



OFFICIAL REPORT
AITHISG OIFIGEIL

SPCB Supported Bodies Landscape Review Committee

Thursday 20 March 2025

Session 6



The Scottish Parliament
Pàrlamaid na h-Alba

Thursday 20 March 2025

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SPCB SUPPORTED BODIES LANDSCAPE REVIEW COMMITTEE
7th 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:

Dr Ian Elliott (University of Glasgow)

Dr Matthew Gill (Institute for Government)

Dr Ruth Lamont (UK Parliament)

Alison Payne (Reform Scotland)

CLERK TO THE COMMITTEE

David Millett

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

SPCB Supported Bodies Landscape Review Committee

Thursday 20 March 2025

[The Convener opened the meeting at 09:32]

Decision on Taking Business in Private

The Convener (Ben Macpherson): Good morning, and welcome to the seventh meeting in 2025 of the SPCB Supported Bodies Landscape Review Committee. I have received no apologies for today's meeting. The first agenda item is a decision on taking business in private. Do members agree to take item 3 in private?

Members *indicated agreement.*

SPCB Supported Bodies Landscape Review

09:32

The Convener: Under agenda item 2, the committee will take evidence from academics and researchers. I am pleased to welcome Dr Ian Elliott, senior lecturer in public administration at the University of Glasgow; Dr Matthew Gill, programme director at the Institute for Government; Dr Ruth Lamont, reader in child and family law at the University of Manchester, and UK Research and Innovation thematic research lead at the United Kingdom Parliament; and Alison Payne, research director at Reform Scotland. I am grateful to you all for your written submissions.

We move directly to questions, and the first one is quite wide and generic. Would you like to relay or emphasise anything about what the purposes of the Scottish Parliamentary Corporate Body-supported bodies and commissioners are or should be? Perhaps Dr Elliott could start.

Dr Ian Elliott (University of Glasgow): A key purpose of the bodies is to support the Parliament with scrutiny in particular policy areas and to provide a long-term perspective and significant expertise in areas that might be fairly technical or legalistic. A classic example is the particular expertise of the chair of the Scottish Human Rights Commission. Commissioners also provide a long-term view. Having a commissioner who is appointed and who then works over a period and develops skills and expertise in an area provides a real advantage.

The independence of the commissioners is also important, particularly in a unicameral system such as we have in Scotland, because they can provide an independent and unbiased view on aspects of policy. Therefore, commissioners' scrutiny function, expertise and long-term perspective are really valuable aspects for the Parliament to be able to draw on.

The Convener: Do any examples stand out for you?

Dr Elliott: I do not want to say that one commissioner is better than another. I do not want to have favourites—

The Convener: I appreciate that.

Dr Elliott: —but you can see from the work of the existing commissioners that there are areas of particular expertise. I mentioned the Scottish Human Rights Commission, but the Scottish Information Commissioner also has a crucial and valuable role to play in supporting the Parliament.

That is my view on the purpose of commissioners and the value that they bring.

Dr Ruth Lamont (UK Parliament): I have more expertise in relation to the English system, but I can provide the committee with an insight into the comparable bodies. I support Dr Elliott's point about scrutiny. Because commissioners can design their own process of research and engagement with the constituency that they represent, they can provide a long-term view. In Scotland, you also have commissioners that have comparable bodies that are important globally—I am thinking of the Children and Young People's Commissioner Scotland in particular. There is a children's commissioner in each of the four nations, but there are also children's commissioners or equivalent ombudsmen across the European space and more globally.

I agree with the point about the Scottish Information Commissioner. Where a commissioner has a particular framework to work with and enforce, they provide an environment in which that can be done and supported in an appropriate way. They can put out information and provide information to constituents that it is difficult for the Government to do otherwise effectively.

The question of what commissioners should be is much broader. I am really amazed and impressed that the Scottish Parliament is asking the questions that nobody else has: "What are you trying to achieve? Are you trying to provide an environment in which there is a body that helps to enforce complicated frameworks, such as human rights and data protection, or are you providing representation for a constituency that otherwise struggles to have traction in a particular framework?" I am thinking of victims and witnesses commissioners, who do not have those frameworks but who represent those interests at a higher level. For me, that is the question of what these bodies should be.

The Convener: That is really interesting and helpful.

Dr Matthew Gill (Institute for Government): Stepping back from the question, your challenge, in a way, is to identify when you should not have a commissioner or a body. That being the case, do you want to define the set of what they are for as narrowly as possible?

One could argue that, in the case of the Human Rights Commission and the Information Commissioner, their independence from the machinery of government and, to some extent, from parliamentarians themselves is quite important with regard to the way that they do their work and look at issues. I agree that giving a voice to underrepresented groups in policy debates is

important; that is why you might want a particular representative.

The reason why I try to set it out narrowly is that, in almost any policy debate, there could be a role for bringing in experts to give evidence. Therefore, you need criteria beyond that to say where the threshold is above which, to do a thing well, you do not just need to call in expert witnesses or recruit experts into Government but you instead need a commissioner to give a degree of independence or to advocate for people who would not otherwise be represented in a policy debate. You need to say when it is worth setting up that particular kind of office. You then need to be clear about how the role differs from that of a regulator or political representative.

In that context, it is worth thinking about a couple of things that you might say that commissioners are not for. You might say that they are not to do time-limited things, because that would be what you might use an inquiry for. Commissioners are not to hold Government to account in a general sense, as that is the role of the Scottish Parliament. That means thinking about whether there is a specific role that a commissioner would have above and beyond the general scrutiny and holding to account that you perform.

I would also draw a distinction between bringing unrepresented or underrepresented groups into the policy debate versus going so far as championing a cause, which might not be the role of a commissioner that is established by Government. Obviously, the final point would be not to set up a commissioner just to demonstrate the importance of an issue or that action is being taken on it.

The Convener: Thank you—that was helpful and was good context for the rest of our discussion.

Alison Payne (Reform Scotland): We would separate the advocacy and the integrity bodies and look at them differently. The integrity bodies are vital for transparency and accountability and for holding Government and Parliament to account. There is that element of holding the broader democracy to account.

The advocacy roles bring up a different question. The Children and Young People's Commissioner Scotland is slightly different. We mentioned in our written evidence that children and young people are an underrepresented group, as they are not part of the electorate, so that commissioner is different and is about ensuring that that voice is heard.

However, there is a danger if one underrepresented group gets an advocate. Where do you draw the line? There are an awful lot of

underrepresented groups. Do you have an advocate for jobseekers, for example, or for various minorities or people who are struggling to be heard? That is a broader question. If there are an awful lot of underrepresented groups in policy making and those voices are not being heard, is that more of a failure of Parliament and what is going on here? As has been mentioned, creating a commissioner can be seen as a great win and an easy win, but will it do what is necessary, and will we then hear the views?

Obviously, part of the reason for having this discussion is about the financial implications of commissioners. The broader context is that many third sector advocacy groups are having their budgets cut because of local government cuts and things that are happening elsewhere. There seems to be an imbalance in creating an SPCB-supported advocate when third sector groups that are out there on the ground trying to deliver for individuals are having their budgets cut.

We look at the bodies in two separate ways. There are two different roles, and what we would say about the broader issues differs depending on which role we are talking about.

The Convener: Thank you. Again, that is helpful for our discussion. To start that, Lorna Slater wants to come in.

Lorna Slater (Lothian) (Green): I have a supplementary question, although I am interested in the points about the separation by advocacy and integrity, so I will come back to that later.

I want to follow up on something that Dr Lamont said, although everyone alluded to this. One challenge that we have in the advocacy space is that a new advocacy body represents a failure of existing bodies, and it is not clear that a new body will succeed where all the others have not.

Really, the success or otherwise of an advocacy body, whether it is a commissioner or something else, is to do with its level of influence and how well the Government listens to it. Another challenge that I would raise with, for example, the proposal for a future generations commissioner—whose purpose I of course support—is about what would make the Government listen to such a commissioner when it does not listen to any of the environmental non-governmental organisations or politicians who speak on those topics.

Would creating a commissioner solve either of those problems? Is there evidence that a commissioner would have more influence?

09:45

The Convener: Who wants to take that?

Dr Lamont: I am happy to take the first ball.

That is an interesting question, because it is focused on the relationship of a commissioner with Government. The relationship between a commissioner and the particular policy space is not just about the Government; it is about the wider context.

I will use the example of victims and witnesses, because that is the one that I know most about. A victims commissioner operates in a complicated criminal justice environment, and it is not just about Government. You are talking about relationships with police services and, in England and Wales, the Crown Prosecution Service. It is a representative role outside that relationship with Government. In that sense, a commissioner can provide broader advocacy and an overarching perspective on the status of victims. I was struck by Alison Payne's point that children's commissioners represent people who do not vote. Victims are essential to the prosecution process, but they have no status in that process, so would a victims commissioner be there to provide that perspective?

On the question of whether commissioners can succeed where other bodies cannot, that very much depends on the receptiveness to critique, the relationship that the commissioner has with Government and those broader bodies, and, to an extent, the personality of the commissioner. Lorna Slater mentioned a future generations commissioner. As a child and family lawyer, I could quite easily take that in three different directions—it is a huge brief. Therefore, there is a risk, which has been pointed to, that you might get a sense of campaigning rather than advocacy.

Dr Elliott: There is also a risk of an overlap in the remits of some bodies. A victims commissioner has been mentioned. To what extent does that overlap with, for example, human rights? I am not clear on that. In some of the written evidence that was provided to the committee, there are comments about overlaps between human rights, a disability commissioner and even the children's commissioner. Lorna Slater mentioned the potential future generations commissioner, which it has been said could overlap with the children's commissioner and the potential wellbeing and sustainable development commissioner.

With all those groups, particularly when you get into the advocacy space, there is a risk of overlap with some of the integrity commissioners—if we want to call them that. Therefore, distinguishing those two different groups of bodies is helpful. However, at the same time, I would not necessarily say that an integrity body does not have an advocacy role, in terms of looking at particular groups. A human rights commissioner should of course think about human rights in relation to children, so there can be an important

role for an integrity body to advocate for underrepresented groups.

I was struck by Dr Gill's point about groups that are not otherwise represented in policy debate. That is a real concern, but I do not think that we can solve that by creating additional commissioners. There is a question for the Parliament to ask about why we are raising an issue about groups in society that are underrepresented by the Parliament. Are we okay with that? Do we really think that the answer is to create separate bodies? Why are children, older people, disabled people and victims not already represented by this Parliament?

That is quite a serious indictment of devolution and the Parliament's role. We need to ask serious questions about where the failure comes from and solve the problem at source, rather than outsource it to another body, which would not be the solution to the issues that have been identified.

The Convener: Those are very interesting and helpful points. The question of how MSPs' time and resources are utilised is broad and has been touched on by the committee. Dr Gill, did you want to come in?

Dr Gill: I take the question as being, "When something is not working properly, how do we know that setting up this new body is actually going to work to solve the problem?" I agree with Ian Elliott that the first thing to do is see whether the existing structures can be made to work better, which might involve looking at personnel, funding, powers and remits.

If you decide that a commissioner is required, as well as considering everything that has been said about the influence of an individual and the Government's willingness to listen to them, you can also think about the powers that you give to that commissioner. Powers such as the ability to gather data and make it public, requiring people to give evidence and making recommendations that the Government has to respond to can give the commissioner a traction that, for instance, a charitable body could not have.

Alison Payne: On the back of what Dr Gill outlined, there is also the broader parliamentary committee system, which can compel witnesses and work with a range of different advocates, whether they are in the third sector or otherwise. When asking the broader question of why democracy is not working and how we ensure that such voices are heard, we need to link back to the Scottish Parliament's committee system. It can work really well, but suggestions have been made about how to improve it—they have been talked about an awful lot. However, nothing has ever changed.

The committee system is in place to act as an advocate in specific areas, which is to be borne in mind in the broader discussion.

The Convener: Absolutely. Lorna Slater, did you want to add anything further?

Lorna Slater: No, that is all right.

Murdo Fraser (Mid Scotland and Fife) (Con): Good morning, panel. Alison Payne has reminded me that Reform Scotland published an excellent paper last year on parliamentary reform. I cannot quite remember who wrote it, but I commend it to colleagues.

To come back to the issue that I want to pursue, we already have set criteria for the creation of new SPCCB-supported bodies. This committee's purpose is to consider whether the criteria are still fit for purpose. I want to start by asking you all for your views on the criteria that need to be set. Are the existing criteria fit for purpose? If not, how do we ensure that, to address some of the concerns that you have raised, we are not overlapping functions that could be done by other bodies?

Alison Payne: The criteria are probably not the problem. You could make a case for any of the current commissioners that have been proposed, the new ones or additional ones that might come up. You could make a case using the criteria, but you could make a case for anything, so that does not mean that the criteria are wrong.

You have to take a step back and consider how such bodies fit into the broader democratic process. There is an argument about whether there are gaps, but who is to say that a need is not being met by one of the other bodies? Dr Elliott is correct about the overlap, in particular with regard to the Scottish Human Rights Commission's remit touching on some other areas, but that does not mean that a case for a commissioner cannot be made.

Part of the problem is that it is difficult to argue against having a commissioner. If someone makes a good case for having, say, a patient safety commissioner, arguing against that can make it seem as though you are against the idea of patient safety itself. Given how the media can portray things, that can end up leading to a completely separate debate.

The issue is not necessarily the criteria but having a broader understanding of what we mean when we say that we are against something. You would have to justify saying yes to one and no to another. We made a point about precedent—that, once you get into the position of having one advocate, it is difficult not to have others. It does not matter whether you change the criteria. Once you have one advocate, how can you say no to having another?

Murdo Fraser: That is a fair point, which we have previously heard made by other witnesses from whom we have taken evidence.

Reform Scotland's written submission says that the criteria have not been followed, and the Parliament has just ignored them, which I think is probably fair comment. Can we produce criteria that will be solid enough?

Alison Payne: The criteria are not the problem; it is about what you are trying to achieve. The criteria are not particularly detailed—they are sufficiently vague that they can be got round. We made a broader point about publications, such as the 2008 review or the Finance Committee's 2006 report. People will say those things then effectively publish and forget them.

Considering the broader issue means taking a step back and asking what we want to achieve. What are the roles? How do such bodies fit into the broader democratic process? If there is a gap, something could be created there. That involves examining where the gaps exist, and why, and what the Parliament can do to fill them. People are represented by eight members of the Scottish Parliament, then there are councillors and a member of the United Kingdom Parliament—there is a whole host of representatives. If you were to ask members of the public what was missing, I am not sure that they would say that they needed someone else to represent them. They would ask, "Why are you not fixing the problem?"

The failures in public policy that were mentioned in evidence suggest that, rather than try to find a commissioner or do something around the sides, we should fix the public policy. If, as part of an attempt to address the problem, another potential advocate were to be identified that would help, that would be different. It is more about looking at each of the specific issues and, if a problem is identified where, for some reason, people's voices are not being heard, addressing that.

We can see how that might fit with the idea of having an advocacy body for young people, because their voices are not part of the broader electorate. However, if, say, there has been a policy failure that affects older people whose voices are not being heard, that failure needs to be addressed elsewhere. It is about going back to the root cause, and not developing what we might call a sticking plaster.

The Convener: Dr Elliott, you are nodding. Would you like to add anything?

Dr Elliott: I completely agree with what has been said. I have nothing more to add.

Murdo Fraser: I want to ask Matthew Gill about that aspect. In your 2023 report you proposed three new tests for establishing a public body,

which involved considering effectiveness, independence and cost efficiency. What are your thoughts are on this issue and on the interaction with the current criteria that the Parliament has set?

Dr Gill: To be honest, when I first read the criteria I thought that they were helpful, but they potentially conflate two questions: whether to set up a new body and how to do that well. For instance, the criteria on shared services or clarity of remit are aspects that should be considered when setting up a new body, but they are not necessarily relevant at the moment of deciding whether to do so. I suggest trying to split those two questions and thinking specifically about what determines the initial use case.

As for the three tests that you mentioned, that research was much broader and was about public bodies in general rather than commissioners. In a way, they were trying to distil into short form a business case that one might create for doing something at arm's length from the Government, rather than doing it in the Government itself.

10:00

Translating that in relation to your questions, the most important thing is probably to think about the alternative options for achieving the same objective. For example, I would think about whether it is essential to have a Parliament-supported body to carry out those functions or whether they can be performed somewhere else and whether there are any existing bodies that could take on that work. You would then look at whether the alternative structures would achieve what you want.

I think that some criteria will come about on the basis of the conversation that has just happened. We have talked about integrity bodies and the specific need for those, the advocacy that they might provide, whether Parliament is, for some reason, unable to provide that and making the case, as has been said before, for why that work cannot be done by the Parliament itself. That sets quite a high bar—having a separate body to do the work if nobody else would do it in its place.

The other thing that we found from our research on parliamentary oversight of regulators at Westminster was that mapping what is already there is not straightforward if there is not a ready list of all the bodies that might impinge on a particular space. Starting with that is also really important.

Murdo Fraser: The Scottish Information Commissioner, David Hamilton, made that point to the committee when he came to give evidence a few weeks ago—namely, that even he could not properly get a handle on how many public bodies

there are in Scotland, despite the role that his office has in securing freedom of information.

Dr Gill: In your 2023 report on creating new public bodies, “When should public bodies exist? Rewriting the ‘three tests’ for when government does things at arm’s length”, you challenged the idea that they should be created only as a last resort. Can you explain your thinking?

Dr Gill: It is important to be rigorous in the analysis of business cases, but the point is that, if creating a public body was more effective than trying to do something in a department, for instance, which would have been the counterfactual in this case, it should be done. It might be that you have people with greater technical expertise in a public body or it might be that you are able to plan to do something over a longer time horizon than is usually possible in a department. That is the thrust of the argument. The last resort framing implies that you would do something in another way, even if that way of doing it was demonstrably worse. What I am arguing is not that one would proliferate public bodies but that, if it can be demonstrated that that is the best way of achieving an outcome, we should not prevent ourselves from doing that for ideological reasons.

Murdo Fraser: We should not just rule out new commissioners for the sake of it, as there might be a case for them.

Dr Gill: Yes, exactly, but that does not mean that we should not be very sceptical about the business case.

Murdo Fraser: Dr Lamont, I have a specific question about your paper. First, however, do have you any thoughts on that broader question?

Dr Lamont: I agree that you have to distinguish the question why you are doing this from the question of how you structure it to do it well. The why question will very much inform how you do it well. For example, the Domestic Abuse Commissioner for England and Wales has produced research and has had access to data that is otherwise difficult to access. That is a good outcome, so do you want these bodies to be able to do that kind of research? That relates back to the why question—whether it could be done in another way. Therefore, I agree with that point.

Murdo Fraser: You co-wrote a paper with Pamela Cox and Maurice Sunkin on the case for the Victims Commissioner for England and Wales. That is relevant because, right now, this Parliament is discussing a proposed victims and witnesses commissioner for Scotland. I think that the convener sits on the committee that is considering that bill, although I do not.

I read the paper with interest, and what really struck me was your conclusion. Forgive me for paraphrasing, and correct me if I have this wrong but, in effect, you put the question: if the new commissioner is not to be given statutory powers, is it really worth having him or her? For the benefit of the committee, will you elaborate a little on your thinking in reaching that conclusion?

Dr Lamont: The research that is referred to was completed with Pamela Cox and Maurice Sunkin at the University of Essex and originated from work that we did with the office of the Victims Commissioner. That office was participating in the development of what was intended to be a victims law in England and Wales and was interested in the comparable powers of commissioners. That is because there is no single framework for a commissioner, which I suppose relates back to the question of the reason to set up a commissioner. If you consider the why, in theory, that gives you a series of powers that you have to achieve.

We reached that conclusion on the Victims Commissioner because the risk of creating a body that purports to represent, advocate and have a stake, but is not well known, has very few powers and does not have a stake in Government or other conversations is that, actually, it is a chimera and will undermine trust in the process. To go back to the point about public bodies, when there is a very complex regulatory framework, is it not better to say, “Okay, we need to look for true accountability elsewhere”?

Murdo Fraser: I do not want to put words in your mouth, but we are trying to extrapolate lessons for us from your research. In essence, are you saying that someone with a purely advocacy role is of limited value?

Dr Lamont: I am not saying that advocacy is of limited value and, as I alluded to, I think that the Victims Commissioner role is not just about the relationship with Government; it is about victims in the criminal justice system, so there is broader conversation about how the role interrelates with prosecution agencies and policing agencies. It has a broader status. However, unless you give the advocate the powers to articulate and argue that on a consistent basis, and unless it has a public status and a role within that structure, it will not fulfil its purpose.

Murdo Fraser: Thank you.

The Convener: Dr Lamont, I am conscious that your examination of the situation, which was very helpful and interesting to hear you elaborate on, is about England and Wales. Of course, we currently have a proposition on a victims commissioner before our Parliament in the Victims, Witnesses, and Justice Reform (Scotland) Bill, which is at stage 2 of our three stages. Last week, at the

Criminal Justice Committee, amendments on that matter were considered. If you had capacity, and if there was any insight or examination that you wanted to provide to Parliament on that bill as amended, I am sure that that would be of interest to MSPs.

Dr Lamont: We are aware of that bill, and we submitted evidence when it first entered the Scottish Parliament because, structurally, it gives stronger powers than those that the comparable Victims Commissioner in England and Wales has. I would be happy to help if there is anything that we can add.

The Convener: I am thinking particularly about the fact that the bill was amended at stage 2 just last week. I am conscious that I sit on the Criminal Justice Committee, too, and that our job today is to talk broadly and not about one proposition, but that was interesting and helpful, and I thought that it was important to give that wider context. If you were able to follow up on anything, I am sure that Parliament would be interested in that ahead of stage 3. We are also interested in what you have said today with regard to the remit and task that this committee is undertaking, so thank you very much.

Lorna Slater has a follow-up question on what we have just discussed.

Lorna Slater: I have a follow-up question on trust. It is my impression from the media and so on that trust in Governments and institutions is at an all-time low. We have heard from other witnesses that independence is the key thing for trust—everybody says, “It has to be independent.” I have two questions on that. Being SPCB supported is one way in which bodies can be independent, but is it the best way? Are there other ways to be independent?

Also, is it true that independence is the route to trust? Dr Lamont seemed to suggest that effectiveness is a better route to trust. I am interested in people’s thoughts on that.

Alison Payne: We mentioned in our written evidence that our commission on school reform has called for a body to look at educational data. That was partly because of the issue of independence. For example, the recent discussion about school leavers basically descends to an argument about statistics. One side says that things are brilliant, while the other side says that they are awful, and the public is completely in the dark, because they do not have a clue.

The independence of some of the integrity bodies is vital, because it says, “This is trustworthy.” Those bodies can call things out. When we get locked into that kind of battle in which everybody finds their point, it is important to have an independent body. Whether we are

looking at standards, human rights, the constitution or the many other areas where our politics get into binaries, we need somebody who is independent and who cannot be accused of taking sides.

Other bodies such as Audit Scotland have that level of independence and are crucial for accountability and for our democracy. The independence is crucial because, particularly at the moment, all our discussions are in binary form, so having something that is separate from that can provide a level of independence so that people in the media and others think, “This is trustworthy.” That is particularly important at the moment.

Lorna Slater: That would be with respect to the integrity bodies, I suppose. Maybe the situation is slightly different with advocacy bodies.

Dr Lamont: Lorna Slater raises an interesting question. Independence has been mentioned a few times. Bodies have been referred to as independent and as being at arm’s length, and there is a distinction between those two categories.

In the early 2000s, some research was done on criminal justice inspectorates, which have the slightly different purpose of inspecting police performance and things like that. The question of independence is very difficult; because a commissioner is funded by Government, their access is determined by Government and, in Westminster, they are usually part of a ministerial portfolio, therefore, to what extent are they actually independent? Something independent would be separately funded. Alison Payne made a point about NGOs and third sector bodies—they are independent and are at arm’s length. There is a mixture of concepts there.

Independence can bring trust, but in the advocacy space it can also bring one particular perspective, because true independence is the ability to say exactly what you wish. These are political appointments, so to what extent will they challenge the Government that appointed them and its policy framework? Are they going to run with the general frame?

10:15

The question of independence is quite complicated. Independence is not necessarily about trust. People cannot perceive independence. How do you determine that? People are interested in whether the body gives them what they need. Can the body represent their interests when they have been ignored up to this point, or they do not have a status in the proceedings, or whatever the particular context is? People are not particularly bothered with our concerns about who funds the body, when they

are appointed and what their powers are. They are bothered about whether it can do the job. For me, that is where trust is built—the issue is about whether the processes are effective.

Dr Elliott: I completely agree with what Dr Lamont has said. One of the values of the parliamentary commissioner function, which is the focus of this inquiry, is the fact that they are sponsored by the Parliament as opposed to Government. That gives that independence and the commissioners are apolitical in that sense.

That is a valuable point to raise, partly because the scope of the inquiry is very much on the parliamentary commissioners, but it is important to recognise that many bodies have “commission” or “commissioner” in the title, which creates a lot of confusion about what a commissioner is. There are about 16 bodies that we are not looking at that are commissions or commissioners, but it is hard to find information about this complex landscape.

Independence and trust in Government is a big question—

The Convener: I am sorry to interrupt. I do not want you to lose your train of thought so please do come back on those points later. You made a point there about the committee's focus on the SPCB bodies meaning that we are only looking at part of a bigger picture. Is it important for the Parliament to bear that in mind and for the committee to consider it as we conclude in the months ahead?

Dr Elliott: Yes. I have mentioned it previously. If you are going to look at commissioners, it is important to look at the subject in the broadest sense, because there are many different models. We are only looking at the parliamentary commissioners here, and that is a valuable exercise, particularly given the numbers that are being suggested. However, we should not ignore the fact that the Government sponsors many more bodies in Scotland that have a commissioner function of sorts, but we are not looking at those here. That is something to bear in mind and at least be cognisant of in these discussions.

Lorna Slater's question about independence and trust in Government is a nice easy question, is it not? The issue of trust in Government is obviously very complex. The independence of parliamentary commissioners helps, notwithstanding the fact that the need to know what a commissioner is and whether they are parliamentary commissioner leads to confusion.

It is important for us to consider a couple of other characteristics. One is expertise and one is visibility. The Information Commissioner is a body that has been around for a very long time and has quite a high profile, which leads to a sense of trust in that body. I feel as though the more

commissioners that you create, the more you can dilute the sense of them being trusted organisations.

My argument has always been that it would be better to have fewer parliamentary commissioners with larger remits and more powers than to have more commissioners with more dispersed powers and overlaps in their functions, because that dilutes the commissioner system and weakens their position. If we really want a strong level of scrutiny and independence, when we are thinking about whether to develop a new parliamentary commissioner, the first question should be: is there an existing body or commissioner that could perform or absorb this function, perhaps with more resource and perhaps with more powers? We should be strengthening the existing system rather than diluting it by creating lots of different bodies with potentially conflicting remits.

Lorna Slater: Thank you. I have a few more questions, but I see that Dr Gill wants to come in on that point before I move on.

Dr Gill: Lots of interesting points have been made, but I will express some scepticism about whether a lack of public trust is, in itself, a reason to establish a body. We can go back to the previous conversation about the criteria for setting up a body. If you were to put lack of public trust on that list, you would end up with a very large list of bodies. If there is a lack of public trust in something, we should look at how that can be fixed—whether that is through parliamentary engagement, transparency of the service or just by improving performance. We should create a particular body of this kind only if the problem cannot be fixed and, even then, only if the solution appears, for systematic reasons, to be that there needs to be that kind of commissioner overseeing it and exercising a specific set of powers to solve the problem. That is quite a high bar for creating a commissioner, and I would not start with a lack of public trust as one of the criteria.

Lorna Slater: As Dr Elliott suggested, creating more commissioners may also inadvertently undermine that intention. On a sort of similar theme, in our conversation, we have separated advocacy and integrity commissioners. With regard to the work of the commissioners, the committee has thought a lot about preventative and reactive work—research and so on that the ombudsman or the human rights commissioner does versus casework in relation to, for example, something that has gone wrong in a hospital, a prison or a school when someone will want to know who they can go to. One of my concerns about the proliferation of these bodies is about people knowing who they should go to.

The committee heard very effective pitches for various commissioners last week—a commissioner for older people, a commissioner for neurodivergent people and so on—but a person can be many of those things, and, therefore, which one would they go to? In defence of their remits, existing office-holders and advocates have said, “Oh, but we’re very good at handing people between us and we’re very good at signposting.” Do you have a view on a one-stop shop? Dr Elliott, you suggested fewer but larger bodies with wider remits, so that, for example, if something has gone wrong in a school, a prison or a hospital, you would go to one place and you would be looked after. Do witnesses have a view on that?

Alison Payne: Is that not the job of MSPs? Each constituent has eight MSPs. The Standards Commission for Scotland has an important job in addressing failings, but there are those eight options. Surely, if someone has a problem with their school or their hospital, they can go to their MSP, who should have an idea about particular issues in particular areas and be able to build on that. However, to my mind, the one-stop shop is the MSP.

I can see that an MSP would direct somebody to the Information Commissioner or the Human Rights Commission, for example—the more integrity-based commissioners—and work with them. However, it would seem odd if an MSP could not help. Are there matters that an MSP could not help a constituent with that require an additional commissioner with an advocacy role? To my mind, you have confused the issue. It should be very clear to the public that, if you need help with something, your MSP should be the first place that you go. Of course, there is already confusion about the lines of accountability in relation to Westminster, Holyrood and the council, and I think that there is a danger of causing further confusion by saying, “It will not always be your MSP—it should be this person.” However, we have a one-stop shop: it should be your politician. That is your level of accountability and it is the democratic process.

Dr Elliott: It is helpful to think about groups who might not feel comfortable about approaching their MSP or might not be able to do so. I wonder whether that is, in part, what is behind the proposal for a victims commissioner. If someone feels that they have suffered personally because of the state generally, might they be concerned about approaching an MSP? Indeed, I know that there are discussions in the UK Government at the moment about potentially developing a commissioner for whistleblowers. If you were a whistleblower within the public sector, might you fear approaching an MSP about that problem? Therefore, might there be a role for a separate body?

It might be helpful to think about potential conflicts of interest and what might stop someone from approaching an MSP. Are there legitimate reasons why someone would feel that they need a completely separate, independent body that they can contact to raise their concerns, particularly if they have been the victim of something that has been done by the state itself? That is something to think about.

Dr Gill: I note that a lot of the commissioners will know where their areas overlap, and so they should be good at cross-referring people who have approached the wrong place initially.

I will also reflect on the discussion that we have been having about advocacy versus integrity. Conceptually, if that goes into the criteria that you subsequently develop, it is probably worth thinking a little bit about the word “advocacy” and whether that really captures the role that is wanted for these bodies. It is maybe more towards, “representative of interest in a balanced process”, rather than a kind of advocacy that involves seeking preference.

Lorna Slater: That is fair. We have struggled all along to try to find the right language around this. There is also substantial overlap where different offices are concerned.

I would have asked whether anyone has any issues or problems with the idea that SPCB-supported commissioners should share back-office services, human resources, and so on, but I assume that none of you does.

Dr Elliott mentioned something that is also on our minds, as the convener said. The remit of this committee is specifically to look at the SPCB-supported bodies commissioners, but we are aware that there exists a wider landscape of public bodies, third sector organisations and other commissioners of various flavours. Do you have a feel for how much time and resource it might take to map that out? We know that we do not have the time and resource to do that, but how big a job would it be, if someone were to take that on?

Dr Elliott: Are you talking about all public bodies?

Lorna Slater: I am talking about gaining a proper understanding of the landscape here, because we are all worried about gaps and a system that is not working well. What kind of resource would that take?

Dr Elliott: That is a very hard question. Without giving that a bit more thought, I am honestly not sure how much time it would take to map out the landscape right now. All I can say is that I tried to find a definitive list of the number of bodies with the word “commission” or “commissioner” in their title in preparation for this meeting and I found it

quite difficult to find out exactly how many there are—or, indeed, how many are still operating, how many have ceased to exist, who is the lead within the different organisations, or what their remit is. Some of them seem to be very active and to have a very strong public presence; with others, it looks as though it is perhaps just one person, on a part-time basis.

It is incredibly difficult for the public to know how many commissioner bodies there are, and how one differs from another. I presume that somebody has that information—I would like to think so. However, it certainly seems that a very messy landscape has developed organically over time.

We are also talking about potential new commissioners here. Ultimately, there is nothing stopping the Government from deciding to create its own commissioner bodies as well. We could have all of the ones that are being proposed being developed in a completely different format, but still with the name “commissioner” in the title, and the public would not necessarily be any the wiser about that.

10:30

Lorna Slater: I will direct my final question to Dr Elliott, although others, including Dr Gill, may have a view as well. You can see the problem that is before us when it comes to SPCB-supported bodies. What steps could be taken to give a more coherent view? We are having trouble even in defining the bodies into categories or groups, because there is so much messy overlap. What would a more coherent model look like?

Dr Elliott: I was struck by the evidence that was provided by the Scottish Biometrics Commissioner about the hub-and-spoke model, and you have mentioned the idea of a one-stop shop. There is real value in having one central place that people can go to and from which they can then be directed towards the right person to speak to. That would also have value for the commissioners themselves in supporting the development of their expertise and the sharing of knowledge and expertise across the commissioner bodies.

In, I think, 2010—some of my colleagues might know better than I do—quite a lot of research about the commissioner landscape was conducted in the UK Government and the Scottish Parliament. Undoubtedly, there is a need for a refresh of some of that, because so much has changed, but I will have to get back to you about how much time that might take. You have put me on the spot—I am not really sure. Again, some of my colleagues might have a clearer view of how much time it would take to conduct such research.

Dr Gill: When it comes to getting a grip on the issue, I would start by putting a lot of emphasis on

the process of defining precisely the criteria for when you would want to set up such a body rather than some other thing—the why and the how in the criteria that we described earlier. We have had a bit of a discussion, today, of some of the substance of that, but there is quite a bit more thinking to do.

We talked a little about the last-resort criterion, which we argued against applying to public bodies in general. However, the SPCB bodies are very much a subset of those bodies. They are established because it has not been possible to do something through other means in the public sector. Therefore, a last-resort criterion, or a very high bar to show that alternatives have been seriously looked at, seems more appropriate in this case than in the public bodies landscape as a whole.

The Convener: As there are no further comments on those matters, I will bring in Richard Leonard.

Richard Leonard (Central Scotland) (Lab): Good morning. I am interested in finding out your views on language. How interchangeable are some of the terms that are used in the discussion about what purpose the different commissions and commissioners fulfil?

When we started this exercise, we were told that, typically, some commissions are regulatory and some deal with advocacy. Alison Payne, you have talked about advocacy and integrity commissions and commissioners. Ruth Lamont, you have talked about regulatory commissions but also about contested social needs commissioners and special interest commissioners. Dr Elliott, you have talked about developing a strategic state. Are those terms interchangeable or do they represent the different profiles, powers and purposes of different commissioners?

Alison Payne: From our point of view, regulatory integrity is more or less interchangeable. However, a distinction can be made between those bodies that are involved in advocacy and those that are more intrinsic to ensuring the good practice of democracy and the workings of Parliament, and maintaining accountability and transparency—the side of things that work alongside Parliament but that could not necessarily be done elsewhere.

A third sector organisation could not be the information commissioner, for example. That body is important and needs to be a separate role. What the groupings are called is less of an issue; it is more that the two types should be separated, as we viewed them differently in terms of what the potential solutions might be.

Richard Leonard: Are you fairly clear which commissions and commissioners you put into

each of those two categories? Based on what the commissioners said when we asked them how they define themselves, I am not sure that they are clear themselves.

Alison Payne: Certainly, most of the ones that are coming up or being suggested—the proposed patient safety, victims and witnesses, disability, older people and wellbeing and sustainable development commissioners—are all more on the advocacy side.

It is interesting that some of the original ones, such as the Scottish Information Commissioner, the Standards Commission for Scotland and the Scottish Human Rights Commission, are more part of the process that ensures that the Parliament is working and maintaining its independence and transparency. There are obvious overlaps, as Dr Elliott mentioned. For example, even in the case of the Scottish Information Commissioner, an issue could at points equally fall under something that the Scottish Commissioner for Children and Young People might have been doing.

Regarding the proposed moratorium, there is a danger in setting a precedent in relation to advocacy-type commissioners—where do you draw the line? That is why we distinguish between the two types. There are things that are necessary for the workings of the Parliament and democracy, and, in the other category, it is a case of, “What group doesn’t get a commissioner?” It is very easy to argue why a group should get one, but that basically opens the floodgates.

Richard Leonard: Does anybody else want to come in on that?

Dr Lamont: In our research, we tried to capture the landscape’s complexity. The phrase “special interest commissioners” seeks to capture all the potential candidates that are in the big bowl of commissioners. We found that commissioners tend to occupy positions on issues in which need, resource allocation or the protection of citizens’ interests is being debated or contested.

The name “commissioner” does not have any special significance; it has been used right back to the 19th century. If you are going to engage in a debate around why you are creating a new commissioner, one thing that you could do is protect a commissioner’s status in Scots law. That would be one way of saying, “These people fall within this category, these commissioners fall within this category and they do these jobs, and the things that are outside that category are something else.”

Richard Leonard: Dr Lamont, you also reflect on the difference between soft powers and hard powers. Does that help us to define the purpose of different commissions and commissioners? Alison

Payne mentioned that the Scottish Commissioner for Children and Young People and the Scottish Information Commissioner might be interchangeable in some of the work that they do. However, the latter has certain powers of enforcement, whereas the former does not. Does any of you want to reflect on that?

Alison Payne: My example was more about the potential for an overlap in some of the work that they might do. There is a difference between them. It would be strange to give stronger powers to anybody who falls into the advocacy role, because you would have a slight democratic deficit. If a commissioner says, “We’re going to compel this activity,” but the Government does not want to enforce it and the Government has been democratically elected, what happens?

The remit of some commissioners—whether or not you call them integrity commissioners—is to make sure that democracy is working. If there is a difference of opinion about what should happen to public services, you have to be careful that somebody who is not elected does not have the power to compel or go against what the public mood or opinion might be. There is a difference between something making democracy work properly and something disagreeing with policy.

Richard Leonard: The Scottish Human Rights Commission has made a pitch for more powers, including, I think, some powers of enforcement. I guess that the equivalent might be the UK Equality and Human Rights Commission, which has the power to support litigation and mount its own inquiries and so on. It has demonstrably more power, yet nobody thinks that that is an interference with the due process of Parliament or Government.

Alison Payne: The EHRC is more wide ranging. Children and young people and disabled people are smaller interest groups. The Equality and Human Rights Commission looks at a broader group. It is supposed to represent everybody, whereas the special interest groups represent small groups. To have powers of enforcement where there is a democratic deficit would undermine trust.

Dr Gill: You are right to point out the complexities of the conceptual landscape. I would attempt to make the following distinction.

Regulators look across the piece, checking on a system—inspectorates, the process of setting rules, enforcement and monitoring all fall within regulation—and, when something goes wrong in a specific case, you might appeal to a regulator. Then, if you are still not happy, you might go to an ombudsman, which would look at casework and is complaints driven.

A commissioner tries to act independently of the existing systems of regulation and complaints, to some extent, and is usually driven not by an individual case but by a systemic problem that requires a degree of independence from the system in order for it to be addressed. That addresses your question about what powers commissioners should have. If they are not part of the executive system, they cannot necessarily do things, but they can recommend. So, perhaps you could consider comply-or-explain powers, whereby they could make recommendations and expect other bodies with executive powers to respond to them and explain what they were doing.

Richard Leonard: That is fine. We put that to the test with the Scottish Public Services Ombudsman over the case of the women against state pension inequality, in which there was an ombudsman recommendation that the Government chose not to implement.

Can I go into a final area that is related to this? Setting aside the enforcement part, I will move on to regulation and adjudication. In some commissions, such as the Scottish Information Commissioner and the Scottish Public Services Ombudsman, those seem to be combined. However, if we look at the Ethical Standards Commissioner and the Standards Commission for Scotland, there is a separation between regulation and adjudication in the Scottish landscape. Is that a unique example in your experience, or are there other instances where there is a separation between those two functions?

Dr Lamont: I have not come across anything similar, but I can go away and look at that question. There are two different ways of looking at the issue. You are looking for consistency across a range of bodies that are doing similar activities in relation to different areas of policy. That is one level. However, although each of those bodies operates at that level, they are also part of an infrastructure that is not related to that but is about the context in which the body operates. For example, human rights is part of a much wider framework of enforcement powers, including the Human Rights Act 1998, the status of the European convention on human rights and those kinds of things.

There is a role for each of those bodies within the infrastructure where they may fit, but that does not mean that that fit is consistent with what each of the other bodies is doing. So, if you are going to have those bodies, there is a genuine consideration as to whether you need them to be exactly the same and have exactly the same powers or whether they are doing something different in the policy space that they work within. I am happy to follow up on that.

10:45

Richard Leonard: Thank you. My final question is for Ian Elliott. How do you reconcile that kind of fragmentation, differentiation or right to be different with your call for a more “strategic state”?

Dr Elliott: Part of that is about explaining the role of a commissioner to the public. One of the challenges with that is that, if different commissioners are sponsored or funded by different bodies and have different levels of power, and if some of them have advocacy roles and some do not, that creates a very, very messy picture for the public. Having a clear sense of what a commissioner is, with a clear definition of what it is and is not, would be incredibly helpful as a starting point. Having some consistency in the use of language would be very helpful in communicating that definition to the public. There is some information on the Scottish Parliament website, but even having clearer signposting there about where to go if you have a complaint about a particular Scottish body would be helpful.

Going back to Lorna Slater’s question, instead of having lots of different types of body out there, having one central contact point would really help to provide a focus for the public. It would also help the commissioners themselves to have more of a shared understanding of what they do and to be able to support the development of their own expertise as commissioners under one umbrella.

Dr Lamont: If you have a child, have you ever asked whether they know who or what the children’s commissioner is? Mine does not, and I talk about this stuff.

Richard Leonard: Okay. I have finished my questions, convener.

The Convener: I will ask a question before I move on to Ash Regan. You talked about a definition, and there were good questions from colleagues about how the landscape could be made simpler and easier to understand and how it could be better structured. Is there a possibility that we need a consolidation act to bring this all together, to reform it, and to strategise so that it is all more coherent? I am aware that, particularly with reserved legislation in years past, consolidation acts have helped to tidy the landscape. Is there a need for that here in Scotland? That is quite a broad question.

Dr Elliott: Yes, it is, but it is a good one. It is getting me thinking. I am not sure that legislation in the form of a consolidation act is necessarily needed. I know that the first solution is sometimes, “Well, let’s get a new act”, but I am not sure that that is needed. Some thought undoubtedly needs to be given to the landscape.

The Convener: I suggested a piece of legislation because many of the commissioners have been created out of primary legislation.

Dr Elliott: Again, there is a role for the committees to ask questions when such pieces of legislation are going through the Parliament and, as Alison Payne previously mentioned, there may be ways in which the committee structure itself can be reformed to help support such work.

On the issue of providing a more strategic overview of the role and function of commissioners, and of public bodies more generally, I keep coming back to the role of the national performance framework, which is meant to set out the long-term ambitions and national outcomes that the Government seeks to achieve. If the Government has a clear sense of the national outcomes that it is trying to achieve, I feel that the secondary question would be to ask what structures and systems of Government are needed in order to deliver that.

That is perhaps where some of the questions about whether we need a separate commissioner to advocate for the national performance framework would come in. At the moment, because that framework does not have a voice that is independent of Government advocating for it, it moves between directorates and is given a changing level of priority. There might be a need to provide an independent voice for the framework. One way of thinking about how to deliver or implement the national outcomes might be to think about which public bodies are required to support it—I am almost suggesting another commissioner. *[Laughter.]*

The Convener: Sarah Boyack will be listening attentively.

Dr Elliott: She might well be.

You have raised an important point about how Parliament makes decisions and scrutinises the Government and the public bodies landscape. As I said, I am not convinced that there is a need for additional legislation about that, although I completely accept the point that many of those bodies were themselves created through primary legislation. There is almost a step before that, which would involve reviewing Scotland's public sector landscape and asking which public bodies are needed in order to support the delivery or achievement of the national outcomes.

The Convener: That is a helpful idea for us to consider in advance of having someone from Government here at a future meeting. I note that the Deputy First Minister told Parliament a few weeks ago that the national performance framework is being reconsidered, so we will make that part of our considerations.

That dovetails nicely with Ash Regan asking about accountability and scrutiny, so I will hand over to her.

Ash Regan (Edinburgh Eastern) (Alba): This has been an interesting discussion so far.

The committee rightly has a strong interest in how the accountability and scrutiny mechanisms are, or are not, working, depending on how people see that.

My first question is for Dr Elliott. Your written submission identified a number of additional reforms, including ideas such as having new funding models and linking back to the outcomes that we are seeking to achieve. Please expand a little on your thinking.

Dr Elliott: Can you clarify that? Are you asking specifically about funding for outcomes?

Ash Regan: Yes.

Dr Elliott: There is a question about which bodies we have to support the achievement of the national outcomes and how those bodies are being held to account regarding their work on those outcomes. There may be a need to reform the parliamentary system itself to create a specific committee that scrutinises bodies in line with the national outcomes.

I know that other devolved Administrations and Governments internationally have looked at how to shift funding away from a fairly siloed approach to something that is more targeted towards thinking about delivering or achieving outcomes.

At the moment, within the Scottish Government, the national performance framework sits within the performance delivery and resilience directorate, but that is separate to the exchequer strategy directorate. If you want to deliver national outcomes, there is an important question about how you fund that. There needs to be a link between the funding of public bodies and the delivery of national outcomes. That is where that comment came about.

Again, we do not have a commissioner, an independent body or a specific committee to do that at the moment. In fairness, the Finance and Public Administration Committee does a very good job on that, but it has quite a broad remit. There is no specific body looking at the extent to which the Government is setting out to achieve the national outcomes and its performance against that. We have great ambitions, but there is no clarity about scrutiny of performance against those national outcomes. That is where that comment came from.

Ash Regan: The next question is for Dr Gill. Your report discusses the importance of clear responsibilities in the area of oversight. How can

that oversight responsibility be enhanced or clarified to increase accountability and to reduce duplication?

Dr Gill: You are thinking of the piece of work on parliamentary oversight.

Ash Regan: Yes.

Dr Gill: That report had two angles to it. One was that, in looking across the range of regulators in the Westminster Parliament, it identified an imbalance of interest: there were certain regulators that were in public view or in high-profile sectors, because things had gone wrong, which got a lot of parliamentary attention, and there were others that did not. It tried to argue for mapping the regulators as a whole and looking at the frequency and nature of parliamentary scrutiny across the piece.

I know that the SPCB does an annual review of how each commissioner is performing against its objectives. In a way, that is already well ahead of what the Westminster select committees were doing for the majority of the regulators that we looked at, so that is a good thing.

It might also be useful to consider some of the report's recommendations on how to engage in hearings to get the most out of a regulator, how to encourage them to talk about future plans to meet their objectives, and how to focus on looking at what their remit and objective is, whether it works and how it fits with other things. There are also suggestions in the report about institutional support for parliamentary committees that are trying to scrutinise quite technical organisations. There should be a unit of specialist clerks who can support committees to conduct that kind of scrutiny.

It is also important to make sure that you keep coming back to the same on-going questions about performance and strategic direction, because some of the committee meetings tend to be a bit of a set piece or a one-off. There might be a good conversation about something, but whether it is followed up or how it is taken forward is not clear. There are a series of things in the report about making that scrutiny process more impactful.

Ash Regan: That is useful.

Dr Lamont, the committee has already had a few discussions about annual reporting, where that is working and where it is not working, and there is a suggestion that the SPCB has the power to determine the contents of annual reports. What are your thoughts on that? Are those reports meaningful enough? Is the information in them actionable enough for the parliamentary committees?

11:00

Dr Lamont: Any annual report must reflect the commissioner's objectives, planned activities for the period and the extent to which they have attained those in order that they are responding to their statutory framework but also to their shorter-term objectives, so that you have both a narrow and a broader focus.

With regard to scrutiny by the committee, I agree with Dr Gill that some support is needed when the committee is dealing with very technical areas. However, annual reporting is the best way to ensure that the bodies reflect on their broader purpose and their short-term objectives.

Ash Regan: Is the content of the reports appropriate and is that process working or does that need to be improved?

Dr Lamont: I have less experience of the Scottish context, but, among the bodies that I have spent time with, there is serious engagement with the purposes and their aims within a period. There is no standardisation, so it is difficult to analyse that across the piece. However, as has been observed throughout, they are all doing slightly different things with slightly different powers, so consistency in that regard is actually quite difficult. That makes it harder work for you.

Ash Regan: Yes, I think that it does.

The committee is very much grappling with the question of whether, as a Parliament, we are managing to accurately measure the outcomes in relation to what the commissioners, particularly the advocacy-based ones, are producing. Could the process of measuring outcomes be improved? Is the Parliament managing to scrutinise these bodies effectively?

Dr Elliott: One of the challenges is that the Scottish Parliament's powers have increased dramatically since devolution but there is still the same number of MSPs. I am not sure that there is public appetite for having more MSPs, but it is fair to say that that gap is creating a real challenge in relation to the Parliament's ability to maintain the level of scrutiny over all the activities of the Government. Again, that is particularly an issue with a unicameral system. The Parliament was not designed to take into account how the electoral calculations would work if one party dominated for such a long time, because there was always an expectation that there would be coalitions. The actual structures of the committees and of the Parliament are quite different to what was expected.

Within all that, there is a really crucial role for the group of independent parliamentary bodies that exist to provide scrutiny and oversight of legislation and of the Government in order to

support the Parliament. As the Parliament grows and develops and receives more powers, there is potentially a growing role for commissioners. The question in front of us today is about deciding when to have a commissioner and when not to have one, and what powers they should have and what powers they should not have. Nonetheless, there is a really crucial role for commissioners in relation to this Parliament, which is quite distinct from that role in relation to the UK Parliament, for example, and we are not as resourced as the UK Parliament.

There are real challenges and there is a real need for strong, effective scrutiny, which expert independent commissioners can provide. Part of that is about scrutinising the Government's performance against the outcomes that it has set for itself, and it may not always be possible for the Parliament to do that. There may need to be separate bodies that provide an independent view of how the Government is performing against the objectives that it has set for itself. That is where the question of national outcomes comes in. It is about who is providing that scrutiny of how the Government is performing. Will the new legislation that is coming in support the achievement of national outcomes or do we sometimes have knee-jerk reactions to events that are not going to contribute to the delivery of longer-term outcomes? All those questions are very much in my mind when I think about the role of parliamentary commissioners in the Scottish Parliament. They have a crucial role to play.

Alison Payne: The issue about the number of MSPs is important. I am not sure whether the Conveners Group mentioned this, but I read in evidence about the lack of time in committee timetables to properly scrutinise the work of the SPCB bodies. That problem is not the fault of the bodies; it is the fault of the committee system. There is perhaps a question about whether we are looking to create more and more commissioners because there will be public acceptance of that, whereas there would not be public acceptance of having additional MSPs to manage the workload.

The scrutiny is really important. Previously, Ken Macintosh did some work on how to strengthen the committees. We have a good committee system, but it is struggling, and with the growth in legislation it is not able to do some of the work that it did in the early days in taking on inquiries. It is worth taking a step back and considering whether we have ended up in this position because it is unpalatable to talk about having more MSPs.

Ash Regan: Capacity is certainly one of the issues that we are facing.

My other question is about measuring the performance of the commissions. If it is felt that a commission is not complying with its remit and it

looks as if the Parliament either has failed to understand that looking at that is part of its duties or has not held the commission to account or censured it, is that a failure of the parliamentarians or the Parliament, or does the failure lie in the way that the system was conceived or set up?

Dr Gill: It seems to me that, if there is a failure of a commissioner body, your levers would be to look at the appointee in that body or to look at the legislation that gives the body its powers and remit. It is for the Parliament to gather the facts on that and then form a view as to which of those is the problem.

On the previous point about scrutiny of performance against existing objectives elsewhere in Government, you should also think about Audit Scotland's role, which lattices into this. Where intended outcomes are set and you are only able to measure performance against them, it may be that Audit Scotland could be the first port of call, or its remit might need to be slightly enlarged to give you the assurance that you need.

The Convener: I will bring in Lorna Slater in a second, but I have a question for Dr Gill or the other witnesses that follows up on that point. Do you have any thoughts on whether there should be sunset clauses? For example, should there be a review after five years of whether the body is performing its functions and is still needed? Should there be a periodic evaluation?

In our previous evidence sessions, the possibility has been raised not just of holding more frequent scrutiny sessions with parliamentary committees and creating the capacity for that, as Alison Payne rightly touched on, but of whether there would be a benefit in having a new committee dedicated to the scrutiny of SPCB bodies—or whether there are other models that we should explore.

Lorna, do you want to add a supplementary question to that?

Lorna Slater: No, I do not want to drag us down a rabbit hole.

The Convener: Okay. Do any of the witnesses have thoughts on my question? Let us perhaps start with Dr Gill.

Dr Gill: On the first question, on periodic evaluation, it is a good idea to look back at the fundamental remit of the body, whether that remit is right and whether the body is performing against it. A formal sunset clause can be a hostage to fortune in such situations. It is important to set these bodies up only where you think that there is an on-going role for them, but you should certainly be open to not continuing with them if they are not performing a useful function.

On the roles of committees, the question is whether a new committee would have a materially different role from this committee, or whether this committee's bandwidth just needs to be amplified. If it is the latter—

The Convener: We have a limited timetable, Dr Gill. We will be ceased in September, so we have a sunset clause. Sorry to interrupt your flow—that is just a point of clarity.

Dr Gill: In Westminster, for some of the parliamentary bodies, having a committee that enables them to report directly to Parliament, rather than through the Government, is quite important. It is likely that such a committee will be necessary here. However, I clearly do not have the in-depth knowledge of the Scottish system to be able to give you a good answer.

The Convener: Thank you—that was very helpful. Excuse me for interrupting you with that point of clarity.

Dr Lamont: I want to pick up on the point about the difficulty of assessing performance, particularly where the commissioner is influence based or advocacy based—whatever term you use. In a diffuse system, it is not easy to trace when an opinion that has been expressed or a report—whatever it may be—has had an impact or caused change. It is challenging for the commissioner body to do that. If you accept that there will be a commissioner body that has that purpose, parliamentary scrutiny becomes really important at that point, because MSPs can have the conversations about how the commissioner participates in those discussions and debates.

The previous discussion was more about measurables—how to measure particular outcomes against national objectives. It is a matter of thinking about the purpose of the commissioner and how you scrutinise them, and a committee's role in doing that.

Dr Elliott: I agree with what Dr Gill said about sunset clauses and the risk of creating a hostage to fortune. If you create a new body and say, "We will only give you three or five years," that is a real challenge. Who will want to take that on if the idea is that it is something that will potentially not exist after five years? That is a very good point, and it is worth noting.

At the same time, that does not exclude the need for continual review of all the commissioner bodies. I am sure that they would welcome that as long as it does not become politicised. The function of these bodies is to scrutinise Government, so it is important that, for example, if a particular commissioner is being quite critical about the way that a particular policy has been developed, that does not come back to bite them in some sort of review or evaluation process.

11:15

Of course, all public bodies should be subject to evaluation and scrutiny, but the idea of creating a sunset clause feels quite harsh. It also suggests a lack of confidence. If you feel that it is necessary to create a body, why would you say at the outset that it is really important to have it, but maybe only for three or five years? I would be surprised if anyone suggested that an information commissioner might not be needed in three years' time—the role serves such an important function. If we are not absolutely confident in the purpose of a commissioner, I think that we need to look at a different model.

The Convener: There is quite a considerable sunk cost in setting up a body, as well.

Lorna, do you still want to—

Lorna Slater: It might take us down a rabbit hole, convener. I think that I will leave it with you.

The Convener: Okay.

I have a final set of questions for the witnesses. Is there anything that you wanted to say today that our questioning has not allowed you to emphasise to us? Also, as a final way of sharing your insights and knowledge, which have been extremely helpful, if you were in our shoes—if you were tasked with what we have been asked to do by Parliament—is there anything that you would definitely do? Alison, that is for you first.

Alison Payne: We have said in our written evidence that we support the moratorium that the Finance and Public Administration Committee suggested on the creation of certain new bodies.

Obviously, the legislation for some of those bodies has already been passed, and some are on their way through the process. It is very easy to say, "Let's have a moratorium, but, by the way, these ones are already going to be created." I think that we need to intervene. Although the Patient Safety Commissioner for Scotland Act 2023 has been passed and we are working our way through it, we need to be able to come together and say, "We need to stop this." The committee system is brilliant for that, because it has the cross-party representation.

We need to pause so that we can look at things across the board. We need to widen out our narrow focus on the SPCB-supported bodies and ask, if our committees are not able to properly scrutinise existing bodies, what impact will creating new ones have? What are the bigger issues? There are unpalatable issues around MSP numbers, workload and so on. It would be nice if we could take the toxic politics out of it, come together and say, "This is a problem, and we need to work together on a solution that makes our democracy work better."

It is very easy to keep creating these bodies. Each of them is a nice win for somebody. It is very difficult to explain to the electorate why you might be voting against having an older people's commissioner, for example. It is easy to see how more and more of these bills will get passed unless there is cross-party buy-in on saying "Look, this is where we are. We need to strengthen our committee systems. We need to strengthen how we scrutinise what is going on in Government."

A broader point is that the national performance framework and its outcomes are clear, but those go across the public sector. A solution to the scrutiny issues should not be to create more and more of these bodies; it should be to look internally and see how we can fix things. That might bring up uncomfortable conversations about MSP numbers and suchlike.

As Dr Elliott said, the Parliament has massively increased its powers. We should have committees that are able to look at issues in depth, carry out inquiries and really advocate for individuals. I think that those broader issues around how the Parliament is working need to be considered. Instead of looking at the SPCB-supported bodies in isolation, they need to be part of a broader conversation.

The Convener: Well said. Dr Gill?

Dr Gill: If I was in your shoes, I would do two things. You might well already be doing the first, which is thinking about a replacement structure for this committee. I guess that you would start by identifying what Parliament has to do to oversee the bodies—the things that cannot be delegated somewhere else. I would delegate whatever oversight is possible to Audit Scotland or to other appropriate bodies. I would then identify how Parliament will conduct the remaining oversight, which might be about the legislative basis and objectives, the relationships that the bodies have with Government and Parliament, and issues of public interest.

What I would then do, which has already come up in the conversation, is home in on the criteria for whether a commissioner should be created to solve a problem, rather than another structure being asked to solve it. Those criteria would include underrepresented interests or requirements for independence, as well as setting out what commissioners are not for. There would almost be an exclusion list of things for which people often propose commissioners but where that is not the right answer. I would then be very cautious about how that list expands. I would start with the criteria as your yardstick for determining that.

Dr Lamont: On this committee's role, it is important to emphasise that it is not just the

Scottish Parliament that is grappling with these questions. If you look across developed legal systems, you will find that they are all grappling with difficulties of accountability, representativeness, scrutiny and public engagement. Commissioners feature in many jurisdictions. I have talked mostly about England and Wales, because that is what I know the best, but Canada has a victims framework and a Human Rights Commission. Australia has a much broader range of commissioners, including an eSafety Commissioner.

The problem is not unique to Scotland. However, the constitutional significance of where the commissioners sit, how you scrutinise them and what purpose they serve within the Scottish constitutional framework is a reflection of devolution and changing powers in Scotland. It is about how you ensure that Scottish citizens can access the support that they need and are represented in different environments, and that the Scottish Parliament can scrutinise the bodies.

It is worth putting the issue in that broader context. Some of the bodies in Scotland have very comparable bodies abroad, and Scotland is part of a wider network that is having that conversation. That was the only additional point that I wanted to make.

Dr Elliott: I agree with everything that has been said. I was struck by Alison Payne's point about potential incentives to create new commissioners when you are developing a piece of legislation and how that can almost be seen as a quick win and can be quite difficult to argue against. An older people's commissioner and the patient safety commissioner have been mentioned, and it is very difficult to argue that you are against older people or patient safety. Therefore, there are almost incentives in the system to develop new commissioners.

That brings all sorts of challenges relating to resources and potential overlap with existing commissioners. There needs to be an additional process in the Parliament through the committee structure to approve new commissioners, as well as some way of having greater oversight of the number of commissioners, their roles and duties and how they are performing.

The value of having commissioners has been mentioned numerous times, and we keep coming back to the idea of their being independent. This is my final comment on what I would do if, God forbid, I was in your shoes. We are talking in a very restricted form about parliamentary commissioners when, as I said, there are about 16 other bodies in Scotland that have "commission" or "commissioner" in the title but that we are not discussing. What does that say about where the public feel that they can go? What does it say

about how we understand the role of commissioners when so many other bodies already exist that we are not including in this inquiry, never mind the ones that are going through the process of approval through legislation?

It is already such a messy landscape. If we are creating a two-tier system in which some commissioners have all this scrutiny and parliamentary activity around whether they are performing their duties, while a separate group of commissioners do not have the same level of oversight, I would raise questions about how those other bodies are scrutinised. Those are my final thoughts.

The Convener: Thank you, all, for those final points, which were very interesting. In the coming weeks, we will speak to others about international examples of how things are done similarly and differently. There are considerations about what the next parliamentary session will look like and how the Parliament could scrutinise things. There are also considerations about whether there should be commitments in 2026 party-political manifestos. We will have representatives of the Government before us in the weeks ahead, and we will be able to ask them about the wider landscape that we have spoken about.

Thank you for those concluding remarks and for what you have relayed to us today in answering our questions and sharing your insights and views. The discussion has been extremely helpful for us, and we are grateful for your time today and in submitting the written material.

That concludes the public part of today's meeting. As agreed earlier, we now move into private session.

11:27

Meeting continued in private until 11:40.

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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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