

Finance and Public Administration Committee Inquiry Scotland's Commissioner Landscape: A strategic approach Children and Young People's Commissioner Scotland

March 2024

Established by the Commissioner for Children and Young People (Scotland) Act 2003, the Commissioner is responsible for promoting and safeguarding the rights of all children and young people in Scotland, giving particular attention to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner has powers to review law, policy and practice and to take action to promote and protect rights.

The Commissioner is fully independent of the Scottish Government.

- 1. Why is the Commissioner model chosen over other approaches, such as a public body or government department, and why do you consider there has been such a growth in Commissioners in recent years?**

Our Model

The Commissioner for Children and Young People (Scotland) Act 2003 established the office of the commissioner. The Commissioner was introduced by a Committee Bill, as opposed to a Government Bill, and was Parliament's response to a 10 year-long campaign by civil society, in particular children and young people themselves, for a champion.

Since 2004 the Act has been modified by the Children and Young People (Scotland) Act 2014, the Scottish Parliamentary Commissions and Commissioners etc Act 2010 and the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024.

The Commissioner is independent from government and parliament, but accountable to the Scottish Parliament. Independence enables the Commissioner to hold duty bearers to account.

The Commissioner's general function is to promote and safeguard the rights of children and young people up to age 18, or 21 if they have ever been "in care" or "looked after" by a local authority. This includes the responsibility for monitoring enjoyment of all human rights of children and young people in Scotland, with special reference to the UNCRC.

More specifically, the Commissioner must:

- promote awareness and understanding of the rights of children and young people;

- keep under review the law, policy and practice relating to the rights of children and young people with a view to assessing the adequacy and effectiveness of such law, policy and practice;
- promote best practice by service providers; and
- promote, commission, undertake and publish research on matters relating to the rights of children and young people.

We have a duty to consult children and young people on the work we do and to pay special attention to groups of children and young people who have difficulty in making their views and experiences known.

The Commissioner has specific powers to carry out investigations. When the UNCRC Incorporation Act comes into force, this will bring new powers to raise proceedings, or intervene in proceedings, in some circumstances.

The Commissioner works with other organisations in exercising its functions and must seek to ensure that it is not duplicating the work other public bodies are already doing.

The office has international standing and credibility, providing evidence to human rights treaty bodies and holding membership of the European Network of Ombudspersons for Children (ENOC).

Why was this model chosen?

It is important to draw a distinction between the role of specialist bodies which are set up to fulfil a policy aim, and that of National Human Rights Institutions (NHRIs) and Independent Children's Rights Institutions (ICRIs). As an ICRI, the work of our office is framed and guided by the principles contained in General Comment no.2 (CRC Committee, 2002)¹ and the UN Paris Principles (UN, 1993)². In working to ensure respect for the rights contained in the UNCRC, General Comment no.2 recommends that ICRIs have the power to, amongst other things: undertake investigations into any situation of violation of children's rights; conduct inquiries on matters relating to children's rights; and review the adequacy and effectiveness of law and practice relating to the protection of children's rights. In addition to having these functions, our office places children's voices, and experiences at the heart of our work, thereby ensuring direct accountability to children and young people across Scotland, while working on their behalf.

The most important aspect of our model is our independence; this principle is essential for the office to fulfil its functions. Promoting human rights requires the Commissioner to be critical of existing practices, policies and legislation which means being able to challenge those who make them, including the Government, Local Authorities and other Public and Private Bodies. It is of paramount importance

¹ General comment no. 2 (2002), The role of independent national human rights institutions in the promotion and protection of the rights of the child. Available here: <https://digitallibrary.un.org/record/490983?ln=en>

² Principles relating to the Status of National Institutions (The Paris Principles), General Assembly resolution 48/134, available here: <https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris>

that we are able to maintain this independence. Unicef has most recently highlighted that;

*‘Independence is the defining feature of human rights institutions for children. It is their main strength and their source of legitimacy and authority. It is the quality that allows them to keep child rights front and centre regardless of political trends. The degree of independence is pivotal in determining the success or failure of institutions’.*³

Why has there been such a growth recently?

We have not undertaken an analysis to understand this growth in proposals for new Commissioners, however there is a clear implementation gap in Scotland between policy and practice. This creates a lot of dissatisfaction. The creation of a specific body or person to champion the needs of a particular group appears to be a reaction to ineffective policy implementation and access to justice.

The model of our office is frequently cited as the model new Commissioner proposals want to emulate. To some degree, this is evidence of the impact our office has had and may have partly inspired some of the proposals. Scottish Government has also expressed the view our office is effective. In November 2023 during committee evidence the current Justice Secretary, Angela Constance stated that;

‘The Children and Young People’s Commissioner Scotland role is a model of a commissioner working well.’ She noted that the office has ‘contributed to many policy and legislative changes in the Parliament’ and ‘shifted and changed our dialogue on how we support children and young people’.⁴

Whilst we recognise that the Commissioner model can be very effective, there is currently a real risk of creating a further fragmented and ineffective infrastructure which would not only be costly but could actually serve to create more barriers to justice. Whilst it could be seen as a ‘symbolic’ easy win⁵ to create new issue-based Commissioner roles, the real impact lies in changing practice, budgets and implementation.

2. What are the implications of this growth on Scotland’s finances, other organisations and wider society?

There are several implications of creating so many new Commissioners’ posts. These relate to the overlap in functions; the potential to duplicate work; making the landscape more fragmented and complex for rights holders and duty bearers; and financial implications.

³ Unicef – Championing Children’s Rights A global study of independent human rights institutions for children – summary report- [championing2_eng.pdf \(unicef-irc.org\)](#)

⁴ [Official Report - Parliamentary Business : Scottish Parliament](#)

⁵ [crossroads_what-next-for-human-rights-protection-in-scotland-shrc-june-2023.pdf \(scottishhumanrights.com\)](#)

Duplication in Functions

We recommend particular attention and scrutiny to avoid unnecessary overlap and duplication in functions. We explain our concerns by illustrating the potential for unintended consequences to our investigation powers. Our office has the power to carry out 'general investigations' and 'individual investigations' into whether a service provider has regard to the rights, interests and views of children and young people in making decisions or taking actions that affect those children and young people (or a specific child or young person for individual investigations).⁶ However, our office is prevented from exercising this power where to do so would duplicate the investigatory function of another body in Scotland.⁷ It is worth noting that, as a consequence of this provision, the individual investigation power is narrower than the general power as there are more bodies able to investigate individual complaints or issues. It can be complex at present to assess whether an individual case falls within the scope of our investigation power. Our office is required to report to Parliament following the conclusion of a general investigation, including any recommendations arising from any investigation. Reporting to the Parliament on an individual investigation is discretionary due to the need to consider the privacy rights of the child concerned.⁸

While our powers to conduct an investigation and require the provision of evidence are strong, the office lacks an enforcement power. We understand that when the 2003 Act was passed, it was anticipated that the Parliament itself would be the enforcement mechanism. However, experience has led us to conclude that a power to make binding recommendations would be an important addition to the office's power to hold public bodies accountable, particularly now the UNCRC (Incorporation) (Scotland) Act 2024 has been passed.

One of the potential risks of the proliferation of new Commissioners is that increasingly scarce public finances are diverted into new bodies, rather than improving the effectiveness of existing offices by resourcing additional powers. Even more than that, the new bodies may actively restrict the ability of existing office holders to fulfil their mandate. For example, the Victims and Witnesses Commissioner and the proposed Future Generations Commissioner both risk duplicating our functions and further constraining our office's ability to investigate children's rights issues.

In relation to the Victims and Witnesses Commissioner, it was pointed out that;

'Section 10 of the bill gives the commissioner powers to carry out an investigation, but not to duplicate the functions of others. The bill is crafted to ensure that we have clarity instead of confusion and that the victims and witnesses commissioner cannot go into the functions and duties of another commissioner or, indeed, another body.'

⁶ Section 7, Commissioner for Children and Young People (Scotland) Act 2003

⁷ Section 7(2A), 2003 Act

⁸ Section 11, 2003 Act

But we have that same restriction – how do we properly decide who has remit when the case involves a child victim?

We have a statutory duty to avoid duplicating the work of others as far as is practical. We already have overlapping remits with other Commissioners and Commissions and other statutory bodies such as regulators, inspectorates and ombudsmen. We strongly recommend that parliament makes it a key priority to ensure that any new offices do not further limit the remit of existing offices or create more complexity for children and young people.

The recent research carried out by the Scottish Government highlighted the importance of talking and communicating with other commissioners.⁹ If there are more such bodies created then inevitably this exercise becomes much more complex. This research also highlighted that even though there can be good working relations, there is often confusion between the bodies as they all have different mandates. There can also be difficulties with information sharing between bodies, which can make joint working challenging. Many commissioners highlighted that the landscape was ‘complicated and busy’ – creating commissioners for particular groups leads to a complex landscape.

Commissioners could end up referring cases between each other – this will create more work to manage and less time to work on the actual issues. If all the small offices are engaged in consultation exercises with one another, they will be spending less time holding Scottish Government and others to account.

Increased Complexity of Landscape

In the Scottish Human Rights Commission paper “At a Crossroads - Which Way Now for the Human Rights System in Scotland?”¹⁰ the Commission identifies several risks with creating more bodies;

- complicating the accountability landscape with overlapping roles and remits;
- the lack of intersectional understanding/work where a body has a restricted mandate;
- likelihood that an under-resourced body to be unable to meet the expectations of rights-holders.

We consider that all these issues are worth consideration by the Committee and discussion with Scottish Government and stakeholders. There is a further risk of scope creep and competition between commissioners – deliberate or unintentional ‘power grabs’. It will be important to establish boundaries and ways of working, or you risk threatening the ability of the offices that exist to carry out their functions properly.

⁹ The role of commissions and commissioners in Scotland and the UK(2023) - [role-commissions-commissioners-scotland-uk-final-report-march-2023.pdf](https://www.gov.scot/publications/role-commissions-commissioners-scotland-uk-final-report-march-2023/pdfs/role-commissions-commissioners-scotland-uk-final-report-march-2023.pdf) (www.gov.scot)

¹⁰ [crossroads what-next-for-human-rights-protection-in-scotland-shrc-june-2023.pdf](https://www.scottishhumanrights.com/crossroads-what-next-for-human-rights-protection-in-scotland-shrc-june-2023.pdf) ([scottishhumanrights.com](https://www.scottishhumanrights.com))

In 2006 the Finance Committee undertook a review of SPCB Supported Bodies¹¹ their recommendations were: Any future bodies should not duplicate a role already being carried out; and for bodies to be designated as Parliamentary commissioners, they should meet certain criteria. The Committee further recommended that new proposals for office-holders should provide strong evidence that the proposer has explored all possible opportunities to have an existing body carry out the additional function, or make use of existing resources.

Financial implications

There are large cost implications with establishing new Commissions/ Commissioners, the bulk of those costs will be in set up, governance and admin. Consideration should be given to better funding of existing services or enhancing the resources of existing human rights organisations – instead of establishing a new Commissioner. One alternative model, which is highlighted in the SHRC review is the Rapporteurship model, which entails a series of small teams within an NHRI focused on particular groups of people and/or particular human rights treaties. This structure allows for highly qualified individuals to be directly recruited to work as human rights champions and experts in their fields.¹²

There are concerns that the proliferation of Commissioners offices will be a costly exercise and may not provide good value for money for taxpayers, especially if there are multiple bodies tasked with intervening on similar or identical matters. The expected creation of additional Commissioners across a range of discrete policy areas may impact on the availability of budget and resources for offices like ours which have broader roles and remits linked to the international human rights framework.

3. Currently, there is a mix of regulatory, investigatory, rights-based, and policy-focused Commissioners in Scotland.

What should the role of Commissioners be and which should report directly to Parliament (and why)?

Looking across the entire model of Commissioners, do you consider it to be a coherent approach? What, if any, improvements could be made to the Commissioner landscape in the future to ensure a coherent and strategic approach?

Whilst we note that there are a range of different types of Commissions and Commissioners in Scotland, the Children and Young People's Commissioner Scotland is recognised internationally as an Independent Children's Rights Institution (ICRI). This makes us distinct and different from other types of Commissioner model. We have a very specific rights-based role and remit. We provide a bridge between international human rights treaties and the scrutiny of domestic law, policy and

¹¹ [The Scottish Parliament - Finance Committee Report](#)

¹² [crossroads_what-next-for-human-rights-protection-in-scotland-shrc-june-2023.pdf \(scottishhumanrights.com\)](#)

practice for compliance with children's rights. Children and young people are at the heart of all the work of the office.

General Comment number 2 of the Committee on the Rights of the Child states that, "the Committee on the Rights of the Child considers the establishment of such bodies to fall within the commitment made by States parties upon ratification to ensure the implementation of the Convention and advance the universal realization of children's rights."¹³

The Committee on the Rights of the Child specifically called for the creation of 'specialist independent human rights institutions for children, ombudspersons or commissioners for children's rights'. As such, our establishment is not just a response to domestic need but also an international obligation.

ICRIs serve a very important function to stand 'in the middle' between local and global human rights perspectives – a two-way process which translates global rights into local systems and ensures the local to the global transfer of knowledge and experiences. They translate international children's right norms to national and subnational levels. One important way in which we facilitate this is by working so closely with children and young people and feeding back to a global level on those experiences and voices.¹⁴

Currently, a range of proposed new Commissioners have been tabled. There is little evidence of coherence to the approach. There is also little evidence of consideration about how new Commissioners would work together or be resourced. It is important that consideration be given to the effect that this will have on the independence of an organisations like ours. Independence is the most important part of our role. If there is overlap in functions, alongside our existing duty not to duplicate work, our independence and ability to work on the priorities identified by children and young people will potentially be compromised.

It would be further compromising to our independence to try and retrofit our model to a newly created template for Commissioners as part of creating a more coherent system. Creating a set of guidelines or coherence between different types of Commission will not work with our model, we are intentionally designed to be different and centred around children and young people.

The existing Commissioner landscape within Scotland, and indeed the UK, has come about in a reactive manner. With Commissioners' being set up in response to a particular campaign or a particular pressure. Our office was established in response to an international obligation as well as with immense support from the sector. In Scotland, there was an inquiry as to whether to have a children

¹³ General comment no. 2 (2002), The role of independent national human rights institutions in the promotion and protection of the rights of the child - [General comment no. 2 \(2002\), The role of independent national human rights institutions in the promotion and protection of the rights of the child \(un.org\)](#)

¹⁴ Independent Children's Human Rights Institutions 'In the Middle' between Local and Global Perspective Roberta Ruggiero PhD University of Geneva, Roberta.Ruggiero@unige.ch Karl Hanson PhD University of Geneva, Karl.Hanson@unige.ch

commissioner – it was very much supported both by the sector and children and young people. In 2008 the UN Committee on the Rights of the Child welcomed the establishment of Scotland's Commissioner and stated that the nation should continue to resource this well and ensure its independence.

The most recent concluding observations on the UK by the Committee on the Rights of the Child stated;

'The Committee recommends that the State party:

- (a) Ensure that the national human rights institutions or Children's Commissioners, as relevant, have the mandate and sufficient human, financial and technical resources to monitor children's rights and to receive, investigate and address complaints by children in a child-friendly manner;*
- (b) Continue to ensure the full compliance of all such institutions with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), including regarding their funding and personnel selection and appointment processes.¹⁵*

It could be unhelpful for both rights holders and duty bearers should the Commissioner landscape become more complex and inefficient. If a multitude of small bodies are mandated to consult and collaborate with each other to ensure they don't duplicate or conflict, a disproportionate amount of resource will have to be committed to this activity. This will result in even less resource to fulfil statutory functions and individual remits. For our organisation, we take our direction on priority issues from children and young people. We would have less resource to undertake this work if the organisational landscape in which we work requires more resource for interagency work.

4. Criteria were developed by the Session 2 Finance Committee to help guide decisions on whether to create a new commissioner. These criteria are considered by the Scottish Government and Members when proposing Commissioner related bills.

How are the criteria working in practice and where do you consider improvements can be made to the criteria, its use, or its status?

As stated above, in 2006 the Finance Committee laid out criteria for consideration for new Commissioners or Commissions. These criteria established a good guide to whether new bodies are required and for monitoring of public spending. These criteria were used in 2008-2009 when consideration was given by the Finance

¹⁵ Concluding observations on the combined 6th and 7th periodic reports of the United Kingdom of Great Britain and Northern Ireland : Committee on the Rights of the Child - [Concluding observations on the combined 6th and 7th periodic reports of the United Kingdom of Great Britain and Northern Ireland](#) :

Committee to whether the Children's Commissioner should be merged with SHRC. Application of these principles resulted in a clear and evidence-based decision that we should not be merged.

The committee noted the international profile the Commissioner's office had achieved and that;

"the Committee is not confident that SCCYP's international and UK reputation and status would be retained if included within a wider rights body"..."the commissioner for children and young people in Scotland is an internationally recognised post commented on by the united nations".

An important and unique aspect of the way in which our office operates is the way we embed children and young people within our work, including our governance and recruitment of staff. We consult on and prioritise the agenda of children and young people. This includes our Young Advisors group as well as more extensive engagement with children through specialist organisations and schools. All our staff are expected to work in child friendly ways, participation has been mainstreamed through our office.

Children don't have the same power (or voting rights) as adults, their rights and interests are often marginalised in favour of adults. Children and young people find it difficult to engage in an adult centred body. The involvement of children and young people is a requirement of our legislation – their voices would be drowned out in an adult centred organisation. Research shows that the involvement of children in organisational structures is specified almost exclusively in the mandates of stand-alone, child-focussed institutions such as ours.¹⁶

We are unable to comment on whether the criteria for considering new Commissions/ Commissioners are still working in practice, it is unclear whether they have been considered in any of the new Commissioner Bills.

The criteria for establishing new Commissions/ Commissioners could potentially be further enhanced by considering to what degree their remit requires to be fully independent of Scottish Government and what the appropriate relationship is with the wider public sector. Functions might be more appropriately added to the remit of existing organisations, or alternative less resource intense models considered.

¹⁶ Unicef – Championing Children's Rights A global study of independent human rights institutions for children – summary report- [championing2_eng.pdf \(unicef-irc.org\)](https://www.unicef-irc.org/publications/16)

- 5. The Commissioners under consideration as part of this inquiry are entirely separate to Government. The Scottish Parliamentary Corporate Body provides governance and oversight, and Commissioners are accountable to Parliament, including through scrutiny by the relevant Parliamentary committees.**

Are the existing governance and oversight arrangements adequate and, if not, what improvements are required?

The office has developed a strong and effective internal governance model, which is supplemented by robust external oversight. The four members of the Senior Management Team (SMT) act as a collective de facto Chief Executive Officer. The SMT meets monthly, there are terms of reference for these meetings which track the effective fulfilment of our statutory functions, our corporate governance and operational matters. The SMT assesses risks to the organisation and agree measures for mitigation of risks identified, as well as tracking that our expenditure against budget is delivering best value.

Quarterly governance meetings led by the Commissioner provide assurance and oversight of governance matters and assess progress against our four-year strategic plan and strategic priorities in our delivery plan. This enables the Commissioner to fulfil her Accountable Officer role and provide strategic leadership to the office.

Senior Management Team and Governance meetings are formally minuted and published on our website.

The creation of our strategic plan involves an extensive consultation process with children and young people and sector professionals, is approved by the Scottish Parliament Corporate Body and is laid in Parliament. We have an independent Audit Advisory Board (AAB), which has a terms of reference and which is tasked with reviewing and advising the Commissioner on matters including corporate governance, risk, financial controls and procedures, accounting and annual reporting, and responses to audit.

We have commenced a programme of internal audit, with one of the first focuses on corporate governance. This audit, conducted for us by Wylie Bissett, found that there was "...strong assurance that the Organisation has appropriate governance arrangements in place and that these have been embedded throughout the Organisation." It identified significant areas of good practice, found that the office benchmarked favourably against similar organisations and made four low level recommendations for improvement which we have committed to take forward.

We are externally audited by Audit Scotland on an annual basis and publish the results of this.

The office is funded through the Scottish Parliament and, each year, we must produce an evidence-based budget bid for scrutiny and approval. The budget is based on the activities set out in the strategic and delivery plans and includes indicative bids for the following two years. We provide an annual report on progress to the Scottish Parliament Corporate Body and publish this on our website.

The Commissioner also has a Young Advisor's group, which is established to provide ongoing direction, insights and monitoring of the office's work by young people.

The Commissioner has an independent assessor assigned by the SPCB to annually monitor her performance. The results of these performance reviews will be submitted to the SPCB.

The Commissioner is a full member of the European Network of Ombudspersons for Children (ENOC). To hold this membership, the Commissioner must fulfil certain criteria as an independent children's rights institution (ICRI). These criteria mandate that:

- The institution is established through legislation approved by parliament, which provides for its independence.
- The institution has the function of protecting and promoting children's rights. This function is established through legislation.
- There are no provisions in the legislation which limit the institution's ability to set its own agenda in relation to this function, or which prevent it carrying out significant core functions suggested in the Paris Principles and ENOC's Standards.

We consider the current governance arrangements in place for our office are robust and appropriate. They provide accountability whilst maintaining the essential independence of the role and enabling the Commissioner to be part of the wider international children's rights system.

6. How appropriate are existing lines of accountability and how does the process work in practice? What other accountability models should be considered?

Please refer to our previous answer. There are resource intensive processes of accountability associated with being a public body. We feel that the lines of accountability are working well. We are continuously working to improve the ways in which children and young people can directly hold our office to account for delivering our objectives.

7. To what extent is the current model of Parliamentary committee scrutiny of the performance and effectiveness of how Commissioners exercise their functions appropriate?

In 2009, the Review of SPCB Supported Bodies Committee recommended that "the Scottish Parliamentary Corporate Body supported bodies should be subject to committee monitoring and scrutiny on the exercise of their functions on at least an annual basis."

The office gives both written and oral evidence to parliamentary committees on Bills and in relation to inquiries, which provides an opportunity for subject Committees to understand, be informed by, and to some degree interrogate, the office's position and work on a particular area.

However, this is based on issues that are live in the Parliament at the time. This means that significant pieces of work undertaken by the office may have very little formal parliamentary visibility unless they intersect with existing Committee workplans. And of course, substantial parts of Committee workplans have themselves been in response to the legislative priorities of the government of the day.

We therefore very much welcome our forthcoming strategic plan scrutiny session with the Education, Children and Young People Committee. We would welcome this becoming an annual session. This will provide both the Commissioner and the Parliament with an increased and wide-ranging opportunity to discuss the office's work, and to consider broader context and decision making.

It is essential that balance is maintained in acknowledging the Parliament's legitimate interest in ensuring that the Commissioner is operating effectively and robustly, while respecting the office's independence and particularly the provisions set out in Schedule 1 of the 2003 Act which state that (except for specific purposes) the Commissioner is not subject to the direction or control of the Government, any MSP or the SPCB.

8. Does the current Commissioner model in Scotland deliver value for money?

The Children and Young People's Commissioner Scotland has a wide range of responsibilities, the office carries out a high turnover of work for a modest budget. We are a small team working to act for nearly 1 million children and young people in Scotland.

Our office has used our budget towards promoting and defending the human rights of children and young people. In most recent times this has been shown in the longstanding campaign for incorporation of the UNCRC into domestic law which came about earlier this year in the form of the UNCRC Incorporation (Scotland) Act 2024. This has strengthened the protections afforded to children's rights and made domestic remedies available to challenge breaches by public authorities.

We publish an annual report which sets out the work that has been undertaken each year and the progress made.

The office continues to look for efficiencies and has been involved in an ongoing programme of developing shared services where possible with other Commissioner offices or parliamentary bodies. This led to co-location of offices, shared contracting where appropriate, and shared training for staff teams. We are assured that our office continues to provide a value for money service.

9. Are the processes for setting and scrutinising the budgets of each Commissioner adequate?

As noted in our response to question 5, the office is funded through the Scottish Parliament and, each year, we must submit an evidence-based budget bid for scrutiny and approval. The budget is based on the activities set out in our strategic and delivery plans and includes indicative bids for the following two years.

The process in place for setting and scrutinising the budget of our office is adequate. There are limitations in our ability to request additional resources to meet increasing demand. However, we recognise the acute pressures on public finances and continue to work as efficiently as possible.

We have raised concerns around the budget projections for some of the new Commissioner models. There is significant risk of underfunding for new officeholders, which will not meet the expectations of the role and will make it challenging for them to have sufficient resource to deliver on their mandate and collaborate well with others.

10. To what extent is there overlap and duplication of functions across Commissioners, and across other organisations in Scotland and how can this be avoided?

We have commented on the current and potential risks of overlap and duplication in our Answers to questions 2,3, and 4, above. We reiterate the importance of distinguishing between bodies which hold and exercise a human rights remit, operating in line with international principles and within a transnational human rights framework, and those exercising a policy function.

We note again that the landscape is already complex across Scotland, not just in terms of the relationship between human rights bodies, policy issue commissioners, and other organisations but in how their differently framed powers interact and intersect. This means for instance that the line demarking remits and responsibilities between two organisations can be in a different place depending on what power is being considered. This can be challenging for us to navigate as qualified professionals and is likely to be even more so for children and young people.

We recommend the Committee consider reinforcing and enhancing existing criteria for agreeing new “Commissioner” bodies. This would include a detailed focus on the legislation that creates these new bodies to ensure that any new duties do not duplicate or inhibit the essential independence of existing roles, that they are appropriately constructed in terms of model and any statutory remit, and that they represent an effective use of public resources. We suggest that in the first instance, consideration should be given to enhancing the powers and resources of existing officeholders, rather than creating new ones.

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