



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# SPCB Supported Bodies Landscape Review Committee

**Thursday 27 February 2025**

**Session 6**



The Scottish Parliament  
Pàrlamaid na h-Alba



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**Thursday 27 February 2025**

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**SPCB SUPPORTED BODIES LANDSCAPE REVIEW COMMITTEE**  
**5<sup>th</sup> Meeting 2025, Session 6**

**CONVENER**

\*Ben Macpherson (Edinburgh Northern and Leith) (SNP)

**COMMITTEE MEMBERS**

\*Murdo Fraser (Mid Scotland and Fife) (Con)

\*Richard Leonard (Central Scotland) (Lab)

\*Ash Regan (Edinburgh Eastern) (Alba)

\*Lorna Slater (Lothian) (Green)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Nick Hobbs (Children and Young People's Commissioner Scotland)

Nicola Killean (Children and Young People's Commissioner Scotland)

Professor Angela O'Hagan (Scottish Human Rights Commission)

Jan Savage (Scottish Human Rights Commission)

Gina Wilson (Children and Young People's Commissioner Scotland)

**CLERK TO THE COMMITTEE**

David Millett

**LOCATION**

The James Clerk Maxwell Room (CR4)



# Scottish Parliament

## SPCB Supported Bodies Landscape Review Committee

Thursday 27 February 2025

*[The Convener opened the meeting at 09:30]*

### SPCB Supported Bodies Landscape Review

**The Convener (Ben Macpherson):** Good morning, and welcome to the fifth meeting in 2025 of the SPCB Supported Bodies Landscape Review Committee. I have received no apologies.

Today, the committee will take evidence from the Scottish Human Rights Commission and then from the Children and Young People's Commissioner Scotland.

I welcome to the committee Professor Angela O'Hagan, who is the chair of the Scottish Human Rights Commission, and Jan Savage, who is its executive director. Thank you for being with us.

We move directly to questions. Similar to what I have done when other commissioners have been at the committee in recent weeks, I will start by asking a general question. What do you consider to be the purpose of the Scottish Human Rights Commission, and how does that differ from the role of ministers, MSPs and other bodies? Of course, as MSPs, we have experience and understanding of that, but it will be helpful, for context, if you set that out in the first instance.

**Professor Angela O'Hagan (Scottish Human Rights Commission):** Good morning, everyone. The purpose of the Scottish Human Rights Commission is to serve the people of Scotland through the realisation of their rights. The commission was established by the Scottish Commission for Human Rights Act 2006, and it has a general duty to promote awareness and understanding of, and respect for, all human rights. We are independent of the Parliament and of the Government, and we differ from the Government in a number of ways.

As a national human rights institution with an A status, we are bound by the Paris principles—a set of principles to which all national human rights institutions are bound. That requires us to deliver a broad mandate on rights realisation.

We are not bound by political-party allegiances or manifesto commitments. We are contained by the impartiality of the civil service. We provide advice to the Government, the Parliament and others based on interpretation of the relevant

domestic and international human rights standards. We focus on the realisation of rights for individuals and on the adherence to international human rights obligations of duty bearers and public bodies.

Our staff team have a different type and level of expertise from that of Government and parliamentary officials. We have deep specialism across rights domains, and we work to the structures and processes of the international human rights framework.

Our purpose was established under the 2006 act. Our purpose, structure, functions and resource level are different from those of all the other office-holders that the Parliament has created. We do not share the same structure. For example, we are a commission, with a chair and four commission members. As such, there is an additional level of governance in the commission.

Our purpose is to promote and raise awareness of rights. Ultimately, we want to encourage individuals to come forward, without fear or favour, to uphold and defend their rights. We want the Parliament and others to hold to account duty bearers in ensuring that their obligations are effectively discharged, and to effectively scrutinise their conduct in relation to their human rights obligations.

**The Convener:** That is very helpful. In your written submission of 13 February, you state that, overall, the issue is

"persistent lack of access to justice, at individual and systemic level".

That is a good phrase that encapsulates my experience of your work. How do you perceive the current role of SPCB supported bodies, including the Scottish Human Rights Commission, in enhancing public trust and confidence in public life in Scotland?

**Professor O'Hagan:** Our role is in relation to access to justice. We have evidence of what we perceive to be systemic rights failures in our recent research series, such as our spotlight report on institutionalised care and the length of time that people are staying in inappropriate care settings. We have reviewed places of detention, and we produced a recent report on economic, social and cultural rights in the Highlands and Islands. Those reports all demonstrate systemic rights failures, highlight the realities of rights in people's everyday lives and bring them into sharp focus in the public domain.

We have a participatory way of working with human rights defenders and people who have direct lived experience of the care sector, detention or fatal accident inquiries, for example, which is a way of demonstrating our openness.

Our approach to participation is rooted in the commission's fundamental belief that that is the most effective way of working. Our strategic plan talks about

"recognising the humanity of the people standing beside you".

Openness and engagement build trust, as does the commission's robust governance structure. I am sure that we will touch on that later, so I will not go into the detail of it.

We have not only a requirement but a desire to function as a pluralist organisation. We engage with a range of perspectives and formulate advice and engagement based on an interpretation of the international human rights standards. We are always focused on securing the everyday rights of everyone in Scotland. The basic foundational principle is that everyone has a right to be treated with dignity and respect, which applies in all aspects and domains of individuals' lives and touches every aspect of public policy.

**The Convener:** The realisation of rights is fundamental in all that. We need to ensure that rights are not just written in law but understood in people's everyday lives.

As a constituency MSP, I interacted with you on an issue in relation to a number of council housing blocks in Leith. I mention that because you talked about your recent work, which was published last month, on the institutionalisation of independent living in Scotland. I have mentioned housing. Both of those are subject areas for the Scottish Public Services Ombudsman's consideration, as are parts of the health service, local authority housing delivery and housing associations, as we have heard in previous evidence sessions. Do you want to say anything about how your work is different from that of the SPSO and about any collaboration that you have with it?

**Professor O'Hagan:** There are two main points to make. The Scottish Public Services Ombudsman mainly has a complaints function in the areas that you have described, whereas our role is completely different. We frame inquiries, research and advice within a human rights framework. Through the promotion of individuals' rights and by raising awareness of them, we empower people to frame their rights in their engagement with public authorities, whether that relates to housing or the provision of care.

You asked about collaboration. We have an effective working relationship with all office-holders, as appropriate, in different operational and strategic interests. The Scottish Public Services Ombudsman has been working on a rights-based complaints process. Separately, we have an operational relationship with the SPSO for

shared services. Jan Savage, do you want to add anything?

**Jan Savage (Scottish Human Rights Commission):** I do, in respect of those two issues. Most recently, there was the deinstitutionalisation project. As Angela O'Hagan said, the role of the public services ombudsman in that area is to take on individual complaints. However, one of the challenges that we have is that we do not know how many individual complaints will make their way through to the ombudsman from individuals who are in institutions or from family members who advocate on their behalf. There are lots of reasons why a lot of people do not have the wherewithal or means to make complaints to the ombudsman.

The role of the Scottish Human Rights Commission is quite distinct from that. It takes a bigger systemic look at the available data, and without fear, favour or judgment, reports on the situation as it is experienced by individuals and assesses it against the international human rights framework—in the case that was referred to, it was article 19 of the United Nations Convention on the Rights of Persons with Disabilities. The SHRC assesses the reality of the lived experience and the best available data that we have against the human rights framework and against policy initiatives and investment that the Scottish Government and public bodies have rightly undertaken to progress matters. Unfortunately, we have to report that there are systemic failures in upholding human rights.

The difference is that other public bodies have the role of investigating at individual level and seeking remedy and redress for individuals, whereas, at systemic level, the SHRC and similar bodies have the opportunity to step in and provide you—the Parliament and ultimate guarantors of everyone's human rights—with evidence, so that you might be able to interrogate that further.

**The Convener:** It is very helpful for our considerations to get those differences on record.

**Murdo Fraser (Mid Scotland and Fife) (Con):** Good morning, and welcome. The mandate that we have been given by the Finance and Public Administration Committee is to look at two broad areas. One is whether there are any gaps or overlaps in the work of existing commissioners. The other is the proposals that are in the pipeline, which you will be aware of, to create new commissioners.

I would like to explore those issues together, because there is obvious synergy between them. We have proposals in the pipeline for a commissioner for the disabled and a commissioner for older people, and we already have the Children and Young People's

Commissioner Scotland. Is there any reason why the work that you are doing cannot encompass the work that is proposed to be done or that is already being done for sectional groups, as they might be called?

**Jan Savage:** Due to work that the SHRC instigated in 2023, in a paper called, “At a Crossroads—which way now for the human rights system in Scotland?”, I have tried to grapple with that question. There has been an emergent trend of advocacy for new public bodies to uphold the human rights of particular groups of people. In our view, there are clearly failures at systemic level for far too many groups of individuals. There is no doubt about that. In the case of disabled people, I have just talked about an example—the SHRC’s evidenced work on deinstitutionalisation—that would bear witness to that. The SHRC wants to raise the profile of the reason for that, which is that there is a systemic and persistent failure in relation to access to justice for individuals and groups. As I say, there is no doubt about that.

We have grappled with what the best route through the situation is. Ultimately, it is not for the commission or for any one of us to say whether there should be more commissions, but you asked whether there is potential for a body, such as the SHRC, to do more for those groups of people. We set out in the 2023 paper, and we have said in various evidence papers to the Scottish Parliament, that there is potential for that.

There are different models through which that could be achieved. There are rapporteurship models, for example, which might mean using different human rights treaties—the UN Convention on the Elimination of All Forms of Discrimination Against Women or the UNCRPD—or the work of the Scottish Social Services Council and so forth to create dedicated monitoring groups in the commission’s team that have a permanent focus on the rights of people in different groups.

We could look at international models in which human rights commissions have a broader number of members. As Angela O’Hagan said, we can currently have one chair and up to four members of the commission, but none of those members is appointed by the Parliament to represent the interests of a particular group of rights holders, so it is pluralistic in a different way. However, there are international models in which that is a bit different. Parliaments can decide to appoint commissioners with the responsibility to represent particular groups, and those commissioners have to be supported by a team of people who can monitor and provide support.

Regardless of all those models, we believe that there is a need to look again at the fundamental mandate of the commission, its enabling powers and the tools that are available to it to uphold

human rights for everybody. Further consideration could be given to those three routes to extend the coverage and relevance of the commission to those groups of people.

09:45

**Professor O’Hagan:** I have almost got my voice back—sorry, I have a horrible cold and I hope not to smit you all.

Jan Savage is absolutely right. Mr Fraser, you asked about gaps, and there are clear gaps in our mandate, which the commission has articulated very clearly over a number of years. They have also been highlighted in the international accreditation process to which we are subject—we are about to embark on our next cycle of reaccreditation. That also relates to Mr Macpherson’s question about systemic failures. In our paper, “At a Crossroads—which way now for the human rights system in Scotland?”, we took that issue head on, saying that part of the reason why there are calls for additional commissioners is that people’s rights are not being realised, which is a matter of policy, policy implementation, policy choices and resource allocation.

In Mr Fraser’s question about new commissioners, there is also a question around criteria and the basis on which any new commissioners or new entities should be created. The Scottish Parliament has had its reasons for creating office-holders in the past. The decisions that were made at those times were to create an external entity rather than to use other legislative means, such as the introduction of new legislative requirements on public bodies. In considering proposals for new office-holders—whether they are commissioners, ombudsmen or any other model that is proposed—there must be robust consideration of the policy intent of the legislation and whether that is best met with a further arm’s-length body or with direct obligations and legal requirements on public bodies.

A well-functioning, well-resourced and robust national human rights institution is part of a well-functioning democracy. The function of holding duty-bearers—including the Parliament, as well as public bodies—to account is an essential strength of a well-functioning democracy. As I said in my earlier answer, we use our current mandate to highlight the areas of rights in which people are the furthest away from access to justice and from living the life that the Parliament would intend for them. However, we have said in our written evidence that a cross-party, deliberative approach to thinking about structures, functions and processes is important in considering the next steps for future legislation and how to respond to those needs—and this committee inquiry is part of that.

**Murdo Fraser:** Thank you for those answers. Just so that I and other members are clear, are you telling me that you could incorporate those roles but it would require your mandate being looked at? Are you telling me that, as it stands, you do not believe that the Scottish Human Rights Commission properly represents the views of disabled or older people?

**Professor O'Hagan:** No, I am not saying that. We are in the service of all the people of Scotland. Of all the models that Jan has outlined, some could be attempted through a rapporteurship model or a thematic member-of-the-commission model, the latter of which is used in other countries and would not require primary legislation. However, the mandate extension that the commission has been talking about for some 10 years or more would require changes in primary legislation.

**Jan Savage:** The reality is that the commission has 15 staff. Probably six or seven of them are the experts who do the human rights analysis, and we have communications and engagement staff, business support staff and others.

The commission's mandate and resource have, arguably, been part of the problem to date. We have said that in our evidence in many places. With such a broad mandate to support everybody's human rights across all the relevant treaties on what has been, until recently, a flatline budget of about £1.2 million per annum and 15 staff, it is difficult to service all the areas properly in the way that all of us would wish. Therefore, the past year has been about refocusing the commission's limited resource to do more domestic human rights monitoring and to identify, through our evidence base, where there are systemic failings for disabled people, for Gypsy Travellers—we will look at failings for them next this year—across the communities of the Highlands and Islands and in places of detention.

There is a balance to be struck. We do not necessarily need mandate change for more resource, but if we want the commission to have more teeth and more members, both of those would require legislative change.

**Murdo Fraser:** That is helpful, because I think that I now understand. In effect, you are telling me that the issue is capacity rather than powers. Is that correct?

**Jan Savage:** I think that it is both.

**Professor O'Hagan:** It is.

**Murdo Fraser:** We will shortly hear from the Children's and Young People's Commissioner Scotland. The SHRC obviously post-dates the creation of that office. If it had been the other way

round, would we need a separate children's commissioner?

**Professor O'Hagan:** The question is really what the Parliament would have been minded to do. It was minded to introduce the children's commissioner and, subsequently, to create a national human rights institution with coverage across the international human rights treaties and standards. Retrofitting the question is a bit difficult.

**Murdo Fraser:** Let me rephrase the question. Is there any general policy reason why, given your reach into all the various areas including disabled and older people, the work that you do on human rights could not also encompass children?

**Professor O'Hagan:** The children's commissioner was, as you said, set up before the SHRC. The post was brought into existence to execute specific functions in supporting realisation of the rights of children and giving a voice to children. It has a specific remit for advocacy and paying special attention to groups of children and young people who have difficulty in making their views and experiences known. It was the Parliament's specific intention at that time to create the children's commissioner.

The recent United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 has also been part of the wider incorporation process, and during the passage of that legislation the commissions were not merged. Clearly, ministers and the Parliament were not minded to seek a merger and saw fit to maintain the current structures while providing both commissions with additional powers on strategic litigation, and to encourage partnership working between them.

**Murdo Fraser:** With respect, I understand all that, but the committee has been established precisely because there is an appetite to revisit such questions, which is why I asked you that one. Let me try again. Is there any reason, in broad policy terms, why the work of the Scottish Human Rights Commission could not incorporate that of the children's commissioner?

**Professor O'Hagan:** My understanding is that that would require a further legislative change to our mandate.

**Murdo Fraser:** However, there is no particular reason why that could not happen, is there?

**Professor O'Hagan:** There is not, if the Parliament were so minded.

**Murdo Fraser:** As we all know, human rights are partly devolved and partly reserved. There is the Equality and Human Rights Commission, which is a United Kingdom body that has a Scotland office, and there is you—the Scottish Human Rights Commission. Is there a particular



reason why we have two separate organisations in the same space?

**Professor O'Hagan:** I am smiling at that question because I am old enough to remember the creation of both bodies. At the time, the comments were that it was like waiting for buses: you want a human rights commission for a long time then, all of a sudden, we have two.

We have distinct mandates and we operate within distinct legal frameworks. The Equality and Human Rights Commission is the regulatory body for the Equality Act 2006 and was formed from the merger of three previous equality commissions. The Scottish Human Rights Commission was created as an office-holder of the Scottish Parliament for the purposes and functions that we have talked about in relation to the commission's direct function in Scotland.

As you will be well aware, the separation of powers is such that, in Scotland, we have jurisdiction on human rights dimensions within devolved matters, and the Equality and Human Rights Commission does not. We have an effective working relationship with the EHRC at the Scotland and Great Britain levels. We have a formal memorandum of understanding, which is part of our way of working across all office-holders, and we are in the process of extending that MOU to the children's commissioner and elsewhere.

We also have a very effective working relationship with our sister national human rights institutions in Northern Ireland and Ireland, and with the EHRC in respect of its functions in Wales. It is a requirement of our international accreditation that we demonstrate that we have effective working relationships across sister organisations within the UK, because that takes us into the various voting systems and deliberative processes of the Global Alliance of National Human Rights Institutions.

**Murdo Fraser:** Okay. Thank you very much.

**Lorna Slater (Lothian) (Green):** I will do a bit of context setting to make sure that I have got my head round this. The committee is looking at the broader landscape of all the SPCB supported bodies. No one has said that you would end up with this landscape if you started with nothing. It has grown organically, so we are aware that there are overlaps and gaps.

Some of the bodies have been created as a result of scandals, failures in public services or failures in the conduct of public servants, in order to try to fix an urgent or immediate problem. I think that it was the Scottish Public Services Ombudsman—my colleagues can keep me right—who said that she is frustrated that she is only allowed to react to complaints that she had

received, and that she was not allowed to do broader preventative work. She may have had complaints from several hundred people about specific councils, but she could only investigate those councils: she could not then broaden out her investigation to all councils in Scotland. There might have been a systemic issue, but she is not allowed to do that. She is frustrated by that limitation.

The Public Services Ombudsman deals with individual cases; however, if I understand it correctly, your situation is almost the mirror image of that. You deal with broad systemic investigation and reporting, but without doing advocacy or individual case support, because that is not your remit and it is not your job to do that.

I have a couple of questions about that. All those public bodies seem to have a structure that is in a preventative space—preventing harm from public services and proactively making sure that institutions get the right advice so that they handle data correctly and so that politicians behave themselves. Then there is the reactive work, which is about saying, “Okay, something has gone wrong”, when, for example, patients have been hurt or people who are in detention have had their rights disrespected. How do we fix that problem?

Some of the bodies do a mix of those things and some do one or the other, but the Scottish Human Rights Commission does specifically preventative work. As we reimagine the landscape because of the proliferation of commissioners, can we reimagine the SHRC as one large body that has both a preventative role and reactive role? Could the reporters of such a larger body be responsible for both the wider investigative systemic look and advocacy? Can we imagine a structure that would encompass all those things in order to look after human rights in Scotland, rather than having your rather narrow remit?

10:00

**Professor O'Hagan:** Yes, we can imagine that. In the various models around the world, rather than the national human rights institution taking the form of a complaints-based ombudsman, some have within their remit more of a mandate on proactive promotion and awareness-raising. In other models, where there are structures whose remits are limited to human rights-based complaints in relation to rights realisation, other bodies perform the promotion, awareness and directive functions. They can be at the local government level right through to national Government. Reykjavik City Council has a human rights office. Oh, that we had such similar functions! There are lots of different models that we could draw from.

Where we are at the moment with our mandate and how we execute it is that we are both reactive and proactive. In our strategic plan, which we are required by statute to produce, we have a four-year framing of our work that is agreed with the Parliament. The process binds us to that and is then operationalised through our annual plans.

Our budget cycle is annual, so it is rather at odds with that four-year planning cycle, but that also means that we need to be agile and responsive in our resourcing.

We also need to be—and increasingly are—agile and responsive to what is going on in Scotland. That is where our participatory work, our consultative work, our horizon scanning and our treaty monitoring work tell us what our key issues are. We are reactive, so we respond to them. That is how we have formulated our spotlight research projects and so on.

We are also reactive to the parliamentary programme, so we respond to requests for advice or we offer advice in the legislative process. We are reactive to live issues but, as Jan Savage said, with a staff team of 15 people, not all of whom are full-time, there is a limit to how reactive we can be.

We cannot provide advice or respond in that way to individuals. We cannot take cases in our own name, so we cannot raise issues in court except through the new powers of strategic litigation in the UNCRC. As Jan Savage has said, it is about taking a systemic approach to rights violations and the proactive functions of promotion and awareness raising. I will leave it there and let Jan come in, if there is more to say on that.

**Jan Savage:** I will use the example of the SPSO and the frustrations of the SHRC. The SPSO can take on individual cases, but it cannot necessarily share information about individual cases with us, as a commission. Our mandate prevents us from providing advice to individuals: that is an explicit “must not and cannot do”. We can look at issues using a systemic research basis, but our outputs do not have any standing. We do not have legal powers of investigation, we cannot compel evidence from public bodies when we are doing our research and, when we issue recommendations, they are not binding. There are frustrations at all levels.

It has been consistent across a lot of the evidence that you have heard that, whatever happens through the committee, there needs to be a consistent look at how the landscape knits together. What is required in order that we deliver access to justice for everyone are bodies—perhaps not as many as are on the table—that have the necessary powers to intervene and to make changes, when necessary. There are

frustrations about all our respective mandates, so it would be valuable to take a look at that.

When considering whether to add new bodies to the mix, we need to ensure that there is, at the very least, consistency in the powers that are being considered. One of the challenges that the current landscape has created is that so many different powers are available to so many different public bodies, and bodies that are being considered by the Parliament at the moment have different powers. If I remember correctly, although it is now stalled, the proposal for a victims and witnesses commissioner had the broadest possible mandate that any public body could have, and it certainly would have had more powers for one particular group of rights holders than the Scottish Human Rights Commission has.

We are now in a position where, even through the positive work to incorporate the rights of the child into Scots law, the commission has a bit of a hierarchy in relation to human rights and disability. We now have greater opportunity and potential to take action, in partnership with the children’s commissioner’s office, where we see that the rights of children and young people are at stake. However, as a commission, we do not have the same opportunities to step in where we see that the rights of their parents, their neighbours or their cousins or uncles, for example, are at stake. There is an imbalance that is not so much about how many bodies we have, but is more about the purpose, functions and powers of those that we already have.

**Lorna Slater:** That is interesting, and you can see how that happens. You can see why, politically, instead of redefining your remit in order to bring in an advocacy role to fill gaps, politicians say, “We’ll make a commissioner for X”—because it sounds great to say that they are standing up for a particular group. That is a lot more glamorous—more showy or headliney—than saying that we will rewrite the standing orders or the legislation that covers the Human Rights Commission, because that does not sound like such a big deal.

We have ended up with a kind of pockmarked landscape with all those bodies. That has been done with absolutely the best of intentions, but bodies have not been brought together and their powers have not been standardised, so some are really different and some overlap. That was really useful to hear.

I would be interested to learn more—maybe this is for the clerks—about the models in countries where the ombudsmen and human rights bodies have different relationships or are combined. With regard to both improving public services and ensuring that people get access to justice, there is some overlap, which it would be interesting to hear about.

I am also interested to hear more about the proposal in relation to rapporteurs and the gap that you feel they are filling.

**Professor O'Hagan:** The rapporteur model is a way of organising within a national human rights institution. There are variations on the model. There are international examples of national human rights institutions that have designated commissioners, from among the commission members, for specific groups of rights holders. The rapporteur model takes various forms—it can be a designated commissioner and or a designated team within the commission.

A commission of our size is limited in its ability to support that way of working. We are increasingly working across functions with a more project-based approach, but the rapporteur model is about having lines of specialism across the team. We have those lines of specialism, but our team works across all the treaties.

In relation to Mr Fraser's earlier question, there is a range of independent mechanisms, including for the UN Convention on the Rights of Persons with Disabilities. The rapporteur model takes different forms. To summarise, it can be either designated commissioners or, within the commission, a designated rapporteur function, which is a kind of crossover with a sort of champion mode—a named function.

We set some of that out in our 2023 report, "At a Crossroads", to try to give a flavour of the different models, but we would be very happy to follow up directly with members of the committee or with the clerking team and the convener on the different models, which would require legislative change and would be about reorganising the structure.

The earlier question about alignment and the frustrations that arise from the lack of alignment are at the core of the whole debate, are they not? The Scottish Public Services Ombudsman's evidence referred to the lack of own-initiative powers, and I cannot retrofit the Parliament's intentions at the times when it created the various bodies, but the lack of own-initiative powers speaks to the fact that we should always remember the separation between the Parliament's functions and those of the external office-holders.

We are very clear that we do not make laws or create legislation: rather, we advise on where we think the legislation is and on when we think the intended outcomes on rights realisation are not a reality in people's lives. That is what we are currently empowered to do through our information and monitoring functions. However, as Jan Savage said, frustrations arise from the constraints in our mandate on ensuring or

securing the most effective remedies and recourse to rights realisations for all.

**The Convener:** That segues nicely into questions from Richard Leonard.

**Richard Leonard (Central Scotland) (Lab):** Good morning. I want to pick up on some of the issues that you discussed in answer to the previous series of questions.

One of the standard questions that we are asking everyone, and which uses the terminology of the landscape, is: to what extent do you see yourselves as having an advocacy function, and to what extent are you regulatory?

**Professor O'Hagan:** Good morning, Mr Leonard. Thank you for your question.

We are neither a regulator nor an advocacy body. We advocate for the realisation of rights in general, and we conduct our activities within our current mandate. Our role is to build an evidence base on rights realisation and denials; disseminating that; and encouraging duty bearers to meet their obligations. That includes the Scottish Parliament acting as the ultimate guarantor of humans rights by holding the Scottish Government and public bodies, as duty bearers, to account.

We do not regulate domestic or international legislation. Instead, we monitor the extent to which rights under international conventions are being realised or denied. Having monitored the realisation of rights contained in the treaties, we take our analysis to the relevant treaty bodies through the complexities of the international process. For example, two weeks ago, the Committee on Economic, Social and Cultural Rights heard evidence from civil society organisations across Scotland, including the NHRI, alongside the UK delegation, when there was detailed scrutiny of the realisation of economic, social and cultural rights across the domains of the UK.

That shows that we take our evidence from Scotland both to yourselves in the Parliament and internationally. We neither regulate nor advocate beyond general advocacy for the realisation of rights for all.

**Richard Leonard:** Thank you. That was very clear and helpful.

There are other labels that get bandied about, such as the extent to which you are "proactive" or "reactive"; indeed, we have used those terms ourselves earlier, and you have answered Lorna Slater's question on that point. This might seem invidious, but could you put percentages on the balance of your workload between proactive and reactive activities?

**Professor O'Hagan:** Do you want to start on that, Jan?

**Jan Savage:** Yes, I can.

In the past 12 months, the balance has shifted quite deliberately towards our being more proactive. That is because we are working through our new strategic plan, which is about stepping into areas where the commission has concerns, albeit that they might have arisen not through direct routes to us from people and complaints but through what we see, what is known to us, and what the Parliament and other civil society organisations are considering.

It is fair to say that, at the minute, the commission under its current leadership is really testing the boundaries of its mandate by being as proactive as it can and highlighting and investing its time and limited resource in areas where we are uncovering potential violations of human rights in certain sections of Scottish society. For example, we have outlined where we see the law standing on places of detention and on the long-term detention of people with learning disabilities and autism. We are also currently working with the Gypsy Traveller community on its experiences relating to cultural identity—and on that work will go.

Doing that more proactive work, and stepping into that space, comes up against and really tests the limits of the commission's mandate. What we can then do is work with the Parliament, as the ultimate guarantor of human rights in Scotland, to ensure that those issues are on members' radar. You are the ones who can move things forward and who can continue to advocate for a stronger set of tools to enable the commission's work. In the past 12 months, we have also shifted our reactive work away from being so reactive to the work of Government and towards being more reactive to the needs of Parliament.

10:15

We often say that we are a creature of Parliament—and deliberately so. Our role is to work with and support you, the Parliament, in your assessment of legislation as it is being passed, and not to provide as much support to Government structures such as working groups and the development of thinking around legislation. That is the Government's job. The role of the NHRI is to be independent and to provide the Parliament with an assessment of what has been proposed and help to keep it right in respect of those obligations.

There has been a shift towards more proactive work. However, even the reactive work of the commission has shifted towards being more in

service of the Parliament than in service of the Government.

**Richard Leonard:** That is interesting.

I know that this question is probably invidious, too, but could you put figures on that split? Is it now 80:20 or 50:50?

**Jan Savage:** It is probably 70:30 proactive to reactive.

It would be brilliant if we as an NHRI had the team to do more and support Parliament in every committee and on every piece of legislation, but that comes down to resource rather than powers. At the moment, the priority with the limited resource that we have is to move more into the proactive space, but it would be lovely if the split were 50:50.

**Richard Leonard:** Thank you. That was helpful.

I should note for the *Official Report* that the first time that Professor O'Hagan and I met was when she was working for the Equal Opportunities Commission and I was working for the GMB trade union. In that respect, I was struck by what your written submission says in relation to your search for new powers, as some of them—the ability to take forward litigation, support legal proceedings and so on—look like the powers that the Equal Opportunities Commission used to have. It is worth noting for the *Official Report* that your long list of asks includes your powers being strengthened so that they cover your being able to

"Provide legal advice ... Raise legal proceedings ... Conduct inquiries in less limited circumstances ... Require and compel information ... Make unaccompanied and unannounced visits to any human rights duty bearer"

and

"Hold public hearings and require duty bearers to be present".

You also ask for a bigger commission, but that is perhaps a separate point.

Could you run us through the difference that those additional powers would make to the work that you do at the moment?

**Professor O'Hagan:** You have just reminded everybody of how long we have been in and around this space, Mr Leonard.

To link the two questions, I note that we currently have an obligation not to duplicate the actions and activities of other commissions. Therefore, at the moment, we are seeking to add value by bringing a human rights lens, framework and analysis to questions of public interest and rights realisation. It is about putting that distinctive human rights framing on things.

As Jan Savage has said, and as, I think, your question is getting at, the additional powers that

we have set out would allow us to move much more towards and be much more proactive in securing rights for individuals and seeking access to justice, remedy and recourse. The limitations of redress and recourse to justice lie behind our requests for the power to provide legal advice and to raise legal proceedings in our own name. It is about bringing access to justice closer to people in Scotland. The incorporation of the international treaties would also go some significant way towards improving justiciability and the domestication of international rights.

We have powers to conduct investigations at the moment, but they are both expansive and constraining at the same time, given the size of our staff team and our resourcing. Given how it is framed in the legislation, conducting an investigation would be all-consuming for the commission, and we would also not have the powers to compel public authorities to comply with it.

There are limitations in each of the powers that we have. "Powers for a purpose" is a well-used phrase in this space. We are looking for additional powers not for the self-aggrandisement of the national human rights institution, but for the institution itself to be more effective in the exercise of its mandate and in the service of the people of Scotland.

**Richard Leonard:** Quite recently, we had a debate in the Parliament about your report on the Highlands and Islands. There is a real sense that people's human rights are not being upheld in a whole range of areas, including access to public services, health services and culture. However, I cannot just go to the Inverness sheriff court and get a remedy for that.

**Professor O'Hagan:** Exactly.

**Richard Leonard:** If you had powers in that area, what more would you be able to do?

**Professor O'Hagan:** The "Economic, Social and Cultural Rights in the Highlands and Islands" spotlight report highlighted the lack of a remedy for people and public bodies' failure to implement, frame, activate and operationalise a human rights framework. The Scottish Government is currently consulting on a mainstreaming strategy, but we have been talking about that over the lifetime of the Parliament since devolution and we have not seen human rights being mainstreamed in the way that public authorities think about and do things.

A combination of incorporation, through one route, and having those rights immediately accessible to individuals in Scotland would make a significant difference to the realisation of rights and the ability of individuals and groups such as those that we identified in the Highlands and Islands, whose access to healthcare and

appropriate sexual and reproductive healthcare has been denied. They also have a right to food, clothing, and, indeed, education and housing—

**The Convener:** I am sorry to interrupt—

**Professor O'Hagan:** I am conscious of time, convener.

**The Convener:** Indeed, but I appreciate that these are all important points, and they are relevant to our inquiry and the debate. Richard Leonard, is there anything else that you want to ask?

**Richard Leonard:** I have another quick, and much more straightforward and practical, question about shared services. One of the things that we are looking at is the extent to which shared services support exists and how it can be enhanced. What are the barriers to greater shared services?

**Jan Savage:** The commission believes in the value of shared services. We share office accommodation with the SPSO and have a formal shared services agreement in place with it; it provides functions relating to our payroll, financial transactions and management accounts, as well as human resources support and so on.

However, the available infrastructure presents barriers. It is brilliant that the SPSO has been able to provide those services for us and that it is of a size and scale for that to be an option. However, if other office-holders were interested in progressing a similar arrangement, there would need to be a frank discussion about where and how that should sit.

There might also be some barriers with regard to institutional independence and the interaction between certain office-holders' jurisdictions. For example, the Scottish Information Commissioner has jurisdiction over all office-holders in respect of freedom of information, so I do not know whether it would be appropriate for us to share data platforms. Some of those elements would need to be considered. Sharing services is a good best-value principle, but the right sort of infrastructure needs to be available.

The next step should be a strategic look at the arrangements and at what services can and should be shared, and how that can be scaled and planned for. Currently, that would be the biggest barrier, as I do not think that such an exercise has been done.

**Richard Leonard:** That was a very helpful answer. Thank you.

**The Convener:** I will now bring in Ash Regan, and I will come back to Lorna Slater if we have time.

**Ash Regan (Edinburgh Eastern) (Alba):** Good morning. The committee is interested in the ideas of accountability and scrutiny, and whether you think that those are robust. The Scottish Human Rights Commission was set up by the Parliament to uphold human rights and to ensure that policy meets human rights requirements.

Last week, the EHRC intervened in the wake of the case involving Sandie Peggie and NHS Fife, but I note that we have not heard from you on that case or on single-sex spaces, nor have we heard from you on toilets in schools, the British Transport Police's intimate search policy or Police Scotland's policies on sex and gender. I argue that women's human rights are very much affected by those issues. How, therefore, are you accountable to the Parliament and to the people of Scotland if you are failing to uphold the standards that provide the very reason for your existence?

**The Convener:** Before we proceed, I ask witnesses and colleagues to be careful about sub judice matters. Answer that question as you wish, and then we will move on to—

**Ash Regan:** My question is not about the individual case—it is about the wider issues.

**The Convener:** I am not challenging the importance of your question or the way in which you asked it. I wanted to make that point for context.

**Professor O'Hagan:** I will not comment specifically on the case that is live just now at the employment tribunal, but I will comment on the wider set of issues that Ms Regan has raised.

We are not the regulator of the Equality Act 2010, which was the basis on which the EHRC reclarified its guidance on single-sex spaces and the protection of single-sex spaces. That is the law. As I am on record as saying recently at another committee meeting, we uphold and seek to protect the law as it is; that is the way in which we function. As a commission, we share a concern to ensure the effective protection of the rights in law to dignity and respect for everyone—

**Ash Regan:** Forgive me for interrupting, but I have set out a number of issues. There are many people across Scotland who genuinely feel that women's human rights are under attack right now across several of those issues, and across other issues that I have not set out. However, I genuinely feel that I am not hearing from the commission on either side of those issues. One way or another, we are not hearing from you, and you are not making interventions on those matters. Do you agree?

**Professor O'Hagan:** We are not making interventions on matters that come under the Equality Act 2010 because we are not the

regulator of that act, and that is not within our remit. That is within the remit of the Equality and Human Rights Commission—

**Ash Regan:** But CEDAW is within your remit—

**Professor O'Hagan:** CEDAW is indeed within our remit—

**Ash Regan:** And the Istanbul convention is within your remit.

**Professor O'Hagan:** As I was going on to say, there are a number of human rights treaties and instruments that the UK has ratified, which we regularly discuss in the commission. As a pluralist commission, we discuss a range of views. We work through the range of relevant human rights instruments that provide instruction on the protection of rights for all, and we take a range of existing legal frameworks into account.

As the previous conversation about the extent to which we are reactive and proactive indicated, we have not been directly engaged by rights holders or public bodies on such matters, and our involvement has therefore not gone beyond providing advice for the legislative process, which predates my time as chair. We have not been engaged in such processes recently.

We ensure that the rights of women are surfaced and foregrounded across our treaty monitoring, and we have recently been engaged in the treaty reporting cycle. Within the next 12 months, the CEDAW process will kick in, and, through that, we will report on the status of the rights of women in Scotland.

**Ash Regan:** With regard to upholding women's rights across Scotland, do you agree with John Swinney that trans women are women—in relation to the points of policy that I have raised—or do you agree with Reem Alsalem that, when it comes to single-sex spaces, sex means sex?

**The Convener:** I am conscious that we are straying into the remit of the Equalities, Human Rights and Civil Justice Committee. I will allow you to answer that question as you wish, but I would be grateful if we could then move on to questions relating to this committee. Perhaps, Professor O'Hagan, if you so wish, you could give an undertaking to engage in written correspondence with Ash Regan and with the equalities committee, as is helpful or appropriate.

**Professor O'Hagan:** That is a very helpful intervention, convener. I am happy to pick up on those issues in writing with this committee, with Ms Regan individually and with the equalities committee.

The question about definitions of women that Ms Regan asked is also being considered by the Supreme Court at the moment. The commission is

alert in waiting for that decision and the implications that it may have for law, policy, duty bearers and the realisation of women's rights in Scotland.

10:30

We are very engaged in the matter. During my tenure over the past six months, the commission has engaged in regular discussion on the issue. We have a watching brief on the Supreme Court, and we are alert to the extent to which case law is instructive on how international human rights standards are interpreted. We can provide further detail on that to the committee, Ms Regan and anybody else who wishes to have it.

Our commission meeting minutes, which are in the public domain, include a series of special commission meetings on the Supreme Court case's progression. As you would expect, we operate under a process of collective responsibility through our governance structures—that addresses the initial part of Ms Regan's question, which was about accountability and scrutiny. As we set out in our written submission, we have multiple internal layers of governance and accountability measures, as well as being accountable under the international frameworks that I mentioned and to the Parliament and, ultimately, the people of Scotland.

**The Convener:** Thank you. Are there any further questions on the committee's remit that you want to ask, Ash?

**Ash Regan:** Yes. Professor O'Hagan, you have set out that there are different scrutiny mechanisms that work together and through which you are accountable. Can you suggest any ways in which your accountability could be improved or other areas that you think could be made more robust?

**Professor O'Hagan:** Any organisation can always improve. The Scottish Human Rights Commission is a learning organisation. I have come into a very dynamic commission that is working through the recommendations from the recent governance review that was discussed and supported by the Scottish Parliamentary Corporate Body, which approved and supported the recommendations and supported the commission in the cultural and structural change programmes in which it is engaged.

From the outset, commissioners have been part of that process. There was a commissioner-led process to introduce—for the first time—a code of governance, which is very clear on collective responsibility, commissioner and staff obligations regarding conduct and engagement, and our accountability to our mandate, the Parliament and rights holders. As we are a learning organisation,

we take how we can improve very seriously. We use our relationships with the European Network of National Human Rights Institutions and the Global Alliance of National Human Rights Institutions to look at best practice elsewhere and incorporate it as appropriate.

Our code of governance was formulated through a wide-ranging exercise, which drew on the Nolan principles and standards that are used across equivalent organisations in the UK and elsewhere to make it as robust as possible, and it is constantly under review. As well as our appraisal system, I am appraised by the independent assessor, and we answer to the Parliament through a regular series of accountability measures.

**Jan Savage:** With regard to parliamentary accountability mechanisms and how they operate at the moment, we are required by statute to deliver a standard annual report to the Equalities, Human Rights and Civil Justice Committee.

We have outlined in our evidence that we think that there could be better interaction between a number of the parliamentary structures. The Equalities, Human Rights and Civil Justice Committee absolutely holds us to account on how we deliver against a strategic plan on outcomes, but that does not necessarily cross over with finance and budget scrutiny.

Therefore, the Finance and Public Administration Committee, the Equality, Human Rights and Civil Justice Committee and the SPCB could perhaps interact better when it comes to mandate issues. As the commission has moved into a more proactive accountability space, such interaction will become increasingly relevant as we look at how to service even our existing powers.

For example, as Angela O'Hagan mentioned, we have powers of inquiry, but we do not have budget to deliver on those powers. We need to make the case to use our powers of inquiry with regard to accountability structures and ensuring that we are making the business case appropriately, delivering appropriately and accounting for that appropriately. Perhaps that is an example of where those three committees could come together a bit more usefully.

**The Convener:** Lorna Slater, you had a last question, and I also have one. I am conscious of the time, so we need brief questions and succinct answers, please.

**Lorna Slater:** In response to Richard Leonard's questions, you said that you cannot duplicate the functions of other commissioners. Does that mean that, as more commissioners are created, your powers will be diminished? I am thinking especially of the justice and the victims commissioner, for example. If its powers are so

broad, does that mean you will have nothing left to do? Because it encroaches into your space, does that reduce your remit?

**Professor O'Hagan:** Our remit would remain the same in relation to the international human rights standards, as well as the realisation of those through domestic human rights legislation, but Jan is probably more across the detail than I am.

**Jan Savage:** That situation would not diminish the commission's mandate. However, we can take the example of our recent work on de-institutionalisation and independent living. Had there been a disability commissioner with stronger powers of investigation than the commission, the commission could not have done that piece of work.

That is a challenge for us as a human rights institution, if we have evidence of problems and concerns. If there were to be an overlap of mandate with another organisation that had a statutory duty to investigate, we would not have any opportunity to influence what that body did. Therefore, our ability to move in that kind of space would be diminished. That would not necessarily diminish the power of the commission, but it would be an additional consideration that might mean that we could not be as agile where we saw concerns emerging.

**The Convener:** Thank you—that was a useful question.

You talked about identifying what to investigate. What are the processes involved in that? Do you do that on the basis of statistical analysis of what is coming through the door, to use a colloquial expression, or on the basis of particular areas of interest? That is relevant to the committee's wider considerations.

**Professor O'Hagan:** As you would expect, we formulate that in a range of ways. Our priority-setting and decision-making processes are published on our website, again, to provide full transparency on the work of the commission. We use a range of data sources: our own evidence base, as generated through our treaty monitoring work; our monitoring of correspondence to the commission; and the wider availability of a range of secondary data—whether qualitative or quantitative—from a range of sources.

For example, our strategic plan contains a commitment to focus a spotlight on poverty. From a human rights perspective, how do we add value? Poverty is endemic and systemic in Scotland. Many organisations are engaged in poverty alleviation and campaigning around poverty, but what would our approach be?

In consultation with members of the commission, members of the staff team and

through a range of participatory processes, we are working through what would be the most effective approach to surfacing poverty in a human rights framing and how that would add value. In that process, we would draw on a range of sources of evidence, including, increasingly, through our participatory approach. Our participation strategy will be published for public consumption and enjoyment next month.

**Jan Savage:** Although our mandate prevents us from providing advice to individuals, individuals get in touch with the commission, as a public body, and we are open to that. We receive letters and correspondence. We received a letter recently from Mr Leonard's office in respect of human rights in a place of detention, and we receive letters from prisoners and so on. We cannot take on such cases—we signpost people elsewhere—but we listen, we notice and we record the trends and the themes. That provides the commission with useful evidence on where there might be violations of human rights that no one else has seen. That is a fundamental part of the role of the NHRI; indeed, that is why our spotlight projects are called "spotlights"—they shine a light on those areas where people are furthest away from access to justice.

I just wanted to explain that, although we cannot provide advice, our doors are not closed. As well as hearing from people, we speak to people proactively, and we are doing more of that through our participation strategy. Even when we cannot take on cases, we monitor those issues.

That approach has in no small way informed part of next year's priority areas. We have been looking at orders of lifelong restriction, for example; we had not considered them as part of the spotlight report, but as a result of the publicity around it, people concerned by the matter have contacted the commission. That, in turn, has raised awareness at commission level of that particular policy matter.

**The Convener:** That approach has also been demonstrated in your recent work on, for example, Cables Wynd house in Leith in my constituency, which was recently reported on.

Is there anything that you have not had a chance to say and which you want to leave us with, or have you managed to cover everything?

**Professor O'Hagan:** I have a comment that relates back to Richard Leonard's questions on shared services, and it is about the role of the Scottish Parliamentary Corporate Body, how well resourced it is and what strength it has to provide some of those shared services and organisational support to office-holders.

I highlight the fact that the SPCB office-holder liaison function has been reduced from three staff



members to one over the past 10 years. When it comes to some of the procedural and process gaps, it would be useful if further conversations came out of this committee with office-holders, the SPCB and the Parliament's corporate function on how best the Parliament can support the organisations that it has created through the SPCB's functions.

**The Convener:** Thank you.

Perhaps I can clarify a few things for the sake of completeness. On the victims and witnesses commissioner, that proposal is still being considered as part of stage 2 of the Victims, Witnesses, and Justice Reform (Scotland) Bill.

During the course of the meeting, some undertakings were given with regard to specific points that were made by Ash Regan, and on the committee's work, in response to Lorna Slater. I am grateful in advance for our being sent that written correspondence.

Lastly, thank you both very much for your written submissions, for your evidence today and for your time.

I suspend briefly to allow for a changeover of panels.

10:42

*Meeting suspended.*

10:48

*On resuming—*

**The Convener:** Welcome back. I am pleased that we are now joined by Nicola Killean, who is commissioner, Gina Wilson, who is head of strategy, and Nick Hobbs, who is head of advice and investigations, all from the office of the Children and Young People's Commissioner Scotland. Thank you very much for being with us and for sending your written correspondence in advance of the meeting.

As I have done with all our previous witnesses, I will move straight to questions. I would be grateful if you could set out what you consider to be the purpose of the Children and Young People's Commissioner Scotland and how the role differs from those of ministers, MSPs and other bodies. As I said earlier, we all have experience and an understanding of that, but it would be helpful for us to hear your position.

**Nicola Killean (Children and Young People's Commissioner Scotland):** Thank you, and good morning. The office of the Children and Young People's Commissioner Scotland was established by the Parliament to promote and protect the rights of all children and young people in Scotland.

The specific functions are set out in the legislation and in the committee's papers, but fundamentally my role is about holding the Government to account on its human rights obligations to children and young people.

That is obviously distinct from the roles of ministers, who are key duty bearers. My role is, and was always intended to be, complementary to that of MSPs. You have powers that I do not have—the principal one being the power to legislate—and my office has been given specific powers and functions that MSPs do not have, the most recent example of which is the power to take litigation.

The Parliament created the office because it recognised that children and young people cannot vote. They do not have voting power or economic power and consistently have to make their way through a world that is created by adults with decision-making processes and structures that are designed primarily for adults. The Parliament created our office to enhance decision making in the best interests of children and young people, and it required there to be a commission just for children that is focused exclusively on children's rights issues.

My work is supported by a specialist multidisciplinary team, and the Parliament has given me a range of tools to help me. I monitor and review the law, policy and practice in terms of how children experience their rights, and I do so with children and young people. I carry out investigations and, which is most important, I must pay special attention to the children and young people who are the furthest away from being able to express their views and enjoy their rights. Crucially, my priorities and those of my office are driven by children and young people.

**The Convener:** That was really helpful and well put—thank you. How do you perceive the current role of the SPCB supported bodies in enhancing public trust and confidence—in your case, as it relates to children and young people—in public life in Scotland?

**Nicola Killean:** The creation of the office was a clear message from the Scottish Parliament to children and young people that their rights matter as much as adults' rights. It is a symbol to children and young people of the public trust that the Scottish Parliament wants to instil in them, but it is not just a symbol: it comes with powers and the ability to hold those who are accountable to account.

Children and young people who are the furthest away from enjoying their rights can feel extremely marginalised and alienated and, sadly, many children and young people have already experienced multiple rights breaches. We have the

resources and play an essential role in helping those children and young people to ensure that their experiences are documented; that those experiences are used to hold the people who are responsible to account; and, most important, that Scotland learns from those mistakes and can drive forward positive change.

So far in my time as commissioner, I have already met many children and young people who, sadly, have shared harrowing accounts and stories of rights breaches. They have shared those with me so that I can document their experiences and share them with you so that, together, we can hold people to account. One of the best parts of my role is that, when I tell children and young people that my role is independent from the Government and that the Parliament has given my office the powers for them, they lift up their heads and realise the importance that has been placed on their rights.

**Murdo Fraser:** I think that you were in the room and heard the previous panel's evidence. I will ask you exactly the same question that I asked the Scottish Human Rights Commission. For context, the committee's remit is to look at the gaps and overlaps between existing commissioners and the case and criteria for establishing new ones. You will be familiar with a number of proposals that are in the pipeline for new commissioners. For example, there are proposals for new commissioners for the disabled and for older people. Given your role as the Children and Young People's Commissioner, do you think that you could make any argument against there being another commissioner for either of those groups?

**Nicola Killean:** As I expressed in my opening remarks, children and young people cannot vote, which is fundamental to why the commission has been established. It recognises that there is an inherent power dynamic that children live with: they do not have power. They are not able to reach out and make their voices heard and known in the ways that other constituents can. You have heard some compelling arguments about the ways in which other bodies could be enhanced or supported to strengthen adults' opportunities and for them to have greater accountability for rights breaches, but there is a very specific reason why the Parliament has given children and young people their own office-holder.

**Murdo Fraser:** That was a very clear answer. Do you have any views on the criteria for establishing new commissioners, including on whether those have been properly followed in the past or whether they need to be adjusted?

**Nicola Killean:** We said in our written submission that we think that the criteria are generally quite strong and that it is important that they are adhered to in assessing any proposals for

new commissioners. We added our thoughts on additional considerations, such as whether a new commissioner needs to be an independent office-holder—in my experience, independence is absolutely fundamental to the ability to do the role—whether there is opportunity within existing office-holders' remits and whether there are opportunities to strengthen the remits or functions and powers of existing office-holders.

We noted in our written submission, and in our previous one on the issue, that really careful attention to the legislation that underpins the role is needed. There can actually be helpful overlap between office-holders—the ability to collaborate and to combine strength can be useful—but, when the legislation is written, it is important that there is nothing that would be a duplication or that would inhibit the possibility of office-holders working together.

**Murdo Fraser:** With regard to the relationship between your office and the Scottish Human Rights Commission, your office existed first and the Human Rights Commission came later. If we had already had a human rights commission, would we still have needed a children's commissioner?

**Nicola Killean:** Yes—absolutely. The Scottish Human Rights Commission is an adult-focused organisation. The Children and Young People's Commissioner Scotland is a child-focused organisation that was created to put children's priorities first. That applies to everything about my office. The two organisations share international human rights expertise. Children live their lives in a community, but they experience that community differently as a child or a young person. They have different services and different experiences. Although my team holds international human rights expertise, we also hold expertise about children's services.

Ultimately, it is for the Parliament to decide but, yes, absolutely, in my view, children and young people need a space. My office is their space that has been held for them and protected for them in recognition of the inherent power imbalance in society. They should not have to go to one national organisation and again navigate their way through it to find their space. My office has been created with a unique identity to make it child friendly. We have a child friendly office building. We go out to see children, and every single member of my team has to be able to participate in, and deliver, work with children and young people. Everything about the office has been designed, created and consistently improved to ensure that we reach the maximum number of children and young people.

**Murdo Fraser:** Thank you.

**The Convener:** Gina, do you want to add to that?

**Gina Wilson (Children and Young People's Commissioner Scotland):** Yes, please. Mr Fraser asked our colleagues in the SHRC whether there are any policy reasons why the children's commissioner could not be merged with the SHRC, so I would like to give an answer to that.

Let us be clear that that would be regressive in terms of children's rights. We have just passed the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. I cannot imagine a child rights impact assessment saying that it would progress progressive realisation of children's rights to take away a body that has children mainstreamed throughout its entirety and simply have part of that in an adult-focused organisation. That would create a significant disadvantage for Scotland within the UK, as it would be the only UK nation that did not have a dedicated body for children and young people. You would have to justify to the international community why Scotland had taken that step. There is no evidence base for doing that. The stakeholders, who in our case are children and young people, are not calling for that change, so what would be the evidence for such a move?

It is important to say that you heard from the SHRC how much it is struggling to cover its mandate with the resource that it has. Can you imagine what would happen if you added children to that picture? I will give a specific example. If the SHRC had come first and the children's commissioner was simply part of it, you would not have a UNCRC incorporation act, because incorporation of all human rights treaties would have been the priority, and we see where the proposed human rights bill currently is. There are very real policy reasons for the current position.

**The Convener:** In defence of my colleague Murdo Fraser, when we ask these questions, we are not doing so from the position of making a proposal or giving a set view. We ask them to cover the remit of our committee and to ensure that we obtain the evidence that we need to take the work forward. In that context, your examples are helpful to the committee, Gina. Murdo Fraser's questions and the response that we have received have been helpful, so thank you for adding that.

11:00

**Nicola Killean:** It would be helpful to add that, on a day-to-day basis, we have an excellent relationship with the Scottish Human Rights Commission. Although we are here to explain to you why it is absolutely essential to retain a commission in its fullest form for children and young people, it is important for you to also know

that we can come together and create work when we can see that that will be beneficial.

I have two specific examples of that. Last year, we co-commissioned research on where children, young people and adults can access human rights advice across Scotland. Most recently, we wrote a joint letter about the continued need for a legal framework for the use of restraint across Scotland. Those two examples show how we can usefully have overlap and come together to use our combined forces.

**The Convener:** Thank you for those helpful insights, examples and responses.

**Lorna Slater:** We have just heard from the chair of the SHRC, who described their role—or, rather, I described it to them, and I think that they signed up to what I was saying—as being almost a mirror image of what the SPSO does. The SHRC looks at systemic, almost preventative-level advice, whereby it investigates and researches a system or a group and it creates a report and gives advice on that, whereas the ombudsman reacts to individual cases of complaints that come in.

As well as reactive work, do you do that kind of preventative research and advice for broad groups? That could be for children in care—I do not know what groups you have been looking at. Do you take on specific cases or the investigation of any particular breaches?

**Nicola Killean:** We are both proactive and reactive in the nature of our work. We have a strategic plan, which, as I mentioned earlier, is set by the priorities of children and young people. We undertook extensive work through consultation and research with children and young people, in which we gathered data from them and set priorities that were driven by them.

We are also responsive to what is happening. In terms of taking on cases, for example, we have our new strategic litigation powers, which I will move to Nick Hobbs to come in on. It will give you a great demonstration of how we work both proactively and reactively.

**Nick Hobbs (Children and Young People's Commissioner Scotland):** I can talk about both investigations and litigation, if that would be helpful. The investigation power that the office has had for some years allows for really significant and substantial pieces of work. Investigations can last for anywhere between six and 12 months, depending on the issue that we are looking at. That work is driven by the priorities of the office's strategic plan, which is itself informed by children and young people and by our assessment and analysis of what the most pressing human rights issues are for children. That assessment draws on the concluding observations from the UNCRC and intelligence that was provided by other bodies,

children and young people, parents, advocates and lawyers.

The office's very first investigation was on restraint. It was a substantial piece of work that continues to have an on-going impact on the debate and discussion in the Scottish Parliament around policy and legislation. Our most recent investigation is into police use of force and is running at the moment. That is an important way of ensuring that Police Scotland is held accountable on its human rights duties and that it behaves and acts in a way that is compliant with human rights. The investigation powers are really important.

The litigation power, which came along with the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, is probably the most substantive and significant change to the office's role and remit since it was created back in 2003. We made the decision that we would not seek additional funding for that power through the legislative process. Instead, we decided to reprioritise our internal resource, which we did because, at that point, the scale and scope of the litigation that we would engage with was not clear. That is now becoming much clearer, and we are working carefully to ensure that we get the most out of the resource that we have available to us.

We are about to complete an internal audit on the way in which we resource our litigation powers. We are putting one of our legal officers through the solicitor advocate course, which will allow us to save money on instructing counsel.

We have taken the view that we will get the biggest bang for our buck out of the existing resource. Should we then at some future point have to come to the Parliament and ask for more money, it will be on the basis of a really sound and robust case, rather than on a speculative business case.

**Lorna Slater:** Do you take on cases like the ombudsman does, whereby you can give individual redress when something has gone wrong?

**Nick Hobbs:** Our power is systemic and strategic, although the litigation power relates to individual cases. For example, if we intervene in a case that is brought by an individual child or a group of children and young people, our focus is not to represent those children but to drive a systemic or strategic change in law.

**Lorna Slater:** There is no specific overlap with the SPSO, although, presumably, they could do similar things for a group of people of any age.

**Nick Hobbs:** We have an individual investigation power, but it is constrained by law.

We are obliged not to use it in a way that duplicates the function of another organisation. The obvious example is that, if something falls within the SPSO's remit, we would, as a matter of law, not be able to investigate it.

**Lorna Slater:** You would not be able to do that. That is really interesting.

On resourcing and what you have just said about your powers, it seems that you have more powers than the SHRC in relation to the group of humans who are children, who are your responsibility, because the SHRC has only a limited researching power. You have a lot more powers in that respect. One of the concerns that I heard in Gina Wilson's tone, in relation to Murdo Fraser's questions, was around the idea that you would get sucked into the SHRC, because it has much less power than you do.

There is something around envisioning what you do, but for everybody, if you like. We have this perceived, or real, gap, because we do not have these powers for disabled people or older people. Could we imagine a situation in which you guys are the exemplar? You do this for children, but, in fact, everybody deserves it. Is there any reason why, with dedicated resource, expertise and the right responsibility for leadership, that could not be duplicated?

Another witness talked about a hub-and-spokes model, with common resources for HR, offices and so on, and with you having responsibility for children, for example, under some sort of broader human rights structure. I am imagining a complete restructure in relation to human rights, whereby we give to other underrepresented groups of people the same excellent service that you give to children. Is there any particular reason why that would not work, if we copied your remit elsewhere?

**Nicola Killeen:** 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.

We are clear that the children's commissioner should not be part of another organisation and that it should be a distinct organisation for children. I hope that that was clear in our opening remarks.

We support what the SHRC is saying about the fact that its powers do not enable it to deliver on the mandate that it has been given. I hope that that is clear in response to the question. I am supportive of some of those asks, particularly where the SHRC is asking whether there is an opportunity to visit that through this committee. However, we do not want that to be taken forward in a way that inhibits at all my ability to be

independent for children, deliver for children and set my priorities for children.

I recognise what Lorna Slater said about the fact that, as an organisation, we feel as though the mandate that we have been given is supported by the legislation, which gives us the right powers to enact our functions.

**Lorna Slater:** Independent of whom? I do not think that there is any disagreement that you need to be independent of Government and of Parliament, but who else do you need to be independent from?

**Nicola Killean:** At the moment, as a commissioner, I take my direction from children and young people. I would not want to be in another organisation in which those priorities were set against other priorities—perhaps those of adults.

I will give you a concrete example. The Scottish Human Rights Commission and the Children and Young People's Commissioner Scotland have two different strategic plans, with different priorities. They should have different priorities, because they are set by two different groups of stakeholders. The independent human rights model and the independent children's rights model need to be independent of the Government. There must be the ability to work and to set the direction. However, for me, particularly, it is about being led by the priorities of children and young people.

**Lorna Slater:** That is really clear. You need the ability to set those priorities. I am not clear that that is dependent on any particular organisational structure, but it is a really clear requirement: to be led by the needs of children and young people.

**Richard Leonard:** Good morning. I want to pick up the points about powers, which you might be able to help me with. As I understand it, you have investigatory powers in relation to the human rights of groups of children. You now also have investigatory powers in relation to human rights in individual cases. You said that the prosecution of individual cases rests with the SPSO, but, when the SPSO came to see the committee, she explained that the office has no enforcement powers. It can make recommendations to public bodies—even to the Parliament and to Governments—but there is no binding requirement for its recommendations to be followed. Is that the model that you want?

**Nick Hobbs:** We do not have enforcement powers as part of our investigation function either, unfortunately. If you are offering them, I will take them, quite honestly.

**Richard Leonard:** Imagine it, Mr Hobbs. Would you like them?

**Nick Hobbs:** Yes.

**Richard Leonard:** That is the collective view of the commissioner and the office.

**Nick Hobbs:** Yes. We have a power to require organisations to respond to our recommendations. We can require a response to an investigation report, but that is obviously not the same as an enforcement power. In some cases, there is potentially a route through to the litigation power. Depending on the subject, it might be the case that we are able to move from an investigation to legal proceedings under the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, which has been a really important and valuable addition to the office's power and structure.

**Richard Leonard:** That is helpful. One of the things that we are asking every witness who appears before the committee relates to the distinction that is drawn between being a regulator and being an advocate. People say to me that the Children and Young People's Commissioner is an advocacy commission. How do you define yourself?

**Nicola Killean:** We define ourselves as an independent children's rights institution. We do not recognise the term "advocacy commissioner". Although I am a champion for children's and young people's human rights, the role, remit and powers that have been allocated to us as an organisation go well beyond that. It is a dual role of promoting, and also protecting and holding people to account.

**Nick Hobbs:** Where we seek additional powers—it relates to exactly this question—relates to the fact that the power to require a response from the Government or from another public body is very specific to the investigation power. We seek a broader power in relation to, for example, an annual report in order to be able to make recommendations in a report that is laid in Parliament, and to then require the Government, in particular—but potentially also the Parliament—to respond to those recommendations.

**Richard Leonard:** I will go back to the regulator and advocacy distinction. Do you see yourself as having a regulatory role?

**Nicola Killean:** We look at regulators, and we will promote to them—and look at how they are enabling the delivery of—a children's rights approach to their work. For example, we are having on-going discussions with His Majesty's Inspectorate of Education in Scotland. There is a huge amount of work happening around education reform, and I have set up regular meetings to say, "I can see that you are about to really look at the framework for assessing educational impact in schools. What is the model? How are children and young people involved in that?". Therefore, we

have a relationship with regulators that oversee bodies with roles that relate to children and young people, but we do not have a specific regulatory remit.

**Richard Leonard:** That distinction is well made.

The other question that I want to put to you, which, again, is one that I put earlier to the Scottish Human Rights Commission, is about shared services. From your perspective, are there obvious barriers that are preventing greater sharing of services between the various SPCB supported bodies?

**Nicola Killean:** I hope that the committee is aware that we are involved in shared services as well. We are co-located in Bridgeside house with multiple other office-holders, where we benefit from facilities management and health and safety support. My head of corporate services has led on some shared services relating to the procurement of payroll services for multiple office-holders.

11:15

On barriers, looking forward, I am very open as an office-holder to the possibility of more sharing of services. Office-holders have been meeting regularly as a group to discuss that. My head of corporate services is a member of the office-holders shared services network, which is a group of peers who look at that on an on-going basis.

As you heard earlier, it is about being clear where the management and leadership model should sit. At the moment, there are three or four different ways in which that is being delivered through the Scottish Parliamentary Corporate Body. The SPSO provides some shared services, and individual office-holders are proactively taking forward opportunities as well. If there is to be progression, there needs to be clarity about whether the organic model works and whether that will continue. There might be a need for clarity about where that should sit in the longer term for office-holders. There is also the question of capacity for all of us—there is always more work to be done to deliver on our core purpose and mandate.

As I said, there needs to be clarity about where the leadership and management model should sit. Also, some feasibility work needs to be done to understand the principles under which any additional shared services should be taken forward. There needs to be the capacity to prioritise work. When we meet children and young people and hear about serious rights breaches, we want to be able to progress that work. We need to be able to balance all that and have an appropriate resource to take forward that work.

**Richard Leonard:** Okay—thank you very much.

**The Convener:** To stick to the topic that Richard Leonard asked about, I am conscious that your powers were extended in 2014. Mr Hobbs has given some indication of other powers that he thinks might be useful for you to have. If, following this meeting, you wanted to give a formal position or further consideration—in a similar way that the Scottish Human Rights Commission did in its written submission—on what other powers might be appropriate, useful, helpful or in the public interest, please feel free to follow that up in writing.

**Ash Regan:** The committee has a strong interest in accountability and scrutiny. Will you say a bit about how that is working? Do you think that it is effective? Are you being held to account in a robust manner?

**Nicola Killean:** There are multiple layers to our accountability. We have internal and external audit. We have our key parliamentary committee—I have had an annual scrutiny session with it since I have been in post. I have an annual session with SPCB leadership, and I also have on-going meetings and an annual evaluation of my work. I have a young advisers group that we meet monthly. They represent young people from across Scotland. I update them, or my team updates them, on work that is progressing, and they can challenge us, ask questions and probe us as well. We also have very strong and open relationships with the children's sector and civil society.

There are formal accountability and scrutiny mechanisms that apply to me, and there are also less formal but very important mechanisms for holding us to account. So far, my experience of that has been positive. I have found it meaningful, helpful, probing and, in lots of ways, validating. We have identified that it is challenging for MSPs, committees and the general public to have a level of clarity about our work. We have mentioned before that we are dynamic. We have a strategic plan that we are proactively delivering on, but we also respond and react to pieces of work, parliamentary business and other things that are happening.

We have identified two areas where we think that we can improve and make it easier for you to scrutinise us. Those are by developing our annual report and by developing an impact framework. I will pass over to Gina Wilson, who has been leading on that work and could describe that in more detail.

**Gina Wilson:** As the commissioner has described, children and young people determine our priorities, and our strategic plan outlines how we assess our impact, so we are trying to be transparent in that regard. However, we absolutely recognise that it can be difficult for MSPs and for children and young people to know what the

indicators of success look like for the type of work that we do.

We have started what I am finding to be quite an exciting piece of work with our young advisers to build a child-friendly impact framework, so that children and young people know whether we are doing our job well. We plan for that framework to be public and transparent on our website, and I hope that our subject committee might use that as a means of scrutinising us, because the indicators of success will come directly from children and young people.

**Ash Regan:** That is helpful. Thanks for putting that on the record.

We will need to be brief, because we are running out of time, but are there areas in which scrutiny could be improved or in which the Parliament or the SPCB needs to do better? Feel free to say whatever you like.

**Nicola Killean:** I will comment on the regularity of scrutiny. I had my first annual scrutiny session last year, and I am about to have my second one this year. I do not believe that such committee sessions always took place, so we should be clear about the need for those to be held regularly. We hope that, if we can be clearer about how our work is progressing, that will help the committee with its questioning and how sessions unfold.

We want to create even stronger ways in which children and young people can be clear about what we are doing. The external feedback loop, which is still in development, is about ensuring that not only our young advisers but young people across Scotland and other organisations can be clear about what we are working on, why we are working on it and how the work is progressing, so that there are opportunities over the longer term.

**Ash Regan:** Thank you.

**The Convener:** In relation to scrutiny, I was a member of the Scottish Parliament's Education, Children and Young People Committee when you gave your first annual report. In recent times, you are the only SPCB supported commissioner from whom I have heard evidence in a committee—actually, the Scottish Biometrics Commissioner came to a Criminal Justice Committee meeting a few weeks ago. Could such sessions be more robust and more probing? For MSPs, those sessions are sometimes more about hearing about your work, which is important, but could MSPs provide more scrutiny during them?

**Nicola Killean:** I found the session to be helpful. It took place at an interesting time, because we had just published our four-year strategic plan. I expect that this year's session will have a different flavour, because last year's one was about how the plan was formed and why we

drew certain conclusions, whereas this year's one will be more about whether we are doing what we set out in the plan. The sessions will evolve over time.

As office-holders, we have the responsibility to provide MSPs with written evidence in advance and to provide the link between our functions, our powers and the work that we deliver. That enables MSPs to consider the questions that they want to ask us. So far, I have had a genuinely positive experience in that regard.

**The Convener:** Such answers are helpful as we consider our recommendations to the Parliament.

In your helpful written submission, you reflected that you thought that your audit requirements were “disproportionate”, given the size of your organisation. Will you say a bit more about that?

**Nicola Killean:** I absolutely value audit, and I recognise that it is an essential part of ensuring public trust in how I, as the accountable officer, manage public money. However, as a group, the office-holders have had conversations over the past year—I have been part of them—about the way in which audit is done, the type of recommendations that are allocated to us and whether there is an opportunity, through this committee, to ask questions. Are the requirements of the right scale? Are we getting the right type of recommendations?

I will give two examples to help to demonstrate that. Since I have come into the organisation, we have had one external audit and two internal audits a year. We have very small corporate services teams, and those audits provide quite a lot of low-level recommendations that we need to deliver within a certain timeframe. Personally, I would like our internal audit to be once a year, which would free up my team to work on other improvement projects. For example, at the moment, we are trying to change our information technology platform, because we believe that the change will be more effective and save us money in the longer term, and we are trying to conserve time for that. As the accountable officer and the head of the organisation, I am juggling the different levels of recommendations with the work that I can see could be developed.

On the nature of the recommendations—I have spoken with some of the other office-holders about this—some of them are quite generic, so they are not completely tailored to the organisation. For example, we are all consistently asked to do a medium-term to long-term financial plan. We have a four-year plan, which includes a projected budget. We have a single source of funding, from the Scottish Parliament, and we cannot earn income, so I question the relevance of that type of recommendation, given that there is work involved

to deliver such recommendations and that it must be done within a certain timeframe. Is there an opportunity to look at that as part of the review process? I understand that audit is essential as part of the scrutiny of the organisation.

**The Convener:** I appreciate that that point might be relevant to other commissioners, so that is helpful to the committee's work, which is likely to include hearing from Audit Scotland in the weeks ahead.

I am conscious of the specific areas of focus that you have engaged in and the impactful nature of your work. For example, there is the work around free school meals—Gina Wilson, I know that you have been very involved in that—and the work around Scottish football and young people, part of which involves the petition on improving youth football in Scotland, which I think is the longest-running petition in the Scottish Parliament's history. Nick Hobbs, you have been engaged in that work, and, commissioner, you are across all that, too. Do you want to add anything? This is almost related to my first question—I am thinking about the specific things that you are involved in, the importance of that work and the impact that you can make.

**Nicola Killean:** I would like to make a couple of comments that go back to where we started, which was the purpose and the remit of the organisation and the fact that the Parliament recognises the inherent power imbalance for children and young people. All the examples that you have given are very specific to children and young people. They are about their rights issues and the things that affect them. You recognise that that power imbalance still exists—that has not changed. You created this office to work specifically on those issues over the long term. The issues need long-term, on-going commitment—through commissioner cycles—in order that we can continue to have the office with the expertise to do that work.

As the evidence sessions unfold in the coming weeks, you might hear from other people—potentially academics—that it might be technically possible to merge this organisation with others. Some people might have opinions about that—they might think that you could make some savings by doing that. The main comment that I want to finish with is that, if you find yourselves ever considering that, please prioritise these questions throughout the inquiry. Is that better for children and young people? Is that in their best interests? Will it progressively realise their rights? The children's sector, children's rights experts and children themselves are not calling for any consideration of a merger. They are not calling for change or reduction—quite the opposite.

This model has delivered strongly for Scotland, and I really hope that this inquiry recognises that fact and the fact that some of the models elsewhere were proposed based on this model. I hope that the committee and this inquiry will support the continuation of this office in its fullest form for children and young people in Scotland.

**The Convener:** Thank you. Is there anything else that you have not had the chance to say?

**Nicola Killean:** No, thank you.

**The Convener:** Thank you for concluding in that way. Thank you all for your engagement, your written submission, your time and participation today and for answering our questions.

I will now conclude the public part of our meeting. As the committee agreed previously, we will move into private session to consider today's evidence.

11:28

*Meeting continued in private until 11:40.*



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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