

REVIEW OF SPCB SUPPORTED BODIES COMMITTEE

Tuesday 20 January 2009

Session 3

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2009.

Applications for reproduction should be made in writing to the Licensing Division,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate
Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by RR
Donnelley.

CONTENTS

Tuesday 20 January 2009

	Col.
REVIEW OF SPCB-SUPPORTED BODIES	31

REVIEW OF SPCB SUPPORTED BODIES COMMITTEE

1st Meeting 2009, 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:

Mr Robert Black (Auditor General for Scotland)

Professor Alice Brown (Scottish Public Services Ombudsman)

Eric Drake (Scottish Public Services Ombudsman)

Dr Jim Dyer (Scottish Parliamentary Standards Commissioner)

David Robb (Scottish Public Services Ombudsman)

CLERKS TO THE COMMITTEE

David Cullum

Claire Menzies Smith

LOCATION

Committee Room 4

Scottish Parliament

Review of SPCB Supported Bodies Committee

Tuesday 20 January 2009

[THE CONVENER opened the meeting at 10:04]

Review of SPCB-supported Bodies

The Convener (Trish Godman): Good morning. Welcome to the first meeting in 2009 of the Review of SPCB Supported Bodies Committee. No apologies have been received. I ask those who have mobile phones and blueberries to switch them off.

Ross Finnie (West of Scotland) (LD): Blueberries?

The Convener: BlackBerrys, maybe. Perhaps some of you have blueberries.

Ross Finnie: Brambles?

The Convener: If you have brambles, or anything else, please switch them off.

I welcome our first witnesses and thank them for attending to give evidence to our inquiry. Professor Alice Brown is the Scottish Public Services Ombudsman, Eric Drake is the director of investigations for the Scottish Public Services Ombudsman and David Robb is the director of policy and development for the Scottish Public Services Ombudsman. I note for the record that Professor Brown was a member of the fit-for-purpose complaints system action group that reported to ministers in July 2008 with proposals for simplifying the public service complaints-handling process and streamlining the complaints-handling landscape—the issues that the committee is considering. We have a lot of questions to get through this morning, so I ask the witnesses to keep their answers brief. If we have to come back to them, we will do so. I invite Professor Brown to make a short statement.

Professor Alice Brown (Scottish Public Services Ombudsman): Thank you, convener. I am pleased to be in the Parliament on this historic day for democracy. I will keep my remarks short, as the committee has already received two submissions from me, one of which covers specific and detailed legislative matters.

As I say in my submissions, I welcome the opportunity to contribute to the committee's work. The committee has a key role to play in making

proposals for the design of the future governance framework in Scotland. The review is timely, as it comes 10 years after the Parliament was established. Although the consultative steering group, of which I was a member, made recommendations for the procedures of the Scottish Parliament, the role of parliamentary committees, petitions and so on, it did not address the important aspect of the architecture of governance with which the committee is concerned. I am happy to share with the committee my experience as ombudsman over the past six and a half years. I can do so without a conflict of interest, as the results of the committee's work and the final decision of the Parliament will be for my successor to implement.

In many respects, Scotland has led the way in this area. Individual office-holders in Scottish Parliamentary Corporate Body-supported bodies have met or exceeded the Parliament's aspirations. For example, other parts of the United Kingdom have taken the ombudsman's office as a model; the scheme has also attracted considerable interest internationally. Parliament should be proud of such achievements. The committee has a new opportunity to take the initiative in proposing a coherent, consistent model and framework of governance for the future.

To some extent, it will be pushing at an open door, as office-holders have sought greater clarity and consistency on issues such as terms and conditions and have explored opportunities for co-location and sharing services. The submissions to the committee reflect the fact that there is a high degree of consensus and support for specific proposals such as fixed-term appointments and strategic planning.

The ombudsman's office has engaged positively with all elements of the debate, including Audit Scotland's report, the Finance Committee's inquiry, the Crerar review and the Sinclair action group, to which the convener referred. Our views on matters to be covered by the committee are on record. However, it may be helpful if I summarise briefly four key points, three of which are relatively straightforward and uncontroversial.

The first relates to terms and conditions and the link with accountability. We already lay our annual report, along with monthly reports on cases. We also give presentations on our annual report to the Local Government and Communities Committee, submit casework discussions to parliamentary committees, and produce strategic and business plans. We agree with many of the proposals in the documentation, such as those on fixed-term appointments and reducing the period of exclusion from appointment after holding office. We have sought other ways of enhancing our accountability, through the establishment of an audit advisory

committee and different internal audit arrangements, while making the point that it is crucial to maintain the right balance between accountability and independence, to ensure that there is public confidence that we are truly independent.

The second point relates to shared services. Over the past six or seven years, we have taken the initiative on that issue—for example, by designing and marketing a complaints-handling system that is used by other office-holders in Scotland and other parts of the UK and Ireland. We have introduced similar financial services arrangements and so on across the different office-holders. We are currently developing a new information technology and software system with the Scottish Legal Services Complaints Commission and the new Scottish Commission for Human Rights. There has been a lot of activity in that area.

The third point relates to possible new functions for the ombudsman as a design authority. We support the views of Crerar and Sinclair on that because it recognises the role that we already play in trying to encourage public bodies to get it right first time and prevent complaints from escalating to the ombudsman. Our annual reports have consistently made the point that we have sought to encourage a model complaints process for all public services in Scotland. Our valuing of complaints initiative, which is detailed in the document that I laid today, has been used widely across the public sector.

Finally, I turn to the question of the appropriate structure, which is likely to generate the most debate and more differences of opinion than the other points I mentioned. We have consistently supported opportunities for greater simplification and extension of the one-stop-shop philosophy—see, for example, our evidence to other parliamentary committees and in particular to the Finance Committee's inquiry into accountability and governance—while recognising that there are important differences in the functions that are carried out by different office-holders. We have already advanced our case on the basis of key design principles, which we outlined in our submission, and have drawn attention to the potential benefits, first, for the public, to ensure greater clarity and simplicity for the user; secondly, for the public purse, through greater efficiency; and, last but not least, for staff in the offices, in terms of career development.

The debate, then, is about the structure. A key question for the committee to consider is what the most appropriate structure is for a country of 5 million people. If the committee accepts the case for the rationalisation of the current office-holders, that will involve considering the most appropriate

grouping of functions. The SPCB has identified three main groups: first, a complaints and standards body; secondly, a rights body; and thirdly, an information body. We broadly support that approach, but have reservations about, for example, the compatibility of the role of the Office of the Commissioner of Public Appointments in Scotland being aligned with complaints and standards.

There is a separate but related point with regard to exploring further opportunities for co-location and common support services. In other words, one could move towards a campus model without necessarily reducing the number of office-holders—we might explore that in discussion. However, we have specific concerns about the SPCB's particular proposal to establish a commission—as distinct from a so-called commissioner; there is a debate around that particular title—to take complaints about services and standards. Complaints about services involve investigation, a final decision by the ombudsman and recommendations for redress. Although complaints about standards involve the office carrying out an investigation, the final decision and, indeed, any penalty rests with another body—the Standards, Procedures and Public Appointments committee. There is a distinction between complaints about services and those about standards.

There has been little consideration of evidence in this area to date, so a detailed options appraisal and analysis are needed before firm conclusions can be reached. I would be concerned if the title "ombudsman", which is distinct from that of commissioner, and the benefits of the brand and the single officer holder were to be abandoned without due consideration. That is not a defensive or protective stance, but a concern that Scotland should not be the only country seeking to remove the office of ombudsman just when other countries are setting up such offices, with the Republic of Ireland, for example, taking steps to protect the title of ombudsman through legislation.

The committee might be interested to know that 2009 marks the 200th anniversary of the establishment of the first office of ombudsman in Sweden. The reasons for its establishment then are still relevant: to have an independent office-holder to adjudicate on a dispute between a member of the public and the state. The role has evolved effectively over time and such an office is regarded as a key pillar of administrative justice, providing justice for the individual when things have gone wrong as well as an opportunity to improve public services for others. It is also recognised as a symbol of modern, vibrant, forward-looking democracies.

I am happy to explore that and other issues with the committee.

The Convener: I will kick off by asking a couple of simple questions. If the services are centralised, as suggested in the Sinclair report, how would that affect local accessibility to services?

Professor Brown: There are two distinct points here. The issue also goes back to the Crerar review, which was keen that disputes should be resolved locally as far as possible. That philosophy is very much supported by our office and, indeed, by ombudsmen throughout the world because it recognises that, when things go wrong, it is to the benefit of everyone if we can sort it out early on, without escalation. That is not the same as centralising, which involves a case moving up through the tiers of the administrative justice framework to a higher external body that makes the final decision. The role of an ombudsman is to be the last resort in a dispute. We would hope that a dispute would be resolved much earlier. Only the exceptional or most complex cases should end up at the ombudsman's office, although that is not always the case. I do not see a conflict of interest between our function and local dispute resolution. In fact, a lot of our work is about helping bodies resolve disputes locally, but as an independent, external, third-party tier, we can be more centralised and efficient.

10:15

The Convener: In what ways can the SPSO encourage and assist access to make it easier for members of the public who cannot attend personally?

Professor Brown: As you will recall, convener, given your leading role when the Scottish Public Services Ombudsman Bill was going through Parliament, one of the Parliament's key aspirations was to make the whole system and the ombudsman's office much more accessible to the public. We have done that through a series of measures. At the UK level, complaints for the UK parliamentary ombudsman must be in writing and cannot be in any other format at that stage; they cannot be made personally and they tend to have to be made through an MP. Scotland looked at that system, but our office implemented the aspirations of the Parliament that we should be much more accessible and take complaints in different formats; in person, if appropriate; in different languages and so on. We therefore do as much as we can to be accessible.

We also work through other agencies, though, because we cannot be accessible to every individual member of the Scottish public, much as we would like to be. We try our best to be accessible, but we improve access by working with other bodies and organisations that have direct contact with members of the public. We work with public bodies that deliver services—that

goes back to the information that is available at the local level—and with advocacy agencies and organisations such as Citizens Advice Scotland. We work effectively in partnership with it and, indeed, with the new human rights bodies—the Commission for Equalities and Human Rights in Scotland and the Scottish Human Rights Commission—because together we should look at improving access and not putting it all into one office.

Jamie Hepburn (Central Scotland) (SNP): Thank you for being with us today, Professor Brown. It is useful to have you at this early stage in our process. I note from your written evidence that it has not escaped your attention that there are proposals from the Scottish Government and the SPCB to transfer the functions of certain Scottish public bodies to a new body that will coalesce around the ombudsman. In what ways do you consider that adding the functions of other bodies to your jurisdiction would improve the service to the public?

Professor Brown: The main argument for that lies around the argument for establishing our office in the first place. It was clear from many of the debates in the Parliament at that time that, in an increasingly complex world, services are not delivered in silos. For example, an elderly person in the community might receive services from the national health service, local government, housing and so on. The Parliament's aspiration was to have a one-stop-shop so that, if something had gone wrong, it would be much simpler for an individual member of the public to access an independent decision maker without having to go up many different avenues and through many different doors and office-holders. The philosophy behind the Parliament's aspiration was about greater simplicity and clarity.

Parliament was clear what it wanted at that stage. However, as things have evolved, complaints handling has been set up in other areas. This committee's review will be helpful in looking at opportunities to extend the one-stop-shop philosophy without diminishing the service that an individual member of the public might get. That is the challenge for the committee and, ultimately, it is for the committee to make proposals to the Parliament on the matter.

There was a lot of consultation for the Crerar review and the action group that Douglas Sinclair chaired, and we were part of those discussions. We were asked whether there were more opportunities to extend the one-stop-shop philosophy. We have not been in the business of building our empire—far from it; ultimately, it is for this committee and the Parliament to decide what the best structure for Scotland is. However, we discussed the opportunities that might lie in

transferring complaints about the water industry or, indeed, prisons to our office. That structure could be extended slightly further, if that was what was wanted. Douglas Sinclair debated in his report the possibility of extending it to, say, complaints about the police or complaints about care in relation to the care commission, but he did not recommend doing that. We could regard the proposal as an evolution of the one-stop shop philosophy. I imagine that future Parliaments might want to revisit the matter, but the main benefits are coherence, simplicity and easy access. People are clear about who they should go to if something has gone wrong and they need to appeal to a higher body.

Jamie Hepburn: So you broadly support the idea of a one-stop shop.

Professor Brown: Yes. I do not think that I would have taken on the role of Scottish Public Services Ombudsman if I did not support that.

One of the real challenges that we faced was that, previously, complaints were dealt with by four main functions. There was a housing ombudsman, a local government ombudsman and a parliamentary and health ombudsman, but we also took on the adjudication functions of Scottish Enterprise and Highlands and Islands Enterprise. In 2005, we also took on complaints about the further and higher education sector. That was a further part of the evolution. Legislation on that sector was going through Parliament and the opportunity arose to include it in the ombudsman's jurisdiction. In that respect, Scotland again led the way. I am not aware of any other ombudsman's office that has further and higher education in its remit.

Jamie Hepburn: I am pretty sure that I heard you say in your opening remarks that the combining of various functions from different bodies will be the most controversial aspect. Waterwatch Scotland is critical of the suggestion that its functions should come within a combined complaints body. What is your reaction to that?

Professor Brown: I have a lot of sympathy for that point. Waterwatch Scotland has done a very good job in handling complaints and I can understand why it might be concerned. That relates to the point that I made about diminution of service; Waterwatch Scotland does not want there to be any risk that the service that is provided will be less good if its functions come to the SPSO.

The technical points that it makes in its submission will also have to be talked through. One is about funding and another is about its powers. In some respects, it has less power than we have to compel evidence, but in other respects it has additional powers. For example, it can carry out systemic investigations. We also discuss that

power in our submission, because many other ombudsmen's offices have the power to conduct such investigations.

In bringing together the office of Waterwatch Scotland and the SPSO, we would be keen to ensure that we had the best of both worlds and that the bodies were combined in a way that did not reduce the effectiveness of the service but enhanced it.

Jamie Hepburn: It is interesting that you mention that issue, because part of Waterwatch Scotland's critique of the suggestion is based on the fact that it can undertake systemic investigations whereas you cannot do that at present. I note that you suggest that you should have that power, but how would it sit with your current responsibilities? Is there any validity in the suggestion that it would undermine the concept of the ombudsman as it is established at present, which is specifically about investigating individual complaints?

Professor Brown: On the contrary, international comparison shows that we are in the minority in not having the power to consider systemic issues. Often, when an individual member of the public raises an issue with our office—free personal care is a classic example—we know that it is an issue not just for the individual but for others in various parts of Scotland. As an office, we are constrained because we cannot go beyond the specifics of the individual complaint and ask about the position in other parts of Scotland.

Another example of a case that came to us concerns a young woman who died because of deep vein thrombosis. Her family also pursued the case through the Public Petitions Committee. We were able to identify a problem in one area of Scotland, but we lacked the power to consider the position in other areas. We have to be careful in that respect, because if we step outwith our powers we might be subject to judicial review. A case in point happened with the UK parliamentary ombudsman.

If we had the power to investigate systemic issues, we would have to use it judiciously and in specific cases. As an ombudsman, one sometimes identifies an issue or a problem that is out there, and on those rare occasions it would be helpful to have the opportunity to go in and consider it without necessarily having an individual complaint from a member of the public. For one reason or another, such as vulnerability, the person who is affected might not feel able to take the matter to the ombudsman.

We had a visit recently from the ombudsman's office in Amsterdam, which is sometimes invited to investigate particular issues on public purse grounds and other practical grounds. That is a

further extension of the argument. Why set up different machinery if machinery with the investigative capacity to consider an issue already exists? That is an example of a small country being imaginative about how it uses various offices and the expertise within them to carry out different functions.

I do not see a conflict of interest between the consideration of individual complaints and the power to investigate systemic failure.

Jamie Hepburn: Let us suppose that you get the power to do systemic investigations and that the other organisations are amalgamated in a new complaints body that is, in effect, SPSO plus. What would be the staffing, performance and financial consequences? What additional resources would be required, if any?

Professor Brown: That is a big question because a lot of different elements are involved. First, it depends on how many bodies come together. Are you thinking about the Scottish Government's recommendations and preferences or about the SPCB's proposals, which would—

Jamie Hepburn: Will you talk about both in turn?

Professor Brown: Certainly.

The first model is for the SPSO to assume the complaints-handling responsibilities of Waterwatch Scotland and the Scottish prison complaints commissioner. The number of staff who handle complaints in those organisations is relatively small, so the financial savings that would be made by bringing things together would not necessarily be significant. No doubt some savings would be made at the margins in administration costs and so on.

The costs would depend on the body's location and on other factors that would have to be considered. Would the staff be accommodated within our current premises?

Jamie Hepburn: I think that the question is "could" rather than "would".

Professor Brown: Absolutely. We have started to do some costings, but some detailed work is required.

I am thinking back to when our office was established and the merger that happened at that time. With hindsight, we would all agree that the financial memorandum that was drawn up was not sufficient to address some of the issues that were involved. The SPCB makes that point in its second submission to the committee. The Parliament has moved on a lot since those days and we have learned a lot of lessons. We must be clear about the cost implications today, tomorrow and further down the line. We would be happy to engage in

such an exercise because we have a lot of the data.

Turning to the option with the three groupings, I will discuss the proposed complaints and standards grouping. I will not comment on the other two, on rights and information. Others might wish to do that when they are before the committee. The option involves bringing together the work of the Standards Commission for Scotland and the Scottish Parliamentary Standards Commissioner. I know that Jim Dyer will speak to you later this morning. The costs that are involved in his operation are not particularly large, so, again, I do not see massive savings there. There could be some savings on the Standards Commission side, not least because there are bound to be some savings in running costs if people are brought from different sites on to one campus.

However, we are talking about marginal savings. The total budget for all the office-holders is less than £8 million. That is a significant amount of money for an ordinary citizen, but it is not a significant amount out of £33 billion. Nonetheless, we have to be very careful with that money. After all, that is why we are in these jobs. We are concerned about the cost of them as well as the impacts on service. There are some opportunities for savings, but I would not overstress them because we are talking about relatively small sums of money in the first place.

Jamie Hepburn: You focused on cost savings and the finances. That might be my fault because of the way in which I phrased the question, but I also asked about the effect on performance, which is important.

10:30

Professor Brown: I beg your pardon. I agree that that is important. I return to the first model, under which complaints about the water industry and prisons would be included in the SPSO's remit. There are without doubt specific issues when handling a complaint from a prisoner because of the obvious differences between it and one from a member of the public. One has to be sensitive to that and to the element of speed so that we are able to turn round cases quickly in order that a problem does not escalate. There are appropriate ways to handle such situations.

We have learned ways to improve our service and are much better at sifting complaints that come in, categorising those that need to be handled quickly for various reasons and identifying others that require more detailed investigations. If Waterwatch and prison complaints were to come within our jurisdiction, we would want to discuss such matters in detail so that they did not lose out

and so that we used the opportunity to learn lessons from each other to improve the service to members of the public because, at the end of the day, that is crucial.

Joe FitzPatrick (Dundee West) (SNP): Sinclair recommends a new overarching complaints system. Although you have covered this to some extent, will you clarify why the SPSO is best placed to undertake that task?

Professor Brown: We are best placed to do that because that is already our task—it is the core function of an ombudsman's office. Over the years, we have built up expertise in the area and we have common standards and processes that are built on the best practice of other models of ombudsmen's offices in the UK and beyond. I am not saying that there is no room for improvement—what we do should be a continuous process—but we are the body that is best equipped to handle and extend that service.

Joe FitzPatrick: Are you confident that the SPSO can achieve that without impacting on your current performance and functions?

Professor Brown: Yes.

Joe FitzPatrick: Okay.

Sinclair looks for assurances that the SPSO will be accountable and appropriately independent in balancing the interests of the public, service users and providers. Do you have any concerns about your existing accountability and independence?

Professor Brown: I am on the record as saying that I do not consider our existing model to be ideal. I start with the crucial point that, of course, just like any similar office-holder, I must be accountable. There is no doubt about that and we have in fact looked at ways in which to enhance our accountability. There is a requirement in the Scottish Public Services Ombudsman Act 2002 for us to lay an annual report and so on, but we go well beyond the requirements of the legislation. We have built up lots of other mechanisms to improve and enhance our accountability through internal audit with our audit advisory committee and so on—there is a big list. So our accountability is not in doubt; the question is about defining the appropriate accountability for an office of this nature, which is constitutionally rather unusual. A constitutional principle is at stake about not having a body that is under one's jurisdiction being responsible for things such as terms and conditions of the office-holder or, indeed, budget issues, in which there can be problems. If we look at the best practice principles that have been laid down by the British and Irish Ombudsman Association and internationally, our current arrangement would be considered rather odd.

The Scottish Parliament is forward looking in trying to overcome the potential conflict between accountability and independence by saying, "Perhaps it wasn't best to fund the office out of the Scottish Government; let's bring it under the Scottish Parliament", which was innovative. If you look at research by Barry Winetrobe and others, you will see that they support that. The next question is: what is the appropriate body in the Parliament for us to report to? We would want the system to be much more transparent and open and we would prefer to be more directly accountable to a parliamentary committee so that we could have that debate in public. The current system is not publicised enough. I would challenge MSPs to tell me what the current system is and I would ask whether they are aware of how terms and conditions are set. Therefore, we are looking for greater accountability to Parliament in a way that properly balances and supports the independence of the office.

Joe FitzPatrick: Moving on to compliance, Sinclair suggests that there is no requirement for the SPSO to be given any new powers to ensure compliance with its recommendations. On how many occasions has compliance been an issue and what actions have been taken?

Professor Brown: The most obvious example was our being judicially reviewed over free personal care. In that example, we upheld a complaint about provision against a local authority. The authority challenged it and the judgment was debated in Parliament, which raised a political issue: Scottish parliamentarians thought they had produced legislation that did a particular thing, but that was found not to be the case when it was tested in court. We moved on advice and tried to demonstrate the intention of Parliament in relation to our judgment. That was a high-profile example. One might argue that judicial review was not the best place to play out that debate because, at the end of the day, the judge's powers were limited. The matter still had to come back to the political arena and it cost an awful lot of public money. That is the only example of where we have been challenged specifically on a case.

There is a big debate about whether we should have enforcement powers. It was argued during consideration of the bill in 2002 that we should not have such powers on the ground that they would compromise our relationship with bodies under our jurisdiction. The force of our argument relies on our reputation, credibility and legitimacy and to date we have not had a problem. If a body rejects our recommendations, we have a power that allows us to bring a special report to parliamentarians to say, that we have made the recommendation, but the body will not implement it. You, as parliamentarians, can hold such bodies

to account democratically through a parliamentary committee or the Government.

Different people have different views on our having powers of enforcement, but the majority opinion in the ombudsman world is that our having direct enforcement powers would be very likely to take us into more legal challenges and would change our relationship with bodies that are under our jurisdiction. We try to work in partnership with public services—we have the same objective, which is to improve delivery of public services. We want to do that by working with them to prevent complaints arising rather than by using a large stick. Although it is often necessary to use that stick, the current balance is appropriate.

Joe FitzPatrick: Finally, if your jurisdiction were widened, would compliance become more of a problem? Would you then say that you needed more statutory powers?

Professor Brown: I do not think so. In relation to extending our jurisdiction to cover Waterwatch and prison complaints, we would apply the same argument that we use at the moment. However, if standards were to come under our jurisdiction, as I said earlier an ombudsman's role in that regard would be to provide the investigative capacity to examine standards issues, but we would not make the final decision. That would be for the standards bodies of Parliament or a different panel that considered standards for councillors and others. We have to distinguish between the investigative function, the decision-making function and redress.

The Convener: I apologise to Ross Finnie, who wanted to ask a question in relation to Jamie Hepburn's.

Ross Finnie: That is all right. I thank Professor Brown for her considerable submissions in two parts, on functions and legislative requirements, which display—if I might say so—her usual intellectual rigour and the pleasant distinction between assertion and evidence, which has not been evident in all the submissions that we have received.

I want to explore further an issue that was raised by my colleague Jamie Hepburn. There is a question about what we do about achieving more efficient running of public bodies and making savings. As the office-holder for some time, you are open to sharing functions and think that it does not present a problem. However, although it would be very good to effect those efficiencies and to afford greater access to the public, our difficulty is this: What are we doing about Parliament's decision that separate issues deserve to be dealt with either by an ombudsman or a commissioner?

Let us accept the general point that the ombudsman looks at complaints about malfunction

or maladministration in the provision of public services or, as you just mentioned, where there has been a wrong interpretation or application of statute to the disadvantage of the complainant, and that there is a level of expertise in that function. Although you might disagree, I think that that is to be distinguished from investigations into individuals such as MSPs or councillors where there has not been a technical service malfunction, but a failure to abide by codes of standards and conduct. The consequences are rather different. There is, in cases involving public appointments, a completely different issue about the nature of the appointments and the appropriateness of the selection process, which requires a different form of expertise. I want to press you on how a reshaped ombudsman could provide those functions. Is it appropriate for an ombudsman, as is clearly understood in general world terms, to perform those functions?

Professor Brown: Ross Finnie has got to the nub of the issue. Extension of an ombudsman's functions always carries the danger that their core function will be diluted, which is why I separated what the ombudsman does and will continue to do from the extent to which expertise in the ombudsman's office would be used to fulfil a function on behalf of others.

I will give an example. It is clear that it is possible for the committee to recommend the proposed arrangement, which would be a big step—I am sure that Jim Dyer has his own views on it. We do not have to look far to find such arrangements in other countries—Wales, for example.

Before the merger that established my office, the Commissioner for Local Administration in Scotland had the power to accept complaints about councillors. Often, such complaints are closely linked with others—most regularly, a complaint about a planning issue involves a complaint about the council and about councillors' roles. Under the new settlement and the new code of conduct for councillors, complaints about councillors were separated out and Scotland decided for good reasons to create the Standards Commission for Scotland.

The Welsh decided not to have such a system, which they thought would require disproportionate resources for a small country and might mean that links in dual complaints were missed. Often, we must consider how a councillor acted as a councillor and as an administrator in a council. Those roles are not necessarily the same, which is a complication. The Welsh legislation went down the road of keeping complaints about councillors with the Public Services Ombudsman for Wales. That ombudsman has a specialist team of investigators—although they are flexible and can

transfer between subjects as business increases or decreases—to deal with those complaints, because they involve a different process and procedure, as Ross Finnie said. That team does not necessarily make final decisions—certainly not on penalties. The work can be done in that way.

The Northern Ireland Ombudsman was asked relatively recently to perform a similar role to that of Jim Dyer by considering complaints about Northern Ireland Assembly members. That system is possible—the ombudsman does that and has a member of staff who is dedicated to dealing with those complaints.

A different way of operating is to keep the office-holder while having all the functions under one umbrella administratively, but that is a side issue. The Republic of Ireland offers another model. The Irish ombudsman also holds office as the information commissioner and deals with standards and referenda, which are much more common in the Republic of Ireland than they are here. I have asked their Office of the Ombudsman how that works and it is clear that that arrangement is workable, but it is for MSPs to decide on the correct philosophy for Scotland.

New South Wales has the most innovative model, which expands the ombudsman's role in an entrepreneurial way to take on private sector complaints and generate income for the public purse. People in New South Wales think that the ombudsman's core role can be preserved while that other function is provided. However, that must always involve a tension, which has an inherent danger, because the distinct functions must be protected. Nevertheless, the functions can be organised differently.

Ross Finnie: I say with respect that almost anything is “workable”. The decision depends on whether we believe that a conflict of interests is at the core of much professional determination of standards and other such issues. All sorts of things might be defended because they are workable, but they might not represent the right decisions if they were arrived at when a conflict of interests arose.

I will press you. I am interested in your suggestion that the committee might conclude that the proposal is workable but, with your obvious experience of dealing with complaints, do you believe that it provides the best way to reach the right conclusions and to do so in the best interests of natural justice?

10:45

Professor Brown: That is a good question. The committee will make its decision on the basis not of workability alone, but on the basis of all sorts of principles that are inherent in such work. The

important principle of avoiding conflicts of interest should be preserved. All I can say is that we have evidence that such an arrangement can be adopted without offending other principles. We do not seek such an office; the proposal came from another body. We are happy to explore the option with the committee, but we do not seek it.

Jackson Carlaw (West of Scotland) (Con): I apologise for just missing the beginning of your introduction. My point is not dissimilar to Ross Finnie's—if I had spoken before him, I might have made similar comments to his.

I will go right back to the beginning, when you talked about the initial one-stop-shop concept. We are now talking about the advantages or disadvantages of bringing in other responsibilities. Is there a danger that the public would perceive all that to be the creation of a ministry of complaints? In asking the Cabinet Secretary for Finance and Sustainable Growth that question, I suggested that it could all be quite Dickensian, but he quickly admonished me and said that there was nothing Dickensian about modern Scotland, so perhaps I should have said it would be Kafkaesque.

I have a slight concern, on which you touched when answering Ross Finnie. You said that the challenge was for the committee to make the decision. Did you suggest that you are not entirely convinced that the whole package of transfers was the right thing to do? You said that the necessary resource for each component must be available. Is the danger that public confidence will start to be undermined if we have a huge monolithic operation that will inevitably lose the focus on particular aspects? Businesses and other organisations often think that bringing everything into one operation is the right thing to do, but regret it later because something is lost. We do not want to go down a route, feel that we have made a mistake and then withdraw from it.

Professor Brown: Absolutely—you make the point that simplicity is not a criterion in itself. The position must be balanced and trade-offs are inevitable.

I do not see the proposed body as being a “monolithic” ministry of anything, and I certainly do not see it as “Dickensian”. As I said in my introduction, Parliament has been forward-looking and imaginative in thinking about how to design a system for the 21st century, rather than for the 20th or the 19th century. Specialisms can be preserved while we obtain the benefit of the generalist approach to investigating complaints.

Even if we put together all three groupings that the SPCB talks about, that would involve fewer than 100 staff. That is tiny in comparison with other ombudsman's offices. The smaller grouping that the SPCB proposes would involve roughly 65

or 70 staff—I do not know the exact number as I have not calculated it. Size per se is not an issue. The questions are more about principles and conflicts between competing principles.

It is crucial that the public feel that the service is easy to access and that they can speak to someone who has the expertise to deal with their problem. I know that ways in which better advice can be given and so on have been considered. I would be against a machine-led approach. I return to a question that the convener asked at the beginning. One benefit of our office is that we have offered a really good and accessible front-line service. Much of the time, people just need to speak to someone. If we had more resources, we would like to speak to and see people a lot more, because that often avoids much of the expense that arises from initial misunderstandings.

We have invested in the front line—which we suggest other public bodies do—to achieve the culture of service to individual members of the public with individual problems, who do not want to hear about difficulties and just want to know how we can help them solve their problems. Much of our focus is on giving the right advice—sometimes, a problem is not for us to deal with—and on walking people through what can be a maze, in which they feel that they are taking on a big bureaucracy and that they are powerless. We would be extremely cautious about any system that diminished the notion of a culture of service and support for the individual.

David Robb (Scottish Public Services Ombudsman): The questions from Mr Finnie and Mr Carlaw get to the heart of and capture one of the concerns that we have expressed about the proposal that any new organisation should have a commission at its head. Since the establishment of the SPSO, it has been an advantage that we have achieved a high degree of recognition and that leadership and accountability are clearly vested in Professor Brown as ombudsman. We have a genuine concern that that visibility, leadership, clarity and accountability might be diluted by the establishment of a commission body that takes us into the territory of having what Jackson Carlaw described as a “ministry”. For us, an attraction and a selling point of preserving an individual at the apex of the administration, albeit that that person might have extended functions, is that that would buttress public confidence in accountability and leadership. We are concerned that a commission model would blur that visibility and leadership.

Professor Brown: On page 4 of his submission, the Scottish Information Commissioner makes that point in relation to his office. He also makes the point that, internationally, people have not gone down the commission route, for the reasons that have been mentioned and for others that I could go into.

Ross Finnie: Your submission makes quite a bit of accountability. I am sorry if I start to become a little tedious on conflicts of interest, but it is quite important to separate out to whom or to which body you are accountable *de facto*, on a day-to-day basis, and to whom or to which body you are accountable *de jure*. In your submission, you suggest that improvements could be made to clarify that. In the context of my question and that of Jackson Carlaw, and in the general context of the substance of your submission, will you explain your views on accountability? Do you think that there are any conflicts in that regard? Ultimately, where might the buffers lie?

Professor Brown: My colleagues might want to respond to that question, in particular Eric Drake, who has the most experience of working in ombudsmen’s offices. He worked in London, Edinburgh—on a previous occasion—and Dublin before taking up his post at the SPSO.

Ross Finnie: He has international experience.

Professor Brown: Indeed. He also advised on the setting up and running of the Office of the Ombudsman in Malawi, so he has lots of expertise.

Accountability is crucial, because there is a danger that people might think that we are trying to be unaccountable. Nothing could be further from the truth. One must distinguish between to whom and for what one is accountable. As regards what we are accountable for, I will deal with operational decision making first and then the governance side.

Quite often, members of the public will be unhappy because a decision has been made that they do not like. The obvious question they then ask is, “To whom are you accountable?” What they are actually asking is, “To whom can I appeal your decision?” Members of the public sometimes propose that there should be a tribunal. I quite understand why, if someone has not got the decision that they wanted, they might want someone else to examine the matter, but I think that they misunderstand the concept of an ombudsman. People will already have been through a long process before they get to the ombudsman’s world. They might have been to a planning committee but did not like the outcome. Although I might on a personal level feel sympathetic, that is not the point—it was for someone else to make the decision.

An ombudsman has a specific role, which is to act as the body of last resort and to draw a line under a dispute from a public money perspective. The ombudsman should have the final word on the matter, unless a decision is challenged by judicial review.

In addition to accountability for decisions, there is accountability for good use of public money—

how one uses one's budget, how efficient one's office is and so on—and we would welcome a more open debate on that. In research on the experience of other countries, Winetrobe et al make a case for the establishment of a committee to examine the role of officers of Parliament, which would enable expertise to be developed in genuinely holding bodies to account publicly. It would be a committee that would understand the business, if you like. A good example of such a committee is the United Kingdom Parliament's Public Administration Select Committee, which is extremely robust. One could discuss one's strategic plan with such a committee. We draw up strategic plans. We made last year's drawing up of a strategic plan for our next three years a consultative exercise. We did not have to do that, but we did it because we knew that it would be extremely valuable. We are seeking ways of having such engagement.

There are different options. An officers of Parliament committee could be set up, as Winetrobe et al propose, and the role that the Scottish Commission for Public Audit plays in relation to the Auditor General for Scotland could be extended, although that would have to be buttressed by an arrangement whereby the remuneration of the office-holder could be examined, which would require independence that does not currently exist. I know that Parliament is not keen to reinvent committees, but another proposal that could be considered would be to bring back the former Justice 2 Committee. As well as examining the role of the office-holders, it could look at the wider role of administrative justice in Scotland in more detail.

I said in my submission that the debate should not be held in isolation, because there is a danger that it could be siloed into consideration of the role of office-holders of the Parliament. The ombudsman's office sits in a much wider administrative justice framework. Yesterday, in my office, I hosted a meeting of the administrative justice steering group, the report of which should be out by the end of March. I hope that members of the committee will look at that report, because it examines different mechanisms through which members of the public can take on issues in relation to the state, which include use of an ombudsman, mediation, a tribunal and courts. There must be a connection. One way of making that connection would be to have greater integration with Parliament so that Parliament would recognise the issues around administrative justice.

There is UK legislation that affects Scotland, Wales and England. The question for Scotland is what kind of administrative justice system it wants to have within that UK context. I think that I drew the committee's attention to the fact that the

Administrative Justice and Tribunals Council might want to make a submission, because it has a statutory role in oversight of the administrative justice system. There are different models that one could pursue. Eric Drake might want to add to that.

Eric Drake (Scottish Public Services Ombudsman): I do not have a lot to add; I will just emphasise that there is always a tension for ombudsmen between accountability and independence because, essentially, all ombudsmen are funded by the organisations that they investigate complaints about. That is true for private sector ombudsmen as well as public sector ombudsmen. In most developed democracies, there are mechanisms in place to work through that tension and to balance the two competing aims.

In general, the funding comes from Government, and Parliament is part of the mechanism for holding the ombudsman to account and for ensuring that the Government behaves properly towards the ombudsman. Alice Brown mentioned that I have done some work with Malawi's Office of the Ombudsman. The ombudsman there has been extremely effective in helping the Malawi Parliament to hold Government departments to account for what they do but, in addition, Malawi's Parliament has supported him when the Government has appeared to try to cut his funding, in an effort to reduce the extent to which he causes it problems. That sort of relationship can be extremely constructive.

To my knowledge, the arrangement in Scotland—whereby accountability is through the SPCB, which is a body within a jurisdiction—is unique internationally, and I think creates potentially unnecessary tension and dilutes the relationship that should exist between the ombudsman and Parliament collectively.

11:00

Ross Finnie: I have a quick observation to make. You have articulated some of those views in your papers and elsewhere, and they are of considerable interest. We might be minded to consider further whether an existing committee of the Parliament should look at public accountability, as you suggested, or the role of the ombudsman and its interface with administrative justice. Either or both of those suggestions would militate against the ombudsman having responsibility for the conduct of the MSPs who would ultimately interrogate them on those two elements of accountability.

Professor Brown: Indeed. We are back to conflicts of interests again. If you do one thing, there will be consequences for other things. That is why you have to look at things in the round and

ensure that there are no internal inconsistencies, so that the logic extends across the whole argument. It is about the design of the system, which has underpinning principles. There will be tensions, including creative tensions—that is appropriate—and trade-offs. How you approach that is the challenge for you. We are more than delighted to assist you with that in any way we can. We have access to a range of models in other parts of the world.

Jamie Hepburn: We have talked about accountability and some budgetary issues. I want to talk about budgetary oversight. You seemed to indicate that you had some concern about the suggestion that the corporate body should play a greater role in budgetary oversight of the ombudsman's office. I think that you had concerns about the suggestion that the corporate body should have the power to approve the number of staff and their terms and conditions, in the same way that it does for the latest creation: the Scottish Commission for Human Rights.

I understand that the corporate body already has powers in relation to your office. Has that caused you problems? Are you concerned about the possible extension of those powers? Will you explore that in a bit more detail?

Professor Brown: Indeed. You are right that these powers currently exist. However, again, I was making the distinction between the SPCB and the Parliament having the powers. It is up to the Parliament to decide how much resource to put into things.

I will give you a general example to set out the theory and work through an option. In any given year, everyone is only too aware of the financial constraints on Government spending. If we were not aware of it previously, we are certainly aware of it today. We are only too aware that we really want money to be spent in the delivery of public services. We start from that presumption. We are not here to be profligate with public funds; we want most public funds to be at the front line delivering good public services and we want to minimise any expense. It is quite right that we have targets for how much of an increase there can be in any given year, taking inflation and so on into account. The biggest element for an office such as mine, and for other offices, is staffing. About 75 to 80 per cent of our funding goes on staffing. There is very little discretionary spending; the rest goes on running the office.

The Finance Committee picked up the difficulty that can arise. A commissioner who is an advocate for children or human rights can make adjustments in their strategic plan—they can consider whether they want to spend money on something in one year or to defer it for another year because it would take them over the

percentage increase that had been set. An ombudsman is in a different place, because their function is demand led. The Finance Committee picked up that point and said that there has to be a mechanism to acknowledge it. It can be acknowledged in different ways. I think that Jane Munro's book on public law says that that is a tension for an ombudsman's office, because it does not have the option of turning away complaints. In fact, as an ombudsman, one runs a great risk of being judicially reviewed for not investigating a legitimate complaint.

The classic dilemma for an ombudsman's office is whether to ask for more resource to meet the exceeding demand. An ombudsman can do that only if they can demonstrate that they have done everything else, such as making efficiencies and changing their processes to manage the number of complaints.

The only other option is one that we faced: we had a backlog of cases because there was no way that we could match the big increase in numbers with the budget that we had. As I said, in that situation we run the risk that somebody will say that we simply have that problem and the public will just have to wait. However, that decision will be made not necessarily by the ombudsman's office but by the Parliament and the committee accepting part of the responsibility for that tough choice, which might have an impact on timescales. Such a dialogue is necessary because we would want to be absolutely clear about the grounds on which we were making that choice and the impact that it might have. We found that, once we got more resources, we were able to do different things.

I am in danger of sounding like I am asking for more resource, but I am not. A more open debate would be beneficial, because hard choices are involved. There may be no more money, so perhaps as many efficiencies as possible will have to be made in running the office. However, the only other thing that can give is the timescales. That is the kind of issue that arises. I hope that that example helps to illustrate the point.

Jamie Hepburn: I understand that a number of the corporate body's appointees have concerns about their legal status on several points, one of which is that it does not fit into any known category in Scots law. Do you share those concerns? What action would you recommend?

Professor Brown: I share those concerns in that the issue has been raised for a number of years and we simply need clarity. There is a difficulty in that the legislation for the offices varies, so the matter may affect different office-holders differently. However, we should all be clear about our status and, if amendments need to be made to the legislation, let them be made

before we hit a problem. There is different legal advice, which is always a problem on such matters. The issue does not keep me awake at night—perhaps it should—but the Parliament and the office-holders need to be clear about it so that we do not encounter a problem further down the line. The review is a good opportunity to clarify such matters.

Jamie Hepburn: You say that some of the lack of clarity is a result of the legislation for each office being different. Do you have an example of that?

Professor Brown: Yes, but there are also differences of interpretation. Different legal advice has been given. Our legal advice considers whether I, Alice Brown, would be liable as an individual member of the public or only as the Scottish Public Services Ombudsman. In other words, if I sign a contract, I do not sign it without my title being underneath the signature so that the office enters into it, rather than me as an individual member of the public.

From the advice that I have had, I understand that, when I demit office at the end of March, any liabilities that have been incurred with me will be transferred. That is a big issue in relation to staffing. I am my staff's employer, so I think that they might like to be satisfied that the new ombudsman will be their new employer.

That is the type of issue that I am talking about. Individual office-holders will probably raise different points with you and I do not want to anticipate what they might say. The matter needs clarification so that everyone is satisfied that we have the right system.

Perhaps Eric Drake might like to add something.

Eric Drake: I am a simple soul and believe that clarity is a good thing. However, there are matters on which we do not have clarity at the moment. Alice Brown mentioned employment status. It is of concern to me as an employee of the ombudsman to know for whom I will be working and with whom I will have a contract when she goes on 31 March. The lack of clarity on that is not helpful.

The Convener: If the restrictions on future employment for holders of your post were relaxed, what would you consider to be an appropriate period of restriction, given that the provisions were designed to avoid conflicts of interest and allegations of corruption?

Professor Brown: I will step back a little bit before I answer your question on the appropriate period. In our submission, we tried to lay out the different provisions that apply to different people. I am not sure what the logic was behind making the provisions on the SPSO particularly restrictive.

There is a restriction of three years on the ombudsman and the deputy ombudsmen, whose

terms of office came to an end in 2007. We did not understand quite how restrictive the legislation was until we looked at it in detail. If the ombudsman's remit is extended, I will not be able to work in any public agency, in any capacity, or do anything in the public service where moneys are involved—even for expenses—for three years after I have left office. Unlike ministers, I cannot ask a separate committee to judge whether there would be a conflict of interest if I took on a role. I am not sure of the rationale for making the exclusion period three years. There is also a specific restriction on the Commissioner for Public Appointments in Scotland, although she has the opportunity to have a committee consider whether there is a conflict of interests.

An issue of principle is at stake. It is an injustice to restrict an individual for three years without any appeal mechanism. The restriction has created considerable difficulty for the former deputy ombudsmen, because it prevents them from making a living. I will give my personal story, just to illustrate the point. When I took on the job of ombudsman, higher and further education were not under my jurisdiction; I was on loan from the University of Edinburgh and intended to go back there after I had finished my term of office. However, quite soon after I took on the role, it was proposed that higher education should come under my jurisdiction. I raised the issue at the time and asked whether it could be addressed, but the only options that I was given were to resign as ombudsman—which seemed a bit premature, given that I had not been in office for long—or to resign from the university. I make that point only because it illustrates the dilemma that individuals face. I argue that the provision is inherently discriminatory on age grounds, at least, and perhaps on gender and other grounds—why would someone do the job unless they were at the end of their career?

There is a particular issue at the moment because the advertisement for my replacement is now in the public domain and people are being asked to apply for a two-year post. If they are successful, they will be subject to a three-year exclusion, under the current legislation. Would you apply for a two-year post if it prevented you from working anywhere in the public sector for three years afterwards? I do not think so. There is an inherent injustice that needs to be addressed.

Nonetheless—having got that off my chest—one must be mindful of Mr Finnie's point about conflicts of interest. Those who hold the offices of Auditor General, Scottish Public Services Ombudsman and so on are in a privileged position and have access to all sorts of information. For that reason, there must be proper arrangements to protect individuals and the public. It is proposed that the person who holds the post of Auditor General

should not be allowed to apply for another post while they are in office; there might also be a period after that in which they could not apply for a post. Where that arrangement exists in other countries, the person concerned is compensated financially for the fact that they cannot fulfil their business; if they were not, the exclusion could be seen as a restrictive practice. When imposing a restriction, we must think about how to compensate for it.

You asked what the exclusion period should be. I do not see where the big conflict of interest lies in relation to the handling of complaints. I would not look at complaints about the University of Edinburgh, because I worked there; such issues can be covered. However, if I later took up a post in the public service, how would that create a conflict? One could argue the opposite—that the expertise of an ombudsman who is no longer in office is being wasted if they cannot contribute to the public service in the way in which they would like, to improve complaint handling and so on. There is no big financial issue. It is not as if we are talking about people who have worked for the Government and who stand to gain financially from that by going into the private sector. We must be mindful of what is appropriate.

We need to establish whether a consistent approach to matters such as terms and conditions and dismissal could be applied across the offices. Why is the practice in one office different from that in another? There might be good reasons for that, but let us have the logic on the table so that we all know what it is and everyone is clear what the rules are.

There could be an exclusion period, but it should be no longer than a year. There should be a facility whereby a committee could determine whether there might be a conflict of interest in any specific case. That would be fair to all concerned.

11:15

The Convener: I have a final question, which relates to page 13 of your annual report. It concerns complaints about the length of time that it takes for complaints to be processed. If you were to set a maximum time for the handling of complaints, what would it be?

Professor Brown: I know that in different office-holders' offices there is sometimes an issue about the maximum length of time for dealing with complaints. In principle, I would not be against a notion of timescales, but the majority of our complaints are handled early in the process. The legislation that established the SPSO allowed for the informal resolution of complaints. Most people want a problem to be resolved as early on as possible. The annual report deals with a different

stage of the process. The majority of complaints are handled within a period of weeks or months, but there are cases that, for one reason or another, take longer than that.

I have mentioned the impact that resourcing issues had on numbers. That was extremely frustrating for the office, as the clear timescales and targets that we started out with were hit hard. In ombudsmen's offices, it is not uncommon for a backlog to build up, which takes time to work through the system. There is no doubt that certain cases have taken much longer than any member of the public should have to endure in an ideal world, and I made that point during the budget discussions. There is an issue about what the public should expect. Most research shows that people want as speedy a process as possible, but not at the expense of a thorough investigation.

There is a proportionality argument. Some issues can be dealt with extremely quickly. We try to manage the process by sorting the complaints that can be dealt with quickly from those that are more complex. Some of the timescale issues are beyond our control, in that it sometimes takes time for people to get back to us, to arrange interviews or to obtain specialist advice on complex, sensitive and difficult cases. There is no one-size-fits-all solution, especially when one has an office that covers many different aspects of public service. The range of complaints that we deal with is enormous. Nonetheless, one must give assurances on timescales. Again, one could discuss such matters with a parliamentary committee.

The Convener: We have no more questions for you, but following our deliberations later this morning, we may wish to write to you for additional information or to ask you to appear before us again.

Thank you very much for your time. You have spent a good hour and 15 minutes answering questions. I also thank David Robb and Eric Drake for coming along and providing clear and succinct answers. You have certainly given us a lot to think about and, as I said, we may write to you.

Professor Brown: Thank you for the opportunity to participate. We would be delighted to contribute further to your considerations if that is necessary.

11:19

Meeting suspended.

11:28

On resuming—

The Convener: In our second evidence session this morning, we will hear from Robert Black, who is the Auditor General for Scotland. Thank you for coming along this morning to give evidence in our inquiry. Before we move to questions, would you like to make a brief statement?

Mr Robert Black (Auditor General for Scotland): Thank you, convener—it is a pleasure to be with you this morning. I will keep my opening remarks brief.

In my letter to the committee, I said that I would like to restrict my evidence to one of your key areas of inquiry—the terms and conditions of the post of the Auditor General, which were referred to in the recent report of the Scottish Commission for Public Audit into the corporate governance of Audit Scotland. I am the current postholder, but the committee's main concerns will relate to people who might hold posts in the future. I therefore see no conflict of interest, and I will be happy to assist the committee in its inquiry.

Another opening remark is a fairly obvious one: the overriding requirement is to safeguard and ensure the independence of the Auditor General, so that he or she can properly undertake the functions of the office. You must also ensure transparent and effective accountability in the Auditor General's use of resources and in the overall performance of the office.

11:30

The arrangements that the Scottish Parliament put in place back in 2000 lead the field; they are used as a model elsewhere, they are robust and they have worked well. We should perhaps bear that in mind as the discussion proceeds.

In my letter I touch on four main issues: the terms of appointment of the Auditor General; matters relating to conflicts of interest in future employment; the conditions on which the Auditor General is appointed and how those are determined; and privilege.

I will be happy to answer members' questions on any of those issues, or on any issue that members consider relevant. Of course, matters of policy arise in relation to the future arrangements for scrutiny; they probably lie outwith my remit.

The Convener: Your view is that the single-term appointment should be eight years. What is the reasoning behind that? Why eight years?

Mr Black: I have said to the SCPA that I favour a relatively long single-term appointment because that would ensure that the Auditor General would be seen to hold office without fear or favour and

could exercise the duties of the post. It would be inappropriate if the term of office were much shorter than eight years. There would be a perception that the Auditor General might be influenced, towards the end of the appointment, by the fact that the term of office was soon to end. If there were a reappointment process, that perception would be even greater.

Westminster has held a thorough review of the governance arrangements of the National Audit Office and the equivalent of my post. The Public Accounts Commission has found that a 10-year period would be appropriate. The reasoning behind that finding has been very similar to my reasoning. Eight years would be the minimum to ensure that a post such as mine had independence.

The Convener: Towards the end of her evidence, Professor Brown spoke about restrictions on applying for other posts. As you know, the ombudsman cannot be an MP or MSP, or hold an office in a listed authority that he or she may have to investigate. That is one of the restrictions. Could any similar restrictions apply to applicants for the post of Auditor General?

Mr Black: Some restrictions would be required, but a balance would have to be struck. The independence and integrity of the office would have to be upheld to secure the best candidates but, as Alice Brown eloquently said, it would be a mistake to prohibit former holders of the office from continuing to contribute to public life in some capacity if they so wished. As is the case with the post of ombudsman, someone who has held the post of Auditor General for some time will have knowledge, insight and experience that could be of value elsewhere in the public sector.

As a general principle, I accept that there should be restrictions—in fact, I would recommend that there should be—but we have to be clear about what the restrictions are. It is sometimes helpful to give one or two examples, so I will give some examples on an ascending scale of significance. If the Auditor General were active in a charity and passionately committed to it—a charity that did overseas work, took no work from the Scottish Parliament, but nevertheless had a Scottish committee—I think that the postholder should be entitled to take that sort of interest in public life, and should be encouraged to do so.

At the next level up, the postholder might have experience and qualifications that enabled them to fulfil the role of visiting professor at a university. It seems to me that such a role would not, in principle, conflict with that of Auditor General—because of the nature of the work and because the Auditor General does not audit universities in Scotland. Universities are independent of the wide reach of the Auditor General.

The third level might be a little more problematic, but reflecting on it is interesting. From time to time, the Scottish Government, with the Parliament's blessing, requires special pieces of work, such as inquiries, to be done. The nature of an inquiry may make it well suited to the talents and experience of a former Auditor General.

Clarity on some of those matters is needed. I would not pretend that we can design the perfect framework, but such issues must be taken into account.

The Convener: There are restrictions on other postholders whom we are considering holding other positions while in office unless a prior agreement has been made with the Presiding Officer. Is such a condition—the Presiding Officer's agreement—sufficient to preserve the integrity and independence of their offices or should there be legislation for that?

Mr Black: I would leave Parliament to decide on that matter. Members might wish to ensure that a completely robust and transparent framework exists, so there might be a requirement to put something into legislation. I am not a lawyer, but I realise that careful drafting would be required to put into an act something that defined the boundary precisely.

I think that it would be sufficient for the corporate body, supported by the Parliament, to recognise a policy on the restrictions that would be put into the appointee's terms and conditions before they took up office. That would be agreed with the appointee. For example, there could be an enforceable restriction on the appointee applying for a post elsewhere in the Scottish public sector for a prescribed period or a mandatory requirement that if the person wished to apply for an appropriate post in the timescale over which the restriction operated, they would have to consult the Presiding Officer or perhaps even an appropriate parliamentary committee.

Jamie Hepburn: We have just explored the restrictions that there should or should not be for a person coming into office as Auditor General. I think that you touched on the issue that I want to explore. Should restrictions be put on those leaving office and seeking employment elsewhere? We usefully explored that issue with Alice Brown. The Scottish Commission for Public Audit has suggested that, while in office, the Auditor General should be restricted from applying for posts that are subject to audit by the Auditor General. Do you agree?

Mr Black: Yes.

Jamie Hepburn: So there should be restrictions?

Mr Black: Yes. It would be inappropriate for the postholder to apply for a position in any of the public bodies that are subject to audit by the Auditor General.

Jamie Hepburn: The corporate body has suggested that a two-year restriction should apply.

Mr Black: I understand the reasoning behind that suggestion and think that I would be comfortable living with it, subject to clarity on what that restriction meant.

Jamie Hepburn: What do you mean by that?

Mr Black: I hope that I have given practical examples of where it might be perfectly possible—and, indeed, in the public interest—for a former Auditor General to contribute to the public sector. I think that we want to avoid the restriction that Alice Brown described—which was, I am sure, not foreseen—on former ombudsman and deputy ombudsman postholders.

Jamie Hepburn: You say that you could live with a two-year restriction. Do you have an alternative suggestion?

Mr Black: Let us be practical. The audit process runs from financial year to financial year, so the minimum period over which a restriction should properly apply would be one full financial year after the Auditor General demitted office.

If, say, I resign next summer—I do not want to start any rumours on that subject—the restriction on me should last for a year until the April. That would allow a full year after my demitting office for the auditors of any public body with which I might have been engaged to audit that body's finances and for the future Auditor General to address any issues of concern. There should be that run-out period. In practical terms, I suggest that the restriction should apply for between a year and two years.

Johann Lamont (Glasgow Pollok) (Lab): For me, there is some lack of clarity about the purpose of the restriction. Is it to prevent someone, while in post, from doing things from which they will benefit immediately after they demit office, or is it to prevent an organisation from benefiting inappropriately from a former Auditor General's expertise? As with ministerial expertise, the issue is about people taking information and wisdom from Government into a particular post. There is a general lack of clarity about the need for such a blanket restriction. Possibly, people are just seeking to make it look like there can be no abuse of position.

As Professor Brown identified, is not the critical issue the need for adjudication? Although we could impose a restriction for a given period of time, perhaps we really need a person or group who can decide whether the categories identified

are reasonable so that there is no possibility that the person could have acted for personal gain by taking information with them in the interests of a particular organisation. Would it not be better to have that kind of model rather than a discussion on arbitrary timescales?

Mr Black: I very much agree with those remarks. On why such a restriction is necessary, your point about people taking information with them is quite perceptive. If a senior civil servant with deep knowledge of the procurement practices of a major spending department of Government moves immediately into a body that is in receipt of significant public funds, that seems to me to be an issue of real public concern, but I struggle to dredge up from my long experience examples of information that I have held that I could take elsewhere because it would be of value to other public bodies. Yes, my post provides general experience of how government works, but I tend not to be party to that sort of information. Of course, there are also issues of confidentiality that require to be observed.

Fundamentally, I think that the matter is about public and parliamentary confidence that—no matter how unlikely the event might be—everyone can be assured that the Auditor General will in no way influence the content of audit reports in his final year of holding the post because he has plans to go in a particular direction in the year following. That might be a somewhat tendentious line of thinking but, nevertheless, public confidence is important.

Generally, I would tend to favour an arrangement whereby a commonsense approach is brought to the issue. Fundamentally, the requirement could be that a former postholder consult the Presiding Officer or a parliamentary committee and that a power is given to, say, the Presiding Officer on behalf of the Parliament to debar the person from taking that interest further. In my view, that would be a commonsense approach.

Jackson Carlaw: I have a question that goes back to the length of a single term. I notice that your submission to the committee refers to the proposal in England for a single 10-year term. Did you find the narrative in support of that proposal compelling? In recommending that

“the term of office should certainly not be for less than eight years”,

are you just resigned to that as a period with which you would be comfortable, or do you believe that eight years is not long enough?

Mr Black: I would stick with the wording in my letter. I think that eight years is the minimum—clearly, I have some experience in this area—because the public sector in Scotland is large and

complex and the reach and complexity of public audit has increased enormously in the years that I have been in the job compared with what audit used to be like before devolution. It takes a while to become aware of the issues in the Scottish public sector in order to make the necessary judgments. It takes a couple of years to bed into that across the whole of the public sector.

11:45

There is also the matter of relating the period to sessions of the Scottish Parliament. If it were much less than eight years, we could end up with the unfortunate situation of the Parliament having to appoint an Auditor General in two consecutive sessions. We need to think about such matters. For example, a resignation at the beginning of one parliamentary session would require a new appointment in that session, which would mean having to appoint another Auditor General towards the end of the next session, which seems inappropriate. For that reason, I feel that the eight-year period is the minimum that would be acceptable.

The Convener: We will now briefly consider salary and conditions. Do you have any views on whether the SPCB should invite the senior salaries review body or its own audit advisory board to undertake a review of the salary benchmark for the Auditor General post at the start of each fixed term? Would you agree with that?

Mr Black: I would strongly support the suggestion that the SSRB be requested to undertake a review of the salary prior to the post being advertised. There should be a formula whereby the salary is reviewed annually, which would ensure transparency and understanding of what is going on and provide the necessary assurance about independence for the post. I am not clear about the role of the audit advisory board, which is not a statutory body but one created by the SPCB to advise it, rather like an internal audit committee, on the finances of the Scottish Parliament and how they are managed. I am not persuaded that that is a suitable body to take on the responsibility of oversight of the Auditor General's salary and terms and conditions.

The Convener: The SSRB recommended that the annual pay increase for office-holders should be linked to that of the senior civil service. Would you agree with that?

Mr Black: Yes. That seems to me to be the obvious set of benchmarks, not least since it must be highly likely that a pool of candidates for the post of Auditor General would come from people at senior levels in Government. That seems an obvious market for potential appointees to come from.

The Convener: Do you think that grounds for removal from office should be set out in legislation for your post?

Mr Black: I would need to be persuaded that there is a need for legislation on that. By taking a diligent and careful approach to the terms and conditions on which the Auditor General is appointed, it should be possible, if necessary, to devise conditions that the office-holder must observe. One of the most obvious is a prohibition on taking any other posts in Scotland as prescribed in the terms and conditions. Clearly, a breach of that would be a matter that would require to be addressed seriously. I think that such matters would be better dealt with through the terms of appointment rather than through legislation.

Jamie Hepburn: Do you have any views on the SCPA recommendation that a position of deputy Auditor General should be created in statute?

Mr Black: That was an interesting thought, which the SCPA shared with us. I could not immediately see the need for such a provision. The principal legislation that governs my post is the Public Finance and Accountability (Scotland) Act 2000, which I know quite well. There are powers in that whereby I may appoint someone to deputise for me. I think that there is sufficient provision for me to appoint a deputy if, for any reason, I am unable to fulfil my duties. I understand that the provisional view of the Scottish Government is that that is the case. It is clearly a matter of legal interpretation but, at the moment, I am not persuaded that it is an essential requirement. I have undertaken to provide the Scottish Commission for Public Audit with a description of the scheme of delegation that would apply if I were unable to fulfil my duties. We think that that is legally competent at the moment.

Jamie Hepburn: Do you feel that there is anything to prevent you from authorising others to perform your duties on a contingent basis?

Mr Black: I am sorry, but I did not quite catch that.

Jamie Hepburn: Do you feel that there are restrictions on your ability to appoint others to discharge your responsibilities or duties as the need arises?

Mr Black: I am unaware of any at the moment. As ever, if there is a legal opinion that there is a shortcoming in the statute, I would be willing to respond positively to that.

Johann Lamont: I wish no ill on any Auditor General, but I wonder whether the issue is that they are incapable of explicitly delegating authority at any stage. There have been examples of that in the judiciary. What you have described is different,

in that a scheme of delegation would kick in if the postholder were unable to fulfil their functions. It would not rely on the postholder saying that they could not do something and that someone else needed to do it; it would kick in automatically. Has that scheme of delegation already been drafted? Does it exist?

Mr Black: I think that I would require to capture it more explicitly and formally in a document, which I would share with the SCPA. In effect, the job description of my depute describes their acting as my depute—that is where it resides at the moment—but it may be necessary to be a bit more explicit about it and have that in place very soon so that there can be no doubt about what would happen if I were, for any reason, unable to fulfil my duties.

Johann Lamont: There would be no hiatus. The concern is that organisations can suffer paralysis if the delegation is not clarified.

Mr Black: Yes. I assure you that, for all practical purposes, there would be absolute continuity. My depute would step in immediately.

The Convener: It would be helpful if you would submit a copy of that paper to the committee.

Mr Black: Yes.

The Convener: What benefits would there be if statements by the Auditor General had privilege?

Mr Black: I am happy to share my thoughts on that. There are two issues: one of principle and consistency and one of practical execution of the duties of the office.

The issue of principle and consistency is this. There are some bodies that are fulfilling the sort of duties that the Auditor General fulfils that have absolute privilege. One of those is the Accounts Commission, which had absolute privilege built into its legislation years ago. Absolute privilege was not built into the legislation that created the post of Auditor General. So, the Accounts Commission, which reports to Government, has absolute privilege but the Auditor General does not. That does not seem consistent and appropriate.

Are there any practical implications of the Auditor General not having absolute privilege? I have managed to chart my way through the past few years without passing any sleepless nights because I do not have absolute privilege. As the holder of such a post, one takes great care in all one's pronouncements to ensure that what one says is factually correct and is backed up by audit evidence.

Not having absolute privilege does not cause me to toss and turn at night, so if the decision were made not to give it to me, so be it, but as the years

have rolled by, expectations of what I should deliver on the Parliament's behalf have grown, so privilege has become more of an issue, particularly when I respond to correspondence from members of the Parliament and the public about issues that concern them. We receive much more correspondence than we used to, quite a lot of which is from members. I am often required to respond to that correspondence without making a report to Parliament. In responding, I must recount my understanding of matters of fact and I might have to judge issues. The risk is small, but it still exists. Strictly speaking, I am not empowered to make such responses, so absolute privilege would give me extra assurance when I did such work.

Qualified privilege is adequate for most matters day and daily, because I understand that the onus is on someone who takes an action against me to show that what I said was irresponsible, vexatious and negligent. I do my best never to behave in that way. The serious point is that it is more appropriate for the Auditor General to have absolute privilege, just as similar bodies in Scotland do.

Ross Finnie: I am never sure about simply applying precedent—saying that because A has it, it would be good for B to have it. If you have absolute privilege, that is quite nice, even if it is just because A has it.

I agree that the range of Audit Scotland's functions has extended. If financial impropriety arose in a public body and a further independent investigation into that were undertaken, would granting the Auditor General absolute privilege compromise that inquiry? That does not imply misfeasance on the Auditor General's part, but a misapplication of standards that was relevant to such an inquiry might be covered by absolute privilege.

Mr Black: How would that work out in practice? When I make a report to Parliament—I do so day and daily—I receive some privilege by that act. The circumstances that Mr Finnie describes would not affect that.

If I responded to a complaint from a third party about the activities in a public body after we had researched that thoroughly and properly, it is conceivable that some of that information might be found subsequently to be imperfect or erroneous. That would not be the fault of the people who did the work for me; that would be because the reply to the third party was the result not of a full, robust and comprehensive audit under statute, but of the professionals in Audit Scotland who audit that public body doing their best to determine the facts of the situation and to relay to me those facts as they were understood, so that I could give the individual a reasoned reply. I am not a lawyer, but my sense is that if it transpired subsequently that

something was wrong in that reply, I could be taken to litigation. Although I would feel uncomfortable with that it would not stop me responding to inquiries from members of the Parliament—I do not think that the allocation of absolute privilege would mean that I or any of my staff would be less careful and assiduous in researching matters of concern to the public—but it might make us just that little bit more cautious about how fully we could express what we found.

12:00

Ross Finnie: I understand that. I just think that there is always an issue in financial propriety about no man being above the law.

Mr Black: Yes. Forgive me if I am being a bit hesitant in my reply, but it is quite difficult to think of an example of the circumstance to which you refer.

The Convener: As we have no more questions, I thank you for coming along. If we think of further questions during our discussions, we will write to you. It would be helpful to have the paper that you said you would put together.

Mr Black: It might take a little while to produce, but I will ensure that you get a copy when it comes out.

The Convener: That is fine. Thank you.

I welcome to today's third evidence session Dr Jim Dyer, who is the Scottish Parliamentary Standards Commissioner. Thank you for attending, and also for waiting patiently. We ran a bit over time with our previous witnesses, which is not unusual for committeees. Would you like to make a brief opening statement before we move to questions?

Dr Jim Dyer (Scottish Parliamentary Standards Commissioner): Thank you, convener. Yes, I would like to make a brief opening statement.

I welcome the committee's review of the issues that are under discussion, partly because parliamentary commissioners and the ombudsmen are not just part of the general mix of public bodies to be fitted into the Crerar mould but deserve careful consideration in their own right. I am sure that the committee is aware that similar discussions have been taking place elsewhere in the UK and beyond, and one might suggest that a principled and comparative analysis is necessary before decisions are reached on these important matters.

Important issues are at stake. We are talking about nothing less than the good governance of Scotland. We are not talking about whether it will be easier for the Parliament to deal with three

bodies rather than six. Essentially, we are talking about how the Parliament can add value to the work of the office-holders and how they can add value to the work of the Parliament in ensuring that we have good public services, appropriate standards of conduct in those who hold public office, and so on.

Regarding the posts in general, my written submission explains why I do not support the Scottish Parliamentary Corporate Body's proposals for structural change and why I do not consider the corporate body to be the appropriate body to carry out the sponsorship role in relation to the posts. In my submission, I make alternative proposals. I believe that the right approach for the future is to promote the collegiate approach that already exists among the office-holders, with a sensible, pragmatic sharing of resources and services, as appropriate, in order to save money where that is possible. Under the corporate body's proposals, Scotland would become the only part of the UK not to have an ombudsman, a parliamentary standards commissioner or a public appointments commissioner, and that situation would arise very soon after the posts were proudly set up by the new Scottish Parliament.

I turn specifically to the standards commissioner post, which I will continue to occupy only for a little over two months, so I have no personal axe to grind in the comments that I will make about the future of the post. We now have further evidence from the corporate body, which has put some flesh on the very bare bones that were served up previously. Basically, it seems that the SPCB wants the standards commissioner role to be subsumed into the chief investigation officer role of the Standards Commission for Scotland, which investigates mainly complaints against councillors but also complaints against members of public bodies.

In 2000, the Parliament's first Standards Committee carried out an extensive nine-month inquiry, which included a comparative approach, to identify the best model for the investigation of complaints about MSPs' conduct. The committee ruled out setting up a separate, independent commission and merging the Scottish Parliamentary Standards Commissioner with the then planned Standards Commission, because of the particular position of MSPs. In my view, after six years' experience of the post, the arguments for a stand-alone standards commissioner still carry weight. Incidentally, Scotland was the first country in the UK to have a statutorily appointed standards commissioner. It is interesting that the National Assembly for Wales is now consulting on whether to have a statutorily appointed commissioner. In that, it has been heavily influenced by the Scottish model that the corporate body is seeking to dilute.

I put it to the committee that Parliament is in a unique position in Scottish life. MSPs make laws that other people in the country have to follow, so it is important for public confidence that MSPs are seen to follow the rules, whether statutory or otherwise, that are laid down to regulate their conduct. Removing the stand-alone post of standards commissioner might be interpreted publicly as a desire to lessen the intensity of scrutiny of MSP conduct. In my view, that would be an own goal for the Parliament—if football is an appropriate metaphor for standards of parliamentary conduct.

On the value-for-money argument, I do not know whether Mr McCabe considers the desk in my study at home to be an “empire” or one of the expanded “silos” to which he referred in oral evidence. Paragraph 12 of the SPCB's supplementary evidence states that some postholders “have few staff”, but I have no staff and no office accommodation—I work from home. I do not complain about that and have come to think that having that degree of distance from the Parliament, in particular, suits the post quite well. I have a very modest budget of £90,000, so there is no financial saving in moving me into an office in a larger organisation—on the contrary.

On the basis of my experience, I put it to the committee that the standards commissioner post should remain a dedicated, stand-alone post, as it was originally set up.

The Convener: My first question relates to the Finance Committee's report on its inquiry into accountability and governance. During that inquiry, you expressed concern that having the corporate body exercise control over budgetary and other matters might amount to direction by the Parliament. How do you envisage the appropriate balance being maintained?

Dr Dyer: It is important that the office-holders, including me, should have demonstrable independence of operation. I say in my written evidence that during the Finance Committee's inquiry there seemed to be a threat of encroachment on that. The committee convener was quoted as saying—I do not have the exact quote—that the first duty of a parliamentary commissioner is to serve Parliament. That could be interpreted as he who pays the piper wanting to call the tune in operational terms, which would be inappropriate. However, the conclusions of the committee's report did not encroach on the operational independence of office-holders, and I have not experienced that in practice.

It was felt that, initially, the corporate body had overinterpreted the idea of the independence of office-holders. The Finance Committee's inquiry was set up to redress that imbalance and to ensure that there was accountability and financial

efficiency. That is fair enough; no one disagrees that there should be such accountability. As I said, the committee's conclusions on budget setting caused no concern, although one could argue that the SPCB should not be given that responsibility, for example because of the conflict of interest that arises for the Scottish Information Commissioner and the Scottish Public Services Ombudsman, whose staff interact with the corporate body yet whose budgets are set by the same body. That issue is technical in nature.

Jamie Hepburn: As the only member present who played in the football game to which you referred, Dr Dyer, I assure you that any investigation by your good self into my conduct on the day would find that it was exemplary.

Ross Finnie: Allegedly.

Dr Dyer: I thought that I might be allowed one joke in what are otherwise serious matters.

Jamie Hepburn: The proposals on the table set out a new landscape for the public bodies that the SPCB appoints. The SPCB believes that the functions of the Standards Commission and the Scottish Parliamentary Standards Commissioner are similar and that no distinction needs to be made between the two. Do you agree?

Dr Dyer: They are similar in that both involve investigations into whether code of conduct breaches have occurred, but there the similarity ends. The two bodies work in different contexts. I work in the context of the Parliament, which has—as I have argued—a special role and therefore a need for safeguards on conduct. The Standards Commission works in the sphere of local authorities and public bodies. It would be unfortunate if the standards investigation role were to be tacked on as the smaller part of the work of a larger organisation. If that were to happen, my concern is that that work might be diluted in strength.

Also, a degree of authority is required in investigating members of Parliament. The commissioner could be asking questions of a minister, even the First Minister. Someone who is employed as an investigation officer cannot do that sort of work; it takes a person of authority. The way to achieve maximum impact and effectiveness is by having a separately appointed standards commissioner who carries out that role.

I recognise the argument on the one-stop shop. Obviously, it is a good idea. However, the criterion of having a one-stop shop cannot override other criteria. The one-stop shop has its limits. If more and more things are added to what it does, the result will be a dilution of expertise and authority. There are other problems with large organisations—big is not always better; one needs only to ask Royal Bank of Scotland shareholders

or Sir Fred Goodwin. If a one-stop shop were the overriding criterion, there would be no Scottish Parliament; a one-stop shop for voters would be the UK Parliament.

Good arguments can be made against having a one-stop shop and for having separate organisations. In this instance, the argument for having separate bodies is a good one; it is the same argument that the Parliament's Standards Committee made in 2000.

Jamie Hepburn: I have a view on whether the UK Parliament should be a one-stop shop.

Dr Dyer: I was not referring to the merits of the case. I was merely putting forward the argument.

12:15

Jamie Hepburn: I will leave that for another day.

You seem to suggest that the similarities between the two roles are pretty limited, but I am not so sure that public would recognise the differences that you have set out. Likewise, I am not sure that the public would recognise the differences that you have pointed out between your role and that of the ombudsman. The public look at MSPs, who are part of public life in Scotland, in the same way as they look at some facets of the issues for which the ombudsman is responsible.

Dr Dyer: That is sometimes true. I occasionally get complaints that should go to the Standards Commission, because there is confusion between the two names apart from anything else. The Standards Commission occasionally passes complaints on to me because they are about an MSP. In that sense, it might be simpler to put the two things together but, in terms of overall effectiveness, it would not be desirable to do so, especially given that there would be fewer complaints about MSPs than there would be about councillors because there are many more councillors, so the standards commissioner element would be a minor part of the investigatory role.

There is merit in having a separate dedicated standards commissioner who develops expertise in the parliamentary code of conduct and the legislation on members' interests, and who can operate exclusively in that field.

Ross Finnie: I take you back to this slim, sleek office that you run from home, which we appreciate. Nevertheless, 30 per cent of your expenditure is on seeking legal advice. Those who would suggest combined and shared offices would also suggest the sharing of services and people who might assist you in getting that legal advice. I want to probe that further. In my experience of

seeking legal advice in commercial life, there was rarely anything wrong with counsel's opinion; if there was a problem, it was caused by how the memorial to counsel was constructed and what question was asked. Given that you have just made a point about the standards commissioner's knowledge and understanding of parliamentary procedure, the code of conduct and everything else that goes with a member of Parliament's duties, would you be concerned about sharing the seeking and obtaining of advice?

Dr Dyer: A number of issues occur to me, one of which is confidentiality. I have learned that MSPs set a lot of store by confidentiality about complaints, especially inadmissible complaints that never become public. If I were part of a larger organisation, more people would know about complaints about MSPs, and there would be attendant dangers to that.

I would not have needed to seek less legal advice had my office been amalgamated with other bodies. I have sought counsel's opinion on three occasions. Two of them were directly related to complaints about different members, and one of them was about what can be disclosed when the media make inquiries about complaints. Counsel's opinion would have been necessary on those occasions even if my office had been linked with other bodies, because the cases related specifically to the role of the Scottish Parliamentary Standards Commissioner.

Also, I was able to select legal advisers who had particular expertise in parliamentary matters. If I simply had to share legal advice with those who are involved with public appointments or the Standards Commission—I happen to know that the Public Services Ombudsman has the same legal advice as I do now—I might not have been able to make use of the same degree of expertise in the legal advisers. I realise that there might be some economy of scale with a large organisation—there could even be an in-house legal adviser—but along with that would go a loss of specific expertise.

Johann Lamont: You said earlier that this exercise cannot just be about whether it is easier for the corporate body to deal with three bodies rather than six. To be fair to the corporate body, I do not think that the issues that the committee is wrestling with are a matter of convenience. There is a danger that we will end up having a false argument about what has motivated people to argue in favour of the move. The committee wants to look at different models on the basis that probity and scrutiny—and the scrutiny role of MSPs in particular—remain.

I accept that there will always be an argument about big against small—economies of scale against diseconomies of scale—but I would be

concerned if your comments could be characterised as suggesting that MSPs wish to dilute the role of any body that scrutinises us in relation to the standards that we uphold. I hope that you would recognise that that is not the case.

I presume that, even with a bigger organisation, it would still be possible to identify that one of its critical roles was to uphold standards among MSPs. We could not have a position where the organisation was swamped by other complaints and did not uphold standards, because it would be charged with that responsibility. Do you accept that such a model is possible? You might not regard it as desirable, but it is possible for those functions still to be carried out in a serious way in a bigger organisation. Do you go further than that? Do you think that the standards function is so particular that it is impossible for it to be embedded in a bigger organisation?

Dr Dyer: First, I did not intend in any way to cast aspersions on the motivation of this committee. I recognise that the committee is taking a very serious approach to the matters that it is discussing. As we know, the corporate body did not provide any rationale or explanation for the evidence that it put forward initially and it had not discussed its proposals with the office-holders. Therefore, one did not know initially what the rationale was—although, of course, there were references to Crerar and the Finance Committee report and so on. I take it as read that this committee is looking seriously at how best these posts should be organised.

I am not saying that it would not be possible to do what the SPCB suggests. Alice Brown has already referred to arrangements elsewhere in the UK. In Northern Ireland, for example, the Assembly ombudsman also carries out a standards commissioner role, but there were particular factors in Northern Ireland, with its history of social division, that meant that that arrangement was suitable for the time being. Of course, Northern Ireland is smaller than Scotland.

If the standards function were part of a bigger office, it would probably have to compete for a budget within a bigger office. Some degree of priority would be lost and there would be some confusion about authority. If it were necessary for Parliament to discuss with whoever is carrying out the standards commissioner role matters of common interest, would they go to the head of the amalgamated body or to whoever is carrying out the investigatory role? There is a risk of confusion in authority and expertise in an amalgamated body.

In my view, it is preferable to have a stand-alone standards commissioner. It is not impossible to include the role with the Standards Commission, for example, but I think that it is more problematic

to include it with the Scottish Public Services Ombudsman, because the roles are very different, as Alice Brown said earlier. The standards commissioner and the Standards Commission look at breaches of standards of conduct by public office-holders, whereas the ombudsman looks at failures of service or maladministration in public services. Those are different functions.

Johann Lamont: Any organisation that is charged with a series of responsibilities would have to satisfy itself that it was sharing its budget justly, that budgets could not be pulled from one place to another and that it could not suffer death by 1,000 cuts and be squeezed out of the system because, I imagine, there would be checks and balances. I accept that your desk is in your house, but there are costs related to all the bodies. Do you not accept that there is at least a case to be made that, by rationalising the support services, we could perhaps fund the more challenging aspects of the bodies' work more healthily? It is not impossible for a big organisation with a big budget to put in place checks and balances to prevent your office from being squeezed.

Dr Dyer: That is the theory, but it does not always work out as planned in practice; there could be pressures. Not even trying to save money by amalgamating services always works out in practice. There were recently reports in the media of criticisms that the House of Commons Public Accounts Committee made of the Department for Transport; the department had planned to save £57 million by having a common information technology system across seven agencies, but in fact the system will cost an extra £81 million because of various problems that were encountered. One can see economies in theory, but they do not always work out in practice.

Johann Lamont: No, but they can.

Dr Dyer: Certainly. I do not disagree that they can.

Johann Lamont: I presume that you compete for budgets currently when decisions are made about sharing them out.

Dr Dyer: It is explicit what my budget is because I am a stand-alone commissioner.

Jackson Carlaw: I will touch on the two issues that Mr Finnie and Ms Lamont raised. Mr Finnie and I both put the point that you have just developed to Alice Brown and you touched on her response to our question. To some extent, the wider point has been appreciated and considerable thought given to ensuring that the point that you make would be addressed in the structures that would be implemented so that the focus would not be lost were the committee to recommend amalgamation. Do you feel that there was some reassurance from the organisation that

might be charged with that wider remit that it appreciates the issues that you mentioned and that they are not only issues for you?

I noticed the evidence that you gave on cost to the Standards, Procedures and Public Appointments Committee in December. I know that you were probably making light of things when you said that you pay for your heat, light and electricity, that you do your own typing and filing and that it costs £90,000. However, I wonder whether there is confusion between you the individual exercising the office and another individual exercising it. I take it that you are not suggesting that it should be a precondition that the office-holder have a desk at home and be able to undertake all those functions. If there were a considerably significant increase in the workload of your office, would it not make more sense for the office to be held within a wider organisation by an individual who, otherwise, might have been unable to operate at home and would have had to set up an office in some other location?

Dr Dyer: First, it is the SPCB's current understanding for the future that the post is home based. It has recently been advertised on that basis. Incidentally, it is also for two years, which creates a considerable problem in relation to independence, but that is another issue.

There are various options, from simply having accommodation within another office to being fully amalgamated with another organisation. At the beginning, I was a bit dubious about the home-based nature of the post and wondered what that said about it, but I came to value it partly for its flexibility and partly because it would not do to have an office in the Parliament and thereby become closer to members whom one might have to investigate. There is value in having some distance.

12:30

Clearly, that could be realised by being in with other office-holders. Personally, I do not see any particular advantage in that, but I accept that another office-holder might. I must say that I am confused about how, under the SPCB proposals, the role would fit in with other office-holders. The SPCB seems to think that there would be some benefit in respect of outcomes from the sort of amalgamation that it suggests. Paragraph 88 of the SPCB's supplementary evidence states:

"A Commission structure with a chair and members would bring specific expertise in certain areas which would be beneficial to the organisation and decision making would produce potentially more balanced outcomes."

The SPCB has not said what the criticism of the current outcomes is.

On reporting in relation to the standards commissioner role, paragraph 49 states:

"However, in relation to the functions of the CIO with regard to complaints against MSPs, the CIO could report his findings direct to the Standards, Procedures and Public Appointments Committee as at present unless the RSSB Committee was minded to recommend to the Parliament that the CIO report to the Complaints handling and Standards body for it to recommend a sanction to the Parliament."

I cannot see Parliament giving up its autonomy other than to the courts, as at present, and agreeing that a new standards and complaints body would recommend sanctions against members, so I take it that the first option applies: the chief investigating officer would report his findings directly to the Standards, Procedures and Public Appointments Committee. In fact, that point is emphasised at paragraph 57 of the SPCB's supplementary evidence:

"Specifically, in relation to 'standards' we would strongly recommend retaining the CIO function within any new body, with the CIO having, as at present, separate functions and the independence to exercise his or her investigatory role without interference from the overarching body".

If there will be no benefit from having a wider body to discuss conclusions with, what is the point of putting the post into a wider body?

The Convener: You clearly have some concerns about the role of the corporate body in relation to office-holders. Can you explain your concerns and give us examples of how the situation has affected you in undertaking your statutory function?

Dr Dyer: I have suggested that the corporate body is not the appropriate body to undertake the sponsorship role in relation to office-holders. It has many other items on its agenda, so it has difficulty in giving adequate time and resources to the matter. Paul Grice, the Scottish Parliament's chief executive and the secretary to the corporate body, seemed to concede that point when he told the Finance Committee inquiry:

"The corporate body is not set up as civil service departments are with a great sponsorship arm; we have a couple of people only. We were not set up to sponsor commissioners. I have done that job myself in the past"—

I take it that he means as a civil servant—

"so I know that it is resource intensive."—[*Official Report, Finance Committee, 15 November 2005; c 3097.*]

Much of the corporate body's evidence relates to the scrutiny function of Parliament, to financial accountability and so on. That was also true of the Finance Committee's inquiry. It is notable that the evidence to the Review of SPCB Supported Bodies Committee has come from the corporate body portfolio holder for finance rather than the portfolio holder for office-bearers, who has met

officer-bearers and discussed their remits and so on with them.

Two functions are necessary in respect of office-holders: one is scrutiny and accountability, and the other is sponsorship. Sponsorship includes taking an interest in their remit, protecting budgets, ensuring that there are good communications with Parliament and, when a commissioner or ombudsman is under attack, helping to rebut criticism and defend territory. It is that sort of function that has been particularly lacking. There has been criticism in the press of the soaring costs of tsars and such like, but there has never, to my knowledge, been a counterbalancing statement from Parliament or the corporate body explaining why Parliament set up the posts, why it supports them and what they exist to do.

Further, there have been sins of commission as well as sins of omission. I refer to Mr McCabe's oral evidence to this committee, when he talked about "commissioneritis", people expanding silos and defending empires, and so on. That sort of thing feeds negative tabloid comment. Sure enough, a headline in the next day's *Daily Express* ran, "Dump the failing tsars". The piece under that headline said:

"Tom McCabe, the former Labour minister, says there are too many 'tsars', or Holyrood-appointed commissioners, and they are dangerously prone to creating their own empires once appointed."

It concluded:

"There is no doubt that a modest bonfire of the vanities is overdue. For each of these appointees has grown an empire as much out of vanity as for the common good."

The references to empires and vanity are the reason why I emphasised my desk at home. Of course, Mr McCabe is not directly responsible for what the *Daily Express* says, but the point is that that sort of comment from parliamentarians feeds uninformed media criticism of commissioners and ombudsmen, and that is not appropriate, given that the Parliament is the body that is supposed to be sponsoring them.

I have suggested that this committee could consider models such as New Zealand's Officers of Parliament Committee, examine the possibility of extending the role of the Scottish Commission for Public Audit, which the Public Services Ombudsman has talked about, or consider setting up a new body to act as a standards and complaints commission for Scotland, particularly if the proposals for structural reorganisation go through. Such a body could include representatives of Parliament, Government and the people, and could carry out the sponsorship function that, for various reasons, including its workload, the SPCB has had difficulty performing.

Ross Finnie: I am sympathetic to the problem of the independence of the Parliamentary Standards Commissioner and the fact that the work that is involved in investigating someone who is in breach of a standard is different from the work that is involved in, for example, Alice Brown investigating maladministration, malfunction or misapplication of a statutory provision. However, there is an inherent conflict of interest with sponsorship. There is tension in a member of Parliament making complimentary comments—however justifiable—about the very person whom the public expects to investigate members at some point. I am not in any way suggesting that it is unhelpful if it can be inferred that Parliament supports its commissioners, but it is problematic for parliamentarians to support proactively the holder of the office in whom the public is supposed to place its confidence in matters relating to the investigation of parliamentarians. If I made bold comments to the *Daily Express*—something that I frequently do, as you will be aware—and the next day it was announced that you were investigating something that I had done, that might confuse the process.

I do not wish to be flippant, but I think that you are, to an extent, advancing an elaborate model without recognising the inherent tension, which I think just has to be accepted. You might want to make a more valid point about your accountability and how, if it is necessary to have an independent office-holder, that independent accountability is to be sustained.

Dr Dyer: I am arguing not for support for the office-holder—I am not looking for personal testimonials in the press—but for support for the office.

The point about the conflict of interest is important. The independence of the standards commissioner's post is currently compromised, because the person is appointed and dismissible by the SPCB, with the agreement of Parliament. In absolute terms, that is a constraint on the independence of the person, in terms of the independence criteria that have been drawn up by the British and Irish Ombudsman Association—I was permitted only associate membership of that body because of that very fact.

The corporate body's proposal to put the Parliamentary Standards Commissioner's work in with the work of the Public Services Ombudsman threatens to attach that problem to a greater degree to the ombudsman. The ombudsman, or whoever was the head of the standards and complaints body, would have as part of their function the investigation of the conduct of MSPs. As a consequence, it is possible that the Scottish ombudsman would not be able to be a full member of the British and Irish Ombudsman Association.

The corporate body, in its supplementary evidence, effectively says, "So what? That's not important." That is a surprising comment—it is important, and it would reflect on the status of the ombudsman in Scotland. There are difficult issues relating to conflict of interest, which it might not be possible to cater for entirely, but one has to bear them in mind as far as possible.

Joe FitzPatrick: With regard to accountability, you have suggested that grounds for dismissal should be laid out in statute.

Dr Dyer: Yes.

Joe FitzPatrick: You have also suggested that, rather than the required threshold being two thirds of the MSPs who vote, it should be two thirds of all MSPs. Can you explain that further?

Dr Dyer: It is important to show people that there is no possibility of arbitrary dismissal. One could become unpopular simply for doing a thorough job—as, at times, I have become unpopular in certain areas of the Parliament simply by doing my job—so it is important that arrangements are in place to make it clear that there is no possibility of arbitrary dismissal. That is especially important in my case, because I can be dismissed by the very people whom it is my job to investigate.

There is currently variation between the posts with regard to the threshold for a parliamentary vote: it is two thirds of the MSPs who vote in the case of my post, the children's commissioner and the Scottish Commission for Human Rights chair and members, but two thirds of all MSPs in the case of the other posts. I suggest that that should be harmonised by adopting the higher standard of a threshold of two thirds of all MSPs.

I believe that, contrary to the Auditor General's view, it is in the interests of independence and transparency for grounds for dismissal to be set out in statute, using simple terms such as inability, neglect and misconduct. That would demonstrate in the most transparent form that there cannot be arbitrary grounds for dismissal, and that there must be sound reasons to dismiss someone from one of the posts.

Joe FitzPatrick: A requirement for a threshold of two thirds of all MSPs rather than two thirds of those MSPs who vote might pose a problem in certain circumstances. For example, a number of MSPs might decide that they did not want to take part in a particular case due to a conflict of interest. You would make it very difficult in that case for Parliament to make a decision.

Dr Dyer: If that would pose a problem, I must point out that it is currently a problem for the Public Services Ombudsman, the Information Commissioner and the Commissioner for Public

Appointments. If I am right, the threshold is two thirds of all MSPs for those posts. It seems appropriate that the threshold should be set at the higher standard.

One should bear in mind the fact that in the analogous situation at Westminster, a vote of both Houses—Lords as well as Commons—is required. In a Parliament with only one chamber, an office-holder could be vulnerable if the threshold is only two thirds of those MSPs who vote. There might conceivably be a reduced number of MSPs voting on one particular day, while those who have a strong motivation might ensure that they vote. It is important to show that, although such an event is perhaps unlikely, there is a determination to avoid any inappropriate or arbitrary dismissal of an office-holder, and therefore to show that Parliament is serious about their independence.

12:45

The Convener: Can I take you back briefly to the role of the SPCB, which we have discussed? How, if at all, has it affected the performance of your functions?

Dr Dyer: It has not really affected that. I am different from the other postholders in that I am not an accountable officer—my budget is held by the Parliament's chief executive, which means that I need to get approval for spending on legal advisers or would need to do so if the situation arose in which I needed to appoint staff. It is in the legislation that I need the approval of the parliamentary corporation to appoint staff, although that has not been necessary to date. As I think I said in my submission, the Finance Committee's conclusion does not make much difference to me, because my budget has to be approved by the SPCB anyway.

I have not encountered problems. My budget has not risen since I took up post six years ago, and it has been possible to stay within the allocated sum, which was originally £100,000 but was reduced to £90,000 when a different arrangement was made for a contingency fund for exceptional legal expenditure and so on that was held centrally rather than in the budgets of individual commissioners. For the past few years, my budget has remained at £90,000 and that has been satisfactory.

The Convener: If we can stick with the budget, you say in paragraph 40 of your submission that you

“do not consider it appropriate for SPSC to be required to produce a 3 year rolling business plan”,

given the small size of your budget. Why would anyone who was in receipt of public money, regardless of whether their budget was small or large, not be prepared to specify their future plans?

Dr Dyer: My argument is that having a requirement to produce a three-year rolling business plan would be like using a sledgehammer to crack a nut. I have produced three-year rolling business plans in the past in other capacities, but the activity of the standards commissioner is so demand-led and circumscribed that it seems somewhat grandiose to produce a three-year rolling business plan. One is entirely dependent on the complaints that come in. I have simply said that it is sufficient to have to justify annual budget bids. It obviously would not be impossible to produce a three-year rolling business plan but, in the case of the post of standards commissioner, it would be extremely slim and would amount to using a sledgehammer to crack a nut. I can see the force of having such a requirement for the other posts, which have bigger budgets.

The Convener: Paragraphs 45 to 49 of the SPCB's supplementary evidence set out how certain functions in relation to complaints about MSPs could be delegated. If the committee were minded to go down that route, should the chief investigating officer report to the Standards, Procedures and Public Appointments Committee or to the complaints and standards body to recommend a sanction to Parliament? Which way should that go?

Dr Dyer: Ultimately, that is for Parliament to decide but, given past statements and the legitimate desire for Parliaments to retain autonomy and not hand over control of their functions to any outside body, I would be extremely surprised if Parliament agreed that sanctions should be suggested by a complaints and standards commission rather than by its own Standards, Procedures and Public Appointments Committee. However, that is not for me to decide.

I have already noted the suggestion that the chief investigating officer, whose functions, under the corporate body's proposals, would include the standards commissioner's investigatory function, should remain independent in operation from the larger body and should report to the Standards, Procedures and Public Appointments Committee without any interference from the larger body. My conclusion from that is, what is the point of the person who performs that role being part of the larger body? Having a stand-alone standards commissioner is clearer and simpler and has more impact.

The Convener: You passed comment on the fact that the job duration has been advertised as two years. As you are aware, there are reasons for that. It has been suggested that the independence of office-holders can be undermined by their having to apply for reappointment once the initial term of employment has been completed. To

avoid that perception, it has been suggested that office-holders should be appointed for a single, fixed term. The Auditor General for Scotland, whom you heard earlier, has suggested that the term should be not less than eight years. You have suggested a term of five to seven years. Why do you think that that is an appropriate period?

Dr Dyer: First, I strongly believe that it should be a single term. I have argued that for a number of years in my annual reports and my experience of the reappointment process strengthened that view. I can see that there could be a perception—if not a reality—of pressures on office-holders. One would not do it—one has not done it—but there could be a perceived pressure to hold back so that one did not prejudice one's reappointment. That is reinforced by the nature of the process, whereby MSPs can make unfounded criticisms of the office-holder during the reappointment debate that nobody is in a position to answer. That can influence a vote in Parliament without any contrary evidence being put.

Taking all that into account, I think that it is highly desirable—and it appears to be becoming the norm for this sort of appointment—for public appointments to be made for a single term. Several years ago, the Wicks committee—the Committee on Standards in Public Life—which considered the Parliamentary Commissioner for Standards at Westminster, recommended that that appointment be made for a single term. The SCPA has now recommended that for the post of Auditor General. I am glad that the corporate body has come round to that view. In its written submission, it states that it is desirable, for reasons of independence, to appoint people for a single term.

My acceptance of a shorter term than has been suggested for the Auditor General might be to do with the relative complexity and size of the area that is covered by the post. For example, a standards commissioner can perhaps become familiar with the issues more quickly than an Auditor General who has to cover a wider and more complex field. There is, therefore, not the same lead-in time. Five years would be the minimum, but seven years would be preferable. That would enable the office-holder to build up experience and have the benefit of that experience in contributing to the post for a reasonable period before it is refreshed by a new office-holder.

The Convener: Can I return to my first question? The corporate body's written evidence elaborates on its earlier proposals. The second paper that we received from it provides a bit more detail on where its thinking is coming from. I turn, first, to the similarities between your role and that of the Standards Commission. It would be helpful if you would disaggregate the steps and actions that you carry out in undertaking your role and

indicate which, in your view, can be carried out only by an individual who reports directly to the Parliament's Standards, Procedures and Public Appointments Committee on completion of an admissible complaint. Can you give us a wider idea of what you consider to be the differences?

Dr Dyer: There are a lot of similarities in process between my role as Parliamentary Standards Commissioner and that of the chief investigating officer of the Standards Commission. It is not so much the process as the context that is different. The posts involve investigation, interviewing people, producing reports and deciding whether complaints are admissible, whatever criteria are used as a filtering mechanism. There is quite a lot of similarity in the processes that are followed, and the chief investigating officer and I have met, from time to time, to compare and contrast our roles, and so on.

My argument for a stand-alone standards commissioner relates more to the context. The chief investigating officer deals with councillors, members of public bodies and their code. The standards commissioner deals with the code of conduct for MSPs and the Interests of Members of the Scottish Parliament Act 2006. Because MSPs are the lawmakers for the rest of the community, it is particularly important that there is seen to be a robust and, I argue, dedicated mechanism to ensure the continuance of high standards in their conduct. Obviously, I am not saying that the standards commissioner is the only element in that—there are others—but the commissioner is an element of a system that ensures that the public can have confidence that MSPs have high standards of conduct. From that point of view, it is better to have a single identifiable standards commissioner than to tack more investigations on to the investigating responsibilities of the chief investigating officer of the Standards Commission, who primarily deals with councillors and public bodies.

The Convener: My final question is linked to questions that Johann Lamont and Jackson Carlaw have asked. What would happen to your functions if your workload increased considerably to a level that a single person could not cope with? I am thinking about your argument about not having a complaints body, where such work could be dealt with efficiently. You work from home, and it is obvious that one person has managed the job well, but that is not to say that the workload might not increase substantially in the future.

Dr Dyer: That is true, although considering that possibility would entail envisaging MSPs breaching the code of conduct much more frequently, which I do not expect.

More seriously, the situation has been satisfactory over my six years in post. It has been possible for me to work on a slightly more than half-time basis, and it is unlikely that the workload will increase to the extent that it will become absolutely necessary to have an office and appoint staff, although I concede that that is theoretically possible. Things would then be different, and an office, clerical staff and perhaps investigating staff, which larger offices have, would be necessary. If that happened, it would simply have to be dealt with. However, currently, and as things can be reasonably envisaged, I do not see that becoming necessary.

Johann Lamont: I do not think that anybody has put forward as being credible or desirable a model in which investigations into the work of MSPs would be tacked on to somebody else's job. With respect, the argument that that would happen and that such work would be diminished in some way seems to me to be a straw man argument. There may be other arguments against having a bigger body and losing the sharpness of distinction that you are arguing for, but I do not think that there is any motivation for not having a body that addresses MSPs' standards.

Do you recognise that investigations of the role of MSPs are similar to investigations of anyone in public service or elected office? The issues are whether they responded to correspondence, took the person seriously and followed things through. A lot of such work would apply across a range of organisations, and shared expertise might exist. Will you comment on that?

It has been argued that a larger complaints and standards body would be able to address legal status and liability issues that single office-holders have flagged up. Do you accept that that is one way of dealing with an issue that has been identified as a problem?

Dr Dyer: First, I will deal with work being tacked on. I was getting at the work in question being a minority part of a larger function. In my opening remarks, I said that, in 2000, Parliament had a nine-month inquiry into whether there should be a separate standards commissioner. At the end of the process, it decided that there should be a standards commissioner, and it made proud public statements to the effect that having a statutorily appointed standards commissioner would bolster that person's independence, give the public confidence in the system and so on. None of those arguments has gone away. The question whether the responsibilities should be merged with those of the Standards Commission or whether there should be a separate, independent commissioner was considered. Parliament thought that having a standards commissioner was right not many years ago—the legislation to create a stand-alone commissioner was passed in 2002.

I agree that there are similar processes—for example, some breaches of code may be similar—but my argument is that the context of the Parliamentary Standards Commissioner is different and that their profile is potentially greater, because they deal with MSPs as opposed to local councillors. A matter involving an MSP might or might not have a profile in the local press, but it will certainly have one in the national press.

Obviously, there are benefits from sharing services. For example, there is no point in six bodies getting separate legal advice on a matter that touches all the bodies. However, that could be resolved without amalgamating the bodies into a single organisation or three organisations. There could be agreements among the bodies to seek and share legal advice if it concerned an issue that affected all of them. There are therefore pragmatic solutions that would not involve wholesale structural reorganisation.

13:00

Johann Lamont: I certainly have an open mind on all the issues, and I think that everybody on the committee does. I presume that you would accept that, when this parliamentary committee looks again at the issues, its view is as legitimate as that of a parliamentary committee in the past—the previous Standards Committee—following an investigation. It is entirely the role of the Parliament to consider the processes and come to an agreement on them. The processes are not set in stone because a committee decided X years ago that it would not be legitimate to look at them again. We can do so when the context is rationalisation.

Dr Dyer: Of course. I said at the start of my opening remarks that I welcome the fact that this committee is looking at the issues. The committee will, of course, come to its own conclusions. I was asked to give my opinion to the committee, which is what I am doing. I will not be around as commissioner for much longer to do that, so this is my opportunity. I will not be here to see the process through, follow the arguments and perhaps change views as the arguments progress. I am giving you my opinion, on the basis of having been in post for six years and having thought a lot about wider issues regarding the commissioner posts collectively.

Johann Lamont: Clearly, it was the will of Parliament that your post was devised in the way that it was. There is no subterfuge now to subvert that expression of the will of Parliament. This committee is charged with reflecting on the position now. It is not an argument against change to say that a committee took a particular view in the past.

Dr Dyer: I take your point, but it can sometimes be a disconcerting experience to be in one of these posts. I will speak just for myself. When you take it on, you know that Parliament has willed the post into being and you expect that Parliament will wish you to carry out the remit of the post to the best of your ability and do the job as robustly as possible. However, you somehow start getting the impression—that was the case to an extent during the Finance Committee's inquiry—that Parliament does not really want to have the posts and thinks that there are too many of them, that they spend too much, that they should be cut back and that postholders can be criticised for simply carrying out their remit. Perhaps that sort of thing has coloured some of what I have said.

Jackson Carlaw: Do you not think that the situation that you described is also true of MSPs? I certainly read in the papers that people think that there are far too many of us and that we could well be reduced in number, but all we are doing is going about discharging our duties. However, it is just a fact of life that such comments are made. We have to live with them.

Dr Dyer: I can see that the same thing could apply.

The Convener: As there are no more questions, I thank you, Dr Dyer, for coming along. As I said to other witnesses, if we find in our deliberations that we have questions of clarification, we will write to you. I thank you for waiting so patiently to give your evidence.

13:04

Meeting continued in private until 13:45.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Wednesday 28 January 2009

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00

Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Standing orders will be accepted at Document Supply.

Published in Edinburgh by RR Donnelley and available from:

Blackwell's Bookshop

53 South Bridge
Edinburgh EH1 1YS
0131 622 8222

Blackwell's Bookshops:
243-244 High Holborn
London WC1 7DZ
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh.

Blackwell's Scottish Parliament Documentation

Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries
0131 622 8283 or
0131 622 8258

Fax orders
0131 557 8149

E-mail orders
business.edinburgh@blackwell.co.uk

Subscriptions & Standing Orders
business.edinburgh@blackwell.co.uk

Scottish Parliament

RNID Typetalk calls welcome on
18001 0131 348 5000
Textphone 0845 270 0152

sp.info@scottish.parliament.uk

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers