

**SPCB Supported Bodies Landscape Review Committee**  
**20 March 2025**  
**7th Meeting, 2025 (Session 6)**



## **SPICe briefing: Evidence session seven**

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### **Today's meeting**

Today's meeting is the seventh in a series of evidence sessions which have heard from SPCB Supported Bodies, Audit Scotland, and MSPs proposing new SPCB supported bodies. In this session, the Committee will hear from:

- Dr Ruth Lamont, Reader in Child and Family Law, University of Manchester; UKRI Thematic Research Lead, UK Parliament
- Dr Ian Elliott, Senior Lecturer in Public Administration, University of Glasgow
- Alison Payne, Research Director, Reform Scotland
- Dr Matthew Gill, Programme Director, Institute for Government

The Committee has previously heard from:

30 January: The Commissioner for Ethical Standards in Public Life in Scotland and the Standards Commission for Scotland

6 February: The Scottish Public Services Ombudsman.

20 February: The Scottish Information Commissioner and the Scottish Biometrics Commissioner

27 February: The Scottish Human Rights Commissioner and the Children and Young People's Commissioner Scotland

13 March: Audit Scotland and MSPs proposing new SPCB supported bodies

## **Introduction**

The SPCB Supported Bodies Landscape Review Committee (SSBLRC) has been established in response to a recommendation in the Finance and Public Administration Committee's (FPAC) report on [Scotland's Commissioner Landscape: A Strategic Approach](#). The Committee called for a review of the SPCB supported bodies, drawing on the evidence and conclusions set out in its report, and that the review should be carried out by a dedicated Parliamentary committee.

The report was debated on 31 October 2024, and the Parliament agreed:

- to the creation of a dedicated committee,
- that it should complete its work by June 2025, and
- "there should be a moratorium on creating any new SPCB supported bodies, or expanding the remit of existing bodies, while recognising that, for proposals within bills that have already been introduced, these are now for the Parliament to take a decision on, respecting the lead committees' roles in scrutinising legislation within their remits."

To inform its inquiry the Committee is holding several evidence sessions with relevant experts including academics and SPCB supported bodies.

Additional background information can be found in the [SPICe briefing](#) from the meeting held on 30 January.

## **Theme 1: The role of SPCB supported bodies**

In evidence sessions with existing SPCB supported bodies, the Committee asked what they thought their purpose was and how it differs from the role of Ministers, MSPs or other bodies.

Responses focused on their independence and powers:

The Ethical Standards Commissioner said:

"It is very important that someone who is, and is seen to be, entirely politically neutral is the individual who makes decisions about whether the respective codes of conduct have been followed. If there was not that independence or neutrality, the public could, quite rightly, have concerns that things were not being looked at through an apolitical lens."

The Scottish Public Services Ombudsman said:

“the biggest difference between me and MSPs is that I am not voted into office but appointed through a Crown appointment via the Parliament—a process with which you will all be familiar. However, my decision making on complaints and complaints handling is completely independent. [...] You could feasibly say that there is some overlap with the role of MSPs, because I am aware from my contact with them that MSPs are also asked to look into things for constituents. The big difference is that I have the power to require information, and I can go all the way to the Court of Session for such information.

The Committee also inquired about the motivations behind establishing new SPCB-supported bodies, referencing the findings of the Finance and Public Administration Committee which in its conclusions said:

“This proliferation appears to have been primarily driven by calls to respond to perceived systemic failures in the delivery of public services, to bring prominence to a specific issue or policy area, seeing similar high-profile Commissioners in Wales and England, and more awareness of, and expectations, around individuals’ rights.”

Written submissions from today’s witnesses also provide evidence on the role of commissioners both in Scotland and internationally.

The [Institute for Government \(IfG\) highlighted](#) how the role of a commissioner may differ from that of a Minister or MSP:

“Governments tend to create Commissioner positions when they see a need to give a voice to a group or an issue which might otherwise be neglected in the policy process. Whereas Ministers or MSPs have to weigh competing interests, a Commissioner can draw attention either to existing treatment or to potential future interests to raise the profile inside government or parliament and try to ensure that those concerns are addressed.”

In [his response](#), Dr Ian Elliott, drew attention to the reasoning behind the need for bodies that work independently from government. He states that:

“There is a need for “creation of institutions that provide against distraction and short-sightedness.”<sup>1</sup> Partly this is due to the risk of short-term thinking and reactionary policy making that can occur in response to events or as a consequence of electoral cycles. As I have noted “Bodies that can work at arm’s length from government, without regard for the electoral cycle, may be needed as well including appropriate scrutiny and oversight bodies”.<sup>2</sup>

In [research undertaken by Dr Ruth Lamont](#) looking at the comparison of functions of commissioners in England and Wales she found that there “is no single framework for a Commissioner body”. In England and Wales, although commissioners are

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<sup>1</sup> Elliott, I. C., & Roberts, A. (2024). The concept of the strategic state: An assessment after 30 years. *Australian Journal of Public Administration*, 1–12. <https://doi.org/10.1111/1467-8500.12685>

<sup>2</sup> Ibid.

considered independent, they are funded by and associated with government departments. Similar to SPCB supported bodies, these bodies “usually include powers of consultation and representation, soft powers of influence within government and beyond; and, more rarely, hard powers of enforcement and monitoring against a specified standard.”

## Theme 2: Criteria for creating new supported bodies

In previous evidence sessions, the Committee has discussed the criteria for SPCB supported bodies that was proposed by the Session 2 Finance Committee. Key evidence and contributions include:

- The Session 6 Finance and Public Administration Committee (FPAC) inquiry into the SPCB Supported Bodies Landscape, found that the criteria were not being applied as intended.
- The Scottish Government is developing a framework designed to ensure that decisions around the creation of new public bodies are made based on evidence and value for money against the backdrop of significant pressure on public spending. The draft Ministerial Control Framework was shared with the FPAC as part of its inquiry.
- The Commissioner for Ethical Standards in Public Life in Scotland and the Standards Commission for Scotland suggested that the focus should be on the intended outcomes rather than simply addressing a need. They also highlighted the importance of affordability, cost effectiveness, and the ability of existing bodies to address any gaps.
- The SPSO proposed three additional criteria that would “update and modernise” the proposed criteria:
  - the function or body should either logically sit with the existing functions of a current [SPCB supported body], or be a role that requires the direct relationship with Parliament either because of the nature of the role and/ or international standards.
  - what is the demonstrable gap in service/ oversight that the role will address. In oral evidence, the SPSO suggested conducting a “gap analysis” as part of the consideration for any new commissioner.
  - what other options for achieving independence from government have been explored and why are they not suitable.

In their [written submission](#) the IfG supports the session 2 criteria, however, states the importance of adequately resourcing and supporting SPCB supported bodies. This includes considering whether a single person commissioner or a multi person commission with a chair would be most appropriate. They go on to state that if commissioners are not created in a way that allows them to be effective, they should not be created.

A [2023 IfG report authored by Dr Matthew Gill and Dr Grant Dalton](#) explores the UK guidance for creating public bodies. Current UK Government guidance states that public bodies should only exist “as a last resort” however the report argues that this may not be the most effective strategy.

The [Scottish Government’s Ministerial Control Framework](#) also restates that any new public body should only be set up as a last resort and sets out criteria to be met before any new public bodies are created.

The [IfG report states](#) the three current tests for establishing a public body:

1. “Is this a technical function, which needs external expertise to deliver?”
2. Is this a function which needs to be, and be seen to be, delivered with absolute political impartiality?
3. Is this a function that needs to be delivered independently of ministers to establish facts and/or figures with integrity?”

The authors argue that these tests as well as the “last resort” criteria should be rewritten to “make it easier to clearly defend decisions about when a public body is desirable and which type of body is best.”

They propose three new tests:

1. “Effectiveness: could a public body perform its function more successfully than any other structure, or would distinguishing it from the work of a department enhance the effectiveness of government as a whole?”
2. Independence: does the function require greater independence from ministers than is achievable within a government department?
3. Cost efficiency: can it be shown that a public body is the least costly option over the long term, or that the benefits identified under the other tests are clearly sufficient to justify any incremental costs, both in transition and in steady state?”

Additionally, the authors state that the new test could be used to “underpin a robust defence against unnecessary bodies, when required”. They further explain that:

“For example, our effectiveness test would exclude functions better performed by an existing part of government or the private sector; our independence test would exclude functions that require regular ministerial input; and our cost efficiency test would tend to exclude functions that are temporary as well as those where a disproportionate overhead cost might be incurred (for example by smaller bodies that unduly complicate the public sector).”

Additionally, Alison Payne from Reform Scotland highlights in her [written submission](#) the larger issues beyond creating an effective list of criteria or shared services. She explains that in regard to the recent FPAC report on the SPCB supported bodies landscape “similar points were made by the same Committee in 2006 with regard to issues such as the criteria for new bodies; shared services; or giving evidence to parliamentary committees”. The written submission asks:

“If these recommendations have not been followed, why not? There is a danger that the work of parliamentary committees is published and forgotten – a reflection Reform Scotland has made in other areas of policy. While governments of all political persuasions may choose to ignore committee recommendations, it does perhaps undermine the perception of Parliament as an institution, and especially the committee system. With SPCB-supported bodies, this is not necessarily an issue about the government ignoring committee advice, but of the parliament itself ignoring its own advice.”

### **Theme 3: SPCB supported bodies model**

In evidence sessions, the Committee considered the current landscape of SPCB supported bodies and possible alternative models. Previous witnesses have varied in their responses however all acknowledged the difficulty in creating “an optimal model for Commissioners” due to the variety of functions that they each hold.

Models discussed include:

- The Scottish Biometrics Commissioner proposed a ‘hub and spoke’ model, where the core services such as finance, HR and facilities management are centralised into one office, and then each of the Commissioners have their independence to execute their functions. This model could then be refined or expanded regarding the supported bodies, but the core function would still be centrally located.
- The Committee also explored the idea of a “one-stop shop” or an office of public trust. This could help people identify which SPCB supported body to approach for help through a ‘front end’ which could signpost people to the information they need.

In exploring new models, it was also noted that the capacity of the SPCB is already strained in its governance role for the existing landscape. This was highlighted in the Finance and Public Administration Committee’s report on the commissioner landscape, where it said:

“The SPCB has previously indicated to the Committee that the oversight of independent officeholders is now becoming a more significant time commitment for it, as well as accounting for a substantial part of the SPCB’s overall budget. Concerns were also raised in evidence, including by SPCB members, about the capacity of the SPCB to carry out this governance role, particularly as the landscape of supported bodies is expected to grow exponentially.”

The FPAC also noted that the default starting point appeared to be an SPCB supported body, rather than a consideration of alternative options:

“Witnesses noted that the Government and Members often opt for the SPCB-supported body model as a starting point rather than as the outcome of detailed deliberations on need, added value, and a full range of alternative options.

The SPSO, for example, questioned “why the recommendation often jumps straight to thinking that being independent equals having a parliamentary officeholder, as opposed to analysing what the gap is, what the need is, and whether the work is being delivered somewhere else but could be done better, before creating the right structure to meet the need”

Reform Scotland shared in their [written submission](#) that they agree with the recent FPAC report relating to the proliferation of SPCB supported bodies:

“We would agree with the Finance Committee that the increasing number of these bodies, and the growing number of proposals for new bodies, is seen as an “easy win” - that by creating the body, Parliament or Government is seen to have done something, when in reality it may not actually change much for those impacted by the relevant issue.”

In [her written submission](#), Dr Ruth Lamont discusses the ‘operational model’ for a commissioner. She explains that a commissioner should have the appropriate structure and powers for their role, whether it involves influencing the regulatory environment or enforcing standards. Additionally, they can be influential in policy and research if they have the necessary powers. If enforcement is needed, they should have “hard powers” like judicial review. She states that “if created, a Commissioner must be awarded the powers to enable them to effectively represent the interests they are deemed to represent, otherwise there is a risk of undermining trust in the governance processes for individual citizens.”

Additionally, she explains that the following should be considered:

- “What constituency the Commissioner is to represent and why they need a general form of representation based on commonality of interest;
- Whether the Commissioner would be there to influence policy and decision-making, or to enforce standards (or both);
- The powers they need to meet the stated purpose.”

Similarly, [in his written submission](#), Dr Ian Elliott also highlights the necessity for clarity what in comes to a commissioner model.

“The myriad of different organisations, with different funding mechanisms, different functions, and different forms of accountability, that currently are labelled as Commission or Commissioner contributes to the significant confusion around these bodies. There is a clear need for more



comprehensive research on the topic of Parliamentary Commissioners including operational models and accountability mechanisms.”

He also poses questions regarding the “value of creating additional scrutiny bodies when other parts of the public sector, that have a direct impact on service delivery, are facing significant budgetary pressures.” He explains that there is also the need to coordinate these efforts with the oversight of the [National Outcomes](#)<sup>3</sup>.

The IfG echoes previous evidence in their [written submission](#) highlighting the importance of establishing commissioners “in a way that makes clear their independence from the government/department that set them up – that may limit the extent to which the sharing of offices or back-office personnel is appropriate”.

## Theme 4: Effective functioning

This theme focuses on the suitability of the remit and powers of current and proposed SPCB supported bodies. Contributions from current SPCB supported bodies relating to powers include:

- Ethical Standards Commissioner: confirmed its legislative remit is adequate but again noted the importance of independence in his role.
- Standards Commission: suggested potential changes to their powers to improve efficiency, such as the ability to dispose of cases without a full hearing.
- Scottish Public Services Ombudsman: In written evidence said “I am limited to investigating the complaints made to me. While I can ‘research’ emerging themes and trends, without own initiative powers I cannot require organisations (and individuals if necessary) to provide me with information.”
- Scottish Information Commissioner: Noted the current timeline allows for lag between annual reports and committee scrutiny.
- Scottish Biometrics Commissioner: Highlighted that there is a need to maximise officeholders, and this does not always require increased cost.
- Children and Young People’s Commissioner Scotland: In evidence said “We have a good level of powers that are appropriate for us to deliver our function. We saw that some of the new proposals for commissioners had been modelled on the fact that this office has been delivering extremely well and has been given the appropriate powers.”
- Scottish Human Right Commission: Discussed a need to consider and ensure consistency between the powers available to public bodies including SPCB

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<sup>3</sup> There are 11 National Outcomes that make up the National Performance Framework which strategic tool introduced by the Scottish Government in 2007 that “sets out a vision for the collective wellbeing of Scotland”. The National Performance Framework and Outcomes are currently under review. More information can be found in the SPICe Blog - [Evaluating Change: Key Themes in Scotland’s Proposed National Outcomes](#).



supported bodies. Additionally, there needs to be the correct amount of resource to allow for the full use of powers. They suggested that additional powers would allow the SHRC to focus on more proactive rather than reactive work to get to an ideal split of 50/50.

[Alison Payne from Reform Scotland also discusses](#) the difference between those SPCB supported bodies that perform an advocacy role versus an integrity role. They argue that 'integrity' bodies, "play an important role in maintaining the integrity of government functions and helping hold government and parliament to account", however "the advocacy-style bodies are different".

Again, agreeing with the FPAC report, they question whether the money spent funding advocacy bodies could be better spent if put directly to issues affecting disadvantaged groups. They state this leads to "a broader question of whether the growing number of advocacy bodies represents a failure of the Scottish Parliament. MSPs are supposed to be advocates for all of us".

Furthermore, she explains:

"There is a danger that once the precedent has been set it becomes difficult to justify why some groups of individuals are deserving of an independent advocate and others are not."

As such, Reform Scotland urge the Committee to consider that the "moratorium for advocacy bodies remains in place at least until there can be a broader review of why the existing parliamentary system is failing in its advocacy role, so making the expansion of these bodies necessary."

Relating to specific powers, [Dr Ruth Lamont explains](#) how the underpinning framework and relationship with government can affect the effectiveness of a commissioner. She states that whilst "bodies with strong underpinning codes, such as the Information Commissioner, had clear mechanisms and hard powers of enforcement. Commissioners without this clear code for enforcement tended to hold only soft powers of consultation, research and influence".

Additionally, in her research relating to England and Wales, she found that:

"The status and their engagement with government, Ministers and Parliament is central to their effectiveness within the wider regulatory framework. This depends on both the government department and Minister, and the actions and work of the Commissioner themselves.

The risk of having a commissioner who cannot, or does not, effectively carry out their role in promoting the interests they should represent, is that this may undermine trust in governance of a particular issue for the identified interested constituency."

## Theme Five: Accountability and scrutiny mechanisms

The Committee has been exploring the existing accountability and scrutiny arrangements of the current SPCB supported bodies.

Previous evidence gathered by the Committee suggests the following improvements to scrutiny:

- Committee scrutiny sessions should be held with the relevant officeholder annually as a minimum
- Committee scrutiny sessions should be scheduled in the period between November and March each year, after the relevant annual reports and accounts have been laid.
- The SPCB should hear from SPCB supported bodies twice annually
- One of those sessions should be exclusively on budgets and should be sequenced between the submission of the budget bid for the following year.
- There should be a separate committee for committee scrutiny of how SPCB supported bodies are fulfilling their functions.

In their [recent paper](#), the IfG discusses how regulatory bodies are usually scrutinised only when something has gone wrong or for a specific issue. The IfG explains that this is not the ideal strategy for scrutiny and provides several recommendations. These recommendations are specific to how select committees can better hold regulators to account however may also apply to the Scottish Parliament committee scrutiny of SPCB Supported Bodies.

- “The government should compile – and maintain – a public list of statutory regulators, summarising their functions and powers and the respective roles of parliament, ministers, departments and other organisations in overseeing each body.
- The House of Commons Liaison Committee should reintroduce a specific core task to examine the work of regulators for departmental select committees.
- The relevant Commons select committee should hold a general scrutiny session with each regulator at least once per parliament to review its remit, statutory objectives and powers, relationships with central government and parliament, and whether it is upholding the public interest. If it does not, the committee should explain why
- The House of Lords Industry and Regulators Committee should invite members of the relevant Commons select committee to participate in public evidence sessions and private deliberations when they hear from, or inquire into, specific regulators.

- A bicameral Regulatory Oversight Support Unit (ROSU) should be established in parliament to provide expert resource for both Commons and Lords committees. The unit would be made up of parliamentary staff and secondees. It would provide advice, training and practical support to enable parliamentary committees to scrutinise regulators more effectively.
- In preference to a new oversight body, the National Audit Office (NAO) should meet parliament's expectations of greater regulatory oversight to the extent that its constitution allows. It should also work with parliamentarians to determine what reform of its remit, objectives, powers and resources would be required to meet their expectations fully."

More simply, they suggest the following to improve parliamentary oversight of regulators:

1. "Clarify responsibilities for oversight.
2. Focus on functions only parliament can perform.
3. Rely on scrutiny performed by others.
4. Conduct oral evidence sessions more effectively.
5. Build structures and resources to support committees."

Similarly, in the [written submission from Dr Ruth Lamont](#), she states that there is no "single model for accountability of a Commissioner body" and also provides suggestions for how commissioners should be accountable to UK Parliament. She states that commissioners should be required:

- "To report on an annual basis to Parliament; explaining how activities of the previous year meet the stated aims of the Commissioner role; and
- Appointments to the post of Commissioner should be scrutinised by Select Committee and annual reports should be sent to the relevant Committee Chair directly."

Looking at how SPCB bodies assist in scrutiny specifically, [Dr Ian Elliott discusses how the "fragmented landscape" leads to challenges](#). He highlights:

- SPCB supported bodies can support scrutiny however "they do not have a direct role in service design, delivery or allocation of resources".
- The current landscape makes it difficult for the public to know where to go in "instances of potential maladministration".
- The government, not SPCB supported bodies, sets the priorities of public spending and to allocate resources to meet statutory obligations including meeting the national outcomes.
- Parliamentary Commissioners can support the Scottish Parliament in the scrutiny of specialist areas where the Parliament may not have the capacity or expertise.

Additionally, he has “identified a number of additional reforms that are necessary to support this which include ‘new funding models that set out a shared understanding of outcomes-based working and reduce ring-fencing to facilitate innovation’.”

## Outcomes Measurement

Dr Ruth Lamont discusses in her [written submission](#), the difficulties in measuring outcomes and how this affects scrutiny and accountability. These challenges are exacerbated when a commissioner “is designed to be one of influence, rather than an enforcement body”. She explains:

“It is difficult to capture influence as an ‘outcome’ in policy, particularly within complex, diffuse policy environments. Whilst evidencing of engagement and distribution of information, support or guidance may be possible, the actual impact in terms of change will be much more difficult to capture. Accountability processes must be sensitive to the difficulties of capturing ‘influence’, particularly where this may be a long-term, relationship-based and reflective process, between public bodies.”

In the [written submission from Reform Scotland](#), Alison Payne lays out suggestions for outcomes measurement and how they should differ between SPCB supported body type.

“We would suggest that advocacy and integrity bodies would need to be treated differently. While certain output measurements, such as response times etc, can be recorded, even then, a one-size-fits-all approach could not work due to the different size and scope of the various bodies. The office holders are not a homogenous group and while some have some capacity to determine their workload and priorities, others are demand-led”.

Dr Ian Elliott links outcome measurement to several factors within [his written submission](#) including “the need for appropriate institutions for oversight and scrutiny, the need for dialogue and learning across all levels of government, and a programme of reform to improve the capacity of civil society to engage in deliberation about national outcomes”.

**Kelly Eagle, Senior Researcher, SPICe Research  
March 2025**

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