

Written submission from the Scottish Biometrics Commissioner, 11 January 2025

SPCB Supported Bodies Landscape Review Committee

Introduction

This written evidence paper has been prepared by the Scottish Biometrics Commissioner to assist with oral evidence to be given at a meeting of the [SPCB Supported Bodies Landscape Review Committee](#) of the Scottish Parliament to be held on Thursday 20 February 2025. The Committee was established in December 2024 and was set up in response to the findings of [a Finance and Public Administration Committee inquiry into Scotland's commissioner landscape](#). Parliament has asked the Committee to review and develop a framework for SPCB supported bodies including by:

- defining how these bodies can be held to account and scrutinised.
- setting stronger criteria for creating new supported bodies; and
- identifying how services and offices can be shared between these bodies.

The Committee will take evidence from all seven of the currently supported bodies at separate evidence sessions.

Written information sought by Committee

The Committee requested a written submission, covering the following five questions, ahead of the evidence session:

- How do you measure and demonstrate outcomes, and how are these outcomes selected and prioritised? What improvements could be made to this process?
- How has Parliamentary committee scrutiny worked in practice and how has this impacted performance? How could scrutiny be improved and/or standardised?
- How do you work in practice with other public bodies or services and what are the main barriers faced? How can these barriers be overcome to improve efficiency and reduce costs while ensuring that shared services maintain high standards of quality and accountability?
- Criteria were developed by the Session 2 Finance Committee to help guide decisions on whether to create a new commissioner. These criteria (Clarity of Remit, Distinction between functions, Complementarity, Simplicity and Accessibility, Shared Services and Accountability) are considered by the Scottish Government and Members when proposing Commissioner related bills. Are these criteria currently adequate and how could they be improved?

- What should the optimal model and structure for commissioners look like, and what key features should it include?

Question No 1: How does the Scottish Biometrics Commissioner measure and demonstrate outcomes, and how are these outcomes selected and prioritised? What improvements could be made to this process?

Response

Antecedent information

The Scottish Biometrics Commissioner function is the newest of the seven existing independent officeholders supported by the SPCB. The Commissioner was appointed in April 2021 and began standing up the new function mid-pandemic. The recruitment of the Commissioner's staff was completed by January 2022 meaning that the full complement of three permanent staff has been in place for three years, but at the time of writing only two full fiscal years.

The SBC function is intentionally 'lean by design' to achieve value for the public purse and benefits from (receives) shared services and is co-located with the [Scottish Public Sector Ombudsman \(SPSO\)](#) who provide financial processing, HR, ICT support and facilities management services to the Commissioner. Entering a shared services arrangement at the outset, with the support and encouragement of the SPCB, meant that the Commissioner needed to recruit only three permanent staff rather than the four that had been projected in the Financial Memoranda that had accompanied the passing of the founding legislation. The staff were purposively recruited under SPSO terms and conditions of appointment to facilitate the shared services agreement. The model has been successful and delivers a low cost and value for money public service and provides 'proof of concept' in terms of opportunities to further expand the successful sharing of back-office functions between independent officeholders as externally validated through three successive years of external audit by Audit Scotland.

Statutory Functions

The functions of the Commissioner are mandated in law by the [Scottish Biometrics Commissioner Act 2020](#). The Act provides that the Commissioner's general function is to support and promote the adoption of lawful, effective and ethical practices in relation to the acquisition, retention, use and destruction of biometric data for criminal justice and police purposes by:

- a. the Police Service of Scotland ([Police Scotland](#)),
- b. the [Scottish Police Authority](#),
- c. the [Police Investigations and Review Commissioner](#).

In exercising that general function, the Commissioner is to:


- a. keep under review the law, policy and practice relating to the acquisition, retention, use and destruction of biometric data by or on behalf Police Scotland, the Scottish Police Authority and the Police Investigations and Review Commissioner.
- b. promote public awareness and understanding of the powers and duties those persons have in relation to the acquisition, retention, use and destruction of biometric data, how those powers and duties are exercised, and how the exercise of those powers and duties can be monitored or challenged,
- c. promote, and monitor the impact of, the code of practice.


The functions of the Scottish Biometrics Commissioner therefore provide ‘**specialist independent oversight**’ requiring detailed technical knowledge of how biometric and forensic data and technologies are used under the devolved criminal procedure laws of Scotland, including how Scottish law enforcement data is then shared bi-laterally with the UK, EU, and Interpol. This enables the Commissioner to provide assurance to the Parliament that biometric and forensic data and technologies used in policing and forensic science are being used lawfully, effectively, and ethically. The functions of the Commissioner exist exclusively in the policing and criminal justice arena with no legislative overlap with any of the existing bodies supported by the SPCB. The work of the Commissioner is directly aligned to the work of the [Scottish Parliament Criminal Justice Committee](#).

The Committee will be aware that there is also a [Home Office Biometrics Commissioner](#) for England and Wales who discharges functions under the [Protection of Freedoms Act 2012](#). The England and Wales Commissioner has oversight of DNA and fingerprints only (not images, recordings, or source biological materials) and also has a wider UK role in reviewing the circumstances where the police retain DNA and fingerprints for counterterrorism purposes from a person not charged or convicted as part of a National Security Determination (NSD), including in Scotland. The Home Office post has been gapped since August 2024 and is currently believed to be the subject of recruitment.

The Northern Ireland Parliament currently has a [NI Justice Bill 2024](#) progressing which will also establish a Biometrics Commissioner for Northern Ireland. The Scottish Biometrics Commissioner will give evidence to the [NI Committee for Justice](#) on 27 February 2025. [The Independent Commission for Reconciliation and Information Recovery \(Biometric Material\) Regulations 2024](#) were laid in connection with the [Northern Ireland Troubles \(Legacy and Reconciliation\) Act 2023](#), and designate collections of biometric material (DNA and fingerprints only). The regulations require that relevant material in those designated collections, which would otherwise be destroyed under certain statutory destruction provisions, is retained. The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland, and Northern Ireland. Having independent oversight mechanisms in each unicameral legislature therefore ensures the observation of devolved and reserved laws, rights, and protections.

The Scottish Biometrics Commissioner also sits in an advisory capacity on the [UK Forensic Information Databases Strategy Board \(FINDS\)](#). This is the strategic UK forum which oversees the running of UK policing biometric/forensic databases and exchange mechanism with the 27 EU member states and with Interpol. Although biometric data is shared extensively between all UK policing agencies, it is acquired, retained, used, and destroyed under devolved legislatures with different legal systems and separate and distinct criminal procedure laws and distinct policing legislation.

 Scottish Biometrics Commissioner
Còimiseanair Biometrics na h-Alba



Biometric exchanges with European Union

- Exchanges between UK and 27 member countries (514 million population)
- Exchanges between UK and Interpol
- Prüm Convention and Prüm 2
- Disrupts and detects international criminality

Sometimes biometric data is contentious and if incorrectly presented or interpreted by the police or forensic scientists¹ can lead to serious miscarriages of justice that can undermine the system of criminal justice.² Biometric data in law enforcement is currently at the crossroads of the next digital revolution as advanced A.I. powered technologies such as live and retrospective facial recognition and Rapid DNA combine with biometric and forensic databases and hyperscale Cloud hosting capabilities to bring new possibilities and risks for both policing and society.

Why Parliament legislated for a Scottish Biometrics Commissioner

The roots of the decision by the Scottish Parliament to legislate for independent oversight of biometric data in Scotland can be traced to several sources that have impacted on public and Parliamentary confidence in the use of biometric and forensic data in Scotland.

In February 1997, a Strathclyde Detective Constable Shirley McKie was charged with lying under oath after testifying (correctly) that she had not been in the house of a murder victim. McKie had also been arrested, detained and strip searched, and was sacked by Strathclyde Police acting on the basis of incorrect evidence provided by four

¹ [See for example the Shirley McKie fingerprint misidentification case in Scotland.](#)

² [See for example the case of Andrew Malkinson, wrongly jailed for 17 years](#)

fingerprints ‘experts’ working at the former Scottish Criminal Records Office who stated that her thumb print had been recovered at the murder scene.

Such was the controversy that a member of the Scottish Parliament asked fingerprint experts from around the world to review the evidence. This resulted in 171 certifications from 18 different countries that the thumbprint recovered at the murder scene did not belong to Shirley McKie. A civil case was brought against the Scottish Executive in 2006 who made a settlement of £750,000 without admitting liability. McKie received a full personal apology in December 2011 from the Director of Forensic Services at the Scottish Police Services Authority, and from the Chief Constable of Strathclyde Police in April 2012.

In June 2008, Professor Jim Fraser published a [report on the acquisition of fingerprint and DNA data in Scotland](#). The report made 8 recommendations to Scottish Ministers including the need for independent oversight. In 2015, HM Chief Inspector of Constabulary in Scotland conducted a review of Police Scotland’s use of the retrospective facial search functionality within the UK Police National Database (PND). The report identified the lack of independent oversight of biometric data in Scotland and made recommendations to Scottish Government to bring forward legislation to create a Scottish Biometrics Commissioner and a statutory Code of Practice. The previous recommendations of the Fraser report (2008) and those made by HMICS (2015) were subsequently endorsed in the [report of the Independent Advisory Group on Biometric Data in Scotland \(2018\)](#).

Over the period, other concerns were emerging about the use or potential misuse of biometric technologies by Police Scotland. In the absence of a commissioner at that juncture, this resulted in the former Justice Sub-Committee conducting critical investigations into Police Scotland’s use of digital triage systems and on facial recognition policy.

Collectively, these various drivers for change caused Scottish Ministers to bring forward legislation to appoint a Scottish Biometrics Commissioner. In 2020, the Bill was passed unanimously by members of the Scottish Parliament before receiving Royal Assent.

Scottish Biometrics Commissioner Act 2020: Policy Objectives and Outcomes

When Royal Assent was given to the Scottish Biometrics Commissioner Act 2020, it brought into legal effect the Scottish Parliament policy objectives which sought to:

- Establish the Office of the Scottish Biometrics Commissioner.
- Deliver independent oversight of how biometric data and technologies are used for policing and criminal justice purposes in Scotland.
- Deliver a statutory code of practice with powers to ensure compliance.
- Deliver a complaint mechanism for data subjects to accompany the code.
- Provide additional safeguards for the biometric data of children and vulnerable persons.

- Deliver a mechanism for regular periodic post-implementation review of the Commissioners functions whereby Scottish Ministers must review whether the Commissioners functions remain appropriate every five years. (section 6 (4) SBC Act 2020). The first such statutory review by Scottish Ministers will be due no later than five years after the laying of the first strategic plan. This means that Scottish Ministers must review the SBC functions by no later than 01 December 2026.

In terms of the **political outcomes** sought from the policy objective all have been achieved, and as indicated legal safeguards were placed into the legislation to ensure that the functions of the Commissioner are reviewed every 5 years with the first statutory review due in late 2026.

Selecting and prioritising outcomes related to function.

The [SBC 4-year Strategic Plan 2021 to 2025](#) sets out how the Commissioner will discharge the statutory functions assigned in the SBC Act 2020. The current (first) strategic plan was developed in consultation with stakeholders and the public through both closed and open consultations in 2021. The current strategic plan covers the period from 01 December 2021 to 30 November 2025 and is misaligned to the fiscal year as a Covid consequential due to a delay in appointing the first Commissioner due to the pandemic.³

The SBC Strategic Plan has four strategic priorities drawn directly from the SBC Act each with a specific intended outcome. The four strategic priorities are:

Our purpose and vision: To support and promote the adoption of lawful, effective, and ethical practices in relation to the acquisition, retention, use, and destruction of biometric data for criminal justice and police purposes in Scotland. ¹				
Our four strategic priorities	1. Keep under review and report on the law, policy, and practice relating to the acquisition, retention, use, and destruction of biometric data for criminal justice and police purposes in Scotland.	2. Promote public awareness and understanding of criminal justice and policing sector powers and duties in relation to biometric data, how these powers are exercised, and how the exercise of these powers can be monitored or challenged. ²	3. Develop, publish, promote, and assess compliance with a statutory Code of Practice on the acquisition, retention, use, and destruction of biometric data for criminal justice and police purposes in Scotland. ³	4. Provide reports to the Scottish Parliament on the outcomes from the use of biometric data and technologies and highlight key issues to inform public debate, thus strengthening democratic accountability.

Figure No 1: Scottish Biometrics Commissioner 4 strategic priorities.

The outputs and intended outcomes related to each of these priorities are:

Our outputs and intended outcomes aligned to each priority.	1a. Develop, deliver, and publish, a National Assessment Framework to help assess the effectiveness and efficiency of biometric data outcomes. Publish annual and other reports to enhance independent oversight, transparency, and public accountability.	2a. Contribute to public awareness and understanding of how biometric data and technologies are used for criminal justice and police purposes in Scotland through various mechanisms including a website information hub, public reporting, and an established complaints procedure on our Code of Practice for biometric data subjects. ⁴	3a. Deliver a statutory substructure and compliance framework through a Code of Practice approved by the Parliament and Scottish Ministers through regulations, which balances ethical public interest considerations with democratic freedoms and the privacy and human rights of data subjects.	4a. Contribute towards the National Outcomes for Scotland, specifically: Delivering community safety, protecting equalities & human rights, avoiding discrimination, protecting children and vulnerable adults, and making a positive contribution internationally.
Our values	Independent	Transparent	Proportionate	Accountable

Figure No 2: Scottish Biometrics Commissioner Intended Outcomes from the 4 strategic priorities.

³ [The Scottish Biometrics Commissioner Act 2020 \(Commencement\) Regulations 2020, SSI 2020/250](#)

Demonstrating outcomes 2021 to 2025

The Scottish Biometrics Commissioner has achieved everything that it set out to achieve in the period of the first Strategic Plan up to and including the date of completing this written response to the Committee in January 2025.

Since his appointment in April 2021, the Commissioner has laid three Annual Reports and Accounts before the Scottish Parliament and an Operational Report.

These Annual Reports confirm that the Commissioner has achieved everything as set out for each fiscal year in the Strategic Plan and the audited accounts also confirm that the Commissioner has operated within his allocated budget in each of fiscal years 2021/22, 2022/23 and 2023/24. Over the 3-year period, there have been zero staff absences, and the low cost shared-services model has stood up well to the rigour of external audit by Audit Scotland.

As an illustration of best value, the Commissioner's most recently audited accounts confirm that in 2023/24 the non-staff related cost of running the function after deducting salary and pension costs was only £65,000. When further deducting the fees for external and internal audit, the residual administration costs for running the public authority for the entire year under a shared-services model were less than £50,000. During an [evidence session with the Scottish Parliament Criminal Justice Committee on 13 November 2024](#), the Convenor commended the Commissioner's Annual Report and Accounts and stated that **'the Committee wholeheartedly agreed'** with the Scottish Biometrics Commissioner's conclusion that the function delivers excellent value for the public purse'.

Another key outcomes from the first Strategic Plan has been the delivery of the Commissioner's [Statutory Code of Practice](#). The Code was developed between 2021 and 2022 through wide and extensive consultation. The draft Code was exposed to Parliamentary scrutiny by the [Criminal Justice Committee on 15 June 2022](#), and was subsequently approved without amendment by Scottish Ministers taking legal effect on 16 November 2022 through a statutory instrument [The Scottish Biometrics Commissioner Act 2020 \(Code of Practice\) \(Appointed Day\) \(Scotland\) Regulations 2022](#) at which point Scotland became the first country in the world to publish a legal accountability framework for biometric data and technologies used for policing purposes.⁴

The Code is accompanied by a [Complaints Procedure](#) which enables data subjects to complain to the Commissioner in circumstances where their biometric data is held by Police Scotland, the SPA, or the PIRC in circumstances that the data subject considers contrary to the Code. The Commissioner has also published an [Easy Read version of the Code](#).

Since November 2022, the Commissioner has conducted two formal rounds of compliance assessments on the Code finding Police Scotland, the SPA, and the PIRC compliant in 2023/24 and 2024/25. To date, there have been no complaints made by data subjects re non-compliance with the Code and it has been publicly acknowledged

⁴ [Scotland 'first country in the world' to publish biometrics code of practice.](#)

by Scottish Government that the Code of Practice has seen Scotland leading the way in a progressive approach to public accountability for the police use of biometric data.

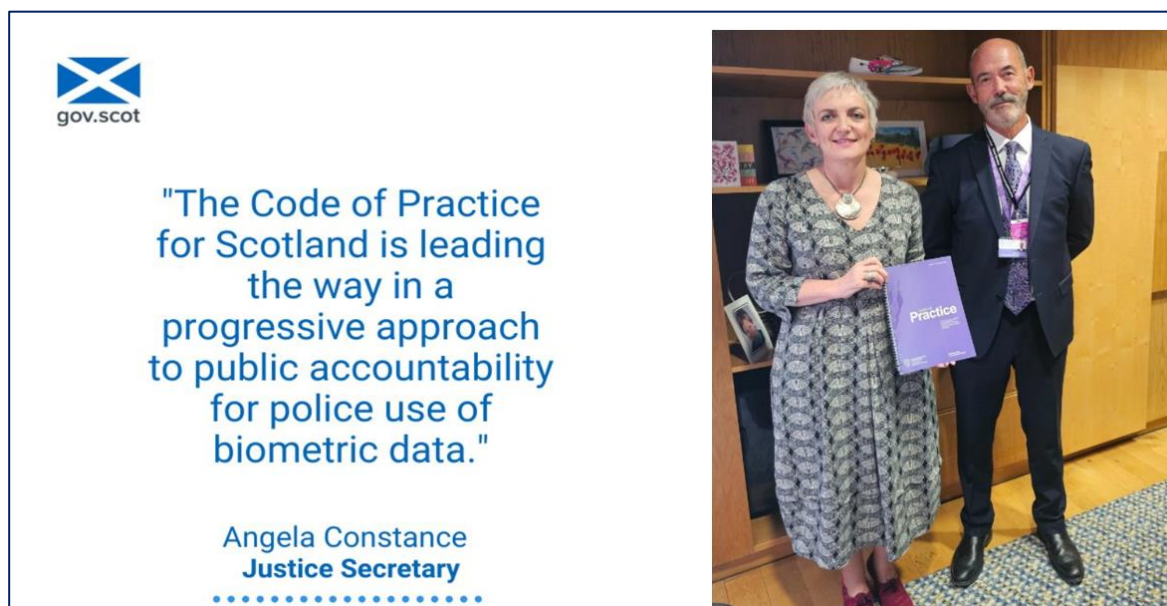


Image No 1: The Cabinet Secretary for Justice and Commissioner with the Code of Practice

To date, the Commissioner has also laid three thematic Assurance Reviews before the Scottish Parliament. In March 2023, the Commissioner laid reports relative to the acquisition of biometric data from [Vulnerable Adults](#) arrested by Police Scotland and another relating to the acquisition of biometric data from [Children and Young People](#).

The Assurance Reviews published in March 2023, were conducted in partnership with the [Scottish Police Authority](#), with the [Children and Young People's Centre for Youth Justice](#) also assisting on the work with children and young people. This partnership approach increased the capacity, capability, and reach of the Commissioner's work at no additional cost to the public purse. It should be noted by the Committee that the SBC had initially sought to work in partnership with the then Children and Young Persons Commissioner for Scotland on the Children's review, but [CYPCS](#) were unable to assist due to resource constraints.

Four recommendations for improvement were made to Police Scotland from these reviews including two around the need to discharge the information rights of persons from whom biometrics are captured following arrest, one to develop distinct policies for children, and one to improve and publish better management information to enhance strategic governance and improve transparency and accountability.

In March 2024, the Commissioner laid his third thematic Assurance Review before the Parliament, this time exploring how Police Scotland use [Images and Recordings](#).

By July 2024, the 4 recommendations made to Police Scotland for improvement in 2023 were successfully discharged by Police Scotland. In relation to upholding the information rights of biometric data subjects, Police Scotland now provide an [Information Leaflet](#) to every prisoner from whom biometric data is captured following arrest. The leaflet is also available as an Easy Read version and explains to data

subjects why their data has been captured and for what it will be used. It also signposts to the [Commissioner's website](#), Code of Practice and Code Compliant Procedure.

The **outcome** is that the information rights of biometric data subjects in some 90,000 custody episodes in Scotland each year are now being upheld and there is improved transparency and accountability on the part of Police Scotland.

In March 2024, Police Scotland also introduced a new policy whereby biometric data is now only captured from children (persons under 18 years old) arrested by Police Scotland in connection with violent or sexual offending or otherwise by exception. Around 4000 children are arrested in Scotland each year. The **outcome** of the policy change is that less children will have their biometric data captured following arrest. This better reflects the interests of children and the policy position in Scotland via incorporation of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024.

Police Scotland also now has a dedicated [biometrics website page](#). The webpage includes the biometric leaflet which is available in 14 different languages. The webpage also contains quarterly management information reports on biometric data volumes. The **outcome** is greater public accessibility to police information on biometric data and accordingly improved transparency and accountability.

In October 2024, and working in partnership with Scottish Government, the Commissioner laid a joint report before the Parliament which reviewed the laws of retention in Scotland in terms of the Criminal Procedure (Scotland) Act 1995 pertaining to biometric data. That report contained six recommendations with four directed to Police Scotland. Those recommendations are due to be discharged by Police Scotland by the end of October 2025. Once discharged, the **outcome** will be a more proportionate retention regime that incorporates periodic reviews to better adhere to recent relevant legal rulings and current UK data protection law.⁵

In late February 2025, the Commissioner will lay his fourth Assurance Review on [DNA](#) before the Parliament and in late March his fifth on the use of retrospective facial matching technologies by Police Scotland. The DNA review is currently being conducted in partnership with the SPA and the [Leverhulme Institute of Forensic Science](#), whilst the [retrospective facial matching](#) review is being conducted in partnership with [His Majesty's Chief Inspector of Constabulary in Scotland \(HMICS\)](#). The **outcome** of these forthcoming publications will be to provide assurance to the Parliament around lawful and ethical use but will also highlight further recommendations intended to improve the effectiveness and efficiency of operational practices and the outcomes from police investigations.

This work continues the Commissioner's absolute commitment to achieving value for the public purse as evidenced internally through the successful delivery of a low cost and best value shared-services arrangement with the SPSO, and as evidenced externally in SBC operations which are predicated on a partnership approach to maximise capacity, opportunity, and value for the public purse. In June 2024, this included the Commissioner working in partnership with the SPA and Police Scotland to

⁵ Gaughran v. the United Kingdom, European Court of Human Rights, February 2020, and UK Data Protection Act 2018.

co-host the first ever [Biometrics in Criminal Justice Conference](#) in Scotland. The Cabinet Secretary for Justice and Home Affairs opened the conference, and speakers included the Chief Constable, Chair of the SPA and the Commissioner. The conference was designed to promote public awareness and to prompt an ongoing national conversation to help promote democratic accountability.



Image No 2: The Cabinet Secretary for Justice opening the Conference.

What improvements could be made?

The practical reality for any new SPCB supported function is that the new entity needs to be stood up from ground zero by the appointed officeholder and all of this takes time to achieve. In the case of the Scottish Biometrics Commissioner, this was further complicated by having to do so mid global pandemic when physical in-person meetings were legally prohibited meaning that early set up activity had to be achieved by the Commissioner initially working both single-handed and remotely.

This meant that the Commissioner's first (current) Strategic Plan required to be laid in the Scottish Parliament by no later than 01 December 2021 and at a point before the Commissioner had completed the recruitment of any staff. As process always follows policy, this inevitably dictated an initial focus on key performance indicator outputs in the first strategic plan recognising that outcomes would follow as the new organisation became fully established over the course of the following 12 months and beyond, and as the impact of our work began to materialise.

In addition, it is recognised that performance measurement by bodies with a full or part regulatory function is particularly complex because their intended outcomes (for example improving public confidence in the use of biometric data and technologies in

policing) are generally delivered by the organisations that they regulate. There are also many external factors and outcomes can take a long time to become evident.⁶

Therefore, it has always been the Commissioners view that there would be an inevitable lag between the establishment of the new SBC function and the demonstration of real-world outcomes. However, and as indicated in the Commissioner's Annual Report and Accounts (ARA) for 2023/24, the SBC function is now sufficiently mature enough to be able to start reporting more fully on outcomes from the 2024/25 ARA onwards.

At the same time, the Commissioner has engaged the assistance of [Evaluation Support Scotland](#) to help shape the articulation of outcomes in the next Strategic Plan which will be consulted on extensively over the summer and autumn and laid in Parliament in November 2025. The SBC team has three workshops arranged with Evaluation Support Scotland in February, March, and April 2025.

Although the SBC can already demonstrate clear and unequivocal impact, the time is now right in terms of the maturity of the new organisation for commencing the formal transition to articulating those outcomes in the next strategic plan. Following the planned workshops with Evaluation Support Scotland, it is our intention to (a) update the current strategic plan and (b) frame our next strategic plan around a theory of change model for assessing the impact and outcomes from our work.

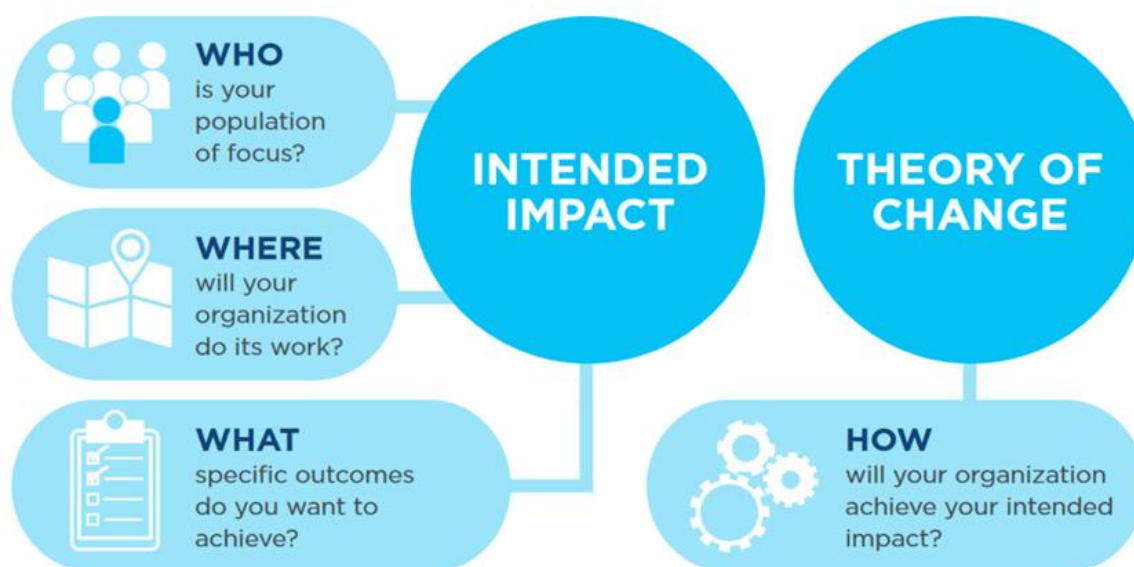


Figure No 3: Theory of Change model for assessing impact/outcomes

Resourcing capacity to achieve outcomes.

Another challenge particularly for the small organisations supported by the SPCB is business resilience and addressing capacity and capability. Sometimes this may cause an organisation to seek to grow its permanent staffing as a means of mitigating risk and thereby incur long- term financial liabilities.

⁶ National Audit Office, Good Practice by Regulators, November 2016.

In the case of the Scottish Biometrics Commissioner, 2025 to 2027 is a particularly demanding period due to a number of highly technical planned reviews such as DNA, and because of the legislative requirements to review the Code of Practice and consult on the shape and form of the next strategic plan during a period of financial uncertainty including the SPCB Landscape Review.

Against that context, the Committee may be interested to know that the Commissioner sought and received the approval of the SPCB to temporarily second a Detective Chief Inspector from Police Scotland to SBC in the position of Director for a period of 24 months. This has significantly increased capacity and capability on a temporary basis, but without incurring any long-term financial liabilities that would have resulted through a growth in permanent staff headcount. Because the secondment also presents a developmental opportunity, Police Scotland has waived the re-charge of employer's overhead costs.

The substantive point is that there are always innovative approaches to dealing with resourcing challenges which may arise over the period of a 4-year strategic planning cycle without defaulting to a permanent growth in staffing with the resultant associated long term financial consequences such as pensions and other employer overhead costs.

Question No 2: How has Parliamentary committee scrutiny worked in practice and how has this impacted performance? How could scrutiny be improved and/or standardised?

Response

Scrutiny in practice

As indicated in the Commissioner's previous oral evidence to the Finance and Public Administration Committee there are obvious opportunities for committees to improve the frequency of the scrutiny of SPCB supported bodies as opposed to the quality of the scrutiny itself which, in the case of the Parliament Criminal Justice Committee, is of a very high standard. The Commissioner is also of the opinion that the SPCB could also improve the regularity and quality of scrutiny.

As illustrated by the SBC response to the previous question on assessing outcomes, since 2021 the Commissioner has laid three Annual Reports and Accounts before the Parliament, an Operational Report, a Strategic Plan, a statutory Code of Practice and three thematic Assurance Reviews meaning that nine separate reports have been laid before the Parliament in a three year period. Yet the Commissioner has only been invited to appear before the Criminal Justice Committee on two occasions since April 2021. The first was on 25 June 2021 to discuss the draft Code of Practice and the second was on 13 November 2024 to discuss the 2023/24 Annual Report and related matters.

One of the factors contributing to the infrequency of scrutiny sessions will be committee capacity due to the massive and diverse portfolio of the Parliament Criminal Justice Committee falling within the responsibility of the Cabinet Secretary for Justice and

Home Affairs, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.

The Criminal Justice Committee was established under the 6th Scottish Parliament in June 2021. It focuses on the Criminal Justice system in Scotland, including:

- Police Scotland and the Scottish Fire and Rescue Service
- The Scottish Police Authority
- The Police Investigations and Review Commissioner
- Courts, including the Scottish Courts and Tribunals Service
- Prosecution and the work of the Crown Office and Procurator Fiscal Service
- The Scottish Prison Service and community sentencing

The Criminal Justice Committee also has an interest in the work of other independent officeholders appointed by Scottish Ministers operating in the criminal justice space. These include HM Chief Inspector of Constabulary, HM Chief Inspector of Prisons, HM Chief Inspector of Prosecutions and HM Chief Inspector of Fire and Rescue.

Accordingly, the Criminal Justice Committee has ‘whole economy’ oversight of criminal justice in Scotland at a time when Police Scotland, the SPA, the PIRC, Scottish Fire and Rescue Services, the Courts, COPFS and the Scottish Prison Service all face significant challenges and financial pressures. Against that context, the demands on the committee are such that it must rightly prioritise its focus.

In this regard, it is worthy of note that under the 5th Scottish Parliament which reconvened on 12 May 2016 there was a Justice Committee as well as a Justice Sub Committee on policing. This meant that there was a dedicated sub-committee on policing and consequently more committee time available for effective scrutiny. Therefore, **the SPCB Supported Bodies Landscape Review Committee may wish to consider the extent to which existing relevant committees have the scheduling capacity to exercise frequent scrutiny over SPCB supported officeholders within their portfolio.**

In relation to the SPCB, Officeholders appear before the whole SPCB once each year and there is additional dialogue on various matters throughout the year, especially on budgets. However, Officeholders are not called before the SPCB to give evidence on their budget submission for the following fiscal year or to be challenged to justify specific projections other than via a written exchange. None of this has impacted on the work of the Scottish Biometrics Commissioner, but there are some potential opportunities to strengthen scrutiny and therefore accountability.

How could scrutiny be improved and/or standardised?

Whilst the quality of committee scrutiny is strong (in the case of the CJ Committee) the opportunities to strengthen and standardise arrangements mainly lie in the frequency of that scrutiny. The Commissioner is of the view that relevant Parliamentary committees

charged with scrutiny over the existing SPCB officeholder landscape should ensure that evidence sessions with the relevant officeholder are held annually as a minimum. Ideally these should be scheduled in the period between November and March each year after the relevant annual report and accounts have been laid. This would be frequent enough to sweep up other reports and major work over the period.

Similarly, the Commissioner is of the view that the SPCB scrutiny could be strengthened by taking evidence from officeholders twice annually. One of those scrutiny sessions should be exclusively on budgets and should be sequenced between the submission of the budget bid for the following year (typically September) and the actual budget award (typically February). This would enable the SPCB to call for oral evidence in support of budget submissions and to intrusively probe any non-salary growth bids. The Parliament Public Finance Committee, highlighted concerns regarding the significant increase in the costs associated with SPCB supported bodies in its Report on the Scottish Budget 2023-24. It was also noted that two of the SPCB supported bodies (Ethical Standards Commissioner and Scottish Human Rights Commission) had significant staffing growth without taking on additional functions. The second scrutiny meeting could be on the Annual Report and there could also be a collective officeholder evidence session to explore and maximise the obvious opportunities presented by the shared-services and co-location agendas.

Importantly, relevant committees and the SPCB should perform a dual role in scrutinising the seven existing independent officeholders and holding them to account, but also a supportive role given that they are appointed by the Monarch on the nomination of the Scottish Parliament, and act on behalf of the Parliament and the people of Scotland.

Question No 3: How do you work in practice with other public bodies or services and what are the main barriers faced? How can these barriers be overcome to improve efficiency and reduce costs while ensuring that shared services maintain high standards of quality and accountability?

Response

Working with other public bodies or services

As indicated in the response to question number one, the SBC function is intentionally 'lean by design' to achieve value for the public purse and operates a shared services model with the [Scottish Public Sector Ombudsman \(SPSO\)](#) who provide financial processing, HR, ICT support and facilities management services to the Commissioner. Entering a shared services arrangement at the outset, with the support and encouragement of the SPCB and Ombudsman, meant that the Commissioner needed to recruit only three permanent staff rather than the four that had been projected in the Financial Memoranda that had accompanied the passing of the founding legislation. The staff were purposively recruited under SPSO terms and conditions of appointment to facilitate the shared services agreement. The model has been successful and delivers a low cost and value for money public service and provides 'proof of concept' in terms of opportunities to further expand the successful sharing of back-office functions

between independent officeholders as externally validated through three successive years of external audit by Audit Scotland.

As responses to previous questions demonstrate, the Commissioner has an absolute commitment to achieving value for the public purse as evidenced internally through the successful delivery of a low cost, co-located, and best value shared-services arrangement with the SPSO, and as evidenced externally in SBC operations which are predicated on a partnership approach to maximise capacity, opportunity, and value for the public purse.

Since his appointment in April 2021, the Commissioner has worked extensively in partnership on various reviews as previously cited including with the Scottish Police Authority, with Scottish Government, the Children and Young People's Centre for Youth Justice, the Leverhulme Institute of Forensic Science and His Majesty's Chief Inspector of Constabulary in Scotland. There is also regular engagement and knowledge exchange with a range of other public bodies in Scotland and the UK and with the Home Office on matters relating to national policing databases. Working in partnership enables all partners to maximise the opportunities from shared resource whilst at the same time reducing overall costs.

Successful partnership working involving shared services relies on a clear framework of roles and responsibilities. Typically, this involves developing a shared vision, agreement of remit, agreed roles and responsibilities, clear terms of engagement and an appropriate lifespan to review and manage change. Early in the establishment of the SBC function, the Commissioner and Scottish Public Sector Ombudsman (SPSO) developed a written agreement setting out the framework for the delivery of shared services. That arrangement has withstood the test of time and demonstrates 'proof of concept' in terms of opportunities to further expand the successful sharing of back-office functions between independent officeholders. Almost four years on, the shared-service landscape for the SPCB supported bodies co-located at Bridgeside House has expanded to include the Scottish Human Rights Commission (SHRC) and the Children and Young People's Commissioner Scotland (CYPCS).

The Scottish Biometrics Commissioner is an optimist and views partnership working opportunities solely through the lens of opportunities to improve effectiveness and efficiency. Barriers, where they exist, are simply obstacles that require careful navigation in pursuit of improved public service delivery.

How barriers can be overcome to improve efficiency and reduce cost while ensuring that shared services maintain high standards of quality and accountability

Over the entire SPCB supported landscape, the Commissioner considers that there are four main opportunities to be seized to improve efficiency and reduce cost while ensuring that shared services maintain high standards of quality and accountability. Those four themes are:

1. **Expand the sharing of prescribed shared services between supported bodies where none currently exist**, and with the objective of collectively increasing effectiveness, efficiency and resilience in the short term, whilst also maintaining or decreasing (but not increasing) total staff headcount over the

SPCB supported landscape through natural turnover and economies of scale in the longer term.

2. **Significantly decrease the costs associated with estates.** Whilst four of the SPCB- supported bodies are co-located and one is co-located at the Parliament, there are also two others in separate premises with different ICT systems and not participating in shared services. In the post-pandemic and hybrid working era, and with rental and utility costs at a premium, having individual (and mostly empty due to hybrid working) corporate headquarters is a non-affordable luxury that cannot be sustained. Accordingly, an SPCB estates strategy should be developed to significantly minimise the property rental footprint to reflect modern working practices.
3. **A presumption against creating new Commissioners.** The Scottish Parliament needs to adhere to the criteria developed by the Session 2 Finance Committee to help guide decisions on whether to create a new commission/commissioner/ombudsman. In particular where a proposal relates primarily to advocating for a particular group or on a particular issue and with no statutory powers of investigation or enforcement of either laws or standards then extreme caution should be exercised so as not to usurp the role of elected members. Accordingly, there should always be a presumption against the establishment of a new commissioner.
4. **Enhanced Scrutiny.** As a general theme, the frequency of scrutiny could be improved by committees and the SPCB, and both should continue to intrusively probe any non-salary growth bids. Better scrutiny can also serve as the delivery mechanism for expanding the shared-services agenda and estates strategy, whilst at the same time improving effectiveness and efficiency whilst also significantly decreasing cost.

Question No 4: Criteria were developed by the Session 2 Finance Committee to help guide decisions on whether to create a new commissioner. These criteria (Clarity of Remit, Distinction between functions, Complementarity, Simplicity and Accessibility, Shared Services and Accountability) are considered by the Scottish Government and Members when proposing Commissioner related bills. Are these criteria currently adequate and how could they be improved?

Response

The Scottish Biometrics Commissioner is of the opinion that there should always be a presumption against creating a new commissioner and that there should also be a presumption against the SPCB funding permanent staff headcount growth within existing supported bodies unless Parliament significantly alters their remit.

Those observations aside, these are the correct criteria however these may not assist without application of the essential criteria of objectivity by the Parliament. One of the key principles of public life, commonly known as the 'Nolan Principles,' is objectivity.

The key principle of objectivity obliges those in public life, including politicians, to make decisions solely on merit, impartially and without discrimination or bias.

However, the very nature of politics is such that it is sometimes adversarial in nature meaning that political leaders and parties are often diametrically opposed on matters of policy. This can result in confirmation bias meaning that decisions may sometimes be made for reasons of political expediency rather than what may be both objectively evidence-based and therefore morally right. Therefore, objectivity or the quality of being able to make a decision or judgment in a fair way that is not influenced by personal feelings or political beliefs will always be problematic in a political context.

That note of caution aside, both the presumption against creating new SPCB supported bodies, and the guiding criteria seem adequate. However, the Scottish Biometrics Commissioner would also encourage the Parliament to put budgetary control measures in place ensure that the landscape does not grow exponentially over this parliamentary session and beyond.

Question No 5: What should the optimal model and structure for commissioners look like, and what key features should it include?

Response

The Scottish Biometrics Commissioner is the Accountable Officer for the SBC function meaning that he has personal responsibility for the propriety and regularity of the finances under his stewardship and for the economic, efficient, and effective use of all related resources including his staff. Accountable Officers are personally answerable to the Parliament for the exercise of their functions and therefore require the ability to exercise control over their function. However, none of this precludes the sharing of prescribed back-office functions between independent officeholders as validated by the successful SBC/SPSO model which has been in place for three years and which provides proof of concept.

In terms of thinking about the optimal model, a useful starting point is to discount the illogical. For example, there are currently seven SPCB supported bodies. Two of those (Ethical Standards Commissioner and Standards Commission) are in essence complaint handling and ethical standards organisations upholding ethical standards for persons working in public life. One has the investigatory function, and one has the adjudication function. The Scottish Public Sector Ombudsman also has a complaints adjudication function and is the final stage for complaints about councils, the National Health Service, housing associations, colleges and universities, prisons, most water providers, the Scottish Government and its agencies and departments and most Scottish authorities.

However, to suggest that some or all could potentially merge their functions completely because they deal with a common subject matter would represent a fundamental misunderstanding of the distinct legal status and legislative functions of each. It would be like suggesting that Police Scotland should merge with COPFS since both are involved in the investigation and prosecution of crime.

Similarly, the Scottish Human Rights Commission and the Children and Young People's Commissioner are both human rights-based organisations but to suggest that they should merge completely would inevitably undermine the special position of the child in society and the commitment by Scottish Government to uphold UNCRC. Likewise, the Scottish Information Commissioner promotes and enforces information rights and freedom of information law whilst the Scottish Biometrics Commissioner provides specialist oversight of biometric data, and both have a complaints function. However, there are no similarities whatsoever in their respective primary mandates.

Therefore a useful starting point in this debate is not to consider the optimal structural model through the language of mergers or acquisitions but instead through the lens of a model (or models) of shared-services, increased collaborative working and more co-location(s), but in a way that enables independent officeholders to maintain control of their own function as Accountable Officer with personal responsibility for the propriety and regularity of the finances under their stewardship and for the economic, efficient and effective use of all related resources including their staff.

In this regard, it is useful to consider some of the key enabling factors for the successful co-location and the sharing of prescribed back-office functions. For example, in the case of the four officeholders co-located at Bridgeside House, all share a common ICT platform (Scottish Government, SCOTS system) which in turn facilitates common ICT policies. Likewise, the SPSO can provide centralised financial processing services to other officeholders because of the co-location and because of the harmonisation of payroll systems over common ICT. Co-location also reduces cost through the sharing of office space, common meeting rooms, common health and safety arrangements and common public reception and mail handling arrangements etc. Therefore, the successful delivery of prescribed shared back-office services has a critical dependency to common ICT infrastructure, and close alignment on administrative policies and other practical arrangements.

However, when looking across the Annual Reports and Accounts of all SPCB supported bodies it is obvious that there are opportunities to expand the shared services agenda and realise financial efficiencies through economies of scale. For example, in 2023/24 the full time equivalent (FTE) staffing level across all supported bodies as reported in Annual Reports and Accounts was 163.98 FTE staff. This ranged from 3 FTE staff with the Scottish Biometrics Commissioner and Standards Commission for Scotland (smallest) to 83.18 FTE staff at the Scottish Public Sector Ombudsman (largest).

A cursory glance at websites also reveals certain common back-office functions that are being conducted independently by those either not participating in a shared service model or not participating fully in such a model. These corporate functions include areas such as financial processing, HR services, legal, facilities management/estates, and ICT support. There are also at least three different core ICT systems in use under different service provision agreements and wide divergence in ICT outsourcing for example in website hosting.

Therefore, it might seem reasonable to assume that expanding the sharing of certain core common back office support functions such as financial processing and HR services and migrating over time to common core ICT systems solutions (where possible) could be more effective and more efficient and potentially reduce total FTE

staffing requirements through a policy of not recruiting posts which become vacant in favour of shared-services alternatives. However, it should be noted that it would be difficult to achieve any significant short-term financial savings as most staff (all in the case of SBC) perform multi-functional corporate and operational roles and therefore removing part of the corporate duties to a centralised function does not necessarily remove the post. Of course, it should also be noted that the Parliament has a no redundancy policy.

As experience of wider public sector reform in Scotland has demonstrated, organisations can experience costs savings and service improvements by consolidating the delivery of prescribed corporate functions and by consolidating approaches to external procurement of services such as ICT provision. As also demonstrated by other public sector reform such as the establishment of national models for policing and fire and rescue, consolidating certain back office functions sometimes requires less staff and when certain other business functions are consolidated the result is often the ability to capitalise on volume discounts in areas such as procurement, as well as economies of scale, improved business resilience, and opportunities to improve service delivery whilst also reducing cost.

During the SPCB Landscape Review, it may also be unhelpful to examine potential efficiencies solely through the lens of closer working between the seven existing independent officeholders without also considering wider sector-specific shared-services opportunities including with the many independent officeholders supported by Scottish Government. For example, on subject matter, the Scottish Biometrics Commissioner is more closely aligned to HM Chief Inspector of Constabulary, HM Chief Inspector of Prosecutions, HM Chief Inspector of Prisons and to a slightly lesser extent with HM Chief Inspector of Fire and Rescue all of whom fall within the portfolio of the Cabinet Secretary for Justice and Home Affairs and the work of the Parliament's Criminal Justice Committee. Therefore, there could also be opportunities in Scotland for shared services and more collaborative working between independent officeholders supported by the Parliament and those supported by Minister's.

Against this context, the Scottish Biometrics Commissioner is of the view that the key features and optimal model are as follows:

1. There should be no full-scale mergers of any of the existing seven independent officeholder functions supported by the SPCB. However, the shared-services model should be maximised and embraced by those not currently participating in a shared-service arrangement. This agenda should be championed by individual Officeholders and the SPCB with the objective of increasing collective effectiveness, efficiency, and resilience in the short term, whilst also maintaining or decreasing (but not increasing) total staff headcount, and therefore cost, over the SPCB supported landscape through natural turnover and economies of scale in the longer term. Shared-services arrangements should be delivered in a way that Accountable Officers retain personal responsibility for the propriety and regularity of the finances under their stewardship and for the economic, efficient, and effective use of all related resources including staff. Expanding shared services will maximise revenue through public sector innovation including for example in areas such as shared procurement and digitisation.

2. Consideration should also be given to alternative 'sector-specific' shared services models and collaborative working between independent officeholders supported by the SPCB and those supported by SG/Ministers for example in the criminal justice space.
3. An SPCB supported bodies estates strategy should be developed to significantly minimise the property rental footprint to reflect modern working practices and in so doing to also significantly reduce rental and utility costs and non-domestic rates.
4. There should be a presumption against the appointment of any new Commissioners/ Commission/ Ombudsman by the Parliament. For any which are appointed, shared services should be mandated at the outset to optimise value for the public purse and there should be a legislative requirement for demonstrable benefit to accrue to the public, or a section of the public.
5. As a general theme, the frequency of scrutiny should be improved by committees and the SPCB, and both should continue to intrusively probe any non-salary growth bids. Better scrutiny can also serve as the delivery mechanism for expanding the shared-services agenda and estates strategy, whilst at the same time improving effectiveness and efficiency and significantly decreasing cost.
6. Scottish Ministers and the Parliament should review the functions of all SPCB supported bodies every 5 years to ensure that they remain appropriate. If considered necessary, Scottish Ministers should insert a sunset provision into relevant legislation to enable functions to cease if no longer deemed appropriate or affordable by the Parliament.