model, we ask auditors to undertake what is called a wider scope programme of work. That includes an audit of the financial statements each year, which is set out in the many pieces of legislation that typically found each individual public body. However, because our view is that it is about public money, that requires an additional level of insight assurance to the Parliament; to the board of directors of those organisations; and, ultimately, to the public.

For the larger and more complex bodies, we ask auditors to set out in more detail, through an annual audit report, their views on how well an organisation is being run. That includes making judgments on the organisation's financial management arrangements and how sustainable it will be in the years to come, and an assessment of

best value, or value for money, performance arrangements.

For the less complex bodies, which are typically the small organisations—for example, as you have seen from my submission, all the SPCB supported commissioners are regarded as less complex bodies—the audit process involves a modified and abridged wider scope element. We still ask the auditors to take a view on the governance of some of the decision-making processes, but we do not ask for the same level of detail. It is important to recognise that, while public money is involved and accountability really matters, proportionateness is also relevant in that context.

I have one final point to add—if any clarification is needed, I would be happy to provide it. We give the auditors that we appoint scope to move between the two categories if necessary, which is quite rare. Typically, an organisation will stay as a less complex body. However, there have been one or two recent examples of small bodies—not SPCB supported bodies—that have not clearly discharged good financial management, fiscal sustainability or regularity of expenditure. The auditor has taken a view and discussed that and engaged with Audit Scotland, and the body has moved category. Typically, that would be for a short period of time until the body evidences that it is functioning properly and spending money well.

The Convener: That is helpful, and it dovetails into my next question. In some of the committee's previous evidence sessions, office holders highlighted that, in some instances, recommendations that were provided to smaller organisations were not tailored to the specific organisations. I would be grateful if you could clarify further what measures are in place to ensure that the recommendations that are provided during audits are sufficiently specific to, and actionable for, smaller organisations.

Stephen Boyle: I am happy to clarify that. Recommendations really matter to us; they need to be specific, measurable, achievable, relevant, and time-bound—SMART—in their appropriateness for public bodies. That is a way for us to evidence impact and support improvement in how a public body operates.

As a follow-up to that, the auditor, through the audit committee of the public body in question, can track progress and see whether the recommendation has been implemented. It is a two-way thing—if an auditor makes a recommendation that a public body does not think is relevant, appropriate and realistic, it is under no direct obligation to accept that recommendation. Neither I nor any of the auditors whom I appoint have any powers to compel a public body to accept a recommendation, never mind to implement it. A public body can quite clearly state

in the management response—these are public documents—that it accepts, partially accepts or does not accept a recommendation, and provide an explanation for that.

On the specifics, in my preparation for this meeting, I read the *Official Reports* of the evidence sessions. I think that the context for the comments that you cite relates to medium-term financial planning recommendations for some small public bodies. Not uncommonly, such bodies receive an annual funding settlement through the Parliament. To be frank, I am somewhat less sympathetic to that—I do not think that having an annual funding settlement negates the need for a public body to undertake medium-term, or even long-term, financial planning.

Many public bodies—not necessarily commissioners—are very likely to be discharging a public service function, as they have been asked to do, beyond a 12-month period. They will be employing staff for many years to come and may well be managing assets that could have a life of sometimes 30, 50 or even 60 years. All that has to be planned for beyond a 12-month period. I would, therefore, take a different view: it is very important that medium-term and long-term financial planning is embedded across all public bodies.

The Convener: I am grateful to you for reflecting on the evidence that we have heard and giving your view on it.

I move to questions from our colleague, Murdo Fraser.

Murdo Fraser (Mid Scotland and Fife) (Con): Good morning. I want to ask some questions on audit fees and costs, because that has come up in our evidence, including from the Scottish Public Services Ombudsman. The committee is dealing with SPCB supported bodies, which tend to have relatively small budgets, and the cost of audit is therefore a substantial burden on them. How does Audit Scotland determine the audit fees that are charged to those bodies? How do you ensure that those fees are fair and proportionate?

09:45

Stephen Boyle: Audit comes at a cost—of course it does. We discharge the audits in Audit Scotland through a combination of people whom we employ; roughly two thirds are Audit Scotland employees, and a third are from private accountancy firms that we appoint, typically every five years, through competitive tender. That is the basis for discharging the public audit model, in respect of which I have already mentioned the audit of financial statements and the wider scope work.

I have seen the Scottish Parliament information centre's briefing on some of the detail of the audit fees relative to the overall budget or turnover of the different organisations. There is some variability in that respect, and I can give you a bit more detail on how we have arrived at that point. Prior to that, though, I should say that our approach to setting audit fees is published on our website and that Audit Scotland's budget and performance are subject to oversight by the Scottish Commission for Public Audit, to which we take our budget, typically every December, as part of the Parliament's wider consideration of our budget setting. We want to ensure that we strike the right balance between proportionateness and affordability, while discharging an effective audit of public spending.

There are a couple of details that I want to highlight that I hope will be helpful. Although we are talking about small public bodies, especially the ones that you are looking at, they are still subject to what we refer to as an audit underpinned by international standards on auditing. That is the model adopted by public audit agencies across the United Kingdom, and it is set out and engaged with in the financial reporting manual, which sets the accounting disclosure standards. Audit Scotland does not dictate or say how financial information should be recorded in the annual report and accounts—it is the Governments and the standard setters that do that. Our responsibility is to audit that information and ensure that auditors give a true and fair view on those results each year.

Audit is becoming more complicated. There are more compliance and quality standards that we must meet, and they are, I would say, largely driven by accounting and audit failures in the private sector. I am sure that the committee will be familiar with some of the failures that have occurred in the auditing market, thankfully not recently but certainly over the past 10 years, and they have led to more regulation.

We have to factor in all those elements in arriving at the audit fees each year, and those fees are subject to annual growth that we typically align with the Audit Scotland pay award. There is some variability—this is the last thing that I want to say on this—and I would note in particular the audit fees that some of the commissioner bodies pay, relative to a percentage of their overall budget. We are required, in line with the relevant guidance and legislation, to break even on a sectoral basis for audit fees. The sectors that we treat are the national health service, local government, further education and, I would say, central Government, too. I absolutely recognise that parliamentary bodies are not central Government but, for audit and accounting purposes, that is how we treat them.

We could do things differently. For example, we could move to a full cost recovery model, but it would be difficult to do that with some of these very small bodies. With an ISA-compliant audit, the costs for some of the bodies would be more than they are currently paying, notwithstanding the fact that even the amounts that they pay are clearly more than they would wish to pay.

The alternative would be not to do an ISA-based audit at all and, instead, to have a lesser assurance approach, sometimes called a defined procedures-based audit, in which the public body would prepare a financial reporting manual-based set of accounts, or something less than that, and the auditor would do something that I would regard as more cursory. They would ask, say, “Are the disclosures correct? Are they following a specific model?” However, that would not be an audit.

Mr Hamilton referred to that issue in his evidence, saying that I and the National Audit Office were considering it. That is perhaps a slight exaggeration of where we are on it. We recognise the importance of proportionateness and, over the next 12 months, as we move into the next cycle and the next code of audit practice, we will consider whether having a defined procedures-based audit rather than an ISA-based audit is the right thing. As you can probably tell, though, Mr Fraser, I am not particularly enthusiastic about stepping back on the level of assurance that we offer on public spending.

Murdo Fraser: Thank you. That was very helpful. In fact, you have pre-empted my follow-up question, which was about potentially reviewing the funding model. You seem to be suggesting that, in contemplation, you are not enthusiastic about that.

Stephen Boyle: I am not terribly enthusiastic about offering the Parliament or the public less assurance on public spending. To me, it feels like Audit Scotland provides a hallmark of assurance to the Parliament and the public, and I would need to be persuaded that the requirement for proportionality with regard to the assurance that we offer the Parliament, the boards and the accountable officers of the organisations should come with a lesser model than we currently operate.

Murdo Fraser: Thank you.

Lorna Slater (Lothian) (Green): Several of the office-holders from whom we have received evidence have talked about audits. Indeed, the issue has come up frequently, and everyone has said that audits are important and that the scrutiny is both welcome and valuable. However, several office-holders have noted the issue of audit being proportionate, with some saying that they are audited twice a year and others saying that they

also have an office or departmental audit, which in the process becomes part of a larger audit. It means that there are audits upon audits.

In previous evidence-taking sessions and written submissions, a discussion has arisen on whether there should be a single audit for all SPCB supported bodies. We understand that that would require legislative changes, but will you elaborate on the potential benefits and challenges of such an approach?

Stephen Boyle: Absolutely. All the commissioner bodies that you are considering are subjected to an annual audit in their own right. They all prepare their own annual reports and accounts, which are considered by their accountable officers, who will certify that they are in agreement that public money has been spent properly. As I have mentioned, the matter is then passed to external auditors, who are sometimes the Audit Scotland team and sometimes one of the firms that I have appointed.

Moving to an alternative model would require legislative change. We would have to go back to the respective pieces of legislation and amend them to say, “Actually, we don’t want that model.” You could have a consolidated set of commissioner-based accounts or, as has been suggested, there could be something through the Scottish Parliamentary Corporate Body. Those things could absolutely happen, but it would be for the Parliament—indeed, it would perhaps be for this committee—to determine whether that better represented the assurance that the Parliament wants, relative to being proportionate and the cost of audit. However, I do not see a clear path to that without such an approach. Although there are clear connections with the SPCB and, to an extent, there is oversight by it—from an audit perspective, there is the role that the advisory audit board plays, too—it would require that additional step for audit to be lesser.

Whether that would be desirable is, I guess, another question. There is much to be said for an annual audit. I know that the committee is familiar with this topic, but what helped to shape the clarity of my view was our audit, which I have already referred to, of the Commissioner for Ethical Standards in Public Life in Scotland. That audit, which was undertaken by one of the firms that work on my behalf, set out deficiencies in the running of that organisation and how it was spending money, and I am not sure that that would have come to light had there not been that avenue of a separate external audit of the organisation. I suspect that the Parliament and the committee might want to consider those issues in depth when it comes to the desirability of such an approach and the trade-off between assurance and being proportionate.

Lorna Slater: I want to clarify something. I understood from one of the committee's evidence sessions that one of the offices gets audited twice a year, but you are saying that that is not accurate and that it is audited only once a year.

Stephen Boyle: We do only one annual audit.

Lorna Slater: I will need to get to the bottom of what I understood had been said.

Stephen Boyle: Forgive me, but we sometimes use the term "audit" interchangeably. By "annual audit", I mean the annual external audit that is undertaken by either Audit Scotland or one of the accountancy firms that we appoint. In addition to that, public bodies ought to have an internal audit function. Internal audit is a tool of management to provide the management team and the audit committee with assurance that the internal controls are operating properly and that they can rely on those controls with regard to functions such as finance, payroll and other aspects of how the organisation is run.

That connects to Mr Fraser's point. When we set audit fees, we assume that there is an internal audit function and that that is operating properly. I have some sympathy for public bodies about the fact that that might feel like overkill. Various auditing functions are being looked at, so scrutiny could feel excessive, and that matters. Going back to the late 2000s, the Crerar report referred to the need for scrutiny bodies to work closely together. Internal and external auditors should be working hand in glove so that they avoid overlap. They should be relying on each other's work, where appropriate. In effect, that is the context in which public bodies operate.

Lorna Slater: In that case, there might be room to look at how the process could work in a more streamlined way, so that it is still effective but does not feel quite so burdensome.

Stephen Boyle: Yes, to an extent. Both audit processes matter and both exist for a reason: to provide assurance to the accountable officer about how their organisation is run. Although the bodies are small, they cannot be across every transaction that goes through their organisations—that would be disproportionate. Some of the amounts of money are not small; many millions of pounds are being spent by some of the ombudsman organisations.

I am Audit Scotland's accountable officer. We have an internal audit function, and we are also subjected to external audit. I have an audit committee that meets a handful of times a year, and I have a board. All those checks and balances to give assurance matter. They come at a cost, and some might say that they are a burden, but the value outweighs the notion that they are an inconvenience or a burden.

Lorna Slater: Therefore, you do not recognise the process as a layering of external audits. Do you think that the issue is about the relationship between internal and external audits?

Stephen Boyle: There will be scrutiny. The Crerar review was about local government, in effect, but you could read elements across to the wider public service. At the time, there was a sense that scrutiny bodies were falling over one another in discharging their responsibilities and assessing how public bodies were performing. Under the Accounts Commission's oversight of how scrutiny bodies work together, there has been better co-ordination, but I do not see that as a direct read-across to how internal and external audit relate to each other. Those are established processes that happen across all bodies, whether they are in the public sector, the commercial sector or the third sector. Having effective internal audit that works and then reports alongside an external audit function is how the system operates. It is one of the key checks and balances that allows accountable officers and boards to sleep at night and assures the public that their money is being spent properly.

Lorna Slater: Are you aware of existing examples of shared audit services or functions in the public sector that could serve as a model for SPCB supported bodies, as you discuss in your written submission?

10:00

Stephen Boyle: There are examples of shared internal audit services in the Scottish public sector, especially in the national health service. For example, NHS Fife, NHS Forth Valley and NHS Lothian have come together to provide that service. To a degree, however, I would argue that what you have mentioned reflects what Audit Scotland does. I contrast that with some of the arrangements that public bodies in England have operated over the past decade or so, especially since the Audit Commission was abolished. Particularly in the NHS, bodies in England appointed their own auditors, which were firms of auditors, because there was no longer a public function for that part of the public sector. Audit Scotland provides that co-ordinating service—it is a shared service—and we act in a system leadership role. We provide guidance to auditors, we set the fee arrangements and we appoint the auditors, which gives the public bodies and the Parliament some assurance and distance.

There are options for doing what you mentioned. Please do not take what I am saying as complacency or as a view that the system cannot change. Over the next 12 months, we will absolutely be looking at whether the system is right and testing that, and we will engage widely

with the Parliament, public bodies and the public during that period. I do not wish to sound fixed in my views, but there are some good examples and Audit Scotland's presence in the system is perhaps one of those.

Lorna Slater: However, there might be some scope for officers to share internal audit functions and related matters.

Stephen Boyle: You are quite right. The sharing of services across public bodies is a good thing, and there has not been enough of it across the piece with regard to how public services are delivered. Sharing internal audit services is a good avenue to explore. The Scottish Government already provides about 30 public bodies with a shared finance system. It was the SCOTS connect system, but the Government is replacing that with the Oracle platform.

I heard the evidence that the committee took about sharing human resources services and, in some cases, premises. Public bodies should satisfy themselves with regard to why they would not do that, rather than why they would. For some bodies, there might be good reasons not to share services, such as the confidentiality of the materials that they consider or any perceptions of threats to independence. In general, however, public bodies should embrace the sharing of services and I hope that they will do that more than they have done to date.

Richard Leonard (Central Scotland) (Lab): Good morning. In your written submission and in your answers to Lorna Slater, you referred to the Crerar review, which set out the purpose and the benefits of audit—namely:

“independent assurance that services are well-managed, safe and fit-for-purpose, and that public money is being used properly.”

Are those principles being fully applied in the case of the commissioner bodies that the committee is reviewing?

Stephen Boyle: That is the test that we considered when preparing the submission to the committee. In many cases, those principles are being met. The principle of independence is certainly being met. We are, perhaps, looking for more assurance on accountability, which is also part of the committee's consideration. The transparency of the work of the bodies absolutely matters, and that has been a key feature of the work of the Public Audit Committee—how well public money is being used and the evidence for that.

We hoped that our submission would be a helpful contribution to the committee's coming to a view on whether existing commissioners are working together and whether that would be the case for any new commissioners.

I am, perhaps, not giving you as direct an answer as I would like to give, because although the work that auditors undertake covers those issues to an extent, it does not map to them directly. As I mentioned to the convener, we are undertaking an audit of the spending of those public bodies, using a less complex bodies approach, which might not cover all aspects. However, in my view, those remain appropriate and relevant measures with which to assess how public bodies are operating and whether further public bodies ought to be created.

Richard Leonard: To go back to the question of proportionateness, I put to you the evidence that we heard from the Scottish Information Commissioner, who characterised the situation around audit as being

“a never-ending cycle of constant audit for us”.—[*Official Report, SPCB Supported Bodies Landscape Review Committee*, 20 February 2025; c 16.]

Do you recognise that characterisation?

Stephen Boyle: If the commissioner is referring to the fact that an annual audit does not happen over just one or two days, I do recognise that characterisation, but at the same time, I think that that is appropriate. Money is spent annually and, as I mentioned, an audit is not a simple process. We discharge the function that the Parliament has asked of us—we carry out an annual audit and report on it. Does that mean that the requirements are completely disproportionate? No, I do not think so.

As I mentioned, a less complex bodies approach is being adopted. At the same time, there is scope for public bodies to look at what they report. If the committee ever has cause to look at a public body's set of financial statements—its annual report and accounts—it will see that it is not uncommon for such documents to be more than 100 pages long. All aspects of the organisation's work and performance are set out, and we have to audit every page, so some streamlining of public bodies' reporting might not be a bad thing. When reporting, providing more information does not always mean that there is more transparency, so public bodies might want to consider that further.

Richard Leonard: Earlier, you mentioned the case of the Ethical Standards Commissioner from a couple of years ago that led you to lodge in the Parliament two section 22 reports, which are, in layman's terms, reports on when things are going wrong. Can you tell us a bit more about that and say whether earlier interventions could have been made to prevent things from getting to the stage at which you, as the Auditor General, had to lodge those reports in the Parliament?

Stephen Boyle: Yes, I am very happy to do that.

As you said, a section 22 report is a report that I prepare following the completion of an annual audit. Colloquially, such reports could be referred to as “what went wrong” reports, although they need not always be thought of in that way. There are examples of my preparing a report just because it is important to provide assurance to the Parliament. The annual report on the Scottish Government is one such example.

My reporting on the Ethical Standards Commissioner highlighted significant deficiencies in governance, relationships and leadership in the organisation. I will provide some of the history in a second.

You mentioned the fact that there were two reports, which is not uncommon for section 22 reporting on a public body. In the second report, I report publicly and provide evidence to the Public Audit Committee on how matters have progressed, and there is almost always evidence that the situation has got better, that there has been an impact of audit and that the organisation is returning to operating like almost every other public body, in that it is operating well and doing what it exists to do.

You asked whether the issues could have been brought to light sooner. The example of the Ethical Standards Commissioner is quite unusual. It would perhaps be relevant to the work of the committee to consider how the accountability regime for commissioner organisations operates.

With the Ethical Standards Commissioner, it was clear that there was variation and, in some respects, a real desire to hold on to their independence, which acted as a barrier to the Scottish Parliamentary Corporate Body’s ability to discharge oversight as it might have wanted to discharge it. That is a really important area to consider. Even when there is an advisory board or a full board, what levers and powers to intervene does the Parliament have, or would it want to have, when things go wrong? In the case of that organisation, it was clear that the Parliament did not have the levers that it might have needed in those circumstances.

Richard Leonard: Have lessons been learned from that in relation to the way in which the corporate body oversees the performance of commissions and commissioners?

Stephen Boyle: As far as I am aware, a different regime is now in place, with the corporate body now having annual engagement with and oversight of the commissioners. The committee might have heard some evidence on that from some of the commissioners. However, as the Scottish Biometrics Commissioner’s evidence

shows, there is no single view on whether the regime is in the right place yet, because there is a desire for more engagement with committees on some of the specific work that the commissioners undertake.

I come back to my main thought on the topic. I do not like to always fall back to considering what we would do if things go wrong. Although it is rare, things can go wrong, so scenario planning should be done. How would the Parliament react if it found itself in another situation like the one that it encountered with the Ethical Standards Commissioner? I do not think that it would do exactly the same, because there has been evolution, but the committee might want to consider whether there are gaps that need to be filled.

Richard Leonard: Thank you.

Lorna Slater: We have been speaking about how effective parliamentary committees are in scrutinising SPCB supported bodies, but those bodies do some really useful and valuable work, and we are not entirely confident that that work is always fed in effectively to the Parliament, then used. We are looking at how to make that system more effective.

Auditor General, I understand from Richard Leonard that you come into the Parliament weekly to give an update on your work and how things are going, but other supported bodies come to the Parliament only annually, and, when they do, they discuss their annual review rather than any specific and potentially crucial work that they are doing.

How did it come to be that you report weekly whereas the other bodies do so annually? Is that because of legislation, or is it just based on a code of practice? Is your approach an effective way of feeding in? Should other bodies be doing something similar? Should that approach be mandated? I am interested in your thoughts on that.

Stephen Boyle: I am happy to give my thoughts. I inherited customs and practice arrangements from my predecessors. As you know, on my behalf, Audit Scotland produces a rolling programme of reports on the implementation of policy performance audits. We talk about whether bodies are achieving value for money.

A key part of my role is to brief the Public Audit Committee in public, along with Audit Scotland colleagues who have written the report, on the detail of our findings and recommendations. I am at that committee almost weekly. About a third of the time, I sit directly in front of the committee to give evidence. Thereafter, the committee takes evidence from public officials on the reports that

we have produced. Audit Scotland colleagues and I engage further with the committee in private to provide clarification or to answer any questions that the committee might have about the evidence that it has heard.

I have heard that some commissioners do not have that style of relationship with their subject committees. As I mentioned, the Biometrics Commissioner felt that that was a gap in the discharge of his office's work, but he also reasonably recognised that committees are very busy and that their work programmes cover a wide range of interests and activities.

I do not have a strong view on the matter, but if I was pushed, I would say that the fact that some subject committees do not hear more directly from commissioners feels like a missed opportunity, because that would create a clear relationship and might inform the work of subject committees. I suspect that committees would not want to adopt the model that I have with the Public Audit Committee, because working with that committee is a core part of my role, but I do not think that a commissioner meeting their committee once a year, solely about their annual report, does justice to the range of activity of, and outputs from, commissioners.

The Convener: Commissioners sometimes appear in front of their subject committees if a particular piece of work is being done, but it is helpful for us to reflect on your custom and practice of regularly being in this institution, in relation to the common good or public good, as you referred to. Thank you for elaborating on that matter.

10:15

Ash Regan (Edinburgh Eastern) (Alba): Good morning. I am interested in the link with the intended outcomes of each commissioner and their being scrutinised or held to account as a way, almost, of mapping against outcomes. Do you assess the effectiveness of the supported bodies against the outcomes that they have set out?

Stephen Boyle: I am not sure that I would say that the situation is as clear or as direct as that. The performance of public bodies is, ultimately, the responsibility of the organisations themselves. The accountable officer will have clear roles and responsibilities, as will the various commissioners. They are not all the same. Some have a board and some do not, so the question is: who is effectively the body corporate?

Although audit has a role to play in developing a view on whether the public money was spent as intended—that is, whether the spend complied with laws and regulations, whether it was regular or whether the body showed propriety in its

expenditure—it will typically take what we call a performance audit to go into matters in real depth and assess whether the outcomes, as intended, are being discharged.

Audit Scotland has produced various reports over the years. I think that I mentioned this in my submission, but it might interest the committee if I highlight a briefing that Audit Scotland produced in 2019 called “Planning for outcomes”, which provided some guidance to policy makers and public bodies on the question, “How do you want to evidence that public money has achieved what was intended for it?” There is a range of factors to consider when it comes to assessing that.

Ash Regan: I do not want to put words in your mouth—I am trying to summarise what you have just said—but do you think that there is a gap in that respect, that the Parliament should be looking at?

Stephen Boyle: I think that it comes down to the relationship that the Parliament wants to have with its commissioners. Does it want commissioner bodies to be appointed and independent—in some cases, they are very clearly independent—and does it want it to be up to them to decide how they discharge their responsibilities? I do not want to labour the point about the Ethical Standards Commissioner, but that was the position in that organisation. Others will have a closer relationship with the Parliament.

Doing those things well will require fine judgment, which brings me back to Mr Leonard's point about the extent to which the Parliament wants to have oversight, and thereby accountability, with regard to what might be independent organisations—which are independent, in some cases, for good reasons. It is all about striking that fine balance to ensure that the Parliament still has the levers that it needs in order to deal with, say, a “what went wrong?” scenario, without that feeling suffocating to a commissioner who needs to operate at arm's length.

I absolutely recognise that, especially given my own role. Although I am appointed on the Scottish Parliament's recommendation to the Crown, I operate independently of the Parliament, which is absolutely essential for me to discharge my role. It is a tricky issue, and there is a real balance that has to be struck.

Ash Regan: A number of the commissioners who have come before the committee have said that they feel that the timing of their financial reporting to the Parliament is off, and they suggested that that could be improved. I am interested to know whether you had noticed that, too.

Secondly, do you think that there are strong enough links between the bodies' financial reporting and, again, the outcomes that they are supposed to be achieving?

Stephen Boyle: On financial reporting, the risk is that it is presented as an inconvenience or a chore. You will expect me to say this, but I think that it really matters that there is high-quality, proportionate and retrospective reporting, accompanied by audit, to ensure that the public body can report to its funder—the Parliament—that the money has been spent properly and that, alongside that, the financial planning for the years to come is robust. Public bodies just have to do that sort of thing well, and I do not have a great deal of sympathy with the view that it is a burden.

It is vital that such reporting is connected back to outcomes. More often than not, that will happen through the annual report that the public body will prepare. It must also be clear and transparent, and if there are alternative vehicles for doing that, that is all the better. Indeed, I think that the Scottish Information Commissioner referred to investment in technology that the organisation is making in order to evidence outcomes and to manage the expectations of people who want to engage with it. The bodies just have to do both things well.

Ash Regan: Thank you.

The Convener: Auditor General, you have provided us with a lot of information, insights, context and clarifications this morning that will be really helpful to our task in this review. Is there anything else that you want to say that you have not been able to express in answer to the questions that we have posed?

Stephen Boyle: I just want to thank the committee. I am delighted to have spent time with you and to have answered your questions this morning. If there is anything that I have not covered or if there are any clarifications that the committee wishes, I will be delighted to engage in correspondence with you on that.

The Convener: That is excellent. Thank you for your time this morning. I suspend the meeting for a changeover of witnesses.

10:21

Meeting suspended.

10:29

On resuming—

The Convener: Welcome back. I am pleased to welcome to the meeting our colleagues Jeremy Balfour, Colin Smyth and Sarah Boyack, and Roz Thomson, who is head of the Scottish Parliament's

non-Government bills unit. Thank you for being with us.

Before I invite other members to ask questions, I will put some generic ones to you all. What do you consider to be the benefit of an SPCB supported commissioner? In your proposals, why have you opted for such a model over other options, such as a Government-supported body, which could also demonstrate independence from Government?

I saw Jeremy Balfour nodding, so I will go to him first.

10:30

Jeremy Balfour (Lothian) (Con): Good morning. Thank you for having us along to give evidence.

The simple answer is that I am not wedded to that model at all. I see the funding of a disability commissioner's organisation and how it functions as being the least important aspects of its operations. The disability community wants to have an independent voice on Government, health services and local government issues. How that organisation might be put together is a secondary consideration.

The reason for my going down the road that you have described was that that was the one that was taken for other commissioners in the past. At that point, it seemed logical to keep everything under the same roof, as it were. However, if the committee or the Parliament, either now or in the future, were to say, "Look—there's a different way of doing this that would provide economic benefit or allow us to pool services," that would not concern me. There are different ways of doing this, which we could perhaps explore later in the meeting. I am not wedded in any way to that one model.

You are right to say that there are existing models that work, and there might be others that you would like to explore. For me, the key issue is to get a disability commissioner in place and advocating on behalf of a community in Scotland that feels that it has been left behind and has, in practice, been left behind, both before Covid and certainly since then.

The Convener: That is interesting. We have both engaged with organisations such as the Scottish Commission on Social Security—SCOSS—so there are bodies that fulfil some aspects of that function. However, your argument is that there should be a comprehensive approach.

Jeremy Balfour: Yes. As you will be aware, SCOSS scrutinises legislative proposals from the Government to see whether they reflect what the disability community wants. The work of a disability commissioner would go much further.

The committee has already heard evidence from other commissions, but they have done very little work on disability issues, which is why the disability community feels that it has been left behind.

When I did my public consultation, people's responses were that they felt that they had been left behind. That was not just a feeling; it is backed by facts. I have just come from a meeting of the Social Justice and Social Security Committee on issues relating to older people and pensioner poverty. The community that is most left behind in that regard is the disabled community. A pensioner who is poor and disabled will really have to struggle against everything else.

I am not so worried about the model that the Parliament comes up with for how such a commissioner could operate. It could be done through the Scottish Government or perhaps with one central bloc that had an HR team that looked after all the commissioners and had all the backroom resources behind it. I know that the latter is a model that the committee has already explored. For me, that is not the issue; it is about establishing an independent disability commissioner who can advocate on behalf of disabled people in Scotland. The rest of it can follow on from that.

The Convener: Thank you very much, Mr Balfour. I am sure that we will come on to our witnesses' various areas of interest—in your case, the interests of disabled people and the operation of the current SPCB supported bodies.

You have just touched on issues that are experienced by older people, including pensioners, which helpfully segues into the area that Colin Smyth's proposal covers. Will you answer my question, Colin, please?

Colin Smyth (South Scotland) (Lab): I thank the committee for asking us along.

Like Jeremy Balfour, my starting point was very much the need for a strong independent voice—in my case, for older people. We had the stark eye-opening experience of the way in which older people were treated during the pandemic. We all saw the issues around "Do not resuscitate" orders, the challenges of loved ones in getting to see their relatives in care homes and the sheer appalling death toll of older people in care homes. That really opened my eyes to the extent to which the human rights of older people were being marginalised. In my view, there was a big gap when it came to strong advocacy for older people when those big decisions were made.

Why, specifically, should we have the SPCB supported model? First, the commissioner needs to be independent of Government and, crucially, they must be seen to be entirely independent of

Government. In my view, that would be strengthened by the Parliament, not the Government, appointing the commissioner. Secondly, the commissioner needs to have strong statutory powers, such as investigative powers. That was the overwhelming view that came across in the consultation on my bill, in which there was strong support for that particular model.

There is already a good example in the office of the Children and Young People's Commissioner Scotland, which has done outstanding work. It has conducted a number of important investigations and has made a real difference on mental health counselling in schools, standing up for the human rights of children in secure accommodation, and the effectiveness of policies and procedures on restraint and seclusion in Scottish schools. We already have a model that works, and I was very conscious of that model in putting forward my proposal for an older persons commissioner.

We are having a debate about the number of commissioners and the need to keep the costs of commissioners down through things such as shared services. That becomes easier if the commissioners who are most likely to share services are based on the same model. We have a tried and tested model for commissioners, and I believe that that is the best model for a commissioner for older people.

The Convener: You talked mostly about older people, but you also mentioned the Children and Young People's Commissioner. Sarah Boyack has a proposal for the unborn and future generations. Do you want to answer my question, Sarah?

Sarah Boyack (Lothian) (Lab): I, too, am happy to be in front of the committee today.

I looked at the model of the other commissioners and, indeed, the Auditor General. For me, it is about independence from Government but also accountability to the Parliament. There is a principle to do with supporting the work of the Parliament. I am conscious that some of our committees are quite stretched these days, given the work that they need to do, such as post-legislative scrutiny.

For me, accountability to the Parliament is critical. The issue is also about the responsibilities that the commissioner should have and the public duty that would come with my proposed legislation, and about clarity in the definition of wellbeing and sustainable development. There is also the opportunity to promote best practice, to carry out research, which would help with best practice, and to identify issues on which action is needed. There could also be investigations into public bodies.

The model is well established, and I looked at the best practice in what has been done. I agree

with colleagues about back-office stuff, especially in setting up a new commissioner. You can learn from those experiences, but it is a question of adding capacity and having a focus that we would not have without a commissioner. In my view, we need to have accountability to the Parliament, separation from the Government and the ability to contribute right across the public sector in Scotland. That is why my proposal is for the standard model of commissioner. I am happy to get feedback from colleagues around the room on that issue.

The Convener: I thank you all. That will be helpful when it comes to our further questions.

I have another generic question. Obviously, the realisation of human rights, sustainability and the wellbeing of people in different groups in our current society and future generations falls to the responsibility of ministers. As MSPs—parliamentarians—we consider those issues as part of our casework, our daily deliberations and how we hold the Government to account. Other public bodies, whether they are funded by the Scottish Government or the SPCB, are focused on human rights, value for money and delivery. Could you elaborate further on why you think that your proposals are necessary, given what is already in place?

Sarah Boyack: I will comment briefly on the issue of policy coherence. The Parliament has passed a large number of bills since 1999. More than 30 of those bills refer to sustainable development, but where is the policy coherence to join up the dots between those pieces of legislation?

I come back to the point about a long-term impact. Politics tends to be much more focused on short-term impacts. That is one of the issues that we face in embedding wellbeing and sustainable development in the work of the Government and public bodies. We have more than 130 public bodies out there. Who gives them advice? Some are large bodies, while some are very small. Where is that extra capacity? The work of a commissioner would increase the capacity of the Parliament and its ambition for the legislation that we pass—when we tick the box and move on—to join up. Policy coherence is absolutely critical.

Fantastic campaigners and lobbyists encourage us to ask questions and have a debate, but that is not the same as a more processed approach, through which somebody focuses on an issue all the time. Commissioners are appointed for a number of years, they are accountable to the Parliament and they are able to regularly update different committees—you might assume that a sustainable development commissioner would report to the Net Zero, Energy and Transport Committee, but, for example, the Future

Generations Commissioner for Wales has had an impact on transport and education.

It is a question of having policy coherence across the piece, which, without the focus of a commissioner, we would not get. That is the added value that would be provided by the commissioner that I have proposed, both in relation to the decisions that we make now and those that we make for the longer term.

Jeremy Balfour: I have three things to say. First, disabled people make up 20 per cent of the population in Scotland, which is not an insignificant number, and that number is growing, for various reasons.

Secondly, we need to follow the evidence on poverty, employability, the transition from education and all the other key issues that we talk about in the Parliament. On almost every occasion, disabled people have been left behind or find it hardest to access those services.

Finally, I will quote Murdo Fraser, who asked a previous panel:

“Are you telling me that, as it stands, you do not believe that the Scottish Human Rights Commission properly represents the views of disabled or older people?”—*[Official Report, SPCB Supported Bodies Landscape Review Committee, 27 February 2025; c 7.]*

The answer to that was, “We do not think that it does.”

To be honest, if the Scottish Human Rights Commission and other bodies were doing their jobs at the moment, perhaps we would not need a disability commissioner. However, the evidence is that, although those bodies are pursuing other very important issues, they are not dealing with disability issues. I do not foresee there being any change in that regard, which means that the 20 per cent of the population who have diverse needs and face diverse situations simply do not have a voice in the Parliament or the Government.

That does not mean that third sector organisations are not doing their jobs. They are doing their jobs very effectively, but there is no coherent voice of the kind that disabled people strongly feel is needed in Scotland.

The Convener: Thank you. I am sure that we will get into some of the points that you have raised when colleagues ask their questions.

Colin Smyth, do you want to add anything, or have colleagues covered that area?

10:45

Colin Smyth: I echo the points that have been made. During my discussions on the proposal for an older people’s commissioner, it has been put to me that the Scottish Human Rights Commission

already does the work that such a commissioner would do, but that is not the case. It is absolutely clear that there is a gaping hole when it comes to standing up for the human rights of older people, and I believe that a commissioner for older people would fill that gap. We can see evidence for that in the work that the children's commissioner has carried out for children and young people.

It has also been suggested to me that we should go back to having a minister for older people, but it is important to stress that the positions of commissioner and minister are very different. Ultimately, MSPs and ministers make policy decisions. At the end of the day, the buck stops with our democratically elected politicians.

However, in my view, there is still an important role for a person who is independent of Government to play in providing advice, putting forward proposals and carrying out scrutiny to a level that, with the best will in the world, individual MSPs do not have the capacity for. Because of their independence, the role of a commissioner is very different from that of ministers and MSPs. In addition, an older people's commissioner would fill a gap that is not being filled at the moment by other bodies in Scotland.

The Convener: You have given us lots to consider and to probe further. I hand over to Murdo Fraser.

Murdo Fraser: Good morning.

I will pick up on what Colin Smyth said, which is a good starting point. I want to follow up on the convener's thread. You will have followed the Finance and Public Administration Committee's discussions on the matter. The core of our work is to understand the role of commissioners and the gap that they are attempting to fill.

With a population of 5.5 million, Scotland is a relatively small country. We have 129 MSPs and 57 MPs, and we have 28 ministers and law officers, so we are not exactly undergoverned at the present time. What gap are commissioners filling? Is their existence simply an admission that the other current structures are not working properly? Is not there a better way to address the issue?

Given that we are relatively short of time, I will ask my second question at the same time. You have all made specific proposals, and there are other proposals out there that I have heard about. For example, it has been proposed that there should be a commissioner for individuals with autism—for the neurodiverse community. There will be a long list of other interest groups that believe that they should have a commissioner, too. Where do we stop? How many commissioners should we end up with—or are you simply saying, "I want my commissioner, and that'll be it"?

Jeremy Balfour is smiling, so I will go to him first.

Jeremy Balfour: I will address your second question first, but I will reverse it. Why are we pulling up the drawbridge now? In the current session of the Parliament, it has already voted to have a patient safety commissioner. Depending on how the votes go on the Victims, Witnesses, and Justice Reform (Scotland) Bill, we could also have a victims and witnesses commissioner. In this session, the Parliament has said that commissioners still have a role to play, and that position has been supported by all parties. Therefore, I reverse your question and ask why we should pull up the drawbridge now and leave behind 20 per cent of the population.

In response to your first question, in an ideal world, we would not need any commissioners at all, because MSPs, the Scottish Government and the third sector would all be doing the job. However, we have seen that that is not the case. The work of the children's commissioner has resulted in changes in the law—some of which I support and some of which I do not support—that would not have been made without the commissioner advocating very loudly to us as MSPs and to civic society that such change should happen.

We are all inundated with requests from people who have contacted us with their issues. There are lots of different issues around disability, in particular. Someone who has a visual impairment will—depending on how they deal with that visual impairment—want certain changes to be made, but two disabled people with two different disabilities might want very different things. Therefore, there is not the sort of unified voice that we get with other protected characteristics, so my suggested commissioner's role would be to bring people together so that we can have that more unified voice.

In the disability world, that voice is fractured for lots of reasons. The commissioner would be able to speak with such a voice not only to the Government and MSPs, but to health boards, local authorities and other statutory bodies. Let us be honest: it is a voice that is not really being heard in the Parliament. How many debates on disability have there been in the past nearly four years of this Parliament, even though 20 per cent of the population have a disability? We discuss other protected characteristics far more. They are all important, but 20 per cent of the population feel that their voice is not being heard.

Sarah Boyack: On Jeremy Balfour's comment about people's voices not being heard, even when people's voices are heard, what happens next? At a meeting of the cross-party group on sustainable transport the other week, we were talking about

disability, and we realised just what a huge project it is to make transport accessible. Our cross-party group is doing work on equalities. We will send it in to the Government, but again the question is: what happens next? In that respect, there is something to be said for the always-on approach of a commissioner, and having somebody in place who has that responsibility.

When I look back, I am struck by the work of the Christie commission over a decade ago and its message about investing now in order not to have to pay later, and keeping people well and healthy instead of trying to cure them afterwards, which is much more expensive. Moreover, we do not have a co-ordinated and coherent approach to the sustainable development goals.

We do not lack people lobbying us or coming up to us as multitasking MSPs on committees, in our constituencies and regions and in the chamber, but there is something to be said for having that other focus.

For me, it all comes back to having specific guidance, having best practice to look at and being able to get people around the table. Things will not happen without those.

Let me give you an example from Wales. We had feedback from the first Future Generations Commissioner for Wales, who talked about engaging with the Welsh NHS. A new hospital was being built, and when she asked about the climate impact, she was told, "That's not our job—we're the NHS." Then she asked whether they were going to put in a solar farm, and she was told that it would be a "nice to have". The solar farm was put in after that engagement and conversation, and it now makes a profit that goes into the Welsh NHS.

The fact is that everybody is just in their own bloc. A commissioner's role is additional to that of an MSP; they are not Government officials, and they are able to come back and report to the Parliament. I think that having commissioners adds capacity to our Parliament. The issue is how to manage them, which was the convener's first question. There are lessons to be learned, but if you just say, "Right—there'll be nothing", what happens to the issues that are not being addressed? For example, we have three climate acts, but we are still not cutting it on that matter.

Murdo Fraser: You and Jeremy Balfour have both made very compelling arguments for why there should be commissioners, but that leads me to my second question. Where do you draw the line? We could have commissioners for everything. Given that you could make a strong argument for commissioners in all sorts of areas, how do you set the criteria for when a commissioner is required?

Sarah Boyack: The fact that we are here today is part of that process, is it not? You have the criteria that were established by the Finance Committee and which we all look at when drawing up this sort of legislation.

In the end, it is an issue for parliamentarians. If members do not support our bills, they will not go through, and if the Government is not supportive of our proposed legislation and we do not get a majority for it, it will not go through. There is learning to be had from the existing commissioners and from looking at the gaps.

Murdo Fraser: I specifically want to ask you about the criteria. How integral to your proposal, as you developed it, were the criteria that were set down by the Finance Committee in session 2?

Sarah Boyack: They formed part of the consultation process, because we asked, "What is the purpose of a commissioner?" and "How would a commissioner work?"

One of the things that I was very conscious of was the issue of feedback after the establishment of a commissioner, and the need to find out whether the commissioner has made a difference.

The consultation process was good, and I am now at the point where my proposed bill is with the Presiding Officer. I have had to go through the financial memorandum, which includes various estimates based on our thinking about the experience of existing commissioners. We have thought about how we could reduce the costs while still having the benefit of that commissioner, because, however passionate I and others are about climate change, we are not going to make the difference on our own. We can ask questions, but there needs to be a focus to make it happen. Even if you get a minister who is passionate about the issues, they are not there forever, and neither are Governments. There is something important about the longevity of commissioners.

I am not here to say where you should draw the line—that is up to MSPs. However, having this debate will make people think more carefully about whether such a commissioner is the only way of proceeding. In my view, having looked at the Welsh example and at what is happening globally, I would say that it definitely works as a way to deliver climate ambitions.

Colin Smyth: It is important to put the issue in context. At the moment, there are seven SPCB supported commissioners with a budget of around £15 million—the Scottish Public Services Ombudsman accounts for half of that—so I do not think that we are being flooded by commissioners. We have 191 so-called quangos with a budget of £6.6 billion, which is maybe more of an issue than commissioners.

The Convener: I am sorry to interrupt you when you are in full flow, but it is important to note that there are a number of Government-funded commissioners in organisations. Part of the challenge that we face is that there are the SPCB supported commissioners and there are commissioners such as the Police Investigations and Review Commissioner, which is funded by the Scottish Government but is seen as being independent. Although we have been tasked with considering only the SPCB-funded bodies, we are conscious of the wider picture. I feel that it is important to emphasise that, for context.

Colin Smyth: Absolutely—and we can go beyond that and talk about the number of quangos whose combined budget is £6.6 billion. That raises a host of issues around shared services and scrutiny. The issue goes way beyond commissioners, and there is a feeling that commissioners are being singled out, particularly the SPCB supported ones.

We should look at the positives. The fact that proposals for commissioners are coming forward shows that it has been recognised that commissioners represent a positive policy intervention. We have seen positive work by the Children and Young People's Commissioner, which is a good example of something that is actually working, and I will come back to that later. We are not alone: every part of the United Kingdom has a children's commissioner. Further, Wales and Northern Ireland both have an older person's commissioner, and there is a big campaign to have one in England as well, which probably shows that there is recognition that having such a commissioner is quite a positive intervention that upholds the rights of older people in those countries. All proposals have to be considered on their merits, and my proposal will stand or fall on its merits—I hope that it stands, of course.

The final point that I will make on that is that it is quite difficult to say to older people that we are now full up with commissioners and that, if a proposal for an older person's commissioner had been put forward earlier, they might have got one, but they are not going to get one now.

You have to look at each proposal on its own merits. In my view, commissioners play a positive role, and the debate is about how we support commissioners and deal with the challenges around scrutiny, shared services and funding.

Do you want me to address the issue of the extent to which I looked at the criteria that the Finance Committee set out?

Murdo Fraser: Yes.

Colin Smyth: That was an important consideration, so I went through those criteria. My

starting point was that we needed somebody with an independent voice to stand up for older people, but I was conscious of the criteria. I went through each of the six principles in quite a lot of detail—they are set out in the consultation document and, I think, in the public papers for this meeting. I needed to satisfy not only the Parliament but myself that my proposal met those principles. I believed that, if it did not, there was no point in taking the proposal forward, because the principles are sound.

I will not go through all six principles, but I will give you one example. On the clarity of the remit, my proposed commissioner would have a very clear remit, set out in the proposed bill, to promote and safeguard the rights and interests of older people. That purpose remains very distinct from that of any other office-holder's post. I am very clear that there is a need for the role, and it very much meets the criteria, which were an important part of my consideration.

11:00

Murdo Fraser: Would your proposals not fit under the remit of the Scottish Human Rights Commission? Jeremy, that commission told you that it does not have the resource, so instead of having separate commissioners for disabled people and for older people, could the Human Rights Commission be appropriately resourced to take on those roles?

Jeremy Balfour: It is important to say that it could be doing that work already. It has chosen to put its resources into certain areas, and it has chosen not to put them into disability issues. We could give the Human Rights Commission more money and whoever is in charge of the organisation at the time could say, "Yes, we're going to sign up to that and we're going to do that", but three to five years down the line, when a new person with new priorities is in place, there is nothing statutory to say that it must continue to highlight disability issues. To be fair, it could have done such work in the past, but it has not. Unless we are going to absolutely change the remit of the commission and give it a whole new way of working, I fear that that simply will not happen in practice. We can put more money into it, but it still gets to decide what work it does. If it chooses not to address disability issues, that will take us no further forward.

Colin Smyth: To gain the support of older people, the commissioner needs to be a specialist older persons organisation, it has to involve older people in all aspects of its work, and its priorities must be informed by older people. There is a strong case for a stand-alone older persons commissioner. Currently, the Human Rights Commission does not carry out that particular role.

There is a strong case for commissioners in all these areas to work together under an umbrella of shared services and shared research facilities. However, to reform the Human Rights Commission effectively, we would still have to create distinct commissioners within that structure for older people, disabled people and children. We might come to do that eventually, but at the moment, there is a strong case for a stand-alone commissioner for older people. That role cannot be carried out simply by tweaking the Human Rights Commission.

Murdo Fraser: I have a final question for all three of you, but I am conscious of time, so please give brief answers. When a member proposes a new commissioner, the non-Government bills unit advises the member to discuss the proposal with other commissioners or bodies operating in the landscape that the proposal impacts on. Did you consult other bodies as recommended? If so, what did you discuss and how did it influence your proposal?

Sarah Boyack: Yes, I picked that up with the Auditor General, because I could see that some of the work that the Auditor General does is in the same field, although it is not the same work. In Wales, there is a relationship between the roles and there is liaison and clarity. There could be a memorandum of understanding so that neither body overreaches. However, that work is not done by the Auditor General, and it is not in their remit.

It is not the case that you would not talk to other organisations; there is lots to be learned from the children's commissioner's work with young people. When I did the consultation, I got positive feedback about having a distinct role that is independent from Government. If you are giving advice to 131 public bodies, there is a point to be made about learning from best practice and experience.

The main discussion that I had was with the Auditor General. I did not talk to other commissioners per se, because they have different roles and I was looking more at the sustainable development principles, sustainable development goals and wellbeing. I see it more as a cross-Government issue of policy coherence and policy development.

Colin Smyth: Yes, absolutely, I consulted the Scottish Human Rights Commission and the Equality and Human Rights Commission. You will not be surprised to know that part of those discussions was whether we could change the role of the Scottish Human Rights Commission to incorporate a lot of the proposed work.

My engagement with those commissions highlighted that, in my view, there is still a gaping hole when it comes to older people, but it also

demonstrated the importance of putting in place proper processes so that work is not duplicated. In my consultation document and proposals, I have set out that it is important that we do not duplicate work, that the Scottish Human Rights Commission and others carry out distinct work and that an older people's commissioner would carry out different work. We should not have duplication.

I also looked closely at the effectiveness of the Children and Young People's Commissioner Scotland—I think that that office is very effective—and at the work of the Older People's Commissioner for Wales and the Commissioner for Older People Northern Ireland. There was an extensive look at a number of organisations, including specific consultations with the Scottish Human Rights Commission and the Equality and Human Rights Commission, before I made my final proposal.

Jeremy Balfour: I met a number of the commissions, but the most useful meeting was the one with the Children and Young People's Commissioner, because that office's set-up is quite similar to what I propose. Like Colin Smyth, I looked at the issue of duplication, and I had conversations with the SHRC about its remit and how it works. Those conversations were robust on occasions.

Murdo Fraser: Thank you.

Lorna Slater: There is absolutely no doubt about the importance of the topics for the proposed new commissioners, but our discussion is about how we can most effectively represent those interests. Someone might be old, disabled, a victim of crime and neurodivergent, so separating advocacy roles might make it harder for people to get the support that they need, because they might not know where to go.

For the record, I note that the office of the Children and Young People's Commissioner, which has been held up by you and other witnesses as an example of best practice, predates the Scottish Human Rights Commission and has a substantially different remit under the legislation. In their evidence, the SHRC and the Scottish Public Services Ombudsman described frustrations about the limitations of their roles under the legislation. Instead of creating new commissioners, why do the proposals for improved advocacy not include legislative changes to redefine the roles of existing bodies to give them powers that are more like those of the Children and Young People's Commissioner?

Jeremy Balfour: I am slightly further down the road than my two colleagues, in that a stage 1 report has been produced on my bill. Redefining the Scottish Human Rights Commission would probably be too broad an area for a member's bill;

such a bill would need to be led by the Government or a committee. Having consulted the office of the Children and Young People's Commissioner on how it works, I have tried to mirror in my bill many of its powers. In fact, my bill goes further, because the Children and Young People's Commissioner said, "Here are some of the weaknesses—we wish that we had these powers," so we added those powers to my bill.

Ultimately, if we are going to change the Scottish Human Rights Commission or do something different, that will take time, and it will not happen in this session of the Parliament. The issue might be back on the agenda in the next session of the Parliament, but we do not know what the Government will be or what the priorities of MSPs will be. If my bill is not passed, the disability community will have no voice for two, three, four or however many more years. It is really important that my bill is passed at the moment, so that there is that voice at the table.

There are legitimate calls for a big debate on what the landscape should look like. However, my concern is that, if there is no one to advocate for the disability community in Scotland, it is inevitable that that voice will not be heard. Let us have that debate, but it will not happen fully in the next 12 months—there will certainly be no worked-out legislation in the next 12 months.

There are legitimate questions about how such bodies are funded and where they sit. The question that the Parliament has to ask in the next few months is: do we believe that there needs to be an independent commissioner to advocate for disabled people? That is the issue that we need to address. Everything else will follow from it.

Sarah Boyack: There might be different models that could be used. However, independence from the Government is critical. There is a challenge for many existing bodies: you could ask them to increase their number of priorities or to do more coherent cross-Government or cross-policy thinking but, if it is not in their day job and they do not have the capacity to do it, it will not happen.

One part of my proposed bill is about establishing a commissioner, and two parts are about having a clear definition of sustainable development and wellbeing, and introducing a public duty to promote them. However, even if both those components of my bill were to be passed, the extra scrutiny still would not happen—because who would be checking up on it?

There are different types of commissioners, and I know that some of them have different roles. However, we need to think about what changes we want to make. For me, the changes are about implementation—making things happen and

accountability—and that comes back to the Parliament.

The Convener: I have a brief supplementary question on that. I appreciate the importance of the points that Sarah Boyack makes. We have heard from the Scottish Human Rights Commission, which has published documentation in recent months, about its concerns about the delivery of policy. We have heard from the Auditor General this morning about how Audit Scotland monitors financial spend, as does the Accounts Commission for local authorities. The SPSO has a role in implementation. I do not discount the points that you have made, which are the reality of the situation. However, as things stand, is it not the responsibility of all the bodies that we have to question and improve scrutiny of implementation?

Sarah Boyack: It is simply not happening, though. We need a push to make it happen and to kick the issue up the agenda. If organisations do not see that role as an immediate part of the day job, who is going to do it?

All public sector organisations are under pressure. One group that I have not mentioned so far that would be covered by my proposed bill is local authorities. We know that they are under pressure, and my bill would help by giving them support and advice and helping them to share best practice. It would also provide focus, because it would mean that there could be an investigation if it was clear that clearly defined legislation was not being implemented. It is about going beyond thinking about the issue as a nice to have or thinking, "We've legislated on this, so we tick the box and move on." The scrutiny is not happening in real life.

The Convener: Your points about scrutinising and monitoring implementation are extremely important. As things stand, there is a question for us about our examination of that more widely and across the bodies. Thank you for elaborating further on that.

I am sorry that I interrupted you, Lorna.

Lorna Slater: That is fine. I wonder whether Colin Smyth wants to come in briefly on that point before I go to my next question.

Colin Smyth: I will be brief. I explored the issue in discussions with the Scottish Human Rights Commission. I also discussed it with ministers in the context of the proposed human rights bill, because I assumed that that would be happening some time soon. Obviously, it is not happening, so those discussions did not go very far.

However, in those discussions with the Scottish Human Rights Commission, it said openly that any change in its structure—it is understandable that its starting point would be its structure—would

involve having rapporteurs on disability and older people. I think that the approach should be stronger than that but, even in those discussions, there was a recognition of the need to have something distinctive for each group.

We currently have a children's commissioner, and I see no reason why we cannot look at how to incorporate that in a wider structure. However, at the moment, there is a strong case for a stand-alone older people's commissioner. It may be part of a wider structure in the future, but even the Scottish Human Rights Commission thinks that there is a need for that distinctiveness.

Public engagement is important for commissioners. Young people engage with the children's commissioner, and older people in Northern Ireland and Wales engage with their respective older people's commissioners. It is maybe not as easy for the public if we say, "If you have a concern or issue over older people, you need to engage with the Scottish Human Rights Commission." People in Wales and Northern Ireland know what an older people's commissioner does, which is important.

11:15

Lorna Slater: Thank you. The committee's role is to look at the potential structures, as opposed to any particular commissioner's merits, because they will be decided on by the Parliament.

We have discussed how effective committees are in scrutinising SPCB supported bodies—how much time and bandwidth they have to spend with those bodies—but we have mentioned that several SPCB supported bodies do excellent work on really important things that is not fed into the Parliament at all. I am not even sure that we are using the bodies that we have effectively, in either direction. Do you have any thoughts about that?

Parliamentary committees are already having trouble scrutinising the SPCB supported bodies that we have. If there were more bodies, the committees would be spread even thinner. Equally, are you concerned that SPCB supported bodies are not having their fantastic work fed back into the Parliament? Would not the creation of more commissioners just make the level of scrutiny worse and reduce effectiveness?

Colin Smyth: As a committee convener, I get that committees have a lot of workload challenges—as a member of the Economy and Fair Work Committee, which I chair, you know that full well—and we have difficulties every time we discuss our work plans. I happen to believe that need to do more at the committee level of what we might call routine scrutiny than we currently do. Often, there is a desire to do inquiries into lots of things, but are we getting routine scrutiny correct?

As I mentioned earlier, there are a host of bodies beyond the commissioners. Even in my committee, we look at Consumer Scotland, enterprise agencies, the Scottish National Investment Bank and all sorts of other organisations. A piece of work should be done that considers the full extent to which committees are effectively scrutinising all those different bodies. When it comes to how committees are structured, that should be a higher priority.

For the stage 1 process, my proposed bill is to go to the Equalities, Human Rights and Civil Justice Committee for scrutiny. In the case of commissioners, I believe that a scrutiny process should happen annually. The committee in question would scrutinise the commissioner's work, whether their annual report has delivered particular outcomes and how effective the outcomes are. Those—if you like—service committees would have a role to play over and above that of the SPCB. That would take the weight off it, which is why it should happen. It would not be done too regularly, but nothing is wrong with the relevant commissioner lodging an annual report. All committees should be regularly scrutinising commissioners over and above the SPCB's work.

Lorna Slater: Do Sarah Boyack or Jeremy Balfour have any comments?

Sarah Boyack: Pressure on committees is definitely an issue. They need expertise and support, as we can see when committees appoint experts for short pieces of work in addition to the Scottish Parliament information centre's capacity. We could increase that capacity through annual reporting, so that commissioners report to specific committees. A commissioner would have an expectation of which committee it might report to, but it might have done work in one year that relates more to another committee than the one to which it previously reported, so that would be an issue.

The points that you make about pressure on the SPCB are important. Could the Scottish Commission for Public Audit provide overarching support that would help to prevent the SPCB's having to do everything? It goes back to the question earlier about why we choose the SPCB model—we do so because we know it and it works. That relates to why the committee is doing the inquiry. What lessons can be learned?

There are ways in which we could support commissioners without overwhelming the SPCB, and if we think about what capacity exists, there are definitely wins to be had, which would be a big benefit for our committees and help us to learn from best practice and experience.

Jeremy Balfour: It comes down to personalities. Over the past 20-odd years, different children's commissioners have had different influences and different ways of doing the role. Getting the right person in post is key.

My bill includes a duty on the disability commissioner to provide an annual report to the Parliament, which would go to the appropriate committees. However, I think that Sarah Boyack is right. If my bill succeeds, there would be an opportunity for the commissioner to raise issues with MSPs on an on-going basis. They would not simply report once a year but would build relationships with the Government, MSPs and other people so that the voice of disabled people could be heard. I think that the commissioner would allow that to happen.

Lorna Slater: Thank you.

Richard Leonard: In the interests of time, I will ask just one question that I have put to the existing commissions and commissioners. To what extent do you consider the proposed commissioners that you have in mind to be regulatory commissioners or advocacy commissioners, and to what extent do you see their role as being reactive rather than proactive?

Jeremy Balfour: That is a good question. I see the proposed disability commissioner as being proactive and reactive.

Richard Leonard: What should the balance be between the two?

Jeremy Balfour: I think that proactive—

Richard Leonard: Can you give me percentages?

Jeremy Balfour: I think that my proposed commissioner should be 70 per cent proactive and 30 per cent reactive.

I will give a quick example. Let us say that a disability commissioner is appointed. In their first year, that individual will have to go out to the disabled community. The commissioner should not expect that community to come to them, but should go to it. They should spend six to nine months meeting as many people as they can so that they can understand the priorities of the disabled community. Most of us know what those priorities are, but let us make sure that they are right.

The commissioner would need to work out how to advocate for those priorities. They would need to consider whether a particular priority is a local government issue, a Scottish Parliament issue or a health board issue. The commissioner would have to talk not only to you—or, rather, to your successor, as you will not be here—but would have to talk to the local councillor in Dundee to

find out why, for example, there are no accessible toilets in that area. There might be accessible toilets in the Dundee area—I am just inventing an example.

The commissioner would have to go to the health board and ask it, “Do you know the effect of what you are doing is having on disabled people?” If the commissioner were to talk only to the Scottish Government and the Scottish Parliament, they would not be doing their job: they would need to talk to other bodies, as well. It is clear that the next Government will introduce legislation that will have an effect on disabled people. The commissioner would need to react to that legislation and to put across their points to MSPs.

I say this very carefully, but a person who is not disabled will not know what effect certain things will have on individual lives. I have no idea what it is like to have a visual impairment, nor do I have any idea what Pam Duncan-Glancy goes through as someone who is a wheelchair user. The disability commissioner would need to represent many different voices. It would not be as easy as going to one or two people in order to understand how the disabled community feels. They would have to get the views of people with different disabilities, some of which are hidden and some of which are very obvious. They would need to bring that information together and to ask the health boards and the Government, “Do you understand what effect this will have?”

Therefore, I think that the role of the disability commissioner would be a very proactive one, which would involve listening to the disabled community and advocating on its behalf.

Richard Leonard: Thank you—that is helpful.

I put the same question to Colin Smyth.

Colin Smyth: My proposal for an older people's commissioner goes beyond advocacy, although that would be an important part of the commissioner's work. You can get a flavour of the range—

Richard Leonard: Give me a percentage, Colin.

Colin Smyth: The extent of the reactive work would depend, for example, on whether a parliamentary committee—

Richard Leonard: On the question about an advocacy role versus a regulatory role, what do you think the balance would likely be?

Colin Smyth: A lot of the commissioner's work would be proactive work that would relate to proposals on regulations or to advocating for changes in policy. The vast majority of the work would be proactive.

The extent of the reactive work would depend on whether, for example, the Government was consulting on an issue that would affect older people. Obviously, the commissioner would take part in that process.

However, my proposal is absolutely about the commissioner having a proactive role. You can get a flavour of my thoughts on that by looking at the work of the children's commissioner and the balance in the work that they have done.

Also, you can look at the example of the Older People's Commissioner for Wales and the balance in that respect. The focus of that office has been very much on proactive work, and it has been very effective. For example, it has made proposals on increasing security of tenure for care home residents, creating new guidance on visiting care homes, embedding human rights in inspection frameworks, increasing care home residents' access to independent advocacy, and producing good-practice guidance for employers in order that they avoid unconscious bias in the workplace.

Therefore, that commissioner has played a very proactive role and, importantly, has added to what already existed. The office has provided real added value to the debate on improving public policy in a very proactive way.

As I have said, the reactive element would depend, to an extent, on what the Government and committees were consulting on at any moment in time.

Richard Leonard: But you see your proposal as being primarily an advocacy commission.

Colin Smyth: It would be an advocacy commission, but it would also put forward proposals on policy changes.

Richard Leonard: It will not be regulating things itself.

Colin Smyth: No, it would not necessarily do that.

Richard Leonard: Okay. I will bring in Sarah Boyack.

Sarah Boyack: First, my proposed commissioner would implement the public duty in legislation and according to the definition that would be set out in the bill, which is about policy coherence. The first job of the new commissioner, in that case, would be to raise awareness—to make sure that the 131 public bodies and 32 local authorities were aware of their new public duties, that they were interpreting them according to the commissioner's own understanding, and that they were providing clear guidance, advice and support. I am not going to split those duties up into percentages, but I will say that that would take up the new commissioner's first year. The

commissioner would thereafter start holding bodies to account. Their investigatory powers and capacity to address non-compliance would come further down the line, and they would make people aware of the powers at the very start.

There have been two such commissioners in Wales: they have been different people with different approaches, but under the same legislation. Interestingly, there has been a Senedd committee review of the impact of commissioners and what can be learned in that respect, as well as of their day-to-day work. Therefore, you could review the commissioner on an on-going basis. I suggest, though, that they be appointed for a period of years, with the maximum time being, say, eight years. You would have a discussion about priorities when they were appointed in order to ensure that they had a plan that they were clear about. It is all about holding the commissioner to account and their being up front about their priorities when implementing the legislative duties that they have been appointed to deliver.

Richard Leonard: Would they have any powers of enforcement, for example?

Sarah Boyack: The issue of non-compliance is raised as part of my proposed legislation, because it would put in place a legal requirement to implement the public duty. That sort of thing will come with time, I think. In the early years, the role would be much more to do with engagement and encouragement, but with clear advice and guidance. A lot of that would come in the policy memorandum, and the guidance that will come out alongside the proposed legislation, but it would be built in from day 1.

Richard Leonard: Okay. Thank you

The Convener: I am conscious of time, colleagues. If there is anything that you really want to tell us but have not had the chance to say yet, please let us know.

Lorna Slater: I have a question, convener, but only if there is time for it.

The Convener: Please be very quick.

Lorna Slater: Colin Smyth alluded to the idea of having a minister for X—that is, a minister to cover whatever advocacy we might be looking for. However, everyone is of the view that such things should be independent of Government. Is there any value at all in having, say, a minister for disabled people or a minister for older people to provide that complementary function and bring that advocacy into Government?

Jeremy Balfour: Yes.

Colin Smyth: Absolutely. We previously had a cabinet secretary who had "Older People" in their title. The Government will argue that ministers

have that remit, but putting that sort of thing front and centre in a title is important—that was certainly in the feedback that I got. However, that is very different from having an independent organisation such as a commissioner.

Sarah Boyack: Commissioners are independent, and they are also there for a set period. That is very different from ministers, who do not know how long they are going to be there for and, indeed, do not know what their role will be, because it can shift. When I was a minister, I set up cross-ministerial work on sustainable development, but those kinds of things come and go.

A commissioner is a robust position that is held by a person who is accountable to the Parliament and who will have a plan. That function can be complemented by ministers but, in a way, you do not want either one or the other. We would want ministers to be working on such issues all the time, although, from my perspective, it should not be about one minister doing just one thing: we need cross-Government work. There are also thousands of officials who should be working on the issues.

There will be leadership from ministers, there is the work of Government itself, and there are the public bodies and local authorities. We must ensure that all of them deliver on the ambitions that are set out in legislation that we pass in the Parliament.

Lorna Slater: Thank you.

The Convener: Those were good and important points to finish on.

Colleagues—thank you very much for your time this morning, for helping us to understand the merits of your proposals and for your comments on and insights into the wider questions that we are considering in the review. I am really grateful for your coming and answering our questions.

That concludes the public part of our meeting. As was previously agreed, we will move into private session.

11:30

Meeting continued in private until 11:40.

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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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