

# **REVIEW OF SPCB SUPPORTED BODIES COMMITTEE**

Tuesday 9 December 2008

Session 3

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## **REVIEW OF SPCB SUPPORTED BODIES COMMITTEE**

### **2<sup>nd</sup> Meeting 2008, Session 3**

#### **CONVENER**

\*Trish Godman (West Renfrewshire) (Lab)

#### **DEPUTY CONVENER**

\*Jamie Hepburn (Central Scotland) (SNP)

#### **COMMITTEE MEMBERS**

\*Jackson Carlaw (West of Scotland) (Con)

\*Ross Finnie (West of Scotland) (LD)

\*Joe FitzPatrick (Dundee West) (SNP)

Johann Lamont (Glasgow Pollok) (Lab)

#### **THE FOLLOWING GAVE EVIDENCE:**

Paul Grice (Scottish Parliament Clerk and Chief Executive)

Ian Leitch (Scottish Parliament Directorate of Resources and Governance)

Tom McCabe MSP (Scottish Parliamentary Corporate Body)

John Swinney (Cabinet Secretary for Finance and Sustainable Growth)

#### **CLERKS TO THE COMMITTEE**

David Cullum

Claire Menzies Smith

#### **LOCATION**

Committee Room 4



## Scottish Parliament

### Review of SPCB Supported Bodies Committee

*Tuesday 9 December 2008*

[THE CONVENER *opened the meeting at 10:31*]

### Decision on Taking Business in Private

**The Convener (Trish Godman):** Good morning and welcome to the second meeting in 2008 of the Review of SPCB Supported Bodies Committee. I have received an apology from Johann Lamont. I remind committee members and members of the public to switch off mobile phones and BlackBerrys.

The first decision that the committee must take relates to its consideration of themes arising from evidence that we will hear at this meeting and how best to take forward the inquiry's themes. The outcome of the discussions will feed into the committee's report, which will be a public document. Members are also asked to consider discussing the committee's work programme in private, as that will include discussion of potential witnesses in relation to the provisional timetable. The committee's decisions will be made public via the minutes of the meeting. The question is, therefore, that we take items 3 and 4 in private and that, at future meetings, we consider the main themes arising from the evidence in private. Is that agreed?

**Members** *indicated agreement.*

## Review of SPCB-supported Bodies

10:32

**The Convener:** I welcome our first witnesses. Thank you for attending and giving evidence to our inquiry. We have Tom McCabe MSP, member of the Scottish Parliamentary Corporate Body; Paul Grice, clerk and chief executive to the Scottish Parliament; and Ian Leitch, director of resources and governance in the Scottish Parliament.

It says in my briefing that, before we move to questions, Tom McCabe should give us an "opening", so he can sing or dance if he likes, but I am sure that he will give us a—

**Tom McCabe (MSP) (Scottish Parliamentary Corporate Body):** I think that you would probably prefer me to speak, convener.

**The Convener:** Yes, I probably would.

**Tom McCabe:** Good morning and thanks for the opportunity to give evidence to the committee. As you will know, I am here today on behalf of the SPCB, which has responsibility for funding the office-holders who are within the remit of the committee's inquiry. I thank the committee for taking on this important piece of work. I am strongly of the view that we should not miss the opportunity to consider the structure around the office-holders, based on the Parliament's experience from its first nine years.

I hope that the committee's work will point us to three desirable outcomes: better value for the public purse; higher standards of output from individuals in the bodies concerned; and services for the general public that are more understandable and easier to use. We on the SPCB fully recognise that, although the SPCB funds the bodies in question, they are parliamentary bodies, so it is only proper that Parliament has a say in their future structure. I welcome the committee as a means of helping to deliver our aims.

I want to say a few words on discussions in the SPCB about the future structural landscape that we envisage. In proposing a structure for discussion, I am aware that some members of Parliament and stakeholders on whom our proposals have a direct impact may hold a different view from that of the SPCB. It will be interesting to hear those views as the committee's inquiry progresses.

The committee will have received a written submission from the SPCB. I do not propose, in the time that is available to me, to go over everything in the submission. However, I reiterate

that our submission's principal proposal is to merge the existing six bodies for which the SPCB has responsibility into three bodies. I make it clear that our proposals are for a structural merger of the bodies and that the functions that the existing bodies undertake should remain, although how those functions are executed could of course change.

The three new bodies that we propose are a complaints and standards body, a rights body and an information body. The complaints and standards body would undertake the functions of the Scottish Public Services Ombudsman as well as the functions that, in his statement last month, the Cabinet Secretary for Finance and Sustainable Growth recommended should be subsumed into that body. Those include the functions of Waterwatch Scotland and the prisons complaints function. The new body should also undertake the functions that are currently undertaken by the Standards Commission for Scotland, the Office of the Chief Investigating Officer, the Commissioner for Public Appointments in Scotland and the Scottish Parliamentary Standards Commissioner.

I acknowledge that the inclusion of the functions of the Scottish Parliamentary Standards Commissioner may be more controversial than that of some of the others, given the direct reporting mechanisms that exist between the commissioner and the Standards, Procedures and Public Appointments Committee. I also acknowledge that the members of the Standards Commission for Scotland and the chief investigating officer are ministerial appointments. The Government will have a view—a positive one, I hope—on the suggestion that we merge those bodies with parliamentary bodies.

The second new body would be a rights body whose functions would comprise the existing functions of the Scottish Human Rights Commission and Scotland's Commissioner for Children and Young People. The functions that the two undertake are closely related to human rights, so we consider that merging them would be sensible.

The final body that we propose is an information body, which would comprise the Scottish Information Commissioner as a stand-alone body, as at present. Our view is that the functions that the commissioner undertakes would not sit neatly with either the complaints and standards body or the rights body.

I realise that a lot of detail must be added to those suggestions. That may be covered in the discussion that will follow. In any event, we will do our best to answer any questions that the committee may have.

**The Convener:** I will kick off by asking for some clarification. It would help the committee if you told us about the budget and staff of the bodies that are supported by the SPCB. We will have to explore those issues.

**Tom McCabe:** We currently support the Scottish Public Services Ombudsman, the Scottish Information Commissioner, the Scottish Parliamentary Standards Commissioner, Scotland's Commissioner for Children and Young People, the Commissioner for Public Appointments in Scotland and the Scottish Human Rights Commission. Between them, those six bodies employ about 96 full-time-equivalent staff.

**Jamie Hepburn (Central Scotland) (SNP):** You said in your opening statement that you want a more streamlined process that is easier for the public to understand to arise out of the committee's deliberations. That is fairly similar to some of the stuff that the Scottish Government has talked about. You have accepted the Cabinet Secretary for Finance and Sustainable Growth's suggestion that the functions of some bodies that the Government supports should be transferred to the SPSO. Is it fair to say that there is a degree of overlap between the SPCB's proposals on commissioners and public bodies and those of the Scottish Government?

**Tom McCabe:** We are certainly working in parallel streams. We have had discussions with the Scottish Government and the cabinet secretary. Sitting behind that is a wider view in Parliament that now is an opportune moment to review what we did in the first nine years and that, with the wisdom of experience, we perhaps would have done things slightly differently. That is coming together in the thinking that is emanating from the SPCB and the Scottish Government.

**Jamie Hepburn:** You have led into the follow-up question that I was going to ask. What you say reflects your written evidence, in which you suggest that it is time to "look afresh" at the structures,

"based on the experiences and lessons we have learned over the last few years."

Will you flesh that out a little? What are some of the experiences and lessons that we have learned? As a new member of the Parliament, I am particularly interested in that.

**Tom McCabe:** I think that it is fair to say that, in the first two sessions of Parliament, there was—with the best of intentions—what I have described as a degree of commissioneritis. Members were keen to address shortfalls that had existed in the past and to deal with issues that had cropped up during the first two sessions of Parliament. The solutions that Parliament came up with were discrete but, as time has passed, we have seen

that some of the functions could be brought together. One of our proposals is to merge the children's commissioner with the Scottish Human Rights Commission. We have had the opportunity to stand back and see that there is great similarity in the functions of the two bodies in respect of rights, particularly human rights. There is an opportunity to bring together bodies that were previously viewed in isolation. The experience of seeing them in operation has led us to think that what we looked at in isolation in the past could now be looked at slightly differently.

**Jamie Hepburn:** So there was perhaps a degree of overlap in the intentions that lay behind the creation of the different commissioners and commissions and, now that the matter has been thought through more thoroughly, it appears that the functions should have been put together. That is reflected in your very specific recommendation that we go from six bodies to three. What process did the corporate body go through to come to that recommendation? Was evidence sought, or is it an opening gambit?

**Tom McCabe:** The recommendation draws on the corporate body's experience over the past couple of sessions and the pleadings that it has received from the current and previous Finance Committees, which have expressed concerns about overlap and cost. A previous Finance Committee report pointed us in this direction. The corporate body has looked at the bodies over time and received annual budgets. On some occasions—not so much this year, I am happy to say, but in previous years—there were robust discussions with commissioners and bodies about the budgets that they were proposing. That is only one example. Although our approach is influenced by budgetary concerns, it is not predominantly driven by them.

**Jamie Hepburn:** I have more questions, but we can perhaps come back to them.

**Ross Finnie (West of Scotland) (LD):** I would like to pursue the issue. The committee has been asked to do two things. First, as Tom McCabe said in his opening remarks, we have been asked to take cognisance of what has happened over time. Secondly, we have been asked to consider the several reports that have been produced on the efficiency or otherwise of complaints and regulatory processes.

We are being asked to address these bodies specifically because, as Tom McCabe rightly pointed out, they are the creations of the Parliament, so it is right that a parliamentary committee should consider them. It is clear that although, as Crerar has suggested, we can look at this as a huge opportunity for improvement, before we make any recommendations we must have regard to the impact that any changes might have

on the delivery of the work of the commissioners. To do that, we will require evidence.

I am puzzled by the corporate body's submission. I would have expected to have received from it a narration of why it believes, referring to Crerar, the Finance Committee or others, that there is overlap, wasteful expenditure, inefficiency and so on. Instead, the corporate body has rushed straight to a conclusion. Like Jamie Hepburn, I am interested in what evidence the corporate body took that enabled it to be satisfied, before it came to that conclusion, that it had considered the impact on the functions. I will come separately to the evidence of inefficiency, but I will first deal with the clear recommendation from the corporate body to streamline the bodies in this fashion. What evidence did the corporate body take before coming to that conclusion? Did it assess the impact on the work of the commissioners?

10:45

**Tom McCabe:** We looked at functional realignment first and foremost. We can arrange a session to take evidence or we can fall back on the experience of the current and previous corporate bodies. I mean no disrespect when I say that we are better informed by experience over time than by a short-life look at an issue. Experience has informed the corporate body and the officials who serve us that there could be a better way of doing things. As my submission says, different parliamentarians might take different views. I would be surprised if some of the stakeholders did not disagree with the proposal to an extent. At the risk of being cynical, I say that I have met few people who do not try to defend their empire.

Our proposal is fashioned by experience. I make it clear that the corporate body is happy to take away its proposal and provide much more detail about how that could come about, if that would be useful to the committee. As the corporate body funds the bodies and has the experience, it would be happy to supply further papers that provide more detail behind the proposal.

**Ross Finnie:** I am interested in your experience—that is what the committee wants to hear. However, I am puzzled about whether the corporate body's experience is of many references to it by people who have used the commissioners' services—that is to do with policy—or of overlaps in financial functions, physical structures and all the other matters to which the Finance Committee's report and the Crerar review refer and into which the corporate body could give us a personal insight. After all, Crerar tends to generalise, although the report runs to 300 pages, and so does the Finance Committee. I am

genuinely interested in the corporate body's experience, but you suggest that your overwhelming experience relates to the commissioners' functions rather than their administration.

**Tom McCabe:** That is not the case—our experience relates very much to the latter issue. Individuals who might complain or offer a view on the service that they have experienced tend to approach the Government rather than the corporate body, which administers the bodies. I mean no disrespect to the Parliament or to the body that looks after its administrative affairs when I say that the public are not greatly aware that a thing called the Scottish Parliamentary Corporate Body exists and, to be frank, we do not particularly need to engage in a public relations campaign that makes them more aware, because we are largely behind-the-scenes administrators.

I do not know whether the example is appropriate, but I am not telling tales out of school if I say that one commissioner proposed a budget increase of about 6.1 per cent and suggested that that followed a robust zero-based budgeting exercise. I pointed out from my experience that that must have been one of the few such exercises—if not the only one—to produce a request for a budget increase at double the inflation rate. After a single discussion, we settled on an increase of 2.9 or 3 per cent. That suggested to me that such bodies could be administered a bit differently and better. That is just one example—there are others—of how, when we follow the tendency to put activities in silos in public life, people defend and try their best to expand those silos. That has been the experience in public life. Our proposal would mitigate that to a degree.

**Jackson Carlaw (West of Scotland) (Con):** I thank you for the refreshing candour in your opening remarks, which hinted at commissioneritis. I appreciate the suggestion that the various operations for which the SPCB has responsibility should be merged. You have hinted at one of the challenges, which is the defence of empires and everything that goes with that. As you have approached the issue and arrived at that recommendation, what challenges do you think will present themselves in effecting the change, and what practicalities might intrude on its being deliverable?

**Tom McCabe:** One of the challenges might be that individual stakeholders defend the status quo. An example of that, from a parliamentary perspective, might be the role of children's commissioner. Some people were passionate about creating that position, and they might worry greatly that merging it with another body might dilute its functions. One of the challenges for us

would be to offer reassurance that we are not trying to alter the functions of the children's commissioner but simply trying to streamline administration.

**Jackson Carlaw:** That is a political challenge, in terms of the formidable representation that might follow from concerns about the recommendations. Sometimes when things have been established, they have a rhythm of their own and, although it might seem sensible to bring organisations together, the practical element is more complicated. Do you believe that the practical element, notwithstanding the political reassurance, is perfectly achievable?

**Tom McCabe:** Yes, I think so. In the final analysis, a lot of committed professionals are involved. There are always people who will defend their territory, but I am sure that, between the committed professionals who work within the bodies and the expertise that exists among the parliamentary officials who serve the corporate body, we can find a way to bring the bodies together.

In our discussions with the minister, there is a will to try to make this happen—even in relation to the possibility of merging ministerial and parliamentary bodies. It seems that there will be a fair movement towards ensuring that, whatever our final decision is, we can put it in place timeously and effectively.

**Jamie Hepburn:** It is always said that the devil is in the detail with such things, so I have a couple of questions on the SPCB's specific recommendations, and on the terms and conditions—for want of a better term—of the people who have been, or will be, appointed.

In your written evidence, you make a clear recommendation that individual commissioners should in future be appointed for a single term, rather than being able to be reappointed. Why have you come to that conclusion? How does it fit in with the fact that some people who are in position just now have come into post under a set of guidelines that may state that they are eligible for reappointment? How will that change be brought into effect?

**Tom McCabe:** We recently gave evidence to the Scottish Commission for Public Audit with regard to the Auditor General for Scotland and other such posts, and that particular issue came up. We said then—and we still hold this view—that experience suggests that the reappointment process often largely involves going through the motions. In practice, it becomes difficult, although not impossible, not to reappoint. We live in an increasingly litigious society and the advice that politicians or people on an appointment panel get from human resources and legal professionals is



that there has to be a distinct and defensible set of circumstances in place not to reappoint.

We felt that, although the reappointment process is pretty involved, it largely consists of going through the motions. Some people might not like to hear that, but it is the truth. It would be a brave set of individuals who took the decision not to reappoint. I am not saying that that is impossible or that it has never happened but, in the main, reappointment would take place. We have concluded that it would be better to appoint someone for a reasonable length of time, for it to be clear that the appointment is for a single term and for the terms and conditions to reflect that. In light of our experience, we feel that a single term would be better than a reappointment.

**Jamie Hepburn:** We do not have that system now but we have people in place, so how would the corporate body propose moving towards a new system?

**Tom McCabe:** The legislation would have to take care of that. Perhaps Paul Grice will give you a bit more detail.

**Paul Grice (Scottish Parliament Clerk and Chief Executive):** It is about expectations. Three commissioners are coming up for reappointment in the next few months, and the corporate body has taken a view that they should be offered fairly short terms of appointment. If the committee were to go down the route suggested, it could be effected in law, but there would be an onus on the Parliament to make it clear to any commissioners who take up appointments that that was what was happening. That is how to move forward. It is good fortune that half the commissioners are coming through the process now. For the others, we would have to consider specific transitional provisions, but I am confident that we can find a way through that.

**Jamie Hepburn:** You also make a recommendation on the future employment of commissioners. At the moment, they are prohibited for three years from working for organisations that were under their remit. You invite us to consider a lesser period. Are you suggesting six months, a year or two years?

**Tom McCabe:** When we gave evidence to the Scottish Commission for Public Audit, we mentioned that there is a standing committee from which former ministers, if they intend to take up a public appointment, must get advice on whether the appointment would be appropriate to take up. I think that the timescale in those circumstances is around two years. That is a guideline, but it is no more than that.

**Jamie Hepburn:** Do you recommend that there should be a similar guideline?

**Tom McCabe:** I am saying that it is one of the guidelines that the committee could consider. We do not have a hard and fast view on whether a year or two years is the right period, but three years is too much. It seems harsh. If the committee stuck to three years then, to enable us to recruit from a broad enough pool, it would be necessary to offer a salary that, in other circumstances, might look excessive as compensation for the fact that we had taken the post holder out of certain employment possibilities for an extended period.

**The Convener:** I have a question about the commissioners' legal status. Is there a problem with the requirement for the SPCB to indemnify them? Will it be easy to address?

**Tom McCabe:** I will hand over to my legal eagle on that.

**Ian Leitch (Scottish Parliament Directorate of Resources and Governance):** Present commissioners are appointed and do not appear to have in law an independent status separate from themselves. England has the legal concept of the corporation sole, on which your parliamentary legal adviser can give you further advice, but that creature is alien to the law of Scotland.

Some commissioners have taken legal advice on their liabilities, and although we do not necessarily subscribe to all the views in that advice, there are issues that require to be addressed. Given that the committee may recommend legislative changes, the opportunity should be taken to find a form of indemnity.

At one extreme, it could be argued that, if a commissioner takes on a lease, they are personally liable for it even when they demit office. They do not own property but one could argue that if they were infeft in property in law—if they were owners of property—they might be able to sell it. However, they would also be liable for all the attendant liabilities. We think that we can overcome nearly all those difficulties by two means: indemnity and the contractual conditions of commissioners' appointment. If you were to consider a radical departure in structural arrangements, you might consider having bodies corporate rather than individual Crown appointees. The creation of bodies corporate would overcome the problems straight away. There are additional reasons why the committee might wish to consider that approach, such as the fact that it would allow investigating officers, with a board over them, to reflect on matters further. That is why those two options have been put to the committee. On balance, the advantage of a body corporate would be that it could overcome the other difficulties and would provide a tighter management structure with greater control and a review panel.

11:00

**The Convener:** I want to pick up on a point that Ross Finnie raised. How will independence be preserved if bodies are put together? The present bodies are independent. How do you see that working?

**Paul Grice:** It depends partly on the model. There are two strands to that independence. The first is operational independence from Parliament, which would be safeguarded. In other words, whatever legislative change is recommended, the corporate body would be clearly of the view that the commissioners' operational independence should be preserved. In a sense, that is the main defence, whether we are talking about casework or the discharging of an advocacy function.

As regards the commissioners' independence from one another, the corporate body argues in its submission that there is less of a case for that. To pick up the point that Ian Leitch just made, if the committee were to go down the body corporate route, which might involve having a chief or head commissioner, with a commission and individual commissioners who had specialist interests—for example, in children's rights—underneath, such a structure would not provide independence, but one of its strengths might be an ability to deliberate more effectively on extremely difficult cases. In other words, there would be a structure above the investigatory function that would allow a degree of deliberation before decisions were taken or recommendations made to Parliament.

The corporate body's view would be that the first strand of independence would need to be preserved in any legislation. In that respect, the status quo would essentially be maintained. However, there is a feeling that the notion of independence between the commissioners would not be quite the same—although confidentiality of casework would obviously have to be preserved.

**The Convener:** How do you see the status of the new bodies? Would they be commissioners or would they be part of a commission?

**Tom McCabe:** That is open, although, to be fair, the thinking is leaning towards having commissioners. There would certainly be a commissioner who would be the decision maker, but in today's increasingly difficult world, people come under tremendous external pressure—through the media, for example—so there might be more of a case for the decision maker to have a board of commissioners that they could use as a sounding board. That would mean that when a decision was made, the process that led up to it would be a bit more reflective and would involve the decision maker taking counsel from others rather than being out there on their own, which is a difficult role to play in this day and age. Although

the concept of having a single commissioner sounds fine, in today's world the reality is that it does not matter how much someone is paid or how much status a post is given, people are people and they sometimes come under tremendous pressure, perhaps through the media. That can impact on their objectivity and, sometimes, on the decisions that they make. If the decision maker had the ability to consult a reflective body, which could act as a sounding board, that might produce more comprehensive decisions in future.

**The Convener:** Given that the corporate body is responsible for spending the public purse, do you have any idea of the costs or savings that might be involved? I suppose that putting people together has initial costs. Have you considered that?

**Tom McCabe:** As I have said, we would be perfectly happy to produce a more detailed paper that could expand on that. In general terms, experience shows that there is no doubt that there would be an initial cost—that is usually the case in any reorganisation—but we are fairly confident that savings would be made over time. Any paper that we produce would give more detail on that.

**Paul Grice:** The corporate body did not want to run too far ahead with this until it got a sense from the committee that it was moving in the right direction. However, picking up on Mr Finnie's comments, I am sure that, in relation to the commissioners, the corporate body would be able to examine finance, personnel and many other functions in far more detail and produce a more robust report. As I said, the corporate body was anxious not to run too far ahead with that work. However, if the committee were to indicate that such a report would be helpful to its deliberations, the corporate body and office-holders would get to work quickly and try to bring something back that would deal with exactly the points that you have raised.

**The Convener:** Echoing Jamie Hepburn's previous question, I am concerned about the staff who serve the commissioners. I seek confirmation that, if these six bodies are merged to form three, their terms and conditions of service will stay the same. I am also concerned that we do not lose people or that, if we have to, we approach the matter in a considered way.

**Tom McCabe:** To be perfectly honest, we cannot guarantee that people will not be lost. However, I am absolutely sure that in our dealings with staff we will apply the highest human resource principles. I think that that is how we operate at the moment, how people expect the Parliament to operate and how, in the main, the public sector operates. There is certainly no intention to deviate from that.

**Ross Finnie:** Perhaps at the end of this process, I will come to the same conclusions that you have reached. However, I will wait until I have heard all the evidence first. I have to say, though, that I am still slightly puzzled as to why the corporate body has not highlighted for the committee just two or three major problems with the current administration and structure of the commissioners that have led it to the very clear conclusion that the number of bodies should be reduced to three.

**Tom McCabe:** I have tried to give the committee one example of that. The fact is that the bodies are in silos with control of their own finance and their own HR and personnel advice. They also have their own legal advice, which sometimes—in fact, on every occasion—can be very expensive. Moreover, there is also the difficult and expensive question of accommodation. With this measure, we have the opportunity to bring all those different elements together.

The slightly different set-up in legislation of the Scottish Human Rights Commission had benefits for the corporate body, as it had more control over accommodation, how the commission sat with other bodies and so on. However, other bodies have been set up differently and have control over, for example, organisation, recruitment of staff and location. Creating the new bodies would give us an opportunity to achieve greater symmetry in support functions, which I think will lead not only to savings but to better organisations.

**Ross Finnie:** I do not disagree with you. Earlier you suggested that the case involving a commissioner who argued for an increase that was way above the rate of inflation did not indicate a desired level of financial rigour. I understand perfectly your point about financial, office and support functions and accept that that might well be an argument for having one office for all Parliament-appointed commissioners. However, I wonder whether, at this early stage of our inquiry, you can accept the general proposition that that is not an argument for merging commissioners.

**Tom McCabe:** The corporate body is charged with taking a structural overview of these bodies, and I do not think that we have suggested in any way that the commissioners' functions will change. We have simply said that the way in which they are organised will change.

**Jamie Hepburn:** From points (iii) to (vii) in the section of your submission entitled "Suggested legislative changes to harmonise legislation impacting on the SPCB" it is clear that a lot of power is vested in the corporate body. I have no problem with that. After all, Parliament as a whole places its trust in you by electing you to do that job. Parliament will want to be able to ensure that the decisions that the corporate body makes are

the right ones; it will want a degree of transparency and openness in those decisions. How do we get that? Would we get it through your annual report or is there another mechanism for it?

**Tom McCabe:** We report to the Finance Committee, which is one of the mechanisms that shed light on the decisions that the corporate body has taken and the thinking behind those decisions. There is also SPCB question time in the Parliament, which is held regularly. Members have the facility to put written and oral questions to the corporate body.

**Jamie Hepburn:** So, the transparency and openness are achieved through our established, normal structures.

**Tom McCabe:** I think so. However, if the Parliament felt that there was a case for creating new structures to examine the work of the corporate body, I do not think that there would be any resistance to that from the corporate body.

**The Convener:** I want to ask about the Scottish Commission for Public Audit. What relationship and involvement do you have with the Auditor General for Scotland?

**Paul Grice:** It is principally around terms and conditions. The corporate body has a particular interest—indeed, we gave evidence to the SCPA on this point—in the term of office of the Auditor General, which was disturbed by changes in relation to age discrimination legislation. There was a loose end, so to speak, and no end date. That is the corporate body's principal interest.

The SCPA performs in relation to Audit Scotland the job that the corporate body performs in relation to the other commissioners—setting budgets and scrutinising them. The Auditor General's terms and conditions and all that those entail are the corporate body's prime responsibility in that regard. The SPCB has sight of the operation of Audit Scotland and the Auditor General from its perspective in the Parliament, but that is a broader interest.

**The Convener:** The Scottish Commission for Public Audit report made some recommendations, one of which was that the post holder should hold no other post. What is your feeling on that?

**Tom McCabe:** I think that we gave evidence on that. There is a general feeling that the structures are pretty complex. There is an unusual situation, in that the Auditor General sits on the board of Audit Scotland, but is also the accountable officer and appoints others to the board. In an age when there are calls for greater transparency, the general feeling is that that is an unusual set of circumstances. We said that it was unlikely that Audit Scotland would recommend that kind of managerial set-up for any other body. The set-up

was the creation of the Parliament; it was not the fault of the Auditor General or any of the current incumbents. We now have the opportunity to reflect on that and to simplify the situation; to look at what happens in other legislatures, such as the Welsh Assembly, which has a different set-up that seems to work successfully; and to consider whether people elsewhere arrived at a better conclusion than we did.

**The Convener:** What are your thoughts on absolute privilege for the Auditor General's statements?

**Paul Grice:** My view—this is probably more my view as the clerk than as the chief executive of the corporate body—is that we want the proceedings of Parliament to be protected. That is exactly what the Scotland Act 1998 does. I would not ascribe this view to the corporate body, because I do not think that it has ever discussed the issue in my presence, but, having considered it in the past, I think that the current arrangements are adequate. We are trying to protect the proceedings of Parliament and all those involved in it. That is why it is important to have protections. As I said, having considered the issue in the past, I think that there is a feeling that the system is adequate. I am not saying that there is not another way of doing things, and if this committee or another committee wanted to make changes we would implement them, but I do not think that there is a strong desire for change.

11:15

**The Convener:** I have a general question. Have you consulted the office-holders or had any exchanges with them about your proposal to reduce the number of bodies from six to three? Obviously, the proposals represent the direction in which the corporate body wants to go, but have you had any discussions with the office-holders?

**Tom McCabe:** No.

**The Convener:** So the proposals will be news to them. What effect do you think it will have on the staff when they read the *Official Report* of this meeting?

**Tom McCabe:** I would be speculating on that. Individual commissioners might have a view, but in general I do not think that the staff need to be overly worried. That is not to say that they will not be concerned, but I do not think that they need to be.

**The Convener:** We have no further questions for you. If, on reflection, we want to ask you anything else, we will write to you. Thank you for coming along this morning and for your evidence.

11:16

*Meeting suspended.*

11:30

*On resuming—*

**The Convener:** With us on our second panel of witnesses we have the Cabinet Secretary for Finance and Sustainable Growth, John Swinney, and Lorna Gibbs, who is the head of the security improvement team in the Scottish Government.

I invite the minister to make a brief statement.

**The Cabinet Secretary for Finance and Sustainable Growth (John Swinney):** I welcome Parliament's initiative in considering the role and structure of the bodies that are supported by the Scottish Parliamentary Corporate Body, which comes at a fortuitous time, as the Government is taking forward an agenda that is designed to achieve a robust but proportionate scrutiny system. The Parliament and Government are operating in a complementary fashion.

Work on this area of activity has been under way for some time. The previous Administration established the Crerar review, which examined issues relating to scrutiny. The new Government welcomed it and took forward a set of actions to build on the conclusions of Professor Crerar's 18-month long investigation, which was thoroughly assessed. Further, we have received the report from the complaints group that Douglas Sinclair from Consumer Focus Scotland chaired, which worked with stakeholders during the first half of this year to produce practical recommendations on how the complaints system could be streamlined and made more accessible to members of the public.

In my statement to Parliament in November, I said that we would put our proposals for improving complaints handling—including structural changes to the Scottish Public Services Ombudsman, Waterwatch Scotland, Consumer Focus Scotland and the Scottish Prisons Complaints Commission—into the work that is being undertaken by this committee, as it was appropriate for them to be considered by this committee rather than the Government.

The proposals that emerged from the review of complaints arose from a broad consensus that was established by the careful work of Professor Crerar and by Douglas Sinclair and his colleagues, which identified common themes around complaints handling in the public sector in Scotland.

The Government has taken steps to improve the landscape for the simplification of public sector bodies in Scotland. We are keen to ensure that our complaints-handling system reflects the needs

of a country of 5 million people, and involves fewer organisations, less duplication and less bureaucracy. I hope that this committee's deliberations around the structures in that area will assist in the process of simplification.

I understand that you have heard this morning from the Scottish Parliamentary Corporate Body about the changes that it would like to be made to the structures of parliamentary commissioners. The Government wants processes to be simplified by reducing the number of bodies and incorporating some of the structural changes that arose from the thinking that was done following the Crerar review and the work that Douglas Sinclair undertook, which is properly a matter for this committee.

This morning, I published the Government's response to the Scottish Commission for Public Audit's report on matters relating to Audit Scotland, which contained issues for the Government and for Parliament to address. I will, of course, be happy to address those issues with you today.

Work on these issues has been under way for some time. It commenced in 2006, and at this stage we have an opportunity to deliver some of the simplified processes for which members of the public have expressed a desire. The Government looks forward to working with the committee.

**The Convener:** Thank you, cabinet secretary. I have some questions on the Government's public services reform bill. Do you have a timetable for the bill?

**John Swinney:** The bill is currently being prepared and will be introduced to Parliament in spring 2009. It is designed to capture a range of proposals on changing the scrutiny landscape in Scotland.

**The Convener:** You mentioned this in your statement, but will you elaborate on how the bill will fit in with this committee's work?

**John Swinney:** There is an important distinction to be established. Although many complaints-handling and public services issues involve bodies that are responsible to ministers, from the point of view of public assurance it is important that the public are confident that the mechanisms for handling complaints about public services are not engineered by the Government but instead are the product of a wider debate in Parliament. The clear distinction between the powers of the Executive and the Parliament must be properly recognised in meeting the essential requirement of ensuring that public concerns are properly and dispassionately considered, free of any relationship with the Government. That point of principle helps us to understand the distinction between those parts of the scrutiny process that are properly the preserve

of the Government to change and those that are more appropriately the preserve of the Parliament. The distinction is clear.

There is also a general appetite to ensure that the landscape of governance in Scotland is simpler and easier for members of the public to access. That will be part of the Government's strategic input into the committee's deliberations.

**The Convener:** How does the Government propose to ensure liaison and consistency between both bills?

**John Swinney:** I am happy to offer close co-operation and dialogue between the public services reform bill team and the committee clerks. As the bill preparation is under way, decisions will be taken on a daily and weekly basis, and it is important that, at all stages of the process, the officials operating on my behalf have an open channel of communication with the clerks to ensure that the distinction between the work of the Government and the committee's responsibilities is properly respected in the formulation of the Government's bill. The last thing that I want is for there to be a sense that our bill has intruded on matters that are the proper preserve of the committee. I want to avoid that at all possible costs.

**Jamie Hepburn:** I welcome the cabinet secretary and the Government's work on the public services reform bill. It is useful to have him here at an early stage to inform our work.

I asked this question of Tom McCabe, so in fairness I should ask it of you, John. In your opening statement, you used the words "simplification" and "simplicity" several times, and you talked about there being less duplication and bureaucracy. That struck me as similar to what the corporate body has called for in relation to the bodies for which it has responsibility. Indeed, Tom McCabe spoke about a more streamlined process that is easier to understand. Is it fair to say that there is a great deal of common ground between what the Scottish Government and the SPCB are after?

**John Swinney:** I have made clear comments to Parliament on this subject, and I will happily make it clear today that we need to create a more accessible, simpler structure so that members of the public can pursue their legitimate concerns. We need greater clarity about the way in which complaints are considered. I warmly welcome the SPCB's approach to addressing those issues and to trying to deliver a smaller number of organisations, while ensuring that the range of functions is properly covered.

Of course, the history behind all this goes back to the previous parliamentary session, when the Finance Committee undertook a great deal of

work. I was a member of that committee and saw the work emerging from Mr McCabe's thinking as the Minister for Finance and Public Service Reform. We have brought a great deal of common ground from the previous parliamentary session into this session to try to deliver the outcome that Mr McCabe talked about this morning.

There is a lot of common ground between the Government and the SPCB, but I insert the caveat that the design of individual structures is a matter for this committee. The Government's role is to say that we think that a smaller number of bodies would be of enormous assistance in the process, but for the reasons that I gave the convener a moment ago, the detailed specification of that is much more the committee's preserve than the Government's.

**Jamie Hepburn:** That leads me into my follow-up question, but before asking it I ask whether you have had the chance to see the SPCB's submission to the committee.

**John Swinney:** I have, yes.

**Jamie Hepburn:** It is helpful to know that.

You will be aware that the SPCB recommends that the functions of the Standards Commission for Scotland's chief investigating officer be merged into a new complaints and standards body, largely transferring the functions to the Scottish Public Services Ombudsman. The SPCB submission points out that those are ministerial appointments and says that

"It would be open to the Committee to discuss with Ministers this issue",

which essentially is what I am seeking to do.

**John Swinney:** There is a lot of merit in the SPCB's proposals. As I said a moment ago, the Government is enthusiastic about a number of bodies that come under the Government's umbrella being put under the umbrella of the Scottish Public Services Ombudsman, or whatever body emerges as a consequence of the committee's thinking.

The type of structure that Mr McCabe outlined this morning would have many strengths. If there was an appetite for it, the Government would be happy to engage in discussion with the committee, as part of the channel of communication that I spoke about earlier, to draw together all functions as clearly as possible. If that requires changes to operational arrangements for appointments, the Government will happily engage in that discussion.

**The Convener:** Minister, you talked about the Sinclair report in your opening remarks. Which of the recommendations in that report do you consider will fall to the Parliament to implement?

11:45

**John Swinney:** The main aspect of the Sinclair recommendations that will impact on the Parliament is how members of the public advance their complaints about public services. There is a whole process, which encourages two things to happen. First, there is an exhortation to public bodies to resolve issues long before they get anywhere near the Scottish Public Services Ombudsman. I enthusiastically endorse that guidance. Secondly, when individuals present complaints, they should be handled in as comprehensive a fashion as possible. That, quite naturally, falls under the current responsibilities of the Scottish Public Services Ombudsman. Those are the key elements of the Sinclair recommendations. The intention is to have a complaints system that members of the public find practical and tangible. That should influence how issues are handled by the public sector bodies about which complaints are made.

**Ross Finnie:** In your letter to us giving your response to the SCPA report, on the subject of the Auditor General for Scotland you indicate that the Government accepts the SCPA's first recommendation, that the Auditor General should be appointed for an eight-year fixed term. In the evidence that we have just heard, the SPCB appeared to wish to extend the principle of a single term to those bodies that are under consideration by this committee. One argument that has been advanced concerns a lack of transparency in the reappointment process and the suggestion—which I had not previously heard—that it is impossible to remove or terminate appointments to the bodies. Does the Government have a similar view—on the first point, rather than the second point, which is a matter of opinion? Specific factors relate to the Auditor General, but would it be desirable to extend the principle to all commissioners?

**John Swinney:** There is a lot of merit in that argument. It comes back to perception. I have no evidence whatever to support what I am about to articulate—

**Ross Finnie:** Well, that is helpful. [*Laughter.*]

**John Swinney:** I just wanted to put that on the record before going any further. It must be possible that an individual who faces reappointment for a second term or who aspires to be reappointed will pull their punches in advancing particular issues. I am not saying that that has ever happened—I do not have a scintilla of evidence in that regard—but that must be a possibility. If it is a possibility, we must address it to deliver the transparency that we all desire.

I sense that members of the public have confidence in the transparency of the process.

When they approach an ombudsman, or whomever it happens to be, to register a complaint, nothing whatever constrains that individual's ability or desire to pursue their complaint to the  $n^{\text{th}}$  degree. That atmosphere is important if we are to assure members of the public that the ombudsmen and others concerned are acting on a without-fear-or-favour basis, because they have no worries about being reappointed. I stress, however, that I have absolutely nothing to back up the point that I have just made, other than a general hunch that that must be the case.

**Ross Finnie:** Those who gave evidence for the corporate body expressed the rather different concern that the reappointment process leaves a lot to be desired. Indeed, they adduced or averred that it is impossible to get rid of the people who are appointed. Your hunch, which you expressed honestly, is that the process can lead to someone's judgment being impaired or affected—or to a perception that that has happened. Two positions are open: appointing people for a longer fixed period, as in the case of the Auditor General for Scotland, or examining the reappointment process to ascertain whether it is at fault. Which is most likely to be giving rise to your hunch or the corporate body's concern that we cannot get rid of people?

**John Swinney:** Either proposition could be true. I am not closely familiar with the reappointment process. On second thoughts, I will have participated in a debate on a reappointment motion in the Parliament, but that is the extent of my involvement thus far.

Clearly, any reappointment process includes a discussion of performance, involving those who are making the reappointment and those who are seeking reappointment. It would be a strange process indeed if performance did not come into the equation, and yet, as I have said, it might lead to anxiety among members of the public that those who seek reappointment take care to keep on the right side of the appointment panel.

I return to the important issue that it is the committee, not the Government, that exercises responsibility in the area of and the processes for SPCB-supported bodies. Ultimately, in almost all cases, complaints are made about a body of the Government, in some form or another. It is important that members of the public feel that the instrument by which they pursue their legitimate complaint is properly independent and can act without fear or favour.

**Jackson Carlaw:** I am sorry if I sound somewhat flippant, cabinet secretary, but I will put my question through the mouthpiece of the eponymous Mrs McTavish. Clearly, the recommendation is to bring together a single body

for the pursuing of complaints. As everyone says, that is being done for reasons of public accessibility and to create a system that is simpler to operate and understand.

That said, the virtue of having stand-alone complaints bodies is that they handle complaints only for the service that they represent. Members of the public know that they are contacting the right person. I hope that we will not end up with a telephone-machine-type system in which a recorded message will tell people to press a number from a menu of 1 to 77 to reach the person who will handle their complaint. Members of the public feel that that is what they have to do nowadays. The point that I am trying to make, albeit flippantly, is this: are you satisfied that the proposal will not result in some sort of Dickensian ministry of complaints? Will it result in an improvement in public accountability and service levels?

**John Swinney:** There is nothing Dickensian about 21<sup>st</sup> century Scotland, Mr Carlaw.

The origins of the Scottish Public Services Ombudsman are important in all this. The SPSO was established to bring together the offices of a number of disparate functions that existed in a previous world—the names of which I cannot now recall—and other specialist complaints organisations have come into being since then.

Your average Mrs McTavish does not know about the wide proliferation of specialist bodies that are out there. I am absolutely sure of that—indeed, I would be very surprised if she knew them all. She might just about know that there is a Scottish Public Services Ombudsman that people can contact. From time to time, she will have read or heard through the media about the SPSO upholding a complaint that has been made by a member of the public. The SPSO is in the public eye most frequently; many other organisations might be in the public eye upholding a complaint once a year, if they have even that much exposure.

We have an opportunity to go back to the founding thinking behind the Scottish Public Services Ombudsman, which was to create a one-stop shop for complaints. In a sense, we have undermined that by proliferating different bodies over time. We now have a moment to reinforce part of the original thinking and, in doing so, it is essential that we do not lose sight of the important point that Mr Carlaw made: if a member of the public contacts an ombudsman to make a complaint, the complaint must be dealt with by somebody who has the expertise to assess it, rather than by a service that does not have, or cannot call on, the same detailed knowledge or expertise to understand and address a complaint.

**The Convener:** I have several questions about the Sinclair report, but I will write to you with them because they concern different suggestions about what will be in the Government bill. However, Sinclair recommended that five or six bodies should be moved into the function of the Scottish Public Services Ombudsman—bus companies and social work complaints come to mind—and you appear to have recommendations about Waterwatch Scotland and the functions of the Scottish prisons complaints commissioner. Will the SPSO be able to cope with those extra functions?

**John Swinney:** There is capacity to bring together those functions in a more coherent fashion. The skill that is deployed in the Scottish Public Services Ombudsman across a range of public services is no different from the type of process that is undertaken in those other bodies. The key thing is that we do not lose sight of Mr Carlaw's point about having the capability and capacity to ensure that such issues are properly considered within those organisations. If our reforms deliver on that point, we will have delivered a landscape that is simpler but which still provides the assurance about the system that members of the public want.

The convener mentioned the detail in the Sinclair report. It would be most helpful for the committee to interact with the Government to understand where some of the boundary issues lie, so that there is an open door to establish how best the committee thinks the agenda can be taken forward. We will do everything in our power to ensure that that is delivered.

**The Convener:** I am interested in the Government's views on some of the recommendations in the Scottish Commission for Public Audit report—for example, on the term of office, that no other posts should be held by the post holder and on future restrictions on employment. Do you have any comments about those?

**John Swinney:** Ross Finnie commented on the term in office. The recommendation from the Scottish Commission for Public Audit is a sensible proposal that we support. To return to the point about acting without fear or favour, it is very important that the Auditor General acts as the Auditor General and nothing else and that no other constraints apply to the perception of the Auditor General's judgment in that respect. The issue about future employment is slightly more difficult, because if an Auditor General had completed a single term of office it would not be reasonable to restrict that individual's ability to seek alternative employment. I would be careful about that point.

12:00

**The Convener:** I think that most of the questions that I intended to ask on the matter have been answered in the letter that we received this morning, so I move on.

You propose to transfer the functions of Waterwatch Scotland and the Scottish Prisons Complaints Commission, as you said in your statement on 6 November. What exactly is being proposed and when will it happen?

**John Swinney:** The current complaints-handling system in public services can be fragmented and is not particularly user friendly for members of the public. The proposals on Waterwatch Scotland and the Scottish Prisons Complaints Commission offer a solution to the problem. The Government acknowledges that although both bodies are pretty specialist and have discrete functions in relation to public services, their approaches and techniques—and the content of what they undertake—are entirely comparable with the work of the Scottish Public Services Ombudsman.

Therefore there is an opportunity to draw the bodies' functions into the role of the Scottish Public Services Ombudsman and to provide the public with a much clearer and more direct channel through which they can express concern. Currently, it is not immediately obvious to the public how they should raise issues, because of the fragmented nature of the system.

**The Convener:** What costs will be involved? Will the Government take forward the approach?

**John Swinney:** There is a bit of a chicken-and-egg situation in that regard. The Government will not take forward the proposals in the public services reform bill, because we consider them to fall much more within the scope of the Review of SPCB Supported Bodies Committee, in relation to reforms to the Scottish Public Services Ombudsman's responsibilities. The Government's proposals will require a response from the committee. The committee must decide whether the proposals are appropriate and should be taken forward.

If costs are associated with the transfer of functions, the Government will consider such costs carefully. I do not want to issue a blank cheque; we scrutinise carefully the costs of proposed relocations, amalgamations or mergers, to guarantee that we are spending public money effectively. If the proposals that the Government is encouraging the committee to adopt have financial implications, it is obvious that the Government will be the first port of call.

**Ross Finnie:** I understand and am grateful for the distinction that you draw between the



Government's proposed public services reform bill and a bill that might emerge from this committee's work.

In effect, you have just invited us to accept the argument for the transfer of the functions of Waterwatch Scotland and the Scottish Prisons Complaints Commission. Is there a paper that advances not just the rationale for bringing the functions of both bodies within the remit of the Scottish Public Services Ombudsman but how those bodies' specialist functions could properly be discharged under the proposed new arrangements? I would not expect you to have such a document with you this morning.

**John Swinney:** I do not think that we are suggesting anything as prescriptive as that. Having read the Sinclair report, we have taken the view that there does not appear to be any impediment to those functions being exercised within the scope of the Scottish Public Services Ombudsman. I return to a point that I made earlier. The process that is being undertaken in either of those bodies is entirely complementary to the process that would be undertaken by the ombudsman. That gives us the read-across and the comfort that what we are suggesting could be taken forward.

The question that arises is about what needs to happen to take that forward. I do not think that it would be appropriate for the Government to add something else to the remit of the Scottish Public Services Ombudsman, as that would begin to contaminate the sense of judgment that members of the public will want to have.

**Ross Finnie:** I accept that, cabinet secretary. However, I pick up the phrase that you used—not in an accusatory way, but because the phrase is interesting—when you talked about the “specialist functions” of the two bodies. If we were minded to accept both Sinclair's and your views that those are perfectly logical, it might be necessary for us—either in writing or in some other way—to obtain some evidence about how those functions might be discharged in order to enable us to do what you want us to do.

**John Swinney:** To be honest, there is no shortage of material underpinning the Crerar and Sinclair reviews, which considered the issues. I would be happy to make available to the committee information on some of the approaches and details that underpin the Government's suggestions, so that they can be scrutinised in greater depth than has been the case until now.

**Ross Finnie:** I do not think that we should be boring about this. We all understand that our burden is pretty light compared with that of any minister—I know that perfectly well—but the file that was presented to us, which contains the body

of reports that are available to the committee, is not small.

**John Swinney:** I am glad that your evenings are spent as usefully as mine.

**Ross Finnie:** I pointed that out only to make you feel warm and comfortable, cabinet secretary.

My serious point is less about the information underpinning the reports of the Crerar review, the Scottish Commission for Public Audit and the Sinclair group; it is more about our being satisfied with the functionality of current individual appointments—although they may look overly cumbersome in administrative terms—and that we are not inadvertently diluting or diminishing their role.

**John Swinney:** That is a fair point. However, that issue is as relevant under the current structures as it would be under future structures. The Scottish Public Services Ombudsman must be in a position to give members of the public the assurance that, if they make a complaint about education provision, health provision or the planning service, their complaint will result in a quality assessment and interrogation by the Scottish Public Services Ombudsman.

If memory serves, we used to have a stand-alone body for complaints about the health service, but that body came together with others in the Scottish Public Services Ombudsman. The point is that we are not suddenly adding new dimensions to a stand-alone single-purpose vehicle. The Scottish Public Services Ombudsman has a broad set of responsibilities, and members of the public have to be assured that the ombudsman can act in every sphere of policy, whatever it might be. We are simply adding on a couple of other functions and areas of responsibility.

**The Convener:** There are no more questions, cabinet secretary, but we will write to you. For example, some issues have arisen in relation to the Sinclair report, and we will want to ask you about them.

I thank the cabinet secretary for attending. I also thank Lorna Gibbs, who is head of scrutiny and not head of security as I said earlier. I am sure she is very happy about that.

**John Swinney:** I thought she was going to throw me out at one point.

12:10

*Meeting continued in private until 12:42.*



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