

Carnegie UK response: Finance and Public Administration Committee review of Scotland's Commissioner Landscape (11/3/2024)

March 2024

About your organisation

Carnegie UK is an independent charitable foundation established with an endowment from Andrew Carnegie over 100 years ago. Our purpose is better wellbeing for people in the UK and Ireland. We focus on collective wellbeing, which is about everyone having what they need to live well now and in the future. We believe that collective wellbeing happens when social, economic, environmental and democratic wellbeing outcomes are seen as being equally important and are given equal weight.

- Social wellbeing: We all have the support and services we need to thrive.
- Economic wellbeing: We all have a decent minimum living standard.
- Environmental wellbeing: We all live within the planet's natural resources.
- Democratic wellbeing: We all have a voice in decisions that affect us.

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?

Carnegie UK welcome the opportunity to contribute to this review of Scotland's Commissioner Landscape.

We believe that Commissioners and Commissions have an important role to play in tackling issues and problems that threaten the collective wellbeing of Scotland's citizens. They offer important external scrutiny and accountability to governments and public bodies, and their independence is crucial to their function.

Furthermore, the Scottish Parliament is unicameral. The independent accountability and scrutiny function of Commissioners is important in this context. They act as an additional accountability mechanism and contribute to a landscape of robust oversight.

Importantly, Commissioners work outside the pressures of short-term political and policy cycles. They therefore play a critical role in supporting the delivery of longer-term change.

They can also bring needed soft power capacity to the Scottish landscape – supporting improved practice by influencing, building support, and driving incremental improvement. These are functions and capabilities that sit alongside hard power levers such as investigatory functions. These hard powers ensure that Commissioners have 'teeth' to drive change and are vital.

A further advantage of Commissioners is that where issues span policy jurisdictions or sectors, they can be uniquely positioned to support joined up practice.

Rights-based Commissioners represent particular groups of people in society. As a consequence, they are often effective advocates for improved outcomes for their constituent group, looking across the activities of many parts of the state. This is in contrast to other audit and scrutiny processes that focus on the activities of a particular organisation or function.

In addition we believe that there are two further reasons that Commissioners are appealing, and that have therefore contributed to their proliferation.

- i A belief that existing mechanisms are not working for particular groups of rights holders (e.g. disabled people; older people).
- ii The Commissioner model has been introduced (and seen to be successful) in other jurisdictions.

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

We are aware that financial concerns around the establishment of Commissioners in Scotland are a key factor in this review. It is important that financial implications are considered carefully, and that delivering value for public money remains a focus. Of course, as the number of Commissions and Commissioner offices grows, so too does the associated cost.

As the Finance and Public Administration Committee has already highlighted, annual budgets of existing offices are increasing. Reasons for this increase include rising staff costs as wages are adjusted to keep up with inflation, and staff numbers growing to support effective delivery of impacts and outcomes.

However, there are a broad and diverse range of functions delivered across Commissioner offices that differ greatly in scope and remit. As such, it is not a helpful approach to simply aggregate these costs and consider them together as a single budget line.

Further, it is important to consider the cost savings that a Commissioner function can bring. For example, a significant proportion of the overall spend on Commissioners cited in this inquiry comes from the Scottish Public Service Ombudsman.

The Committee may wish to consider the wider impact on service delivery and public finance if this particular ombudsman service did not exist. There would likely be additional pressure on Scotland's court and judicial system and increased legal costs for public bodies.

The abolition of the Audit Commission in England in 2015 is also an interesting case study which the Committee may wish to consider. Many commentators speculate that this Commission would have earlier identified issues of financial concern in Local Authorities that have since been declared bankrupt.

It is important that proposals for future Commissioners are considered in the round with a focus both on their potential positive contribution to long-term policy making and service delivery as well as the current budgetary context.

It is also important not to dismiss any proposal that:

- fills a clear policy need or service gap
- contributes to improved long-termism in policy making
- offers an appropriate and cost-effective solution
- supports effective policy delivery and impact
- provides needed accountability and scrutiny
- Supports improved policy cohesion across functions

Commissioners also bring benefits to other organisations. For example, organisations working in the children's rights sector benefit from the presence of the independent Children and Young Person's Commissioner working to further children's rights and hold government to account on their commitments. The Children's Commissioner played an important role in incorporating the UN Convention of the Rights of the Child into Scot's Law. This strengthens the rights context in which children's organisations are operating.

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

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?

As this question highlights, the current range of functions, duties and overarching purposes is broad and the umbrella term 'Commissioner' covers a diversity of functions. It is important to consider the benefits of each Commissioner or proposed new Commissioner individually on its own merits.

One issue around this is raised in the [discussion paper](#) by the Scottish Human Rights Commission (SHRC) published in June 2023. It highlights the organic rather than strategic development of the current landscape, which can be understood as a coherence issue.

The proposals for new Commissioners present an important opportunity for a strategic approach to be taken, and alternatives to be explored where this is appropriate.

Carnegie UK is a strong advocate for and supporter of the Scottish Government's Wellbeing and Sustainable Development Bill, which includes provision for a Future Generations Commissioner. We believe this is an essential feature of the proposed legislation.

A Future Generations Commissioner would bring much needed visibility to issues brought to the fore through the two wellbeing and sustainable development Bills currently being proposed. They could act as a figurehead to inspire and excite, helping to fulfil the vision of these pieces of legislation, and bring people and organisations along. They could provide important 'critical friend' guidance and advice.

The creation of this Commissioner would also support the important shift towards long-termism in policy making that is a central feature and ambition of the legislation. We recognise that current political structures can reward short-term policy interventions, even when they incur future costs – for example on health through inadequate focus on prevention and

the future-proofing of services, and the environment through the approval and delivery of environmentally damaging practices to generate short term profit.

We believe that increasing the capacity of the Auditor General in Scotland to have dedicated focus on wellbeing and sustainability would strongly complement the role of a Future Generations Commissioner. This would be a proportionate and cost-effective way to deliver all of the functions – including investigatory powers - that would be required for this legislation to truly succeed.

The Auditor General would be responsible for auditing whether organisations are fulfilling their legal duties in relation to delivering the National Outcomes. The Future Generations Commissioner would focus on improving awareness of wellbeing and sustainable development, capacity building within the public sector and actively engaging in research and policy development. These two functions – a Commissioner and a new, clearer role for Audit Scotland on auditing wellbeing and sustainable development should work closely together. It is vital that a Commissioner has suitable powers – including to trigger action by the Auditor General should they uncover issues of concern during their own work.

Our favourable responses to both the [Scottish Government consultation](#) and the [2023 consultation](#) for a member's Bill fully explain our rationale and support for the new legislation.

It is important that future decisions are coherent and strategic, but legitimate proposals should not simply be dismissed because there are already a number of Commissioners and Commissions in operation.

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

In this context of resource constraints, it is important for duplication to be avoided. It is also important, however, to recognise the specific and unique value that Commissioners add.

Proposals for new offices should be viewed together, and against the remits of existing functions to avoid duplication. Consideration should also be given to alternative approaches that would serve to increase capacity where required (for example – SHRC rapporteur proposals), which maximise existing channels and ensure that maximum value from what is already in place.

As we have highlighted, Carnegie UK suggestions around the proposal for a Future Generations Commissioner include close working and joined-up practice with the Auditor General. Our proposal is for investigation powers to be included in the remit of the Commissioner, but to be actioned by the Auditor General. This would prevent duplication and support value for money.