



The Scottish Parliament
Pàrlamaid na h-Alba

REVIEW OF SPCB SUPPORTED BODIES COMMITTEE

AGENDA

2nd Meeting, 2009 (Session 3)

Tuesday 3 February 2009

The Committee will meet at 10.00 am in Committee Room 4.

1. **Review of SPCB Supported Bodies:** The Committee will take evidence from—

Kevin Dunion, Scottish Information Commissioner;

and then from—

Kathleen Marshall, Scotland's Commissioner for Children and Young People;

and then from—

Gary Womersley, Chief Officer, and Jim Black, Head of Customer Support, Waterwatch Scotland;

and then from—

Richard Smith, Interim Scottish Prisons Complaints Commissioner;

Christine O'Neill, Partner, Brodies LLP.

2. **Review of SPCB Supported Bodies (in private):** The Committee will consider the main themes arising from the evidence.

Claire Menzies Smith
Clerk to the Review of SPCB Supported Bodies Committee
Room T2.60
The Scottish Parliament
Edinburgh
Tel: 0131 348 5417
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The papers for this meeting are as follows—

Agenda item 1

[Scottish Information Commissioner written evidence \(RSSB\(E\)\)](#) RSSB/S3/09/2/1

Table of recommendations - Scottish Information Commissioner RSSB/S3/09/2/2

[Scotland's Commissioner for Children and Young People written evidence \(RSSB\(H\)\)](#) RSSB/S3/09/2/3

Table of recommendations - Scotland's Commissioner for Children and Young People RSSB/S3/09/2/4

[Waterwatch Scotland written evidence \(RSSB\(I\)\)](#) RSSB/S3/09/2/5

[Interim Scottish Prisons Complaints Commissioner written evidence \(RSSB\(B\)\)](#) RSSB/S3/09/2/6

Agenda item 2

Review of governance evidence RSSB/S3/09/2/7
(P)

Education, Lifelong Learning and Culture Committee's written submission RSSB/S3/09/2/8

Background information

Note of meeting - Scottish Information Commissioner RSSB/S3/09/2/9
(P)

Note of meeting - Scotland's Commissioner for Children and Young People RSSB/S3/09/2/10
(P)

<p>Summary of Recommendations made</p>	<p>SCOTTISH INFORMATION COMMISSIONER [Does recommendation apply, anything in existing legislation]</p>	<p>SIC written submission [Note identity/location any evidence received to date]</p>	<p>[Note by whom and when decisions made, if it needs legislation state whose bill it is in]</p>
<p>Crerar Report</p>	<p>Applicability</p>	<p>Evidence to date</p>	<p>Action to be Taken</p>
<p>The unique role of external scrutiny is to provide independent assurance that services are well-managed, safe and fit-for-purpose, and that public money is being used properly.</p>	<p>The statutory functions of the Scottish Information Commissioner are to promote good practice by Scottish Public Authorities under the Freedom of Information (Scotland) Act 2002 and to determine appeals made to him by any person who is dissatisfied by the failure of a Scottish public authority to provide them with information which it holds.</p>		
<p>Scrutiny priorities must reflect the public and user interest.</p>	<p>The Commissioner has statutory rights to provide information and advice to the public on the operation of the Act and to make proposals to Scottish Ministers in respect of their powers to amend the schedule of public authorities covered by the Act and in respect of their powers to designate Scottish public authorities.</p>		

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<p>The primary responsibility for demonstrating compliance and performance should rest with service providers.</p>			
<p>External scrutiny should operate as a coherent system. The features of this should include: Strategic priorities agreed by Ministers and Parliament,</p>			
<p>We propose a revised model of accountability where independence from Ministers is balanced by responsibility to the Parliament. Parliament should become more proactive in seeking assurance.</p>	<p>The Commissioner is independent of the Scottish Parliament and Scottish Government in the exercise of his functions.</p>	<p>The governance and accountability arrangements have to balance a proper regard for the Commissioner being held to account for the discharge of functions and use of public funds, and ensuring that this is both proportionate and does not have the effect or appearance of exercising direction or control, or compromising the independence of the Commissioner.</p> <p>In practice governance and accountability has developed</p>	

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		<p>considerably since I have taken up office and the Committee should be aware of the range of measures which are now in place. In brief, in addition to my annual budget submission the SPCB receives my strategic plan, a monthly projection of costs in justification for the draw down from budget, and a dashboard of case performance against targets. All except the monthly projection of costs are published on my website, together with my annual operational plans, quarterly progress reviews, and a monthly financial statement.</p> <p>In addition my accounts are audited by Audit Scotland and are laid before Parliament, as is my Annual Report. I have appointed a firm of accountants as internal auditors who regularly check</p>	

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		<p>financial controls, risk management, adherence to procedures etc. The reports from Audit Scotland and my internal auditors are scrutinised by an external Audit Advisory Board (AAB) (drawn from members of the Scottish Parliament's own AAB). This Board also scrutinises my annual budget proposals which are then subject to further scrutiny and comment by SPCB before being approved by the Scottish Parliament's Finance Committee. (WE/20081219/page8/paras33-35)</p>	
<p>The complexity of organisational structures is a constraint on a strategic approach to developing and delivering an appropriate scrutiny regime across public services. There is a need to remove constraints to joint</p>			

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<p>working and to simplify the scrutiny governance infrastructure.</p>			
<p>Cost/benefit analysis should become a routine element of any decisions about the use of external scrutiny; and Scrutiny bodies should report to [Ministers and] the Parliament against cost and impact measures.</p>			
<p>All reviews of specific inspection and regulatory functions should also assess the scope for amalgamating bodies with common interests, re-allocating responsibilities to one organisation where there are unnecessary direct overlaps and opportunities to share resources (including staff) to deal with overlaps.</p>		<p>In my view it would compromise the role of the Scottish Information Commissioner should the post be part of a wider Commission alongside other office-holders who were subject to the Commissioner's jurisdiction. It would almost certainly colour public perception as to the relationship between the Commissioner and any of those office-holders who were the</p>	

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		<p>subject of an appeal by a dissatisfied applicant for information. (WE/20081219/page3/para13)</p> <p>Restructuring to have a Commission with a Chair and appointed Commissioners, supported by a Chief Executive, would be disruptive and increase costs, and could well decrease efficiency in coming to case decisions. As Commissioner I am supported by proficient, professional staff providing advice on cases and in particular my Head of Investigations is a qualified solicitor providing in-house legal advice. Our Investigation Procedures incorporate a full internal review procedure which ensures the production of well considered, consistent and legally enforceable</p>	

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		<p>decisions. If on occasion I require a second opinion this is provided by retained external legal advisers. This has proven to be efficient and cost effective. (WE/20081219/page4/para16)</p> <p>I have reservations about co-locating with public bodies over which I have jurisdiction and also whether the assumed savings in shared costs would materialise. Typically it is argued that back of office activities could be shared, generating savings. Firstly such activities are a very small part of my expenditure. Secondly these activities are not divorced from front-line investigations which depend upon professional administration such as case management and records management systems and the secure storage and retrieval of</p>	

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		<p>documents in dispute. Security is vital for these functions. It is a criminal offence for me or my staff to reveal information gathered in the course of an investigation. It is also the case that we receive documents and submissions containing classified material (e.g. one of the cases I investigated recently related to nuclear security). I am security vetted, as are many of my staff and shortly this will be a requirement for all staff, including administrators. Authorities such as the police require the strongest assurances as to the security of sensitive information. It would not be appropriate to share offices or systems where security could be compromised, even by colleagues from other organisations passing by the desks or computer screens of investigative staff, far less by</p>	

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		<p>sharing computer and storage facilities.</p> <p>For reasons mentioned earlier I am of the view that it would affect public perception of my independence were I to share premises and facilities with those bodies which come under my jurisdiction and which are currently the subject of Fol requests and appeals. (WE/20081219/page6/paras28-29)</p>	
<p>Sinclair Report</p>			
<p>moving complaints handling from small to large offices produce efficiencies of scale (last bullet)</p>			
<p>Waterwatch complaints function to SPSO (para 74)</p>			
<p>Prison Complaints Commissioner to SPSO (para 74)</p>			

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Other bodies for transfer to SPSO (para 74)			
SPSO to oversee fit for purpose complaints system (para 75)			
SPSO to be suitably accountable and also appropriately independent (See para 82)			
Enforcing compliance with SPSO decisions (para 83)			
role for SPSO as design authority (para 84)			
A single set of principles for all complaints handling (para 86)			
How is the SPSO authority and resources for SPSO to oversee fit for purpose complaints function (para 88)			
Mediation to be mandatory before a complaint is allowed to progress to the SPSO (or other review body)			
Resourcing SPSO to cater for new functions			

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<p>Finance Committee</p>			
<p>Parliament to determine what the format of any information it requires from a commissioner should be if it chooses to do so, namely the form and content of annual reports</p>			<p>There is no express requirement to prepare strategic plans. The only express requirement is to prepare and lay an annual report on the exercise of the SIC's functions. In practice it is understood that the present SIC has prepared both Strategic Plans and annual Operational Plans.</p> <p><i>Agreed consistent approach required per Human Rights legislation. Committee Bill</i></p>
<p>Powers of direction should be given to the SPCB for budget setting</p>		<p>The benefit of engaging the SPCB in strategic planning would be to provide a strong underpinning to forward financial planning which the current annual settlement lacks, especially with regard to non-recurring or capital expenditure. The rolling strategic plan should be matched with a</p>	<p>The SPCB is responsible for paying the SIC's salary and allowances and any expenses incurred in the exercise of his/her functions. The SIC must prepare accounts. The SPCB must designate the SIC or a member of staff as the 'accountable officer' with responsibility for signing</p>

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		<p>rolling financial plan which would make provision for such non-recurrent expenditure. This would inform the annual budget which would improve on the current approach of a flat rate percentage increase on the previous year's budget and would avoid necessary variations in expenditure being interpreted as unreasonable budgetary expectations. This would also provide the basis for end of year arrangements which many public authorities already can take advantage of.</p> <p>I note that the SPCB goes further and proposes a change to legislation making the Commissioners' and Ombudsman's financial expenditure plans subject to approval by the SPCB. I would</p>	<p>accounts, ensuring the propriety of finances and ensuring that resources are used economically, efficiently and effectively.</p> <p><i>Agreed consistent approach required per Human Rights legislation. Committee Bill</i></p>

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		<p>wish to be clear about the basis for this. If the SPCB is to be given the authority to withhold approval for specific elements or amounts of expenditure, even though these are legitimate and within budget, then this could be said to be exerting direction and control. It should be acknowledged that the Commissioner has been appointed by the Scottish Ministers as an Accountable Officer in his own right making him directly accountable to the Scottish Ministers for his financial management and subject to the same accounting and external auditing requirements of other public bodies. The Commissioner should be allowed to exercise the operational judgement which goes with this responsibility, within the arrangements for financial planning and control</p>	

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		<p>which are already in place and shown to be effective. (WE/20081219/page9/para40-41)</p>	
<p>The SPCB to have power of approval on premises location</p>		<p>The 2006 Finance Committee Report specifically notes the power given to the SPCB with regard to approval on premises location in the Scottish Commission for Human Rights Act 2006, and recommends the legislation for existing Commissioners and Ombudsman be amended to provide the SPCB with similar power in order to ensure it can approve future determination of location.</p> <p>In its report the Finance Committee remained “very concerned by some of the location decisions taken by commissioners e.g. the Freedom of Information Commissioner” (sic). However the basis for the</p>	<p>There is no provision regarding the location of the SIC’s office.</p> <p><i>Agreed consistent approach required per Human Rights legislation. Committee Bill</i></p>

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		<p>Committee's concern is not clear, and has not been made explicit.</p> <p>As indicated earlier there was an urgent need for me to locate premises following my appointment. It was quickly apparent that I could not co-locate with the SPSO who was at that time negotiating a lease on premises in Edinburgh in which to combine staff from existing separate offices. In any case I was encouraged by the SPCB to locate outwith Edinburgh and I was the only Commissioner or Ombudsman to do so until the recent co-location of the Scottish Human Rights Commission with the Equalities and Human Rights Commission in Glasgow. I considered a number of premises in different locations, including Kirkcaldy and Dundee, none of</p>	

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		<p>which were suitable, and settled upon my current location as it offered excellent value for money and appropriate security for my operational requirements. In April 2003 I attended a meeting of the SPCB at which I summarised the search which had been conducted to establish what was available and I indicated at that point that a lease on favourable terms was being negotiated on premises in St Andrews. Members of the committee gave no indication that they were dissatisfied with this decision. If a preferred location was the priority (and no location was indicated) then a longer period of search could have been undertaken - but this would certainly have meant that the Scottish freedom of information legislation could not have come fully into effect at the</p>	

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		<p>same time as the UK legislation and that was the clearly expressed priority at that time.</p> <p>There is no practical reason for my office to be located in Edinburgh and, drawing upon the 2009-10 budget submissions for commissioners and ombudsman, I am of the view my property costs per employee represent excellent value for money at £4,200 per annum, compared with £5,800 for the SPSO and £8,800 for OCPAS. (WE/20081219/page6/paras24-27)</p>	
<p>Provisions requiring a three year rolling business plan and strategic plans</p>		<p>I would be happy to lay future strategic plans before Parliament and to prepare these on a rolling 3-year basis. The SPCB in its submission suggests that, when drafting strategic plans, I should invite comments from it and</p>	<p>There is no express requirement to prepare strategic plans. The only express requirement is to prepare and lay an annual report on the exercise of the SIC's functions. In practice it is understood that the present SIC</p>

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		<p>others. I believe this could be a purposeful and valuable dialogue as long as such comments did not become de facto instructions or gave the impression of direction or control. (WE/20081219/page9/para39)</p>	<p>has prepared both Strategic Plans and annual Operational Plans.</p> <p><i>Agreed consistent approach required per Human Rights legislation. Committee Bill</i></p>
<p>SPCB prior approval for staff numbers, terms and conditions</p>		<p>FOISA already provides that the appointment of staff, their terms and conditions and arrangements regarding pensions etc are approved by the SPCB and I see no need for change to statute. (WE/20081219/page10/para44)</p>	<p>The SIC may appoint members of staff. The SIC requires the approval of the SPCB for the terms and conditions of any staff appointed. Subject to the approval of the SPCB, the SIC may also make pension provision for staff. The SIC may delegate functions to staff. Those in employment with the SIC are eligible for membership of the Civil Service Pension Scheme.</p> <p><i>Agreed consistent approach required per Human Rights legislation. Committee Bill</i></p>

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<p>Consent from SPCB to acquire and disposal of land</p>		<p>I agree that it makes sense for the SPCB to approve the acquisition or disposal of land (WE/20081219/page9/para42)</p>	<p>The SIC has power to do anything which appears necessary or expedient for the purpose of or in connection with the exercise of his/her functions. In particular, the SIC has power to acquire and dispose of land and other property and to enter into contracts. In limited circumstances the SIC may charge for services.</p> <p><i>Agreed consistent approach required per Human Rights legislation. Committee Bill</i></p>
<p>Power to SPCB to direct sharing of services as appropriate/necessary</p>		<p>I am committed to constantly reviewing our operations to identify opportunities to improve economy, efficiency and effectiveness.</p> <p>In practise the scope to find savings within my budget is limited. Salaries represent almost</p>	<p>There is no provision regarding the sharing of premises, staff or other resources. The Commissioner is based in St Andrews and is supported by 24 staff.</p> <p><i>Agreed consistent approach required per Human Rights</i></p>

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		<p>80% of my costs the remainder of my budget (c. £300,000) funds ongoing and largely committed costs, such as rent, rates etc.</p> <p>I believe the way forward is to develop the existing collegiate approach and I would suggest the SPCB's officials could have a useful role to play here, as well as colleagues in the offices of Commissioners and Ombudsman. We have benefited from this approach in terms of procurement, IT, and training.</p> <p>Although this could be made even more effective by an explicit arrangement, I am not convinced it requires legislative change regarding the sharing of services as proposed by the SPCB. There is nothing in FOISA which would prevent the sharing of services</p>	<p><i>legislation. Committee Bill</i></p>

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		<p>and presumably any developments in this area would be subject to a business case analysis and discussion with the office-holders.</p> <p>With regard to HR, my staff are employed on terms and conditions which are very closely modelled on the Parliament's and we are therefore already effectively enjoying the benefits of a shared service as I do not employ staff or external advisers for the purposes of negotiation. (WE/20081219/page10/para46-50)</p>	
<p>Parliamentary committees to take evidence more regularly from commissioners and ombudsman and establish memoranda of understanding with the relevant commissioners/ombudsman to ensure evidence sessions on</p>		<p>I publish and lay before Parliament my Annual Report and I would welcome the opportunity to formalise an arrangement under which I would present this to the SPCB or to the appropriate Parliamentary Committee.</p>	<p><i>Not appropriate for inclusion in legislation. Cover in Committee report?</i></p>

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<p>annual reports.</p>		<p>(WE/20081219/page9/para43)</p>	
<p>Independent assessor to oversee the procedures of reappointing commissioners and ombudsman.</p>		<p>A single term of office has its merits. It removes uncertainty as to whether the Commissioner will be re-appointed and could be seen to bolster the independence of the Commissioner. A period of 7 or 8 years seems appropriate. (WE/20081219/page5/para22)</p>	<p>SIC is appointed by Her Majesty on the nomination of the Parliament. The SIC's term of office is determined by the SPCB, but may not exceed five years. The SIC may be appointed for a second term, but can only be appointed for a third term in special circumstances.</p> <p><i>Outstanding Committee decision</i></p>
<p>The Committee considers that there is a strong case for integrating the Human Rights Commission with the SPSO.</p>			<p><i>Rejected by the Parliament during the Human Rights Bill.</i></p>
<p>The Committee endorses the approach taken in New Zealand and recommends that future proposals for representatives of specific interest groups within society should not be designated as Parliamentary commissioners.</p>			<p><i>Not applicable for this Bill.</i></p>

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<p>SCPA Report</p>			
<p>The Auditor General for Scotland should be appointed on a fixed term. Legislation should be amended to provide that, in future, the Auditor General for Scotland is appointed for a single non-renewable term of eight years.</p>			
<p>Counter-productive to be unduly restrictive on whether the holders of any particular posts should be ineligible for appointment as Auditor General.</p>			
<p>A presumption that the Auditor General will hold no other positions of any kind should be included by the SPCB as a term and condition for any future Auditor General.</p>			
<p>While still in post, an Auditor General should not be permitted to apply for a post with any body</p>			

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<p>which is subject to audit by the Auditor General, or which is associated with the Auditor's General's role.</p>			
<p>The SPCB should specify at the start of each fixed term a mechanism that will be used throughout the fixed term to determine routine increases in the salary.</p>			
<p>Difficulty in the event of the incapacity of an Auditor General, where temporary provision may need to be made for certain functions of the post to be delegated.</p>			
<p>Formal statutory provision for the position of Deputy Auditor General</p>			
<p>The SCPA considers that it is essential to retain the functions and processes of the Accounts Commission, namely considering the output of the audit of local</p>			

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<p>authorities and joint boards and, where necessary, making recommendations to Scottish Ministers. However, the SCPA believes that there may be merit in delivering these functions within a simplified audit structure.</p>			
<p>statements of the Auditor General (and of staff of Audit Scotland when acting on his/her behalf) to have absolute privilege</p>			
<p>Any other proposals received/considered</p>			
		<p><u>Legal Status of Commissioner</u> I am pleased that the SPCB wishes to use this opportunity to resolve the issues regarding legal status of the Commissioner. However I am not convinced this matter can be fully resolved in the way suggested by the SPCB in its</p>	

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		<p>submission to the Committee. (WE/20081219/page4/para17)</p> <p>My understanding is that a remedy would lie in the creation by statute of a body corporate (as distinct from the English common law provision of a corporation sole) in which the Commissioner is the sole member. I would welcome the Committee making a recommendation to this effect, or some other recommendation which would resolve the types of issues which I have raised and which indemnity alone would not resolve. (WE/20081219/page5/para21)</p> <p><u>Removal from Office</u> I do not see the merit of altering the provision under Part 3 in the Freedom of Information (Scotland) Act 2002 which</p>	

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		<p>requires removal from office to be voted for by no less than two thirds of the total number of all MSPs. Involuntary removal from office in this fashion would be a serious matter and I think the provision in FOISA makes an appropriate threshold compared to that in section 3 of the Commissioner for Children and Young People (Scotland) Act 2003 which relies upon the number of MSPs present and voting. (WE/20081219/page5/para23)</p> <p><u>Commissioner's Terms & Conditions</u> The terms and conditions on which Commissioners are appointed are somewhat sparse. They reflect some basic aspects of terms and conditions similar to SPCB staff such as for holiday</p>	

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		<p>entitlement, expected hours of work etc. However these are not amplified further. The Commissioner does not have any employment rights, which is all the more reason then that there should be a fuller exposition of terms and conditions and to have a structure in place allowing Commissioners to raise any issues regarding terms and conditions which affect them. I note for example that Audit Scotland¹ recommended the establishment of a remuneration committee and I recommend that such a committee, dealing also with terms and conditions generally, be established. (WE/20081219/page7/para31)</p>	

¹ Audit Scotland Report – SPCB – Ombudsman/Commissioners Shared Services (April 2006)

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		<p><u>Governance & Accountability</u> Strategic Management - establishing a Management Group, chaired by the Commissioner and comprising the 3 senior staff and 2, or at most 3, non-executives, recruited with the support of my AAB, and the Commissioner for Public Appointments. These non-executives would support me in areas such as strategic development, risk management and operational planning and review, and in ensuring best value (including consideration of shared services). They would complement the experience and skills available within the current senior management team. They would have no role or influence with regard to individual investigations and decisions. I believe this would be a low cost</p>	

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		<p>way of improving upon the current arrangements and that this could be achieved without legislative change and with modest additional expenditure. (WE/20081219/page8/para38)</p>	

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<p>Crerar Report</p>	<p>Applicability</p>	<p>Evidence to date</p>	<p>Action to be Taken</p>
<p>The unique role of external scrutiny is to provide independent assurance that services are well-managed, safe and fit-for-purpose, and that public money is being used properly.</p>	<p>The Commissioner has a duty to promote and safeguard the rights of children and young people up to age 18 years, and those up to 21 in certain circumstances. In addition, the Commissioner is to promote an awareness of those rights amongst children, young people and adults; to keep under review current law, policy and practice relating to those rights; to promote best practice by service providers; promote, commission, undertake and publish research; and carry out investigations concerning any decisions or actions by service providers, which have an effect generally on the rights, interests and views of children and young people.</p>		

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<p>Scrutiny priorities must reflect the public and user interest.</p>	<p>The work priorities of the office will be set by the Commissioner, having regard to the views of children and young people.</p>	<p>The SPCB argue for a realignment that would “make it easier for the general public to identify with one body covering associated functions.” I believe children and young people will find it difficult to identify with an adult-centred body. They need one that communicates with them in terms and places that are familiar to them and that give their perspectives centre stage. (WE/20081219/page9/para4.2)</p>	
<p>The primary responsibility for demonstrating compliance and performance should rest with service providers.</p>			
<p>External scrutiny should operate as a coherent system. The features of this should include: Strategic priorities agreed by Ministers and Parliament,</p>			

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<p>We propose a revised model of accountability where independence from Ministers is balanced by responsibility to the Parliament. Parliament should become more proactive in seeking assurance.</p>	<p>The Commissioner is independent of the Scottish Parliament and Scottish Government in the exercise of her functions.</p>	<p>SCCYP refer to The Paris Principles - The main aim of the Principles seems to be to secure independence of the Government (Executive) rather than the Parliament. In fact, accountability direct to the Parliament, and funding from it, is seen as a guarantee of independence from the Executive. Commissioners/ Ombudsmen should be free to pursue the objective human rights agenda without political interference, but they are still dependent upon their parliaments for resources and for their very existence. (WE/20081219/page15/chap2)</p>	<p>SCCYP is not generally subject to the direction or control of the Parliament, the Scottish Executive or the SPCB. There are minor exceptions.</p>
<p>The complexity of organisational structures is a constraint on a strategic approach to developing and delivering an appropriate scrutiny regime across public</p>		<p>SCCYP welcomes the opportunity to reflect on how governance arrangements support efficient and effective execution of the duties of the office.</p>	

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<p>services. There is a need to remove constraints to joint working and to simplify the scrutiny governance infrastructure.</p>		<p>(WE/20081219/page2/summary)</p>	
<p>Cost/benefit analysis should become a routine element of any decisions about the use of external scrutiny; and Scrutiny bodies should report to [Ministers and] the Parliament against cost and impact measures.</p>			
<p>All reviews of specific inspection and regulatory functions should also assess the scope for amalgamating bodies with common interests, re-allocating responsibilities to one organisation where there are unnecessary direct overlaps and opportunities to share resources (including staff) to deal with</p>		<p>SCCYP believes that the reasons for establishing the office of Commissioner for Children and Young People are still valid and that these can best be taken forward through a separate and independent statutory office which might, nonetheless, benefit from sharing some central services with other offices.</p>	

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<p>overlaps.</p>		<p>(WE/20081219/page2/summary)</p> <p>I question whether this is an opportune time for change in the "landscape of commissioners and ombudsmen." I agree that there is an ever present need to seek value for money. I agree that any opportunities for doing this through sharing services should be explored, and my comments identify some possible ways in which this might be achieved. But there is a danger of wasting public money by destabilising very new organisations that are only just emerging from their birth pangs, and diverting them from the purposes for which they were established.</p> <p>(WE/20081219/page9/para4.1)</p> <p>Parliament decided that the</p>	

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		<p>Commissioner for Children and Young People should not have a remit to investigate individual cases. There is therefore no clear overlap with the Scottish Public Services Ombudsman or other complaints-handling bodies. (WE/20081219/page17/chap8)</p> <p>In terms of proposed regulators or investigatory bodies, there would be common interests with any Scottish Human Rights Commissioner. The Commissioner for Children and Young People (Scotland) Act 2003 identifies the Convention on the Rights of the Child as the central agenda, but extends the scope of the Commissioner's concerns to other relevant international instruments. The Scottish Human Rights</p>	

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		<p>Commissioner Bill identifies the Convention Rights of the European Convention on Human Rights as the central agenda, with other relevant international instruments also falling within the remit. This means that there is scope for common interests, but different voices and emphases. (WE/20081219/page18/chap8)</p> <p>At this stage, I would advise enrichment of the landscape with new pathways between agencies and common areas for wider use, rather than wholesale redevelopment. (WE/20081219/page9/para4.1)</p>	
<p>Sinclair Report</p>			
<p>moving complaints handling from</p>			

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small to large offices produce efficiencies of scale (last bullet)			
Waterwatch complaints function to SPSO (para 74)			
Prison Complaints Commissioner to SPSO (para 74)			
Other bodies for transfer to SPSO (para 74)			
SPSO to oversee fit for purpose complaints system (para 75)			
SPSO to be suitably accountable and also appropriately independent (See para 82)			
Enforcing compliance with SPSO decisions (para 83)			
role for SPSO as design authority (para 84)			
A single set of principles for all complaints handling (para 86)			
How is the SPSO authority and resources for SPSO to oversee fit for purpose complaints function			

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(para 88)			
<p>Mediation to be mandatory before a complaint is allowed to progress to the SPSO (or other review body)</p>			
<p>Resourcing SPSO to cater for new functions</p>			
<p>Finance Committee</p>			
<p>Parliament to determine what the format of any information it requires from a commissioner should be if it chooses to do so, namely the form and content of annual reports</p>			<p><i>Agreed consistent approach required per Human Rights legislation. Committee Bill</i></p>
<p>Powers of direction should be given to the SPCB for budget setting</p>		<p>The extent of parliament's actual control of my budget has been widened through a voluntary agreement between my office and the parliament, set out in a Financial Memorandum with the SPCB. Paragraph 16 allows me to spend within agreed budget</p>	<p>SPCB is responsible for paying the SCCYP's salary and allowances and any expenses incurred in the exercise of his/her functions. The SCCYP must prepare accounts. The SPCB must designate the SCCYP or a member of staff as the</p>

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		<p>limits without further recourse to the SPCB. Paragraph 8 allows me to approach SPCB should I require additional funding. Paragraph 10 allows the SPCB to refuse such additional funding, with the proviso that I may thereafter raise the matter with Finance Committee by writing to the Convener. (WE/20081219/page16/chap4)</p> <p>In my view, the current Financial Memorandum provides a reasonable starting point for the desired balance between budgetary control and independence. However, there is potential for strengthening both factors and clarifying their relationship. (WE/20081219/page16/chap5)</p>	<p>'accountable officer' with responsibility for signing accounts, ensuring the propriety of finances and ensuring that resources are used economically, efficiently and effectively.</p> <p><i>Agreed consistent approach required per Human Rights legislation. Committee Bill</i></p>

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		<p>Budgetary control and accountability could be strengthened by raising the status of the core principles of the Memorandum from voluntary agreement to legislation. The advisability of such a move, and the extent of any legislation, should take account of the fact that the current voluntary Memorandum has a built-in review mechanism. It would be unhelpful were the legislative structure to be fixed too early or too broadly, before lessons had been learned from experience of operating it. Nevertheless, I would be happy to be involved in further debates aimed at achieving a more transparent and structured balance between independence and accountability.</p> <p>(WE/20081219/page17/chap5.2)</p>	

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<p>The SPCB to have power of approval on premises location</p>		<p>SCCYP has no objection to proposals about authority to determine the location of the office. (WE/20081219/page2/summary)</p>	<p>There is no provision regarding the location of the SCCYP's office.</p> <p><i>Agreed consistent approach required per Human Rights legislation. Committee Bill</i></p>
<p>Provisions requiring a three year rolling business plan and strategic plans</p>		<p>I have no objection to the SPCB proposal that office-holders should be required to lay a strategic plan before Parliament, nor the requirement to invite comments on it. This seems sensible and does not go so far as to require the office-holder to change the draft plan in response to those comments, which would impede the independence of the office. (WE/20081219/page11/chap7)</p>	<p>There is no requirement to prepare strategic plans. There is a requirement to prepare and lay annual reports which must include an overview of work to be undertaken by the SCCYP in the following year, including the strategy for involving children and young people in his/her work.</p> <p><i>Agreed consistent approach required per Human Rights legislation. Committee Bill</i></p>
<p>SPCB prior approval for staff numbers, terms and conditions</p>		<p>SPCB already has power to determine the number and terms</p>	<p>Subject to the approval of the SPCB regarding both numbers</p>

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		<p>and conditions of staff of the office of Commissioner for Children and Young People. (WE/20081219/page11/chap7)</p>	<p>and terms and conditions of staff, the SCCYP may appoint staff and make pension provision for staff. Those in employment with the SCCYP are eligible for membership of the Civil Service Pension Scheme.</p>
<p>Consent from SPCB to acquire and disposal of land</p>			<p>SCCYP has a general power to do anything necessary or expedient for the purpose of or in connection with the exercise of his/her functions. In particular the SCCYP has power to acquire and dispose of property and to enter into contracts. The CCYPS may charge for services, provided that this has been permitted by Regulations made by the Scottish Ministers. No such Regulations have yet been made to allow such charges.</p> <p><i>Agreed consistent approach</i></p>

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			<p><i>required per Human Rights legislation. Committee Bill</i></p>
<p>Power to SPCB to direct sharing of services as appropriate/necessary</p>		<p>SCCYP is open to considering proposals for greater sharing of services through the provision of central services for a number of bodies for functions such as HR, IT, procurement, Equalities support and monitoring, and general development of policies and procedures. These proposals should include full cost-benefit analyses. (WE/20081219/page2/summary)</p>	<p>There is no provision regarding the sharing of premises, staff or other resources.</p> <p><i>Agreed consistent approach required per Human Rights legislation. Committee Bill</i></p>
<p>Parliamentary committees to take evidence more regularly from commissioners and ombudsman and establish memoranda of understanding with the relevant commissioners/ombudsman to ensure evidence sessions on annual reports.</p>			<p><i>Not appropriate for inclusion in legislation. Cover in Committee report?</i></p>
<p>Independent assessor to oversee</p>		<p>I agree with the SPCB proposal</p>	<p>SCCYP is appointed by Her</p>

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<p>the procedures of reappointing commissioners and ombudsman.</p>		<p>that there should be a single term of office with no potential for reappointment. This arrangement would better safeguard the independence of the Commissioner. I would suggest a term of seven years, which is the arrangement in place in Wales. This would allow a new appointee an initial year to settle in and get to grips with the job and to devise and follow through two 3-year plans. (WE/20081219/page11/chap6)</p>	<p>Majesty on the nomination of the Parliament. The SCCYP's term of office is determined by the SPCB, but may not exceed five years. The CCYPS may be appointed for a second term, but may not be appointed for a third term.</p> <p><i>Outstanding Committee decision</i></p>
<p>The Committee considers that there is a strong case for integrating the Human Rights Commission with the SPSO.</p>			<p><i>Rejected by the Parliament during the Human Rights Bill.</i></p>
<p>The Committee endorses the approach taken in New Zealand and recommends that future proposals for representatives of specific interest groups within</p>			<p><i>Not applicable for this Bill.</i></p>

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<p>society should not be designated as Parliamentary commissioners.</p>			
<p>SCPA Report</p>			
<p>The Auditor General for Scotland should be appointed on a fixed term. Legislation should be amended to provide that, in future, the Auditor General for Scotland is appointed for a single non-renewable term of eight years.</p>			
<p>Counter-productive to be unduly restrictive on whether the holders of any particular posts should be ineligible for appointment as Auditor General.</p>			
<p>A presumption that the Auditor General will hold no other positions of any kind should be included by the SPCB as a term and condition for any future Auditor General.</p>			

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<p>While still in post, an Auditor General should not be permitted to apply for a post with any body which is subject to audit by the Auditor General, or which is associated with the Auditor's General's role.</p>			
<p>The SPCB should specify at the start of each fixed term a mechanism that will be used throughout the fixed term to determine routine increases in the salary.</p>			
<p>Difficulty in the event of the incapacity of an Auditor General, where temporary provision may need to be made for certain functions of the post to be delegated.</p>			
<p>Formal statutory provision for the position of Deputy Auditor General</p>			
<p>The SCPA considers that it is</p>			

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<p>essential to retain the functions and processes of the Accounts Commission, namely considering the output of the audit of local authorities and joint boards and, where necessary, making recommendations to Scottish Ministers. However, the SCPA believes that there may be merit in delivering these functions within a simplified audit structure.</p>			
<p>statements of the Auditor General (and of staff of Audit Scotland when acting on his/her behalf) to have absolute privilege</p>			
<p>Any other proposals received/considered</p>			
		<p>SCCYP would welcome clarification of the legal status and liability of office-holders. (WE/20081219/page11/chap7)</p>	

REVIEW OF SPCB SUPPORTED BODIES COMMITTEE

**Draft response to the Review of SPCB Supported Bodies Committee,
from the Education, Lifelong Learning and Culture Committee**

Background

1. The Education, Lifelong Learning and Culture Committee considered the consultation published by the Review of SPCB Supported Bodies Committee (RSSB) at its meetings on 14 and 21 January 2009.
2. One of the SPCB supported bodies is Scotland's Commissioner for Children and Young People in Scotland (hereafter "the Children's Commissioner"), and the scrutiny of that body falls within the remit of the Education, Lifelong Learning and Culture Committee.
3. The Committee therefore considered the general terms and conditions, and the structure of the Children's Commissioner.
4. The Committee notes the SPCB's proposal to merge the current posts of Children's Commissioner and Scottish Human Rights Commissioner.
5. The Committee agreed that the timetable set out by the RSSB did not allow it to take any evidence on the SPCB proposals in relation to the Children's Commissioner. The Committee considers, therefore, that it is not at present in a position to offer any comment on the proposals.
6. The Committee, however, agreed unanimously that, should the RSSB decide to support the SPCB proposals to merge the posts of Children's Commissioner and Human Rights Commissioner, the Education, Lifelong Learning and Culture Committee would wish to have an opportunity to consult stakeholders and take evidence before arriving at a view on whether or not to endorse the proposals.

Karen Whitefield
Convener
Education, Lifelong Learning and Culture Committee