



Scottish Parliamentary Corporate Body (SPCB) Supported Bodies Landscape Review Committee: Call for views

About Together (Scottish Alliance for Children's Rights)

Together (Scottish Alliance for Children's Rights) is an alliance that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) and other international human rights treaties across Scotland. We have over 600 members ranging from large international and national non-governmental organisations (NGOs) through to small volunteer-led after school clubs and interested professionals. The views expressed in this submission are based on wide consultation with our members but may not necessarily reflect the specific views of every one of our member organisations. Views expressed separately should also be taken into account.

Introduction

Together (Scottish Alliance for Children's Rights) welcomes the opportunity to comment on the Scottish Parliamentary Corporate Body (SPCB) Supported Bodies Landscape Review Committee's call for views. This response focuses on the role of Commissioners in promoting and protecting the rights and best interests of children and young people so primarily focuses on the Children and Young People's Commissioner (CYPCS). As stated by the UN Committee on the Rights of the Child ('UN Committee'):

"Independent national human rights institutions are an important mechanism to promote and ensure the implementation of the [UNCRC], and 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 [UNCRC] and advance the universal realisation of children's rights".¹

As such, our response offers a children's human rights perspective in line with the cross-party commitment the Scottish Parliament has recently made to the realisation of children's human rights through the passage of the *UNCRC (Incorporation) (Scotland) Act 2024*.² It draws on our response to the Inquiry into the Commissioners Landscape: a Strategic Approach submitted last year,³ which we refer the Committee to, and similarly key articles of the UN Convention on the Rights of the Child (UNCRC), guidance given by the UN Committee's General Comments on the nature and function of National Human Rights Institutions (children's NHRIs) specifically for children and young people, guidance from the European Network of Ombudspersons for Children, the unique position of children and young people in society and the previous work of the CYPCS that reflects this. Our response argues that CYPCS provides real value to Scotland's children and young people and must maintain its independent function and mandate to promote and safeguard their human rights.⁴ Children have distinct needs and face unique challenges within society, making it essential to have a dedicated Commissioner with the expertise and

¹ *CRC/GC/2002/2: Para: 1.*

² *UNCRC (Incorporation) (Scotland) Act 2024.* <https://www.legislation.gov.uk/asp/2024/1/contents/enacted> [Date accessed: 20.02.25].

³ *Together (2024). Consultation response to Scottish Parliament's Inquiry into Scotland's Commissioner Landscape: a Strategic Approach* https://www.togetherscotland.org.uk/media/3673/scotlands-commissioners-landscape-consultation-response_final.pdf [Date accessed: 20.02.25].

⁴ *Section 4, Commissioner for Children and Young People (Scotland) Act 2003.* <https://www.legislation.gov.uk/asp/2003/17> [Date accessed: 20.02.25].

mandate to promote and protect their rights. This specialised role is vital to ensuring children's voices are heard and their rights upheld, which must take precedence over the pursuit of consistency or administrative convenience.

In line with Scotland's commitment to children's rights as demonstrated through the *UNCRC (Incorporation) (Scotland) Act 2024*, and the commitment shown by Parliamentarians in involving children and young people at every stage of its passage, we urge the SPCB Supported Bodies Landscape Review Committee to put children and young people at the centre of any proposed changes to the Commissioner Landscape that could have an impact on the protection of their rights. Together would like committee members to note that the short timescale given to respond to this consultation has impacted our ability to engage with members and is likely to have prevented broader engagement from the children's rights sector.

We call on Scottish Parliament to:

- **Protect the independent nature of the Children and Young People's Commissioner Scotland and specific focus of monitoring and implementing children's rights, and ensure no regression in its mandate,**
- **Continue to reflect the UNCRC and UN Committee's guidance and requirements for an effective Children and Young People's Commissioner,**
- **Ensure that children and young people are at the heart of any discussions relating to CYPCS including proposals to alter accountability and scrutiny mechanisms, remit, powers or the sharing of services or offices.**

Effective Accountability and Scrutiny Mechanisms

How should public bodies measure and demonstrate outcomes, and how should these outcomes be selected and prioritised?

Each SPCB supported body has a unique purpose and distinct mandate. These mandates should reflect the distinct needs of the individuals they represent. Imposing a uniform approach to accountability and scrutiny of all SCPB supported body and their outcomes fails to understand and meet the diverse needs of the groups of individuals each body represents. Any standard introduced for measuring and demonstrating outcomes or how these should be selected and prioritised should reflect the needs and views of the individuals the body represents.

The CYPCS mandate, as laid out in the *Commissioner for Children and Young People (Scotland) Act 2003*, aligns with the UNCRC's Article 4, which requires States to take all appropriate measures to implement children's rights, and has a distinct function to represent children and young people and to monitor and promote the implementation of the UNCRC.⁵ The European Network of Ombudspersons for Children (ENOC), of which the CYPCS is a member, is clear on how children's NHRIs should be scrutinised, saying the institution should:

"Systematically involve children in the work of the institution in different ways, including through meaningful participatory mechanisms such as surveys, focus groups, interviews, child advisory panels,

⁵ Section 4, *Commissioner for Children and Young People (Scotland) Act 2003*. <https://www.legislation.gov.uk/asp/2003/17> [Date accessed: 20.02.25].

*etc. so that children's experiences and insights are fully taken into account. This includes their participation in the future development, evaluation and implementation of the work of the institution.*⁶

Children and young people should have a *central* role in defining the outcomes that CYPCS aims to achieve and how success is measured. Their experiences and perspectives should be gathered through participatory mechanisms such as advisory panels, focus groups, interviews, and surveys to ensure that the outcomes reflect their needs and priorities. These processes should be accessible, inclusive, and adapted to suit children of all ages and backgrounds.

CYPCS should demonstrate its outcomes in ways that are transparent, measurable, and relatable to children and young people. This includes using clear, child-friendly communication to share progress and explain how children's input has influenced decisions. Any system introduced to measure or scrutinise CYPCS outcomes must be rooted in a child rights-based approach, ensuring that the Commissioner remains accountable to the children and young people they represent.

To what extent is the current model of parliamentary committee scrutiny appropriate? How could it be improved?

As stated above, scrutiny mechanisms used by parliamentary committees should respect the distinct role and specific mandate of each SPCB supported body. Any standard introduced should reflect this diversity, rather than treating them all the same.

Children and young people must be consulted and their views fully considered in any inquiry that seeks to assess or change the current model of parliamentary scrutiny of the CYPCS. This consultation must be rights-based, child-friendly and involve full transparency about how decisions are reached. Failure to appropriately consult and consider children's views in any changes affecting CYPCS, or in the introduction of any standardised scrutiny mechanisms, risks falling into an adult-centric approach which does not align with UNCRC Article 12 as enshrined in UNCRC (Scotland) (Incorporation) Act 2024.

Children have the right to be involved in budgetary decision-making processes, including scrutiny, as set out in the UNCRC and further articulated in General Comment No. 19 on public budgeting for the realisation of children's rights.⁷ Embedding this rights-based approach within parliamentary committee scrutiny would ensure that children's perspectives are considered when evaluating how CYPCS allocates and spends its budget. It is essential that all children's NHRIs are provided with sufficient resources to fulfil their mandate effectively.

How appropriate are existing lines of accountability for SPCB-supported public bodies? What other accountability models should be considered?

The CYPCS role is distinct to other SPCB-supported public bodies due to its expertise in addressing the particular challenges that children face in society. Unlike adults, children are democratically disenfranchised and rely on the support of those around them, as they do not have the right to vote. According to the UN Committee, an independent children's NHRIs should ensure children's human rights are given special attention which is necessary due to their unique phase in life which can make them

⁶ European Network of Ombudspersons for Children (2023). Position Statement on "Strengthening Independent Children's Rights Institutions and recognising their unique role". <https://enoc.eu/wp-content/uploads/ENOC-2023-Statement-on-Strengthening-ICRIs-FV.pdf> [Date accessed: 20.02.25].

⁷ [CRC/GC/19](https://www.unhcr.org/refugees/crc/gc/19)

more vulnerable to human rights violations as well as being overlooked in decision making compared to adults.⁸

Accountability mechanisms must recognise the unique status of children and young people, and the CYPCS's role in defending their rights. Currently there is no requirement on Ministers to respond to recommendations in CYPCS investigations or annual reports. This presents an accountability gap that needs to be addressed. Together supports a requirement on Ministers to respond to CYPCS recommendations. This would provide further transparency for children and young people about actions being taken and planned to ensure their rights are protected, respected and fulfilled.

Furthermore, many existing SPCB accountability mechanisms – such as SPCB audits – are not accessible to civil society, let alone children and young people. This creates a challenge for Together to be able to provide meaningful comment on the effectiveness of the existing lines of accountability. Steps need to be taken to ensure lines of accountability are transparent and child-friendly to ensure children, young people and wider civil society are able to scrutinise its effectiveness in holding CYPCS to account.

Criteria for Creating New Supported Bodies & Remit/Powers of Commissioners

What is the purpose of an SPCB-supported Commissioner? How does this differ from Ministers, MSPs, or other bodies?

CYPCS is vital to ensuring children's voices are heard and their rights upheld. Unlike Ministers and MSPs, who are accountable to voters and may be influenced by political agendas, CYPCS is an independent body with a specific mandate to monitor and promote children's rights. This ensures impartiality with investigating children's rights issues and when making recommendations to the Scottish Government. Unlike Ministers, MSPs or other bodies, and as highlighted in the UN Committee on the Rights of the Child's General Comment No. 2, as a children's NHRI, CYPCS must be specifically accessible to children and involve them in their work, ensuring that their experiences and perspectives are central to decision-making processes. Additionally, CYPCS plays a key role in holding the Scottish Government accountable to its international obligations by contributing to the UN Committee's reporting process, ensuring that children's rights in Scotland are monitored and upheld at both national and international levels.

Are the powers/remit of existing Commissioners appropriate?

As explained in Together's response to the consultation on the Commissioner Landscape,⁹ the UNCRC and UN Committee guidance are clear that to effectively implement the UNCRC, state parties must ensure an independent NHRI that has specific focus on the monitoring and implementation of children's rights:

“It is the view of the Committee that every State needs an independent human rights institution with responsibility for promoting and protecting children's rights. The Committee's principal concern is that the institution, whatever its form, should be able, independently and effectively, to monitor, promote and protect children's rights. It is essential that promotion and protection of children's rights is “mainstreamed” and that all human rights institutions existing in a country work closely together to this end.”¹⁰

CYPCS has contributed significantly to the dialogue on children's rights in Scotland, across the UK and internationally. The implications of the CYPCS on wider society can be seen through previous CYPCS

⁸ [CRC/GC/2002/2](#): Para: 5.

⁹ Together, consultation response to the Commissioner's Landscape.

¹⁰ [CRC/GC/2002/2](#): Para: 7

research and calls to action. CYPCS's work has given attention to children and young people's issues, particularly those whose rights are most at risk, resulting in their experiences and views being considered when important decisions have been made by Scottish Government and Scottish Parliament,^{11 12} and in international guidance.^{13 14} This gives further justification to protecting the independent and specialist nature of CYPCS, to continue to give voice and attention to the groups of children and young people who too often get overlooked and whose rights are most at risk.

At a time where children's rights are at risk internationally, there should be no regression in CYPCS's existing model, remit, resources or powers. In its latest recommendations, the UN Committee made clear to the UK and Scottish Government that full compliance with the Paris Principles should be ensured, including regarding funding, personnel selection and appointment process for Children's Commissioners.¹⁵ ENOC is clear that children's NHRIs should be protected from any reduction of powers, remit and resources and ensure only their increase.¹⁶

Diverting from the current model and mandate would place doubt in the sincerity of Scotland's commitment to becoming a leader in children's rights through the passing of the *UNCRC (Incorporation) (Scotland) Act 2024*. It could well provide a precedent that other nations follow, resulting in the regression of children's rights not just in Scotland but across the UK and more widely internationally.

Are the existing criteria for creating new commissioners adequate?

We believe the existing criteria for the creation of new commissioners are theoretically sound, but more is needed to ensure their consistent application. Recent proposals have not always fully adhered to these principles, which has created risks. It is crucial that new commissioner roles do not duplicate or undermine existing roles. A more rigorous application of the criteria is needed to ensure effectiveness.

Barriers to Sharing Services and Offices

What are the main barriers to sharing services and offices among public bodies?

The main barriers to further sharing of services and offices among public bodies is the risk to the CYPCS not being able to ensure the best interests of children and young people and ensuring their specific needs are prioritised.

Any office or service sharing among public bodies must not compromise accessibility for children and young people. ENOC's guidance is clear that children's NHRIs must;

“Regularly reach out, meet and meaningfully engage with children and young people in all possible settings and geographical areas, such as educational, residential, and closed settings, community centres

¹¹ CYPCS (2018). *No Safe Place: Restraint and Seclusion in Scotland's Schools*. <https://www.cypcs.org.uk/resources/no-safe-place/> [Date accessed: 20.02.25].

¹² *Proposed Restraint and Seclusion (Prevention in Schools) (Scotland) Bill*. <https://www.parliament.scot/bills-andlaws/proposals-for-bills/proposed-restraint-and-seclusion-prevention-in-schools-scotland-bill>

¹³ SCCYP (2008). Not seen. Not heard. Not guilty. The rights and status of the children of prisoners in Scotland. <https://dera.ioe.ac.uk/id/eprint/9399/2/Not%20Seen%20Not%20Heard%20Not%20Guilty%20compress.pdf> [Date accessed: 22.02.25]

¹⁴ UN Committee (2011). *Report And Recommendations of the Day of General Discussion on “Children Of Incarcerated Parents”*, <https://www.ohchr.org/sites/default/files/Documents/HRBodies/CRC/Discussions/2011/DGD2011ReportAndRecommendations.pdf> [Date accessed: 20.02.25].

¹⁵ [CRC/C/GBR/CO/6-7](https://www.enoc.eu/wp-content/uploads/ENOC-2023-Statement-on-Strengthening-ICRIs-FV.pdf): Para: 13(b).

¹⁶ European Network of Ombudspersons for Children (2023). *Position Statement on “Strengthening Independent Children's Rights Institutions and recognising their unique role”*. <https://enoc.eu/wp-content/uploads/ENOC-2023-Statement-on-Strengthening-ICRIs-FV.pdf> [Date accessed: 20.02.25].

and others” and that States should “design ICRIIs according to their purpose, with appropriate physical and digital child-friendly and safe spaces”.¹⁷

The existing CYPSCS office space, designed in collaboration with children and young people, is widely recognised as an exemplary child-friendly environment. As CYPSCS has expanded its involvement of children and young people over the past decade, the space has become an increasingly valuable resource, providing a welcoming and supportive setting for the CYPSCS Young Advisors and other children and young people participating in its work. The children’s sector has benefited greatly from the availability the CYPSCS child-friendly space, including Together for our engagement projects with the Rights Detectives and for the UN Reporting Cycle 2023.

The SPCB should ensure that the CYPSCS can work efficiently in prioritising the best interests of children and young people in its remit rather than prioritising administrative convenience. To best serve children and young people, the CYPSCS should be given discretion in how their offices operate.

As noted in our response to the Commissioner’s Landscape consultation, the *UNCRC (Incorporation) (Scotland) Act 2024* gives equivalent powers to SHRC and CYPSCS.¹⁸ Where legislation is creating powers for both Commissioners, we emphasise again that strong communication and co-ordination will be essential to maintain CYPSCS’s independent functions while working closely together to ensure that no child or young person falls through the cracks. We believe this level of coordination can be achieved without the need to share office space.

What should the optimal operational model and structure for commissioners look like?

As stated above, the UNCRC and UN Committee are clear that upholding children’s rights requires a specific children’s NHRI with an independent mandate to monitor the implementation of the UNCRC. ENOC is clear that children’s NHRIs must be protected against their powers being reduced. Restructuring or combining commissioner offices risks weakening their impact. Distinct roles must be maintained.

There are concerns about Scotland’s commitment to children’s rights if commissioners are merged or altered in any way that impacts their autonomy. Together (Scottish Alliance for Children’s Rights) strongly advocated on the need for a Children’s Commissioner for Scotland and played an active role in providing evidence to the Education, Culture and Sport Committee inquiry into the issue in 2001.¹⁹ ²⁰ The need that existed back in 2003²¹ when the Scottish Parliament passed the *Commissioner for Children and Young People (Scotland) Act 2003* is arguably stronger than ever 21 years later. The independence of the role of the Children’s Commissioner is of particular importance and was highlighted as such in the UN Committee’s Concluding Observations to the UK in 2016:

“The Committee welcomes the increased independence of the Children’s Commissioners in the four devolved administrations of the State party and the many

¹⁷ European Network of Ombudspersons for Children (2023). Position Statement on “Strengthening Independent Children’s Rights Institutions and recognising their unique role”. <https://enoc.eu/wp-content/uploads/ENOC-2023-Statement-on-Strengthening-ICRIIs-FV.pdf> [Date accessed: 20.02.25].

¹⁸ Sections 11-12, *UNCRC (Incorporation) (Scotland) Act 2024*. <https://www.legislation.gov.uk/asp/2024/1/contents/enacted> [Date accessed: 20.02.25]

¹⁹ Scottish Parliament (archive, no date). Committee Bill – A Children’s Commissioner for Scotland, Scottish Parliament archive. <https://archive2021.parliament.scot/visitandlearn/Education/15872.aspx> [Date accessed: 20.02.25].

²⁰ Education, Culture and Sport Committee (archive, no date). Background Information - Education Culture and Sport Inquiry, <https://archive.scottish.parliament.uk/business/committees/historic/education/inquiries-01/edc-sev.htm> [Date accessed: 22.02.25].

²¹ Elsley, S. (2002). ‘A Children’s Champion for Scotland’, *Scottish Journal of Residential Care*, 43-45. https://strathprints.strath.ac.uk/83967/1/Elsley_SJRCC_2002_A_childrens_champion.pdf

*initiatives that they have taken to ensure the promotion and protection of the rights of the child.*²²

Across Together's membership – and more widely across generations of children and young people who have grown up with a dedicated Children's Commissioner in post – there continues to be strong support for the role and office of CYPCS. This is accompanied by an extensive evidence base as to the impact such a role has on children's experiences of their rights. As a result, it is understandable that there are increasing demands for wider independent Commissioner roles. However, whatever changes might be proposed within the SPCB-supported bodies review, given the widespread support for CYPCS and its demonstrable impact in advancing children's rights, it is essential that the role is preserved as an independent, well-resourced body with a clear mandate to promote and protect the rights of children and young people in Scotland, both now and in the future.

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²² [CRC/C/GBR/CO/5](#): Para: 14.