

REVIEW OF SPCB SUPPORTED BODIES COMMITTEE

Tuesday 10 March 2009

Session 3

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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)

*attended

THE FOLLOWING GAVE EVIDENCE:

Stuart Allan (Chief Investigating Officer)

Paul Grice (Scottish Parliament Clerk and Chief Executive)

Ian Leitch (Scottish Parliament Directorate of Resources and Governance)

Tom McCabe (Scottish Parliamentary Corporate Body)

Janet Nixon (Standards Commission for Scotland)

CLERKS TO THE COMMITTEE

David Cullum

Claire Menzies Smith

LOCATION

Committee Room 4

Scottish Parliament

Review of SPCB Supported Bodies Committee

Tuesday 10 March 2009

[THE CONVENER *opened the meeting at 10:01*]

Review of SPCB-supported Bodies

The Convener (Trish Godman): Good morning and welcome to the fourth meeting in 2009 of the Review of SPCB Supported Bodies Committee. I have received no apologies, but Johann Lamont has indicated that she will be late. I am afraid that one of the witnesses, Albert Tait, will probably not make it to the meeting. He is still in Orkney, as his plane is delayed. I remind committee members and members of the public to switch off mobile phones and BlackBerrys.

The first item on the agenda is the continuation of the committee's review of Scottish Parliamentary Corporate Body-supported bodies. The first of this morning's evidence sessions is with the Standards Commission for Scotland and the Office of the Chief Investigating Officer. I welcome to the committee Janet Nixon, secretary to the commission; Stuart Allan, chief investigating officer, ethical standards in public life in Scotland; and David Sillars, senior investigating officer. Ms Nixon will say a few words, after which I will move to questions from members.

Janet Nixon (Standards Commission for Scotland): First, I must pass on two apologies. Our convener, Wendy Goldstraw, would have been here but for the fact that she had made holiday arrangements well in advance of the committee's invitation. We had arranged for Albert Tait, a commission member, to deputise for Ms Goldstraw but, as the convener has already made clear, his plane is still in Orkney.

We thank the committee for this opportunity to contribute evidence to the review. The commission was asked to submit written evidence on the SPCB's proposals; we did so, focusing in particular on the proposed complaints and standards body. In essence, we are very happy to support and to be a part of proposals for change that would improve services to the public or make savings for the public purse—or, ideally, both.

There is scope for savings to be made through shared services and—perhaps—accommodation. As I think you know, the commission is not a large organisation; this year, its budget is around £245,000. Indeed, the combined budget of the

commission and the Office of the Chief Investigating Officer is a little less than £600,000.

Of course, we actively pursue savings where we can. For example, the contract for the commission's accommodation expires in October 2009 and we are working with the Scottish Government's property services division to find out whether we might be able to occupy some underutilised accommodation in the Government estate. Although that might not mean a direct saving in the commission's budget, it might result in a saving in overall public expenditure.

In our written evidence, we asked the committee to consider a few points in relation to the SPCB's proposal. Those points relate broadly to the rationale for the proposal; the proposed reporting mechanism; and how the complaints and standards body would operate in practice. We have some concerns on that last point—in particular, we would not want a structure to be adopted that would compromise the statutory functions that the commission currently exercises.

We stress in our written evidence the significance of the commission's adjudicatory role, and of the public's entitlement to have confidence in the standards that are applied by elected and appointed members and in the robustness and impartiality of the enforcement procedures. We would not wish that role to be undermined by a structure that did not allow for decisions on those matters to be taken—and to be seen to be taken—by an independent and impartial body.

I am happy to take questions on the commission's evidence, or, if I can answer them, on the wider matters that the committee is considering.

The Convener: I address my first question to Mr Allan. In your written evidence, you set out clearly your role and that of the Standards Commission for Scotland. What administrative support do you have to enable you to undertake your functions, and is that a shared resource with the commission?

Stuart Allan (Chief Investigating Officer): The Office of the Chief Investigating Officer and the Standards Commission for Scotland are independent and separate, and are staffed accordingly as separate bodies. I am a part-time CIO who works three days a week. David Sillars is the senior investigating officer, and he works part time. We have six investigating officers who all work on a daily basis, depending on the workload.

We have between us a composite gathering of expertise. Three of us have been senior legal officers in local government, and we have a retired procurator fiscal, a senior police officer, a senior ombudsperson and a former controller of audit, so there is a fair body of experience. We have

administrative support from three administrators in the office. That is the total number of staff with which we operate.

The Convener: How do you break down those roles and divvy up the work? Are you able to use certain expertise that has been built up?

Stuart Allan: The work is allocated on a broadly equal basis. At present, there is no formal allocation of responsibilities to the extent that, for example, one person will deal with declaration of interests and another will deal with general conduct. In extremely complex cases in which legal issues are likely to arise, there is a tendency for the IO who will run with that case to be one of the legally qualified investigating officers. When a large element of finance is involved, it will tend to be dealt with by one of the IOs who has a financial background. A fairly flexible allocation system is in place; the allocations are made broadly with regard to the merits of each case.

The Convener: Do you share your administrative support resource with the Standards Commission for Scotland?

Stuart Allan: The commission operates payroll and accommodation systems on our behalf, as our agent. It provides us with the offices that we require, the staff payroll system and the office's accounting system, so we do not need to become involved in those administrative functions. That works satisfactorily.

Jamie Hepburn (Central Scotland) (SNP): To be clear, are you saying that all the members of staff you mentioned work for you and not for the Standards Commission for Scotland as well?

Stuart Allan: Absolutely. There is a complete separation of functions between the investigative branch, which is our office, and the adjudicative branch, which is the Standards Commission. The staff I mentioned operate exclusively for our office.

Jamie Hepburn: I have a wider question for all the witnesses. What advantages or disadvantages might arise from the creation of a complaints and standards body, as proposed by the Scottish Parliamentary Corporate Body?

Stuart Allan: There is a great deal of merit in what the SPCB advocates in relation to bringing together complaints bodies in an amalgamated body. Most of the functions that are being discussed, such as those of the Scottish Public Services Ombudsman, the Commissioner for Public Appointments in Scotland, Waterwatch Scotland and the Scottish Prisons Complaints Commission, are administrative functions. There is a lot of merit in pulling together all those functions in a single complaints body.

I begin to have a concern in relation to standards, which involves a different approach,

first, in the investigation of complaints and, secondly, in their adjudication. Particularly given the legal consequences of a finding that a breach of a code of conduct has occurred on the part of either a councillor or a member of the Scottish Parliament, there is a case for pausing and saying that the proposal to include the standards function is a step too far. A complete amalgamation of not only the administrative functions of those bodies, but the judicial or quasi-judicial functions might result in a blurring of responsibility when it comes to setting the appropriate standards. It is easier and more appropriate to have a distinction between the administrative process and the investigative and adjudicative processes, which are essential to the standards function.

Jamie Hepburn: I am keen to hear Ms Nixon's perspective on behalf of the Standards Commission but, before we come to that, I want to clarify something with Mr Allan. The proposed body has been termed a complaints and standards body, but you make a clear distinction between complaints and standards, as different concepts.

Stuart Allan: I am saying that there are essential differences between investigating complaints that are about administrative process—which is important—and investigation and adjudication in relation to complaints about the standards that are exercised by elected members in Scotland. In the latter case, it is critical that there is independent review and rigour in the review process, but that might not be so apparent if the function was undertaken by a conglomerate body with a range of diverse activities.

The committee must bear it in mind that, whereas with the administrative process, the approach is to try to find out what has gone wrong with a service, with a standards investigation, we find out whether there has been misconduct on the part of an elected member. That can have major consequences. If a councillor breaches the code of conduct, there is the possibility of censure, suspension or disqualification from office. With MSPs, the Parliament has the final power to withdraw the member from its proceedings. Those are important consequences, so it is essential that the process of dealing with questions of standards is beyond reproach. It is going a little bit too far to tack on to the duties of a conglomerate complaints body the particular responsibilities of adjudicating in relation to elected members' standards.

10:15

Jamie Hepburn: That is very helpful, and it reflects some of the evidence that we have received from others.

Do you have any reflections on behalf of the commission, Ms Nixon, in relation to the wider

benefits or disbenefits of the creation of a complaints and standards body?

Janet Nixon: The commission sees potential benefits and potential disbenefits, as you phrase it, in relation to the proposal. The benefits probably lie in the issues that you have heard others talking about, including making things less confusing for the public. We are not sure that there is much evidence of confusion among the public who wish to make complaints about the areas with which we deal. However, that argument certainly exists, and there is the obviously potential for some savings. There is certainly an initial attractiveness to the idea of having all the bodies under one heading, rather than having different, quite independent, bodies.

Having said that, when one looks slightly more closely at the functions that are undertaken by the various bodies, they seem to be quite different and disparate. There are organisations dealing with complaints of maladministration, and others dealing with complaints about individuals—in themselves, those areas are quite different. The area of public appointments in Scotland is again slightly different from the areas covered by the rest of the bodies.

As we have stressed in our written evidence and as both I and Mr Allan have touched on this morning, the commission is conscious that, given its adjudicatory role, it is in a slightly different position from that of the other bodies. We would not want anything to be lost to any future organisation holding an adjudicatory role.

I have heard people speaking to the committee about some of the benefits of having a standards and complaints body, such as the idea of talking about decisions before they are made and using others as a sounding board. However, in relation to the adjudicatory role, we feel strongly that the decision-making process must be very clear to the people who are taking the decisions, and those people must be both impartial and independent. The independence of the chief investigating officer from the commission in relation to his investigatory role is of critical importance. Our main concerns relate to defending the adjudicatory role, whoever ultimately exercises it.

Jamie Hepburn: It seems clear from what you and Stuart Allan have said that you accept the difference between complaints about maladministration and the issue of standards. There is more than one standards body, so what do you think of the idea of bringing them together?

Stuart Allan: There is a great deal of synergy between the CIO's functions and those of the Scottish Parliamentary Standards Commissioner. Our responsibilities in relation to the investigation of complaints about councillors and members of

public bodies are very similar to the functions of the commissioner in relation to MSPs.

I think that there is considerable benefit in what the SPCB is proposing. Such an amalgamation would bring about an improvement in the general service for members of the public and an overall improvement in the investigation system.

The CIO's office provides a public service. It is available 9 to 5, and people can access it to obtain information in relation to any complaints that they might wish to make—they can ask about procedures and so on. It is important for the public to have the capacity to find out more about the function of the office and how they can go about making a complaint.

On the other side of the coin, bringing the two offices together will mean that the combined office has access to the range of professional and administrative expertise that exists at present. If it were thought appropriate to bring the offices together, it is fair to say that that should bring about an overall enhancement in the level of service that was available to the combined office-holder.

Jamie Hepburn: I would be interested to hear Janet Nixon's view on that.

Janet Nixon: I am sorry, Mr Hepburn. Will you clarify which bodies you meant when you mentioned the different standards bodies?

Jamie Hepburn: My reading of the SPCB's proposal is that it involves bringing together the Standards Commission for Scotland and the Scottish Parliamentary Standards Commissioner and combining them with the Scottish Public Services Ombudsman, but I am talking about dissecting that. You argue that there is a difference between the work that the SPSO does and the work of the standards bodies, so what about just bringing together the standards bodies?

Janet Nixon: I am not trying to sidestep the question, and Mr Allan might argue differently, but the distinction that we draw is not so much between complaints bodies and standards bodies as between the other bodies and the adjudicatory role of the Standards Commission for Scotland. I think I am right to say that we are the only body in the SPCB's proposal that has a real adjudicatory role.

Setting that aside, I suppose that the advantages of bringing the commission and all the standards bodies under one umbrella are the ones that have already been discussed—they involve savings, synergies and improved access for the public. However, I do not think that the proposal quite addresses our reservations about the need to safeguard the adjudicatory role.

Stuart Allan: My remark that there is synergy between the CIO and the standards commissioner's role is in respect of investigative functions. As far as the disposal of cases where there is an alleged breach is concerned, there must continue to be a separation in how cases are dealt with. In my view, cases that involve MSPs should continue to be addressed to the Parliament's Standards, Procedures and Public Appointments Committee, and cases that involve councillors and members of devolved public bodies should be addressed to a hearing either by an adjudication panel of the new body or by a stand-alone adjudicatory body.

Although there will be a common investigative process, the disposal mechanisms must suit the purpose. As I mentioned earlier, the consequences for councillors and members of devolved public bodies are different from those for MSPs, so the adjudicatory role must be kept separate, as it is at present.

Ross Finnie (West of Scotland) (LD): I have some sympathy with the distinction that you draw between maladministration by elected bodies and a failure to comply with standards.

The important public perception of investigation and adjudication is that elected persons should not be judge and jury in their own case. You advocate a merger of the two bodies concerned. Do you have a view—I hope so—about by whom the merged body would be appointed and to whom it would be responsible? As I understand it, the Government appointed you, whereas the standards commissioner is appointed in an interesting way by Parliament. I would not have thought that it was a particularly healthy option to suggest that members of Parliament should have the Government as their judge and jury.

Stuart Allan: On the investigative function, if the proposal is to appoint a new standards officer to carry out that function for all elected members, including members of the Scottish Parliament, it seems to follow that Parliament should make the appointment. It would be unduly complex to have a system whereby Parliament and the Scottish Government were involved in appointing a single officer.

On adjudication, I have said that the adjudication of complaints about MSPs should remain with the Standards, Procedures and Public Appointments Committee. The adjudication of complaints against councillors could be left to the new complaints and standards body, but to maintain public confidence it should be done by a stand-alone body rather than, as envisaged by the SPCB, by the complaints and standards body.

Ross Finnie: Yes, I do not disagree with that. I think that that is right. However, the difficulty is

that, as the questioning has progressed from the convener to the deputy convener and then to me, we have not ended up with a view of a significantly simplified structure because of the need to preserve the question of by whom the body would be appointed and to whom it would be responsible and the important point about the obviously different adjudicatory roles that are performed in different bodies.

Stuart Allan: Yes, I accept that entirely. A couple of points might be helpful. Someone must ultimately appoint the CIO or commissioner, and the question will always be whether the appointing body allows the appointed investigating officer sufficient independence. My experience is that, although ministers appoint me, there has been no question whatsoever of any interference in my functional independence. We are of course accountable to ministers for finance, which I have no concern about.

On whether the public will be concerned that the CIO or the standards officer cannot, because Parliament appointed them, come to an independent view on whether an MSP has breached the code, I am not sure that that is a real issue. I have not heard anyone articulate such a concern in the years that I have been in my post.

10:30

Ross Finnie: To clarify, that is not the point that I am making; I perfectly understand Government appointing commissioners to look into a function that it dictates—in a sense, that is what happens with regard to local government. The point that I was making was to do not with the integrity of the individual office-holder, but with the difficulty that the public would have in perceiving the independence of the process if there were in any way a perception that Government was responsible for initiating, interfering with or being part of the process for disciplining members of Parliament.

Stuart Allan: Yes, indeed. I follow that entirely.

Ross Finnie: I follow the logic of bringing together the administrative functions; I was seeking clarification of issues relating to the public perception of the probity of the situation.

Stuart Allan: I accept that.

Jackson Carlaw (West of Scotland) (Con): I will approach the matter from a slightly different angle but go around the same course.

You very carefully set out your reservations about the complaints and standards functions being brought together. I make no complaint about the fact that the language that you used was slightly subjective—you talked about one element being tacked on to the other and about there being

a conglomerate—but I suggest that there is a difference between the possibility that it could be like that and the suggestion that it would be like that. Is it not perfectly possible that, in bringing the respective subject matters together into a single entity, the best practice that you outline and the ways in which the structure is subsequently designed could work to protect the integrity of the two functions so that it was clear that neither was simply an afterthought?

Stuart Allan: I think not. First of all, it is essential that there be a separation of function between investigation and adjudication. If the investigative and adjudicative sides were part of a single corporate body, there would be a major question about how they could operate independently of each other.

Jackson Carlaw: I do not understand why that would be the case if there were separate integrity.

Stuart Allan: When we had our first hearing, a major human rights issue was raised about whether the CIO and the Standards Commission were sufficiently independent of each other. The perception was that the CIO and the commission were one office, which raised a question about the propriety of the commission hearing from the CIO. People thought that the CIO might become too closely associated with the commission.

We prevented that from happening, but we were clearly put on notice that the public wanted there to be a clear separation of those functions. Further, there had to be such a separation because of human rights legislation. We have worked hard to maintain that separation and, if you blur that distinction, you will raise an issue about the final adjudication of complaints. People will say that the CIO and the commission come from the same place and therefore cannot be independent of each other.

The other point is that, if the body has a substantial general administrative role, it is possible that it will have to deal with a complaint about the administration of a matter that touches on the standards of a particular councillor. For example, a complainant could say that, because of maladministration in a planning office and because a planning committee handled the matter badly and did not follow procedures properly, their application was not properly dealt with. Such a complaint would be considered and ultimately determined by the complaints body.

An elected member might have acted improperly or inappropriately during that process, so there might be a question about whether they met the proper standards. If a complaint was made about that conduct and it was seen to be investigated by the same body that determined the maladministration, there would inevitably be a

concern that the body's position would be predetermined as a result of its involvement in the administration complaint.

That is why the Ethical Standards in Public Life etc (Scotland) Act 2000 was structured to separate investigation and adjudication and to leave the adjudication system with the Standards Commission as a stand-alone body that has a judicial function that is subject to appeal to the sheriff principal and thereafter to the Court of Session. There was a deliberate intention to give the Standards Commission a specific and focused role in deciding standards issues.

The Convener: The CIO and the Standards Commission are currently separate, although they have a close connection as regards pay and ration. Could that administrative connection be preserved if the Government retained responsibility for appointments to the Standards Commission, or should the Standards Commission be governed by the corporate body?

Stuart Allan: I am reasonably relaxed about the body's administrative support functions. As I have said, I do not procure my own finance or office accommodation. The commission conducts that procurement on both our behalves, which has worked perfectly well. As far as finance is concerned, I argue a case before the Scottish Government for my allocation of funds. That process can be robust, but I am accountable to the Government so I have no difficulty with that.

If there were to be a conglomerate body, it could be argued that the person who performed the investigative role could not be sure that they would get their share, but if Parliament were minded to set up such a body I would be reasonably confident that those who were responsible for the investigative and adjudicative roles would get a fair and reasonable share of the overall resources.

Joe FitzPatrick (Dundee West) (SNP): I want to return to the separation of the roles. The corporate body has suggested that standards and complaints be handled by one body, but it has been argued that standards are very different from complaints. In addition, you have suggested that there is a need for a separation between adjudication and investigation. Would it be possible for the investigation element of standards to be in with complaints, so that adjudication is still separate?

Stuart Allan: Yes. All things are possible. If we continue to have a divide between investigation and adjudication—and it must be clear to the public that there is such a separation—the question is whether the investigative roles could be combined with the role of the enlarged ombudsman's office. That is possible.

A concern might be whether the investigation of standards, which is extremely important and raises questions of human and civil rights and significant legal issues, should be dealt with in a single office whose function is primarily service related. I think that that is one step too far, although I accept that it could be done. No doubt it might be possible to make it clear that there is a dedication of resources to the standards investigation function.

I note that paragraph 57 of the SPCB's supplementary evidence states:

"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".

The SPCB can answer for itself, but the thrust that I take from that is that it understands that the issue of standards in relation to elected members requires specific expertise. I endorse what the SPCB says on that.

The only modest point that I would make about the SPCB's comments is that, if the CIO or the enlarged CIO is to be independent, I do not see that he has to be formally a part of the body. I am not currently part of the Standards Commission for Scotland and there would be a big constitutional issue if I were: the loss of the CIO's independence from the complaints body—particularly if the complaints body is to have any adjudicatory role—cannot be contemplated.

Jamie Hepburn: I have a similar question. I hear the concerns about the difference between investigation and adjudication and whether it would be appropriate for the Government to sponsor a body that investigates complaints against MSPs. Would it not be perfectly possible to combine your office, the Scottish Parliamentary Standards Commissioner and perhaps the Commissioner for Public Appointments in Scotland in a standards body that was sponsored by the Parliament? To take care of the concerns about adjudication and investigation, you could report differently, contingent on who you were investigating. The body would adjudicate in the case of councillors, as the Standards Commission does now, but in the case of MSPs it would report to a committee of Parliament. Is that not perfectly possible?

Stuart Allan: Yes. In broad terms, that is consistent with what I have said. If you take the investigative role, you could combine the CIO's functions, the standards commissioner functions and perhaps also the public appointments functions—I think that the latter is more an administrative than investigative-judicial function, but you could do that.

It is perfectly possible to have separate ways of reporting but, if you add on many additional administrative functions, you come to the point at which you colour the ability of the investigation properly to comply—

Jamie Hepburn: Surely all those administrative functions exist now. I have not proposed anything new, have I?

Stuart Allan: I am accepting, in broad terms, the principles of what you are saying.

The Convener: Ms Nixon, the Standards Commission and the CIO currently report to ministers. Can you explain how the reporting process works and its advantages? Would those be diminished or enhanced if the reporting was done to Parliament?

10:45

Janet Nixon: I do not think that we have expressed particularly strong views on what the changes would mean if the reporting structure were to alter. The commission is effectively treated by our sponsoring division as a non-departmental public body, although we do not technically fall into that category. As you would expect, we have a sponsor division and there are the normal budgetary controls. We normally meet the minister once a year to talk about the corporate plan, the commission's proposals for the future, performance against targets and so on.

I do not think that our written submission expresses a particularly strong view about any potential disadvantages resulting from a change in the reporting mechanism other than—I am sorry if this appears to be batting the issue back to you—posing the question whether you would wish us to report to Parliament given our adjudicatory role in relation to locally elected members.

Stuart Allan: At present, I am accountable to the Scottish ministers, I meet the Government regularly, I report broadly on what I am achieving, and I talk about our strategic business plans and get approval for them. We meet the minister jointly, and I would be entirely comfortable with that accountability being transferred to the Parliament, as it would just be a transfer from Government to Parliament of the process of holding me to account.

Our relationship with the Government is robust but constructive: if we see issues developing, we can discuss them with the Government. I will give you a simple example. The Government asked us whether there was a case for any review of the councillors' code. We had a positive dialogue on whether a review was necessary, and it was agreed that there was a case for a limited review. That was extremely constructive.

I hope that if the Parliament took over responsibility for the CIO's office—as it is or enlarged—there would continue to be that flexibility of dialogue. I hope that it would be not a formal, fixed responsibility of just submitting an annual report once a year but a genuinely constructive relationship that permitted dialogue on key issues, especially the more strategic issues and the development of codes of conduct and practice. Those codes are not set in stone but develop as circumstances change, so it is important that there is dialogue between the accountable officer and the body to which that officer is accountable.

The Convener: Do you currently produce a strategic plan?

Stuart Allan: Yes. The commission and I together produce a corporate plan in two halves—a three-year strategic corporate plan that takes account of the national outcomes—and we separately produce business plans that are renewed annually.

The Convener: As Jamie Hepburn explained, the committee is charged with considering whether we should group certain bodies together. Certain housekeeping questions need to be asked, and this question is for both of you. You are appointed by the Scottish ministers for a period of three years, which is renewable. How long can the chief investigating officer, for example, be in office? Will you explain the basis on which your appointment is renewed?

Stuart Allan: Yes. I am in my third and final term—I leave next year. I have been appointed for three years and the appointment has been renewed twice.

I have read with interest the competing arguments about whether, to ensure independence, there has to be a single term of seven or eight years or whether a shorter, but renewable, term of appointment is possible. I think that it depends on the post—there has to be a horses-for-courses solution.

At the end of each term, ministers have had the option to renew my appointment. I have no problem with that, and I do not see it as interfering with my functional independence—I am quite clear about that. The term of appointment could be longer, but would that not take away from the appointing authority the option to say that we need a fresh broom?

Competing criteria have to be balanced and the approach has to be targeted at the specific circumstances of each office before a conclusion can be reached. I am not of the view that a single solution can be applied across the board.

The Convener: A number of office-holders are subject to restrictions on their future employment. Do you think that those should apply to every office-holder and, if so, what do you think would be an appropriate period for restricting future employment, given that such provisions are designed to prevent conflicts of interest or allegations of corruption? Alternatively, do you think that there should be no restrictions whatever?

Stuart Allan: I am fairly relaxed about that. At present, no specific prohibition prevents me from working where I like after I retire from my current post, and there has to be a pretty obvious case for introducing such a prohibition. I can well understand that, if someone has a specific responsibility for regulating a function, it would be inappropriate for them to move into that functional sphere, but again it is a question of horses for courses. You have to apply the appropriate criteria to the specific office-holder and take a view on whether it is really necessary and in the public interest to place restrictions on their future employment at the end of their period of appointment.

The Convener: Ms Nixon, will you explain the structure of the commission, who appoints the members and their terms of appointment?

Janet Nixon: It is unfortunate that we do not have a commission member here to answer that question, but I can answer it in general terms. The commission currently has five members, including its convener, who are appointed by ministers, generally for terms of three years. The capacity exists for ministers to reappoint a member who has served a three-year term—my understanding is that the convener submits a report to our sponsor division that is relayed to ministers so that they have the information to assist in deciding whether to reappoint the member.

Jamie Hepburn: Throughout our consideration, we have heard the commissioner-versus-commission argument. I think that the commission's position is that the commission-style structure is better and that that position is predicated on its adjudicatory function. Will you expand on that and explain your concerns?

Janet Nixon: Yes. The SPCB seemed to consider an individual office-holder and a commission structure but ultimately came down in favour of the commission structure. We are not entirely clear about how it envisages that the structure will work. The commission has a strong view on that, and I am sorry that I am being terribly repetitive about our adjudicatory function—

Jamie Hepburn: I mentioned it, so do not worry.

Janet Nixon: The commission's view is that, ultimately, that function should be exercised by a commission.

Jamie Hepburn: Why, specifically?

Janet Nixon: There are two points. The first was made by the SPCB in its written evidence. If all the functions were given to an individual office-holder, their task would be hugely onerous—in practical terms, it might not be possible for one individual to carry it out. I am not sure how, in that situation, one could avoid a lack of separation between the investigatory and adjudicatory functions.

Secondly, we have talked about the gravity of the possible repercussions of a hearing and the sanctions that are available to the commission under current legislation, which range from censure to disqualification from office for up to five years. Appeal against such decisions can be made only on the application of the respondent and, initially, only to the sheriff court. Given those arrangements, it seems far more appropriate that the adjudicatory function should lie with an independent and impartial body, which would act in effect as a tribunal.

The Convener: Mr Allan, you support the amalgamation of your post and that of the Scottish Parliamentary Standards Commissioner. Could one person perform both roles adequately? Do you think that they could maintain your impressive performance of dealing with 100 per cent of cases in nine months if, as suggested by the SCPB, their functions were merged into a new complaints and standards body?

Stuart Allan: The answer to your first question is yes. There is a strong case for amalgamation of my post and that of the Scottish Parliamentary Standards Commissioner. At present, the workload of the CIO is greater than that of the commissioner, who, as he indicated in his evidence to the committee, stands alone and has no support. It would be perfectly reasonable for a single postholder to carry out both functions, especially given that there is an in-house body of professional and administrative expertise to lighten the load generally.

A single postholder would not be unable to prioritise properly—they could see fairly clearly which cases merited personal attention and which did not—and the administrative support that was available would increase the capacity of the office to provide a service to members of the public when they make inquiries about what to do when submitting a complaint. Our office could provide the public with helpful information on the process and procedures for complaints.

The Convener: Thank you for your attendance and answers this morning. Once we have read the

Official Report of today's meeting, we may want write to you for clarification of certain points.

We will have a five-minute comfort break to allow people to stretch their legs.

10:59

Meeting suspended.

11:05

On resuming—

The Convener: I welcome our second panel of witnesses and thank them for attending to give further evidence to our review. Tom McCabe MSP is a member of the SPCB; Paul Grice is the clerk and chief executive of the Scottish Parliament; Ian Leitch is the Parliament's director of resources and governance; and Huw Williams is head of office-holder services and allowances policy at the Parliament.

Before we move to questions, Tom McCabe will make an opening statement. As the committee is keen to hear the SPCB's response to the evidence that we have received to date, I will—for the first time ever—allow a little more time for that statement.

Tom McCabe (Scottish Parliamentary Corporate Body): You have always been very kind to me, convener.

I begin by stressing that my comments this morning have been discussed fully and agreed by the SPCB. In an attempt to contain what I have to say, I have already written under separate cover to the committee with specific responses to some of the evidence that it has received, but my statement will still be longer than usual and, for that, I apologise and crave the committee's indulgence.

It might be useful if I set out some of the background to our proposals, as we sense that there might—and I stress the word "might"—be a perception that we are driving some wider agenda. The proposals are consistent with the wider public services reform agenda, which has already received general support in the Parliament. As members will recall, Professor Lorne Crerar carried out a review of regulation, audit, inspection and complaints-handling bodies. Although his recommendation for a single scrutiny body in Scotland did not receive overwhelming support, it is fair to say that there was a general consensus in the Parliament in favour of a more simplified structure in the wider public sector. That also seemed to be the Parliament's general mood following the most recent debate on the subject, which took place last November.

Apart from the Scottish Public Services Ombudsman, the bodies that the committee is considering do not fall directly within the categories on which Professor Crerar reported. However, it seems entirely sensible that, at a time when changes in the structure of the public sector are being considered, the bodies that are funded by the SPCB should also be reviewed.

Professor Crerar re-emphasised some of the recommendations that were made in the Finance Committee's 2006 report on accountability and governance. That committee noted the potential

"lack of co-ordination of work between"

scrutiny

"organisations operating in the same sphere"

and recognised the need for better collaboration and sharing between them. It recommended that

"Bodies with similar roles and responsibilities should be amalgamated wherever possible;"

that

"The potential to pool the resources of existing bodies ... should be considered wherever possible with a view to streamlining these organisations";

and that

"Unnecessary ... remit overlaps should be dealt with by removing responsibility from one of the bodies involved and adjusting budgets".

It is fair to say that the commissioners were created on a pretty ad hoc basis. For instance, if the Scottish Human Rights Commission had been established before Scotland's Commissioner for Children and Young People, would we have gone ahead with the proposal for a separate children's commissioner? Perhaps not.

That said, all the commissions and commissioners were established for good reasons, and much of the original rationale holds good. I am not unduly critical of the approach; indeed, I supported much of it, as did the great majority of our parliamentary colleagues. However, what I and my corporate body colleagues are suggesting, with the benefit of hindsight, is that we could organise those functions more effectively. We are not making an argument for or against those functions; we are simply saying that rationalising the organisation of their delivery is both desirable and possible.

Two underlying principles drive our proposals: making access as simple as possible for users of services, in essence by providing a streamlined, one-stop-shop approach; and achieving public services that provide the best value for money. The corporate body argues that the onus is as much on the people who are defending the status quo to prove that the current arrangements represent best value for money as it is on those of

us who advocate change to demonstrate that our proposals could help to reduce costs.

We are experiencing an exceptional economic climate. As members know, circumstances have deteriorated substantially since the committee's establishment. It is evident that public spending will be extremely tight during the next few years—and probably beyond. That underlines the need to consider the structure of the bodies that the SPCB supports, to ensure simplified public access and—I make no apology for this—greater value for money. It is unlikely that a similar opportunity will arise for some time.

We can postulate savings on a logical basis, but at this stage we do not propose to talk definitively about pounds and pence. What we can say is that, where several relatively small organisations separately arrange their corporate services, accommodation and promotion arrangements, grouping the organisations together sensibly can ensure that arrangements are more cost effective. The same principle underlies the approach to joint procurement and shared services that the previous Government initiated, which has been continued by the current Government and has demonstrated that services can be secured more effectively.

We cannot prove that the proposed approach will save money until the contracts are tendered. There must be willingness to judge which course of action is most likely to deliver the best outcome. What makes our view reasonable? Let us consider all the office-holders who are supported by the SPCB. Out of a total budget of £7.5 million, the combined totals of this year's budgets show that almost £5 million is being spent on staff costs, £257,000 is being spent on staff-related costs such as training and travel, £584,000 is being spent on accommodation, almost £500,000 is being spent on advisers, and £1.1 million is being spent on running costs, which include research and promotion.

Given that Scotland's Commissioner for Children and Young People is spending £96,000 on accommodation and the Scottish Human Rights Commission is spending £75,000 on accommodation, there must be scope for savings in bringing together the two bodies. On participation, promotion and research, which are included in organisations' running costs, the children's commissioner is spending £380,000 and the SHRC is spending £310,000. It is logical that drawing together the bodies' resources into a single research team would bring scope for savings and for more sharing of ideas and expertise.

Scale is an issue. Relatively small organisations—which is what we are dealing with—carry certain overheads. We are trying to

focus on savings in such areas. I propose that, if the committee is persuaded that the corporate body's proposals—or a version of them—offer a sensible way to proceed, we work with the commissioners to produce more detailed analysis of the cost provision, to inform the financial memorandum to the legislation that would be needed to bring about change.

We proposed a separate complaints-handling and standards body. We suggested that there should be a commission with a chair and three or four members, who might have specific expertise and be able to take the lead in areas of the commission's work. Whatever its composition, the commission would draw on the expertise of existing staff in the offices that currently carry out those functions. Existing functions will not change but be realigned into simplified structures. We propose similar arrangements for a rights body, and we propose no change for the Scottish Information Commissioner.

11:15

I note that some of the main concerns from some office-holders are about the amalgamation of complaints handling and standards. If committee members are not persuaded of the merits of amalgamating those, I invite them to consider having, at the very least, a single standards commission. Such a commission could comprise the existing Standards Commission for Scotland and the Scottish Parliamentary Standards Commissioner. In our view, such a body could also provide the functions that are currently undertaken by the Office of the Commissioner for Public Appointments in Scotland.

Under such a proposal, a chief investigating officer could be appointed to undertake investigations into complaints and to report to the new commission on any potential breaches by councillors or members of public bodies. Reports into alleged breaches by MSPs would continue to be sent to the Standards, Procedures and Public Appointments Committee so that, as at present, the Parliament could determine any sanctions. We suggest that the chief investigating officer should be a parliamentary appointee rather than a ministerial appointment as at present.

In oral evidence to the committee, the Scottish Parliamentary Standards Commissioner accepted that his functions and those of the Standards Commission both involve investigations but in different contexts. The different contexts would be taken full account of by the different reporting routes that I have described. The evidence of the chief investigating officer shows that there is considerable merit in aligning the standards

functions. Indeed, the chief investigating officer's submission states:

"I think there would be significant benefits with the public having access to a single office set-up when seeking advice about the complaints process relating to members' conduct ... I also consider that the amalgamation proposals could be implemented with an overall improvement in service delivery and with some (albeit modest) overall savings in current expenditure."

It is only fair to point out that the chief investigating officer does not support our proposal to have complaints handling under the same body.

The Scottish Parliamentary Standards Commissioner said that he occasionally receives complaints that should go to the Standards Commission because

"there is confusion between the two names apart from anything else."—[*Official Report, Review of SPCB Supported Bodies Committee*, 20 January 2009; c 70.]

Given my earlier comments about simplification being a driving force behind our proposals, we think that we have an opportunity to address that point. Under our proposals, it would not matter whether such confusion existed in the mind of a member of the public because the commission would be set up to deal with the complaint without having to pass the person on to another body.

We stand by our proposal that such a body should be a commission rather than a commissioner. The creation of a commission as a body corporate would address some of the legal status issues that have been drawn to the committee's attention. It would provide for a broad range of experience at senior level. As I have said, individual commission members could have responsibility and expertise for specific functions. Indeed, specific decisions could be delegated to individual commission members. The commission approach mitigates the risk of too much decision-making power being entrusted to one individual.

I disagree profoundly with the Scottish Information Commissioner's comment that

"decisions that are taken on a majority basis do not engender public confidence."—[*Official Report, Review of SPCB Supported Bodies Committee*, 3 February 2009; c 88-9.]

I can think of a number of situations in which majority decisions are deemed perfectly adequate. Appeal court decisions are one example. Closer to home, here in Parliament a simple majority of members is sufficient to change the legislation governing the country.

On our proposals for a rights body, I acknowledge that evidence that the committee has received shows that there is concern in some quarters about subsuming children's rights into a general rights body. I appreciate the views of the various children's organisations that have taken

the time to submit evidence to the inquiry. However, I believe that, with some clever thinking, most of the concerns that have been raised could be addressed. It will be open to the committee to propose legislative changes that make clear the specific requirement for children's rights to be promoted within the new body. The legislation could include provision for a specific commission member to have responsibility for children's rights. In addition, consideration could be given to including the word "children" in the title of the new body.

All that could be achieved while we enable streamlining that could simplify the landscape, encourage cross-fertilisation of ideas on promotion, for example, and produce better value in the provision of support services and accommodation.

Under the proposed governance arrangements, Parliament would approve a strategic plan. As parliamentarians, we would therefore be able to ensure that children's rights were catered for under the new arrangements.

On functions, the children's commissioner may consider issues that relate to the children of asylum seekers, but that will happen in isolation. A more general rights body could take a more holistic view of issues that relate to asylum seekers and their children, which could be a better outcome.

I acknowledge that care must be taken when quoting from outside material, but I draw members' attention to paragraph 6 of "General Comment No 2 (2002)" by the United Nations Committee on the Rights of the Child, which says:

"Where resources are limited, consideration must be given to ensuring that"

all

"available resources are used most effectively for the promotion and protection of everyone's human rights, including children's, and in this context development of a broad-based"

national human rights institution

"that includes a specific focus on children is likely to constitute the best approach. A broad-based"

institution

"should include within its structure either an identifiable commissioner specifically responsible for children's rights, or a specific section or division responsible for children's rights."

That makes a strong case for the rights body that we have proposed.

A further advantage of our proposed approach is that the new body would in principle be capable of incorporating new rights-focused commissioners over time. That would give the Parliament the

option of creating new responsibilities without having to establish new bodies each time, such as a commissioner for older people.

We urge the committee to support providing the SPCB with the powers that the Finance Committee recommended to provide for greater accountability of office-holders whom the Parliament funds. I take issue with some of the arguments that have been made to the Review of SPCB Supported Bodies Committee for diluting the SPCB's responsibility. Most of the arguments appear to be based on jurisdiction, because the SPCB is subject to review by some office-holders.

The central point is that all bodies that Parliament establishes must have a line of accountability back to Parliament for their overall performance and their expenditure. We suggest that parliamentary committees should take a closer interest in overall performance. Some certainly have, but a more systematic approach to the review of annual reports would be desirable. That would also have benefits when we consider the strategic plans that might be required to be submitted.

I argue that the corporate body has discharged effectively the function of ensuring on the Parliament's behalf that funding that the Parliament allocates is properly scrutinised since it was handed that responsibility by Parliament. As has been pointed out to the committee, the corporate body comes under the jurisdiction of the Scottish Public Services Ombudsman and the Scottish Information Commissioner. However, the key question is whether that compromises its ability to scrutinise budgets on the Parliament's behalf. The clear evidence is that that has not affected that ability and I see no reason why it would in the future.

It is important to note that the Scottish Information Commissioner said in his evidence:

"I do not feel particularly vulnerable. I have been allowed to get on with my job, I am able to take tough decisions and I am adequately resourced, so I do not come here with any complaints."—[*Official Report, Review of SPCB Supported Bodies Committee*, 3 February 2009; c 99.]

In one sense, that is the most eloquent answer to the concerns that have been expressed. I suggest that it fully supports the corporate body's view that it is possible to fall technically within a body's jurisdiction while performing a scrutiny role of that body on the Parliament's behalf.

The Finance Committee's report following its inquiry into governance arrangements in 2006 recommended that the SPCB should play a more proactive and demanding role in the scrutiny of commissioner budgets. In that year, we therefore invited bids from each office-holder on a zero-based approach, to ensure rigorous justifications.

We received a bid from the Scottish Public Services Ombudsman for a budget increase of 30 per cent over the previous year, and a bid from the Scottish Information Commissioner for an increase of 19 per cent. After some negotiation, the office-holders submitted revised and reduced budgets with increases of just over 7 per cent for both offices, which we were more comfortable in presenting to the Finance Committee. Those agreed budgets still allowed both offices to increase their staff complement to help them with their respective case loads. We were anxious to ensure that both offices would be able to perform their statutory duties within those budgets.

I am afraid that a question arises with regard to the justification for the original figures. We now set a guideline for what might be acceptable, but that does not mean that we would dismiss any budget that exceeded that percentage, if that were justified. However, we cannot have a lack of accountability or any impression that there is unlimited money—the Finance Committee was very strong on that. In other words, independence of function does not equate to unlimited finance.

I am on my last few paragraphs, convener—I apologise for the length of my statement.

We note from the Government's evidence its view that our scrutiny processes could be more transparent. We also note that the Government has helpfully suggested that a framework be put in place to set out the accountability arrangements. We would be happy to consider entering into such a framework agreement with our office-holders.

We assure the committee that we will make the approval and monitoring of office-holders' budgets more transparent. We intend to accommodate a public session with the office-holders on the scrutiny of their budgets and to put all correspondence to do with the scrutiny process into the public domain. That will, of course, be in addition to the public session that the Finance Committee already holds each year as part of the annual budget process, which historically has had a clear focus on office-holders as well as a range of other key corporate body responsibilities.

I appreciate that my opening statement has taken some time longer than is normal. We felt that it was important to address the large body of evidence that the committee has received during the weeks that it has spent on the inquiry. I appreciate the committee's indulgence, and we will do our best to answer any questions on what we have said.

The Convener: Thank you, Mr McCabe—we have indeed heard a lot of evidence.

There have been a lot of complaints from office-holders that, although your proposed restructuring of the offices is vast, they were not consulted or

given any idea that that was what the SPCB was considering. Why did you not initially consult the office-holders on the very wide-ranging proposals that you put forward? Most office-holders have made such a "complaint".

Tom McCabe: To some extent, it is a chicken-and-egg scenario. It is clear that there has been a move towards considering how we can rationalise these structures in the Parliament. Members have indicated, particularly in the two debates that have taken place, that they would like to travel in that direction. Given that indication, the Parliament decided to set up this committee to examine what was possible.

In the light of the SPCB's experience—as I mentioned when I spoke to the committee a few months ago—we decided that our proposal might be a suitable way forward. We make proposals to this committee, and it is ultimately for the committee to make up its mind. During that process, the committee has taken evidence from and heard the views of the office-holders. Although I acknowledge that the committee has heard the views to which the convener referred, I have to say that the office-holders were aware, from the dialogue that has been going on for some time, that there was a view that some areas could be rationalised. That did not come as a bolt from the blue.

11:30

As commissioners were set up over time, the Parliament gradually took a different view about how it framed the legislation setting up commissioners. In the light of experience of how accommodation had been secured previously by commissioners, when the Scottish Human Rights Commission was established, Parliament decided to include a provision in the legislation giving the corporate body authority over determining what kind of accommodation it should have and where it would be, and authority to look at where there could be amalgamations with other bodies. All those things were developing over time—we could see that, the Parliament could see it and, frankly, I do not understand why individual commissioners could not see the direction of travel.

Ross Finnie: Before we move on, I want to establish a quasi-constitutional issue. I have always had the view and, having listened to all the evidence and your statement this morning in particular, I remain of the view that the SPCB, as the sponsoring body, has an absolute and unquestionable interest in the performance of the commissioners; their effectiveness and efficiency; the effectiveness of their administrative arrangements; the procurement and utilisation of their assets; their staffing; and, fundamentally, as you pointed out in your statement, their financial

accountability. Therefore, I agree with the latter part of your response to the convener, which was that no one could be in any doubt that there has been a substantial amount for the Finance Committee and others to look at.

However, I have some difficulty with the way in which, on the basis of no evidence, the corporate body arrived at a view that it could simply pronounce on the functions and discharge of matters that are contained in parliamentary acts about which you have taken no evidence. Despite that, you express a resolute view that what is proposed will work, that there will be no diminution in delivery and that there will be no effect on it. You had no evidence and it was not an area in which the corporate body had any particular exchange, so I am not sure on what authority the corporate body can write such a report addressing the functions of those commissioners.

Tom McCabe: Like anyone else in the Parliament, we do not need authority to express a view. We were invited to give evidence and we decided to give it. I stressed the point when I spoke to you before, and I cannot stress it too strongly, that the Parliament is now 10 years old. We now have a significant body of experience of dealing with the various commissioners who came on stream during those 10 years. In the light of the experience not just of the politicians in the corporate body but of the professional officers who have served it over the 10 years, we formed a view that some of the commissioners' functions could be rationalised in the proposed way. As I mentioned earlier, the two driving forces for that are that it would provide a more simplified structure and source of access to the general public, and that it could provide more value for money. When I spoke a few moments ago, I gave two examples of that. In fact, I prayed in aid a comment from the Scottish Parliamentary Standards Commissioner in which he explicitly recognised that there are occasions when there is confusion in the minds of members of the public about where they should take a complaint about standards.

As regards value for money, as I said earlier, we can postulate savings on a logical basis. Where we can secure a rationalisation of accommodation, there are potential savings to be made. Clearly, where we can rationalise the procurement of research and promotional work, there is potential for savings. Parliament, in its wisdom, included in the Scottish Commission for Human Rights Bill the facility for the SPCB to determine the accommodation for that office and to look for opportunities for it to share accommodation. The chair of the Scottish Human Rights Commission has acknowledged in evidence to the committee that that has been beneficial and that his office is now co-located with the Scottish office of the

United Kingdom body. He acknowledges that that provision in the legislation has been of benefit to him. That is one of the things that helped us to shape the overall view that we are now proposing to the committee.

Ross Finnie: With respect, that is not the point that I am making. The point that I am making is that, although the corporate body is extraordinarily well placed to advise a committee that is looking into the matter on the administrative, financial and other savings that can be made through different groupings, in my humble opinion that is different from pronouncing on how those commissioners can discharge their functions effectively on the basis of no evidence. I do not dispute that better arrangements could be made in respect of assets and personnel. We have had invaluable evidence on that from the corporate body. Nevertheless, I have difficulty in understanding how you are able to say, having taken no evidence on the matter, that the different functions can simply be merged with no effect at all.

You make it clear in your evidence how fairly you, as the sponsoring body, deal with all the bodies in terms of the financial and other expertise that the corporate body has. Indeed, you are right to point out to us that some of those who came to give evidence perhaps misunderstood that. On the other hand, I am not sure how you, as the sponsor of those bodies, can say that you deal with them fairly in financial terms when you have a view that there should be only three of them, not six. That seems to be going beyond the function and powers of the corporate body.

Tom McCabe: With respect, I think that we are in danger of dancing on the head of a pin. The corporate body is offering its view to the committee and it is the committee, not the corporate body, that will make recommendations to Parliament. We have not recommended the elimination of any functions, as I tried to make clear earlier. I have said that functions could be realigned and that there could be a rationalisation. We have not said that although the Parliament, in its wisdom, decided that there should be a specific focus on the rights of children, we no longer think that that is the case. We have deliberately not done that and will not do that, as that is not our function.

It is similar to the argument that is sometimes put forward when a public body issues a consultation document and someone says that it has prejudged the issue because it has printed a bit of paper when the paper should be blank. That is dancing on the head of a pin. Where should the public body start from? Should it produce a document that helps to generate discussion, opinion and thought or should it start from nothing whatever? In the light of our experience, we have

tried to produce something that will allow the committee to consider what recommendations it might want to put to Parliament.

Johann Lamont (Glasgow Pollok) (Lab): Everybody is sympathetic to the role of the corporate body. Everybody likes to see what it is in favour of but nobody wants to have to make the hard choices about how that plays out in terms of budgets and so on. However, one of the lessons that the Scottish Government has learned is that it can declutter itself of very few bodies easily because such bodies are often created because there is a particular need. The challenge that we face is to make a distinction between what is functional, which can be brought together, and what is core business. We will deal later with some of the assumptions about what functions can comfortably be transferred to the Equality and Human Rights Commission.

Did you give any thought to consulting other committees? The Finance Committee had obviously taken a view, but there are anxieties in other subject committees about the model that the corporate body is proposing.

My second question is about the assumption that the corporate body came to a view and then set up a committee that would will the means. That is a bit of a block, because people set their views against the corporate body's proposals. Alternatively, your evidence could have the same status as everybody else's, with it being for the committee to decide on the issues. However, that assumption has impeded the debate. Rather than take a strong line on the options that you identified and setting them out as the corporate body's view, did you consider consulting committees and producing something that would have been more like an options paper?

Tom McCabe: To be completely frank, we did not consider consulting other committees. For some time, right back since 2006, when the Finance Committee produced the report that I mentioned, the corporate body has been getting a strong steer from that committee. Ultimately, we go to the Finance Committee with the corporate body's overall bid for finance. Since the 2006 report—and, to an extent, a wee bit before that—the Finance Committee has put particular emphasis on the allocation of money to commissioners and has suggested that there are possibilities for further rationalisation.

If I understood your second question correctly, you asked about the suggestion that the corporate body had established this committee to rubber-stamp its proposals. I do not think that we felt that at any time. We have always been aware that we are walking a pretty fine line because, ultimately, any changes will happen through Government-proposed legislation. The Government is

promoting a public service reform bill, within which the proposals that we are considering would be contained.

As I said when I gave evidence to the committee previously, we had discussions with the Cabinet Secretary for Finance and Sustainable Growth on the proposed public service reform bill in order to try to get the balance right. The direction of those discussions was that although the cabinet secretary is ultimately responsible for proposing a bill, the corporate body can, in the light of its experience, make suggestions. However, the Government has to decide which proposals to proceed with in legislation. Through those discussions, the Government became comfortable with the notion that the wider question should be examined by a parliamentary committee that would make recommendations, and that the Government could then make a call—given that it is a minority Government—on the final shape of the legislation. I do not know whether that answers your question properly.

Johann Lamont: Possibly. Given the role of committees, people would have been a bit ill-advised to think that the committee was going to rubber-stamp the proposals, even if that had been the plan. However, I believe that some people perceived that the committee was established as a consequence of the corporate body taking a view. We certainly need to debate where the responsibility will lie, once the corporate body's proposal is tested in committee, to will the means for the proposal to be taken forward. It might be convenient for the Government to park difficult issues with a committee. We need to consider that further.

My central point is, however, that there is a view that the corporate body's approach was to make proposals that were to be tested by the committee, rather than contribute to broader consideration of what we do about the issues. That is important, because it raises the question of how considered the corporate body's view is. It weakens your argument if, as Ross Finnie suggested, you have not taken all sorts of evidence before making the proposals.

Nevertheless, the committee will be responsible for ensuring that the dialogue is not just between the Finance Committee, the SPCB and this committee, because other strong interests with expertise in, for example, education have a view on what the appropriate vehicle should be.

11:45

Tom McCabe: It would be unfortunate indeed if the perception was as members have outlined. I would regret that as much as they would. Such a

perception would certainly impact on people's view of the eventual proposals.

I take the point about consulting other committees. We decided that that was not necessary, which the committee may think was right or wrong. However, I stress again that, since the Finance Committee's 2006 report, there has been a drive for the SPCB to take a much more proactive and robust role with regard to budgets. Emanating from that is the view that one way to take a more proactive role is to assess whether the various bodies could be organised better and how that could be done without impinging on, or reducing, their functions.

Ross Finnie: Convener, I seek clarification and I apologise if I have misunderstood what Mr McCabe said. I understood him to have said that the process started as a Government drive for public service reform, that changes would be made largely at the behest of the Government and that this committee was asked to consider the issue in that light. I seek clarification on that because, as I understand it, although that was the initial driver, the Government realised that it had no authority to amend the commissioners' functions because they are within the provenance of Parliament, and so any changes to their functions or arrangements will be made by a committee bill and not by a Government bill.

The Convener: I was going to ask that question, because the committee's remit states clearly that any changes will be

"by way of a Committee Bill",

not by way of a Government bill. In addition, I inform Mr McCabe that the committee has taken evidence from other committees, albeit that it is written evidence. However, the point is that we asked other committees for their input to our deliberations. I emphasise that Ross Finnie is correct that any changes would be made by a committee bill—perhaps from this committee—and not by a Government bill.

Tom McCabe: I fully understand that. In fairness to the Cabinet Secretary for Finance and Sustainable Growth, he took considerable care to avoid issues that are within the provenance of the Parliament rather than the Government in the knowledge, in a sense, that what we are discussing would not be part of a Government bill but would be in line with the general trend of examining public services, and that the bodies within the SPCB's remit would be considered at the same time. However, I fully acknowledge that that would be done through a different parliamentary route in terms of the kind of bill that would be presented to Parliament.

The Convener: Okay, we have cleared that up. I want to have a look now at the proposed

complaints and standards body. The ombudsman undertook an independent review of the first two quarters of 2008, which showed a complainers' satisfaction rate of 39 per cent in relation to the time that was taken to deal with complaints by the ombudsman. Given that, what makes you consider that the ombudsman can satisfactorily take on further responsibilities?

Tom McCabe: In a sense, it is the opposite of that, because we propose a new body. We do not propose that the ombudsman take on new functions but that a new body be created to take on those functions, which is a different thing altogether. It would have been wrong of us to form the suggested view on the basis of the 39 per cent figure because we rightly have to tread a fine line between oversight of the body and interference in its functionality, which we try to avoid. If our view had been formed by that statistic, we would have been wrong from the start. Essentially, we are saying that there should be a new body rather than that the ombudsman should simply absorb other functions. We propose that a new body be created to consider a wider range of functions.

The Convener: The functions of the Scottish Parliamentary Standards Commissioner, the Standards Commission and the SPSO are loosely similar in that they all undertake investigations and prepare reports. Do you consider that that is enough to overcome the significant differences that exist at present in report handling?

Tom McCabe: Yes. Essentially, all that work is done by chief investigating officers who then report in different ways. In the case of the Scottish Parliamentary Standards Commissioner, it is the Parliament that decides on the sanction. A lot of the matter is about the initial investigation, and we believe that there is adequate capacity to do that.

Jamie Hepburn: I have a related question. In your introductory remarks, you noted the evidence that has been given to us. This morning, we heard a lot about the difference between complaints about service failure or maladministration and complaints about standards. You seem to recognise that difference. Is that now your position? You went into some detail on an alternative model whereby there would be a combined standards body.

Tom McCabe: I was just saying that that is an option.

Jamie Hepburn: You suggested, assuming that that option was followed, that the standards body should still be a Parliament-sponsored body. Obviously, some Government-sponsored bodies would come under it. If a separate complaints body was proposed that covered Government-sponsored bodies, should the same thing apply?

Should the complaints body be a Parliament-sponsored body?

Tom McCabe: Yes. There would be a real conflict if it was a Government-sponsored body.

The Convener: At present, Waterwatch Scotland is wholly funded via a levy that is collected by Scottish Water. How do you envisage Waterwatch being funded in the future if it becomes an SPCB-sponsored body?

Tom McCabe: We have said that we will hand that issue back to the minister. It is for the Government to resolve the matter. I might add that the corporate body has no fondness whatsoever for playing even a small part in determining the bills that drop through people's letterboxes.

The Convener: Scotland's Commissioner for Children and Young People told us that the body has been fairly successful in its short existence. How would its amalgamation into a rights commission ensure that its work on children retained a distinct voice in the new body?

Tom McCabe: A number of the points that I made earlier are relevant to that. It has been suggested that the new commission would present a strategic plan to Parliament, which could examine the plan and determine its focus on children. As I said earlier, Parliament could determine the title of the commission, and in doing so could emphasise the rights of children.

Also, the new body could take a more holistic view. I think that the example that we gave—on asylum seekers—is a good one. The existing commissioner can consider the children of asylum seekers but cannot consider all the other human rights issues that surround their families. I think I also mentioned that, under a commission model, legislation could require an individual commissioner to take specific responsibility for children's rights.

Those are some of the suggestions that we have made. However, we are not the fount of all wisdom, and suggestions from the committee and others can add to those.

Johann Lamont: There is a great deal of controversy about the matter. The model that you suggest is to have an overall body with discrete commissioners, and you would probably ring fence the funding to give reassurance.

The Scottish Human Rights Commission has not organised itself in that way; it has generic commissioners and, as far as I can see, it is suggesting that it would not be possible to reorganise itself in that way. Is it the case that you are not arguing for a merger but for a completely different new body? Would there be costs associated with that?

The SHRC tells me that it regards its responsibilities as being to look at areas that are more marginal and which have previously not had any real attention or focus. I think that one of the areas that are mentioned in the corporate plan, and on which it is consulting, is mental health. Its view is that there are issues around human rights that could be captured, such as meeting the needs of people with mental health issues, which would include children. Scotland's Commissioner for Children and Young People is saying that, in such circumstances, children's rights will always lose out in the competition with the rights of adults and that, in any case, the structures do not allow for that.

Although your model sounds interesting and I can see the logic for it, it would not be a merger; you would simply be getting rid of the bodies and starting again. Is that possible, given the constraints that you have identified in relation to the functions, rather than the legislation?

Tom McCabe: I think that it is possible. It depends how you look at the model—you can describe it in different ways. If you are talking about creating a new body, that would, in itself, achieve rationalisations and savings. The secret would be in the attention that Parliament paid to the detail, shape and form of legislation on that. Such legislation could determine how the new body would operate, the emphasis it would put on children and whether there would within it be a separately designated commissioner whose function was specifically around children. A raft of guarantees, checks and balances could be inserted in the legislation to ensure that that emphasis existed. Our view is that there is a benefit in being able to take a holistic view. Yes—there could be specific emphasis and there could be a specific commissioner dealing with children, but the commission's ability to take a more holistic view of the things that impact on a child, or the people who are associated with them, could be of benefit.

Johann Lamont: The convener can correct me if I am wrong, but my understanding of the evidence from the Scottish Human Rights Commission is that, given the responsibilities with which it is charged, it would not be possible to use the model that you are proposing to cover the range of needs that are identified.

Tom McCabe: I have to say that I understood its evidence differently. I thought that it was quite enthusiastic about the suggestion.

Johann Lamont: I think the commission is enthusiastic about caring about children's rights. I think that it has a chair and three or perhaps four members and that they will all take whatever responsibility—they are not going to be a

children's commissioner within an older person's commission or whatever.

Tom McCabe: I think that we can determine that. If Parliament thinks that that would be a suitable way to proceed, the legislation that we shape will decide how the commission is formed and how it operates in the future. Undoubtedly, we have learned from experience with commissioners.

Parliament changed its modus as it formed legislation covering different commissioners. The example that I gave earlier was the Scottish Human Rights Commission. I am thinking particularly of accommodation and co-location. We learned lessons from the way in which other commissioners had established their accommodation. We can do the same in this case.

It is perhaps overoptimistic to say that we would have a blank sheet of paper, but Parliament has the opportunity to decide the shape of a fresh piece of legislation, or any amendments that are necessary to take account of the concerns that members have expressed. The concerns that you are expressing are legitimate in my view and would, I think, be legitimate in the view of the corporate body.

I would be horrified if what we were proposing would dilute the protection that we offer children. If anything, we think that what we are proposing can enhance that protection. People are, of course, entitled to take a different view of that—I understand that—but it is important for me to stress that that is the motivation behind what we are proposing. It is not just some detached accountant's view of how we can save a few pounds.

The Convener: My memory of the evidence from the Scottish Human Rights Commission is that it took a general view but when asked specifically about the issue, it thought that specialisation would be possible if it were to incorporate the role of the Commissioner for Children and Young People.

12:00

Jamie Hepburn: That is certainly my recollection. Although the commission said that it had chosen not to structure the organisation in such a way, it seemed to indicate that that would not be impossible.

Tom McCabe seemed to suggest that one way of protecting the rights of children would be to include the word "children" in the title of the new organisation. A human and children's rights commission sounds a bit cumbersome and unwieldy. The fact that it would be a rights body

for human beings implies that the rights of children would be included in its work.

Tom McCabe: We are quite good at producing cumbersome titles.

Jamie Hepburn: And cumbersome questions.

Tom McCabe: You are being unkind to yourself.

Words are important. That would be one way of sending a reassuring signal to people that we had the right things in mind and that the proposed legislation had the right intention. I fully accept that the content and structure of that legislation and the skill that is put into its drafting will be far more important than the title, but the title will send a signal. Titles are important, too, in the sense that when Parliament comes to consider a bill, what is in its long title can sometimes determine what amendments can be made to it.

Jamie Hepburn: I have another question, which is about the length of time it takes the SPSO to report on some complaints. What is the corporate body's position on an idea that the SPSO seems to accept, which is that an arrangement should apply that is similar to the one that applies to the Scottish Parliamentary Standards Commissioner, whereby it must prepare a report to the sponsor if it fails to undertake an inquiry within a set period of time? Would you be in favour of such an arrangement for the ombudsman or for any alternative complaints body that might be proposed?

Tom McCabe: Broadly, yes—but we need to take great care about interfering in the functioning of the office-holders. There could be a duty to report. Mr Leitch wants to make a point about that.

Ian Leitch (Scottish Parliament Directorate of Resources and Governance): The committee will recollect that the Finance Committee and Parliament in general had concerns about the reappointment process for commissioners and wanted to consider how they could be assessed. A procedure was introduced that was applied to one of the commissioners, which we have adapted to perform an annual assessment. As Mr McCabe points out, that must be carried out with great care.

Broadly, the process that we intend to use will involve the annual issuing to office-holders of a self-assessment questionnaire. They will complete the assessment, but we will not see it—it will go to the independent assessor, who will assess it, together with the statistics that we seek quarterly from commissioners about how much work they have and how long cases are taking. A dialogue will take place and the independent assessor will report to us. The intention is to avoid conflict and our getting involved in operational arrangements.

We have not rolled out that process because the ombudsman has sought early leave, the standards commissioner's term is up and the children's commissioner is leaving. We intend to roll it out, with the safeguards that we have in mind.

Tom McCabe: In the context of a wider concern about performance, I mentioned the need for parliamentary committees to take a more active role in scrutiny of the commissioners' annual reports. That is extremely important. Some committees have done that, but there is certainly scope for our committees to spend more time examining parts of the reports about which there are concerns, and getting the commissioners to expand on the reasons for the causes of concern. That would address any concerns about interference in the functioning of the office-holders.

The Convener: When I asked who would fund Waterwatch Scotland, you said that that would be a matter for the minister. For absolute clarification, do you have views on who should investigate private water suppliers in the future, given that any legislation that we produce could not competently maintain that aspect of Waterwatch Scotland's jurisdiction? Who would look at such complaints?

Tom McCabe: I have no views on the issue.

The Convener: You suggest that the Office of the Commissioner for Public Appointments in Scotland be merged with the proposed complaints and standards body. What is your thinking behind that suggestion, given that the post of Commissioner for Public Appointments is slightly different from the other positions that would be included in the body? Why do you consider that the commissioner's functions are a good fit with the proposed body? What would be the advantages of such a merger?

Tom McCabe: The basic thread that runs through the proposal is that all three posts are concerned with standards. We thought that it might be suitable to include the Commissioner for Public Appointments in Scotland in the complaints and standards body because their role is to maintain the standards of public appointments. The commissioner has one of the lowest profiles of all commissioners, but their work is about enhancing public confidence in the fact that due process has been followed and undue influence has not been exerted when people are appointed to public positions. Because of that link, we thought that the most appropriate place for the commissioner was a body that deals with standards for public bodies, councillors and MSPs.

The Convener: You propose that any restructured body should operate as a commission, along the lines of the Scottish Human Rights Commission. We have noticed that the Scottish Public Services Ombudsman has an

extremely wide jurisdiction under her sole authority. Can you explain the benefits of a commission approach to that role and indicate whether, in light of the evidence that you have received, you favour the ombudsman being converted into a commission? There is a significant difference between the two arrangements.

Tom McCabe: I stand to be corrected, but I am sure that the ombudsman as currently constituted has an executive board. If I recall correctly some of the submissions that I have read, when complaints are taking an exceptional length of time to resolve, they are reported to the executive board, so that the reasons for that can be examined. The arrangement is different, but not very different, from a commission.

I am sorry if I am being simplistic, but if I were to ask five people on the Royal Mile to explain the meaning of the titles "Scottish Public Services Ombudsman" and "commission, or commissioner, for public service complaints", I think that they would understand the second more readily. Like members of the committee, I get many representations from the public on the issue. People have different views on the ombudsman and do not think that they have adequate recourse if they are unhappy with her decision. However, the pre-eminent issue for me is that the word "ombudsman" is just a title—in my experience as an elected member over a number of years, it does not have resonance with or mean much to most people. The title "commission, or commissioner, for public service complaints" would explain the body's functions much better to members of the general public.

In line with our comments on commissions in general, we think that there is merit in taking a more broad-based approach to some of the difficult decisions that need to be taken. In my view—other people may disagree—in the world that we live in, the pressures that are placed on individuals are sometimes difficult to deal with. Having the sounding board of a commission that includes different experiences could be beneficial and lead to more rounded outcomes. I made that point when I spoke to the committee previously.

The Convener: On the governance role, does the SPCB wish to continue to sponsor these bodies? Do you see that as a core function of your role?

Paul Grice (Scottish Parliament Clerk and Chief Executive): The SPCB remains willing to do that. The functions have been placed upon it through various acts of Parliament since about 2000. The Finance Committee considered the matter in some detail in 2006—we gave evidence to that committee as part of that consideration—and concluded that, on balance, the SPCB should

retain that role. The SPCB never sought that role, but the huge experience that it has built up as a result of being given it is the strongest argument in favour of maintaining the current arrangement. That is particularly true if the committee ultimately decides to propose change of some sort, because that will mean that we will go through a challenging two or three years, in which the experience, knowledge and understanding of the SPCB will be invaluable. Further, if we are to move to a new model of scrutiny within the Parliament, that will add another element of change.

The SPCB reflected carefully on the matter and is quite happy to continue in the role, should the committee decide to recommend that it should.

The Convener: If all the recommendations to add new bodies to the SPCB were agreed, what effect would that have on staffing within the Parliament and for the portfolio member?

Tom McCabe: The chief executive can answer that much better than I can, but part of the corporate change programme that has been under discussion for some time has addressed that question. It might even have done so in advance of the current considerations. I say that to help Paul Grice; I hope that he finds it helpful.

Paul Grice: It is. I have already identified one of my most senior colleagues to lead on this matter, whatever the committee recommends. Indeed, he is tracking the work of this committee, so that, regardless of what you recommend, we can hit the ground running. There is an existing high-quality team, but I brought in some new senior level leadership, recognising that any change that you propose will require leadership. I can give an absolute assurance to the committee that I will ensure that the necessary resources are in place.

On the portfolio approach, one of the advantages that we have is that the portfolios of two SPCB members overlap in this area, which gives us extra strength. Mr McCabe has a broad interest in all matters financial—he leads for the SPCB in its dealings with the Finance Committee, which has traditionally taken a strong interest in the issue—and Mr Pringle has taken a strong interest in individual commissioners. The SPCB is strong in this area, and it is fair to say that it would give the issue a high priority. Clearly, if the committee makes recommendations, the SPCB will ensure that it is in a position to deliver any changes that you recommend.

Tom McCabe: It is not written in tablets of stone that it should be the SPCB that looks after these matters. As the chief executive said, the responsibilities were handed to the SPCB over time.

Individual commissioners expressed concerns about there being a jurisdictional conflict. We need to remember that, if we decide that a parliamentary body other than the SPCB should have those responsibilities, the individuals on that body will be under the jurisdiction of the same commissioners. It might be argued that a parliamentary committee would be slightly more open than the SPCB. In that regard, I said earlier that the SPCB would be delighted to hold a public session and to make all the correspondence freely available. However, I was surprised that the commissioners preferred a more open model; I will be frank and say that, during my time on the SPCB, I can think of occasions when it would not have been in their interest to have a more open model.

12:15

The Convener: The ombudsman and some commissioners say that there is a lack of transparency in their dealings with the SPCB. Do you agree? What will you change to address those concerns?

Tom McCabe: I was a bit surprised by some commissioners' comments. The commissioners deal a lot with the professional officers who service the corporate body, as is the case in any organisation. Politicians are aware of that and the outcomes of discussions are brought to the politicians.

During my time as a member of the corporate body, I am not aware of any request from a commissioner to discuss an issue having been refused. Indeed, I am not aware of any such request having been made. Commissioners have been invited to come to the corporate body to discuss budgets, and such discussions have taken place. The discussions were not in any way limited; commissioners were perfectly free to raise whatever issue they wanted to raise. That approach will continue.

I say in all sincerity that I am aware of no instance in which a commissioner's opportunity to express a view or concern has been blocked. If a commissioner was unhappy with the budget that the corporate body approved, they could appeal to the Finance Committee, under the memorandum of understanding between the corporate body, the Finance Committee and the commissioner. The Finance Committee cannot direct the corporate body. However, if the committee recommended to us that we reconsider our approach in the light of a presentation from a commissioner, it is inconceivable that we would not do so.

Jamie Hepburn: I do not know whether this surprised you, but we heard from office-holders that they are concerned about what they perceive

to be a tension between the independence of their office and scrutiny of their budgets and operations—in particular, their strategic plans. Do you agree that there are inherent tensions in that regard? If so, how will the corporate body deal with the problem? If not, how will you deal with the perception?

Tom McCabe: I was surprised. I have seen no evidence whatever of such tension. The Scottish Information Commissioner said that he has not felt in any way compromised, that he has not been limited in terms of his budget and that he is able to take tough decisions. He told the committee that he had no complaints—I am paraphrasing the extract from the *Official Report* that I quoted earlier, but that is the essence of what he said.

This morning, I read the supplementary evidence that the committee had requested from the Scottish Public Services Ombudsman, which mentioned tensions. I was surprised by the comment, which came after the ombudsman had talked about arrangements for funding the United Kingdom Parliamentary and Health Service Ombudsman. When I looked at the UK ombudsman's website, I found that the Treasury takes decisions on funding and makes recommendations to ministers. Not many people have a good track record in influencing the Treasury—I say that with the greatest of respect to the Treasury. I was surprised that the SPSO prayed in aid a Westminster system that is, in effect, determined by the Treasury and ministers, given that the system in Scotland is determined by parliamentarians.

I did not fully understand the SPSO's comment about tensions, but it is fair to say that there is more comprehensive engagement between commissioners and the officials who service the corporate body, so perhaps the chief executive will comment.

Paul Grice: I reinforce the point that Mr McCabe made. We have had a good relationship with all the commissioners, over a long time. Like Mr McCabe, I am not aware of circumstances in which a commissioner has felt unable to get access to me or to the corporate body.

Let me also reinforce Mr McCabe's point about the Scottish Information Commissioner's evidence. Across the piece, he is the commissioner who has taken the most decisions that affect the Parliament, including—as members are well aware—decisions on the reporting of members' allowances. The corporate body has received a large number of freedom of information requests, mostly in respect of MSPs. A significant number of those cases—perhaps around 20—has ended up on the desk of the Scottish Information Commissioner. Anyone who knows the

commissioner will acknowledge that he always takes decisions without fear or favour.

Over the piece—in addition to Mr McCabe's point about the commissioner's comments—while we have been under that jurisdictional overload, the corporate body has given the Scottish Information Commissioner a steadily rising budget, which has increased broadly in line with inflation. There is clear evidence that, notwithstanding the fact that the Scottish Information Commissioner has made a number of decisions that have impacted upon us, the corporate body has sustained the commissioner's broad budgetary position throughout that period. That is a powerful answer to any concerns that one cannot, on the one hand, scrutinise information about a body and, on the other hand, be subject to that body's jurisdiction. Over a period of time when it has been the subject of a considerable jurisdictional issue, the corporate body has demonstrated that it has undertaken in a mature way what it was asked to do by the Finance Committee. There can be no question that the corporate body has allowed that jurisdictional issue to influence its decisions on scrutiny of budget.

Jamie Hepburn: I want to explore the issue of the SPCB's jurisdiction over scrutiny. Further to what has been said—I think that Tom McCabe might have commented on this a wee bit already—would any additional supplementary powers assist the corporate body in undertaking its scrutiny role? I think that reference was made to the Scottish Commission for Human Rights Act 2006, from which it was suggested that lessons could be learned.

Tom McCabe: Certainly, the provisions on determining the location—or co-location—of the commission that were inserted into the Scottish Commission for Human Rights Act 2006 were beneficial, as the commission has recognised. I think that it would be beneficial to have such powers for the other office-holders, as well as specific budget approval.

Jamie Hepburn: Does the corporate body need any other powers?

Paul Grice: I think that those are the key issues, but the details would need to be considered in drafting the legislation. Mr McCabe's last point is quite critical. At the moment, with the exception of the Scottish Human Rights Commission, the budget position is slightly ambiguous. The Parliament gave an approval power to the corporate body only in respect of the Scottish Human Rights Commission. If such a power were given to the corporate body alongside the accommodation issues, the corporate body would have the powers that the Finance Committee said that it should have. Clearly, if the committee recommends that we should go down that route,

some detailed analysis will be required to ensure that the drafting is right. However, I think that those are the essential tools that the Finance Committee recommended.

I think that the corporate body has felt that it has been able to play a fuller role with the Scottish Human Rights Commission. As Mr McCabe said, that has not necessarily been antagonistic. Ahead of the commission's establishment, we were able to put in a lot of work to secure co-located accommodation alongside another body. As Professor Miller said, that assisted the commission. We simply do not have such powers in respect of any other commissioner. Those are the two key powers that I think that the corporate body needs.

Jamie Hepburn: Tom McCabe talked about the need to be realistic and not to expect that finance is unlimited. In the opinion of the corporate body, should an office-holder's budget be set to match that office's strategic plan, or should the strategic plan be set to match the budget?

Tom McCabe: There should be an interactive discussion. The one should not predetermine the other because, otherwise, we start to negate the usefulness of the strategic plan. For example, if the new standards body proposed a strategic plan that involved taking on two investigating officers and 10 press officers, I do not think that we would approve that budget. There must be an interaction—I have nothing against press officers.

Johann Lamont: My questions concern terms and conditions. They are intended to get on the record some of the points that have been raised with us. As appointees, the office-holders do not have the usual employment rights, so how are their terms and conditions determined? How and by whom is their performance monitored and assessed? If a motion to remove an office-holder from post were to be debated, who would speak on their behalf and defend them?

Tom McCabe: On the first question, one of the commissioners made the point—I hesitate to call it a strange point, but it was surprising—that although their appointment letter was two sides of A4, the staff in their office were issued with terms and conditions and an employment booklet outlining everything to which employees are entitled under law and good practice. In fact, the commissioner has unique and preferential protection, in that it takes a vote of two thirds of the Parliament to remove them from office—that is not a bad piece of employment protection—and their terms are broadly laid out in the relevant legislation.

Ian Leitch: The Parliament sets out what the office-holders can do. They are office-holders, not employees or contractors. They are uniquely

placed and their terms are set out mainly in statute. We intend to roll out a mechanism for considering performance while respecting their operational independence.

That tails into another issue that has been addressed to the committee: the questions concerning liability about which the existing office-holders are concerned. The commission model would do away with that issue, because the law of Scotland recognises bodies corporate. For example, the Auditor General for Scotland is an appointee—an office-holder—but also a member of the board of the body corporate that is known as Audit Scotland. One of the members of the Parliament's corporate body is sitting here in front of the committee. The body corporate is a well-recognised model that would remove the difficulties, but we also have procedures in place to deal with them. We now have a condition that, when a commissioner takes up office, they take the existing staff on the same terms and conditions and that, when they leave, they make arrangements with the incoming commissioner so that there is a constant loop to overcome the difficulty.

However, we also look for an additional power of indemnity in the event that any reassurance is required or an issue is raised because of the uncertainty about a commissioner's personal liability and the office's liability. There is no such concept as the corporation sole in Scots law—at least, not in Scots law as I was taught it some years ago.

Tom McCabe: Johann Lamont's last question concerns territory that, thankfully, we have not been in and to which I hope we will not get. The answer would depend on how such a motion came to the Parliament. Any member has the right to lodge a motion if they feel that an office-holder should be removed. That would be a serious proposal and the Presiding Officer would be interested in ensuring that the debate was full and frank. If a motion were lodged, it would be surprising if a member of the corporate body did not contribute to the debate. However, the member who lodged the motion would need to justify it and other members would contribute either for or against in the light of their individual experience.

Johann Lamont: I presume that there is some kind of constraint on members just sticking down such motions. Otherwise, a member could keep lodging them as a form of harassment.

Do office-holders have the normal responsibilities of an employer to their staff?

Ian Leitch: Yes.

Joe FitzPatrick: I have another couple of questions on terms and conditions. How is

remuneration for office-holders determined and monitored throughout their term? In taking evidence, we have discussed whether office-holders should be restricted from applying for other posts while they are in office and for a period after they have been in office. What are your views on that?

Tom McCabe: Paul Grice will deal with the first question.

12:30

Paul Grice: The corporate body is generally given a duty to set salaries. In the past, it has sought advice from the Review Body on Senior Salaries, so office-holders' salaries are now broadly pegged to a civil service mechanism. That means that salaries tend to increase annually, broadly in line with a measure of inflation, as pegged.

Tom McCabe: We discussed the second question when I previously spoke to the committee. The instinctive reaction is reluctance to allow people to undertake other duties while they are in post. As for the period after an office-holder relinquishes their post, as others in the room know, when a person ceases to be a minister, they receive a letter from Downing Street or a commissioner in London that says that if they want to take up a particular post outside the public sector, they should discuss it with the body that sent the letter. If that is done, any exchanges are made public. That person might or might not be advised to take up the post. I have never tested that system, although I have seen instances that make me wonder how it works.

The answer depends on what the office-holder does but, in some instances, the ability to take up posts should be restricted. I see no case for being too heavy-handed but, if much of what we do in public life is based on perception, a somewhat troublesome perception might be created if people moved from a particular function into a variety of jobs.

Joe FitzPatrick: We heard evidence that suggested that the current system is too restrictive. If someone has experience that we want to maintain in public service, perhaps a way to bring those skills back in and to make exceptions could be found.

Tom McCabe: I do not disagree with that. We are a small country—there are only 5 million of us. How we use our human capital is critical to how we move forward. However, it is important that we are always mindful of the perception that could be created and that we try our best to guard against that.

Jackson Carlaw: It is some time since you reached the last few paragraphs of your opening statement, so you might be relieved to know that we are now reaching the end of the housekeeping questions that have been set.

A slight perception of anxiety has arisen about the legal status of office-holders, which we have spoken to several people about. They have suggested that the existing difficulties with the legal status of office-holders would be resolved if they became sole members of bodies corporate. Do you have views on such an approach?

Tom McCabe: We agree with that suggestion. The commission model would create a body corporate, which would address the issues that have been raised.

The Convener: The last few questions are on the ombudsman's supplementary written response. Does the corporate body have a comment on the supplementary evidence in that response on the handling of complaints against the corporate body?

Tom McCabe: At the start of my introduction, I said that my comments had been discussed and agreed by the corporate body. However, the corporate body has not discussed the ombudsman's paper, because of time limitations. With that caveat, I ask the chief executive to comment.

Paul Grice: I looked carefully into the matter when I saw the evidence, because from my memory—I have been in post for the entire time that the ombudsman has been in place—I was aware of no complaints against the corporate body. However, we found one complaint—a member of Parliament raised with the corporate body a question about its complaints policy, which was raised with the ombudsman. We responded positively to that. To my knowledge, one complaint has been made. I do not know whether that stacks up as a series of complaints against the corporate body.

I reassure the committee that no tension exists. I state that for the record. Even in the instance that occurred, the member of Parliament raised a perfectly reasonable point. We now have a complaints policy in place.

There was no read-across to any discussions with the ombudsman about the budget. I am pleased to have the opportunity to reassure the committee on that point. To the best of my knowledge, there has been only one complaint in the eight years or so for which the ombudsman has been in existence.

The Convener: I have another question on the SPSO's supplementary written submission. I appreciate that you will not have discussed the

issue with the corporate body, but the statistics produced by the SPSO in its reply to the committee in March indicate that 31 per cent of investigations were completed inside 12 months, with the figure rising to 57 per cent after 18 months and to 80 per cent after two years. The remaining 20 per cent of complaints took longer than two years to investigate, with the longest taking five years. Are those figures a source of concern to the SPCB? If they are, what action would you like to see taken to improve the completion times of those investigations? The investigations seem to take rather a long time, given that 20 per cent of complaints took longer than two years and the longest took five years.

Tom McCabe: Mr Leitch will comment, but I will say that, again, we must be very careful, because it is not the corporate body's remit to get involved in the functionality of that office—we approve the budget. We do not think that the level of budget is a reason for any of those figures.

Ian Leitch: I referred to the annual assessment process that we intend to roll out. We are asking for quarterly statistics. It would be open to the corporate body members to raise questions, but we may be treading into difficult areas where, for example, a complex issue takes a long time to investigate. We have seen trends over each quarter of each year and have given that information to the independent assessor, along with the commissioner's self-assessment.

We think that there is an issue there for dialogue, over and above anything that any subject committee may wish to address. If, in fact, any tendency is shown, we would expect the independent person to report to the corporate body with their view on performance. It is very difficult, because we are trying to keep the corporate body out of directly making that assessment, which is why we intend to roll out the tripartite arrangement. We would be cognisant of such matters.

The Convener: As there are no more questions, I thank you for coming along. Once we have read the *Official Report* we will write if we feel that we have anything else to ask you, or, indeed, if we feel that there is anything that you did not answer.

I point out to the public that the committee agreed at its second meeting that themes arising from each day's evidence will be discussed in private. I ask members of the public to leave the room.

12:38

Meeting continued in private until 12:56.

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