

# THE CRERAR REVIEW

THE REPORT OF THE INDEPENDENT REVIEW OF  
REGULATION, AUDIT, INSPECTION AND COMPLAINTS  
HANDLING OF PUBLIC SERVICES IN SCOTLAND



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HANDLING OF PUBLIC SERVICES IN SCOTLAND

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## ACKNOWLEDGEMENTS

The task of reviewing the scrutiny sector and complaints handling systems in Scotland, which seemed daunting in prospect, has proved, in the event, to be no less daunting both in scope and complexity. That I have been able in the short time available to submit this Review owes much to those who have responded so readily to requests for information, the elucidation of their views and attending dialogue or other events. Others too have responded readily to requests for help, either in the form of discreet areas of research, advice or enlightenment in technical areas of the Review. Details of all those who have provided such assistance are contained in the supporting Appendices to the Review. I would like to express my sincere thanks for all their help and assistance.

The principal purpose of this acknowledgement is to express my heartfelt thanks to my small, but very hard working, Secretariat. The burden of organising the Review and assessing the outcomes of research and consultation fell to my colleague, Alison Cook, who led the Review team. I am sure that without her dedication and application the Review would not have overcome the many hurdles and difficulties we encountered. My thanks too, to her fellow secretariat members: Sarah Wedgwood, Mark MacPherson, Morris Fraser, Craig Gilbert and Jenny Kinnear.

I was also greatly assisted by an expert panel who comprised: Dr Clive Grace, Professor Christopher Hood, Michael Lennon, Professor Sandra Nutley, Professor Ellie Scrivens and Douglas Sinclair. In addition, Antony Clark provided professional support. They unstintedly lent their time and support, particularly in helping me navigate important issues of principle and practicality, for which I am extremely grateful. It is important to record in relation to my expert panel that they were a reference group and were not part of the Review team. Accordingly, the responsibility for the views and recommendations contained in this report should fall in their entirety upon me.

### **Professor Lorne D Crerar**

#### **Chair**

Independent Review of regulation, audit, inspection and complaints handling of public services in Scotland

September 2007

## FOREWORD



When I was asked to undertake this Review, like many people involved in public service, I thought the problems were obvious – there are too many scrutiny bodies; they cost too much; they create needless burden and divert resources away from delivering services. Surely it was just a case of removing some of the organisations? Having spent a year examining the problems, I've reached the conclusion that the answer is not that simple.

When I spoke to stakeholders – including both those undertaking scrutiny and those subject to scrutiny – they all agreed that scrutiny was important, and many were able to point to benefits. However, those responsible for providing services were critical of the current scrutiny 'burden' they perceived to exist, with many suggesting that the costs outweigh the benefits. It would not have been possible for me to undertake a systematic assessment of every external scrutiny organisation in the time available and I have found that reliable information about costs and benefits of external scrutiny is neither readily available nor straightforward to establish.

The landscape appears to me to be unnecessarily complex. There are a significant number of external scrutiny organisations in Scotland, all with some responsibility for checking and assessing the work of those who provide services to the public. The number of organisations perhaps reflects the large number of service delivery organisations responsible for providing an ever-increasing range of complex services to a diverse population, and a corresponding need for the public, and those elected to represent them, to be assured that those services are being delivered effectively and efficiently, in line with expected standards.

I have concluded that many of the current external scrutiny arrangements are a result of assurance being required about particular public services at a particular point in time, and these arrangements have not subsequently been subjected to a rigorous assessment as to whether they are still required. Further, where new external scrutiny has been introduced, there has been no real prioritisation against existing requirements and how new scrutiny should fit in an already cluttered landscape.

My other principal area of concern is the role of service users and the public in external scrutiny. While those responsible for carrying out external scrutiny are trying to engage service users more systematically, research suggests the level of engagement is not yet where it needs to be. Further, the extent to which service users and the public are truly benefiting from external scrutiny seems at best opaque.

I believe this failure is most apparent in the complaints handling area of scrutiny. I have dedicated a specific section of my Review to complaints handling, and set out recommendations that would make it easier for the public to make complaints and for service providers to learn lessons from complaint outcomes.

For all strands of external scrutiny, the model I am proposing, if adopted, would lead to a substantial reduction in the burden experienced by providers and, in the longer term, would reduce significantly what I believe to be an over-crowded landscape. It will also make clearer the costs and benefits associated with external scrutiny. The model proposes a greater focus on the experience of the user and of the public, widely accepted to be the ultimate beneficiaries of scrutiny. It also proposes a greater role for elected members, at local and national level, in both the development and the use of scrutiny. I propose placing a far greater responsibility on those who provide services to assess and report their own compliance, performance and capacity to improve. Furthermore, I propose a more consistent and transparent assessment of the risks that external scrutiny is expected to address, alongside robust assessment of the likely cost.

The remit of the Review has been extremely wide-ranging and has required us to prioritise within a tight timescale. From my dialogue with key stakeholders it is clear that it is accepted that the time is apposite for change as our public sector services have evolved and become more complex. The proposals I am making for change are radical, but follow the outcomes of the extensive evidence that has been gathered and the logic of what I believe should be the shape, purpose and methodologies of scrutiny regimes and complaints handling processes in the years ahead.

It would have been easy at the outset to suggest a straightforward rationalisation, or to propose significant budget cuts – indeed, those options are still open to Ministers and to the Parliament. However, I am firmly of the view that doing that, without considering how the resulting landscape would operate in line with the outcomes we wish to achieve, would risk losing important functions that the various external scrutiny organisations currently perform.

Nonetheless, what I am proposing is very significantly different from the current arrangements. I do not under-estimate the work that will be required to deliver it but, given the concerns that have been expressed to me during the course of the review, and my own view of the complex arrangements that have evolved, I believe it is right to recommend these steps be taken now.

If my proposals are adopted, I strongly believe Scotland can create a leading edge public scrutiny model and function linked to a revised complaints handling system that is not just more satisfactory than currently exists, but mirrors a public service delivery culture of excellence.

**Professor Lorne D Crerar**

**Chair**

Independent Review of regulation, audit, inspection and complaints handling of public services in Scotland  
September 2007

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Annexes covering evidence submitted to the Review and other research commissioned by the Review, are available on the Review website, or on CD Rom along with published copies of this report.



# EXECUTIVE SUMMARY

This report considers how Scotland's systems of regulation, audit, and inspection (referred to as 'external scrutiny' throughout) and complaints handling for public services could be improved. In carrying out the Review, we have taken on board comments from a wide range, and significant number, of stakeholders. We have commissioned work from various organisations, and we have drawn on work done previously by others, and on submissions made to the Review.

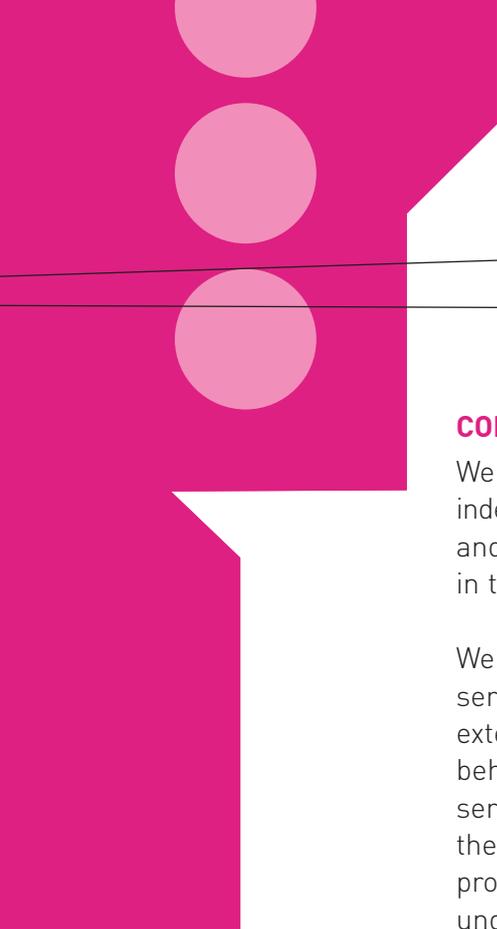
Our analysis focuses on strategic issues rather than the operations of individual scrutiny regimes, and we highlight systems-level issues about application, focus, direction, leadership and control of external scrutiny and complaints handling.

We begin by describing the following in relation to external scrutiny:

- The context in which it currently operates;
- What its role and purpose should be;
- Its beneficiaries;
- The principles under which it should operate; and
- Concerns about how existing arrangements fail against these principles.

We then go on to describe the place of external scrutiny in a future framework for performance management, including how it should be applied in the future and the key issues to be considered before it is applied.

The report concludes with a separate examination of complaints handling – an important activity aligned to, and complementary to, external scrutiny.



## **CONCLUSIONS FROM ANALYSIS OF EVIDENCE GATHERED BY THE REVIEW**

We have suggested that 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. This is an essential function in the system of governance and accountability that will always be required.

We argue throughout the report that primary responsibility for improving services lies with the organisations that provide them, but we recognise that external scrutiny can also be a catalyst for improvement where it influences behaviour and culture of providers, leading to improvements in the way that services are delivered. We have concluded that five principles should govern the application and use of external scrutiny – independence; public focus; proportionality; transparency; and accountability. These principles are well understood and have already been adopted in some form by most scrutiny bodies. We noted a particular issue about the independence and transparency of scrutiny in health.

We have found that there has not always been clarity of role and purpose or principle in the way that external scrutiny has been introduced in recent years. Existing external scrutiny arrangements have evolved to serve Government intentions at particular points in time. Growth in scrutiny reflects circumstances where the governments at the European, UK and Scottish levels have felt the need to increase the indirect supervision of public service delivery through increased inspection, audit and regulation. This is partly because of lack of confidence in service delivery, absence of robust performance management in many services, and partly because of new policy priorities. The growth also reflects the ongoing reality that changes in services, or emerging sector problems and unexpected high profile cases will continue to happen. The Scottish Government's intentions are changing, and it is now seeking to devolve more responsibility for managing and monitoring services to front-line providers and to streamline reporting processes. These developments have contributed to the debate about the role and future use of external scrutiny.

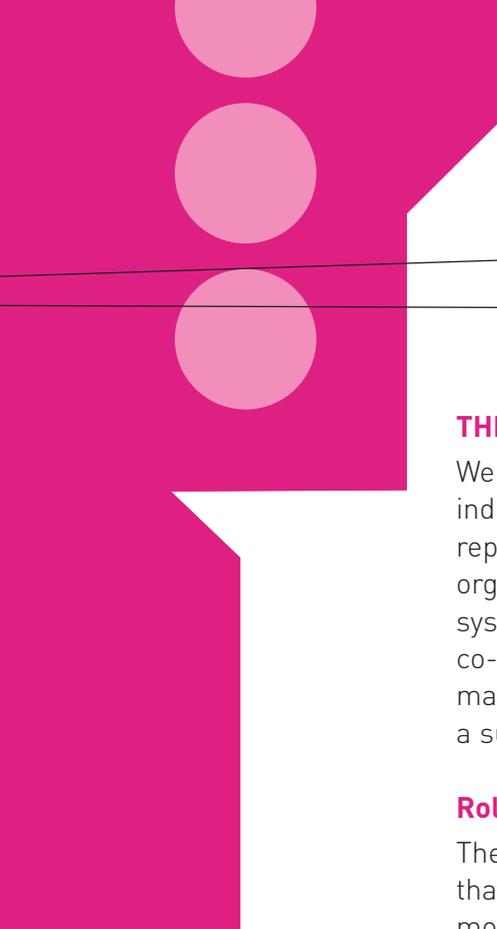
The growth in scrutiny has been accompanied by a growth in scrutiny costs. Providers believe that this has had a significant impact and is diverting resources from front-line delivery. This was particularly evident in local government. However it is difficult to assess costs across different scrutiny regimes, to assess compliance costs accurately, and to judge whether the "right" amount of resource is being allocated to scrutiny activity. There is a similar difficulty in assessing the impact of external scrutiny on performance by service providers. There is therefore a need for further work to enable a more accurate assessment of costs and benefits.

Scrutiny arrangements are complex. This is partly a reflection of the public service delivery landscape. Each external scrutiny regime performs the role they have been asked to perform by the Scottish Government and by the Parliament in auditing, regulating or inspecting public services. We do not question the integrity of individual regimes and organisations, but we do believe that it is necessary now to re-consider the overall aims and desired effect of external scrutiny, with a view to ensuring it is proportionate and minimises workload for providers. Allied to this objective is a need for a realistic assessment about the extent to which external scrutiny is an appropriate response to risks in public service delivery.

Complexity also arises from the way that scrutiny bodies carry out their business and the way they are set up and run. The result is a wide variety of scrutiny methodologies, organisational structures and governance arrangements, and large numbers of different players with the ability and right to both direct and create new scrutiny. Such complexity makes joint working on cross-cutting and complex issues more difficult to organise effectively. We believe there is scope to build more consistent leadership and control to ensure more strategic and flexible use of scrutiny resources.

The creation of the Scottish Parliament has changed the accountability landscape. We suggest that there is a need for a revised model of accountability where independence from Ministers is balanced by responsibility to the Parliament. There is scope to strengthen democratic scrutiny through further refinement of the Parliament's role in the scrutiny process, and for Parliament to be more proactive in seeking assurance. We propose placing a strong and appropriate duty on scrutiny bodies to account to the Parliament for their activities and use of resources.

Given the importance of the public as beneficiaries of external scrutiny, it is important that scrutiny contributes to wider policy intentions to focus services more effectively on their needs. We have found that whilst most scrutiny regimes are working in this direction, there is scope to go further to involve the public more effectively, and to improve transparency, measurement and reporting. Scrutiny bodies will require to work in conjunction with other stakeholders to develop better ways to measure and evaluate provider performance, and will require more involvement of service users and the public in the process. However, this will not be easy. It has to be done in a way that is proportionate. There are cost implications to doing it thoroughly and, as a number of contributors have highlighted, resources may need to be diverted to achieve this objective.



## **THE FUTURE OF EXTERNAL SCRUTINY: RECOMMENDATIONS**

We propose that the core purpose of external scrutiny is to provide independent assurance within a wider performance management and reporting framework, and that the functions of external scrutiny and the organisations responsible for carrying them out should now operate as a system. This will require a much greater degree of leadership and directed co-ordination than at present, and a much greater focus on performance management and associated self-assessment by service providers. Below is a summary of our key recommendations.

### **Role, purpose and principles**

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. The five guiding principles for external scrutiny should be public focus, independence, proportionality, transparency and accountability.

### **Public focus**

Scrutiny priorities must reflect the public and user interest. Focusing external scrutiny outputs in a way that is more meaningful to the public should be an overriding principle of any change and will assist both in targeting external scrutiny and in informing stakeholders about performance. The Scottish Government should work with external scrutiny organisations and providers, and consumer representatives to achieve this.

### **Performance management and self-assessment**

External scrutiny is part of a wider performance management and reporting framework. The primary responsibility for demonstrating compliance and performance should rest with service providers. Ministers and the Parliament should accept this principle and continue to support the development of robust performance management and outcome-focused self-assessment amongst service providers.

Over time Ministers and the Parliament should rely more on self-assessment by providers, enabling a reduction in the volume of external scrutiny. In future Ministers and Parliament should consider the extent to which the assurance they require can be provided by providers, before commissioning external audit, inspection or regulation.

## Features of a scrutiny system

External scrutiny should operate as a coherent system. The features of this should include:

- Strategic priorities agreed by Ministers and Parliament, and focusing on areas where assurance about public services are most important. We recommend that financial audit should be one of the priorities;
- Core risk criteria agreed by Ministers, and considered by the Parliament, to assess the need for current and future external scrutiny;
- Self-assessment by providers as the main source of information about performance. Performance management frameworks are still being developed, so reliance on self-assessment is a longer term goal;
- Two stages in considering the application of scrutiny. First, there must be an assessment of risk against the core criteria agreed by Ministers. Second there must be an assessment of the appropriate external scrutiny required;
- Where scrutiny is needed, if there is more than one existing organisation, only one should be asked to do the work and to be responsible and fully accountable. Creating a new external scrutiny organisation to attend to the issue should not be an option;
- A timeframe with a preset 'sunset' clause for each external scrutiny initiative or programme;
- Cyclical inspection, audit and regulatory programmes happening only where all other options have been considered and ruled out; and
- Existing scrutiny being removed or scaled back when new scrutiny is introduced.

## Leadership

Responsibility for decisions to create scrutiny should rest with Ministers, the Parliament or the Auditor General. At Ministerial level a Cabinet-level committee or group should take leadership on this. The Parliament should identify a suitable committee or group to take responsibility within the Parliamentary system. Independent expert panels, drawn from the scrutiny sector, service users and providers, should provide advice on the application of scrutiny. Co-ordination of the panels could be provided by the Auditor General.

## Accountability

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. This would involve placing a strong and appropriate duty on scrutiny bodies to give an account for their activities and use of resources to the Parliament, which will require adapting the existing governance and reporting arrangements for scrutiny bodies.

## **Governance**

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 working and to simplify the scrutiny governance infrastructure. In view of this we are recommending that all external scrutiny organisations should have one “status”, with clearly defined lines of accountability to the Parliament and to Ministers.

## **Costs and impact of external scrutiny**

There is a need for work to more accurately assess the costs and impact of external scrutiny. We recommend that:

- Ministers should commission Audit Scotland to develop cost and impact measures to enable comparisons between scrutiny regimes;
- 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.

## **Reviews of scrutiny activity**

The Scottish Government should carry out a programme of specific activity, co-ordinated at Cabinet level, to assess existing cyclical scrutiny activity against the recommendations in this report, with the aim of reducing activity. This should include:

- Cyclical inspection programmes;
- Joint and multi-agency inspection programmes, ensuring that no further joint or multi-agency inspections should commence without first securing the advice of independent experts;
- Thematic inspections, ensuring that these are aligned with the strategic priorities set for external scrutiny by Ministers and the Parliament; and
- Regulatory functions, particularly inspection activity associated with regulation.

We also recommend that future performance audits should be aligned with the strategic priorities for external scrutiny as agreed by Ministers and the Parliament.

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. The legislative changes required should also be identified as part of this process.

### Improving coordination

- Existing external scrutiny organisations should review the data they gather, with a view to reducing overall requests and to eliminate any duplicate requests. Ministers should place a high priority on this and ensure that priorities and leadership are assigned to taking such work forward;
- The Scottish Government and scrutiny organisations should develop an external scrutiny website, or portal where all planned scrutiny activity will be logged;
- Ministers should also ensure that parallel work to improve data gathering across public services more generally links with work in the scrutiny sector.

### Recommendations for local government and health

We make some specific recommendations for local government and health. In local government we recommend that the Accounts Commission should work with other scrutiny organisations to develop a corporate performance audit which absorbs other corporate level inspections in local government, and that local government should be a priority sector in which self-assessment becomes the core tool of accountability, with less reliance on external scrutiny. We also propose that Ministers should identify and appoint an appropriate scrutiny body to co-ordinate scrutiny of local government until the longer term changes are implemented fully.

We propose one significant change to scrutiny in the health sector, where we believe that, in order to ensure independence, the functions and resources currently controlled by NHS Quality Improvement Scotland (QIS), along with resources controlled by the Care Commission in relation to private hospitals and related treatment, and some of those controlled by the Scottish Government's health directorates should be redistributed to one external scrutiny organisation.

### Single national scrutiny body

In the longer term we expect our proposals to lead to a significant reduction in scrutiny activity and an associated reduction in the number of external scrutiny organisations culminating in a single national scrutiny body. This level of change will require significant commitment and direction by Ministers, the Parliament and other key stakeholders.

### Complaints handling

We make radical proposals for improvements to the complaints handling system that should give the public better access to redress and scrutiny as well as giving scrutiny organisations better information on the public experience. We recommend a standard time-framed system of complaints handling for all public services with the Scottish Public Services Ombudsman (SPSO) taking responsibility for its implementation and patrol. We propose that the localised standard complaints process should conclude the public services complaint in a robust and independent manner. There will no longer be a final appeal to the SPSO except in circumstances where the complaints process and methodologies have not been followed.

01



# INTRODUCTION

## REMIT

- 1.1 In June 2006, Scottish Ministers commissioned Professor Lorne Crerar to evaluate the current systems of regulation, audit and inspection (referred to in this report as 'external scrutiny') and complaints handling. Professor Crerar was also asked to make recommendations on a framework for the future external scrutiny of public services, including:
  - The purpose, principles and role of effective external scrutiny, including clarifying who the customers and beneficiaries are;
  - Governance arrangements;
  - How external scrutiny and complaints handling can better support continuous improvement in public services;
  - How external scrutiny and complaints handling can be more efficient and better co-ordinated;
  - The priorities for change;
  - Any legislative or organisational changes that would be required to implement the recommendations.
  
- 1.2 A small team was established to support the Review, staffed by secondees from public sector organisations and from the Scottish Government. A panel of experts was also identified to provide advice and challenge:
  - **Dr Clive Grace**, University of Cardiff
  - **Professor Christopher Hood**, University of Oxford
  - **Michael Lennon**, Glasgow Housing Association
  - **Professor Sandra Nutley**, University of Edinburgh
  - **Professor Ellie Scrivens**, University of Keele
  - **Douglas Sinclair CBE**, Chair of the Scottish Consumer Council

## SCOPE OF THE REVIEW AND APPROACH ADOPTED

- 1.3** The Review was commissioned as a key initiative within the wider public service reform agenda in Scotland. The recommendations made within this Review are complementary to other areas of work being pursued within the reform agenda, such as the desire to create models of service delivery which:
- Are more personalised to the individual;
  - Place more emphasis on outcomes rather than process measures to drive performance improvement;
  - Include devolution of responsibility for the delivery of services to the front-line; and
  - Reduce unnecessary bureaucratic burdens.
- 1.4** The timeframe for the Review was initially 12 months and this determined the approach we used. Early consultations with key stakeholders indicated that the Review would add most value by articulating the purpose and unique role of external scrutiny and by identifying a set of principles to govern its operation. We were clear from the beginning that it would not be possible to conduct an in-depth analysis of all aspects of the current system in only 12 months and so it has not been possible to undertake a detailed diagnostic of individual scrutiny organisations or scrutiny regimes. We have taken an overview and make recommendations for the whole scrutiny system and for the complaints handling system.
- 1.5** In this Report, we begin by describing the following in relation to external scrutiny:
- The context in which it currently operates;
  - What its role and purpose should be;
  - Its beneficiaries;
  - The principles under which it should operate; and
  - Concerns about how existing arrangements fail against these principles.
- 1.6** We then go on to describe the place of external scrutiny in a future framework for performance management, including how it should be applied in the future and the key issues to be considered before it is applied.
- 1.7** The report concludes with a separate examination of complaints handling – an important activity aligned, and complementary, to external scrutiny.

## AREAS OUTSIDE SCOPE

- 1.8** We considered external scrutiny to be audit, regulation and inspection undertaken by a body distinct from the one being scrutinised. While some activities undertaken by the Scottish Government will often be considered by the body being scrutinised to be “external scrutiny”, we have focused on the scrutiny undertaken by bodies normally seen as being one step removed from the Scottish Government (i.e. public bodies, executive agencies and bodies that report directly to the Parliament).
- 1.9** The Review’s scope does not include scrutiny undertaken by UK and international organisations, or professional regulation. It has also not considered contract compliance arrangements between local authorities and suppliers of services, which can include monitoring arrangements that place compliance burdens on providers. We have required to focus upon areas of public service that are subject to greatest intensity of scrutiny and account for most of the public expenditure in Scotland, these being:
- Health;
  - Local government;
  - Social care; and
  - Social housing.

## EVIDENCE BASE

- 1.10** We took a significant quantity of evidence from a wide range of stakeholders. We have synthesised all of the evidence received in reaching our conclusions. We have not responded to all points of detail, but have considered the issues that were most important to stakeholders, and which were most relevant to the remit of the Review.
- 1.11** We carried out a mapping survey of potential external scrutiny organisations, taking detailed evidence from 36 of these.
- 1.12** We commissioned specific research:
- ‘Literature Review to Inform the Independent Review of Regulation, Audit Inspection and Complaints Handling of Public Services in Scotland’, by DTZ Consulting & Research;
  - ‘Scrutiny and the public: Qualitative study of public perspectives on regulation, audit inspection and complaints handling of public services in Scotland’, from Ipsos MORI and an academic team led by the University of Edinburgh; and
  - ‘Literature Review on the Consumer Approach to Scrutiny’, from the Scottish Consumer Council.

**1.13** Although not commissioned by the Review, we benefited from other research and evidence:

- The Scottish Consumer Council submitted a paper 'Scrutiny and the Consumer';
- COSLA, SOLACE and the Improvement Service submitted a research report on behalf of Local Authorities – 'External Audit and Inspection Arrangements in Scottish Local Government' by Brodies LLP Management Consultancy;
- Audit Scotland submitted two reports. 'The cost of external scrutiny of public services in Scotland: a preliminary analysis', and 'Risk-based and proportionate scrutiny'; and
- The Scottish Public Services Ombudsman (SPSO) submitted 'The Place of Complaint Handling in the Scrutiny Landscape'.

**1.14** The commissioned research reports, submissions, and other papers are included as annexes to this report and a full list is in Appendix I. The annexes are available on the Review website and on a CD Rom with published hard copies of this report.

**1.15** We also took the views of stakeholders in a series of seminars, events and meetings with key stakeholders. We also gathered evidence through questionnaires:

- We held four regional discussion events (Aberdeen, Edinburgh, Glasgow and Stirling) in May to discuss both the improvements suggested in the Review Interim Report and a national framework for external scrutiny. Over 200 people attended these events. A summary report on the events and attendance lists are in Annex L;
- Evidence was taken from service providers. All health boards and around 200 care or social housing providers, as well as 35 independent health care providers were offered an opportunity to contribute evidence to the Review, through workshops (from Inverness to Dumfries), forums, submissions and questionnaires;
- A range of key stakeholders including SPSO, inspectors, Commissioners, local authorities and Scottish Consumer Council, participated in a forum to explore ways to improve complaints systems;
- We took advice at a one-day forum from a group of academics recognised as experts in public services;
- The Chair had individual meetings with the Scottish Government, the Parliament, scrutiny bodies, service providers, the voluntary sector, and other representative bodies and spoke at conferences and seminars throughout the Review;

- Views were also sought from around 30 sponsor and policy teams across the Scottish Government, who either established or sponsored scrutiny bodies;
- We were informed by the UK and Welsh Governments' reviews of external scrutiny and associated reforms;
- We had regard to the findings of the Finance Committee's Inquiry into Accountability and Governance.<sup>1</sup> We also drew on submissions from other groups and organisations.

## DEFINITIONS

- 1.16** We recognise that the terminology used to describe the strands of external scrutiny is often open to interpretation. We have tried to be clear about what we mean throughout this report. We used the practical definitions below to describe the various elements of existing external scrutiny.

### Regulation

- 1.17** Regulation focuses on providing a licence to operate, enforcement of legislation and regulations, and monitoring the quality of services provided. Regulation may also include elements of service inspection, and can be designed to drive up quality as well as to enforce standards.

### Audit

- 1.18** External audit is the periodic external scrutiny of corporate governance and management; financial statements and underlying financial systems; and performance, performance management and reporting of public bodies.

### Inspection

- 1.19** Inspection is periodic, targeted scrutiny of specific services, to check whether they are meeting national and local performance standards, legislative and professional requirements, and the needs of service users.

### Complaints Handling

- 1.20** Complaints handling is the independent investigation of complaints about public services carried out by a range of commissioners and ombudsmen and other public bodies with specific roles and responsibilities.
- 1.21** We have covered complaints handling in a separate chapter (chapter 11). We have concluded that complaints handling is not in itself "external scrutiny", but it must be closely aligned with it.

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<sup>1</sup> Finance Committee Inquiry into Accountability and Governance (SP paper 631) 7th report, Scottish Parliament 2006

02



# PUBLIC SECTOR CONTEXT

2.1 There are thousands of organisations providing public services in Scotland:

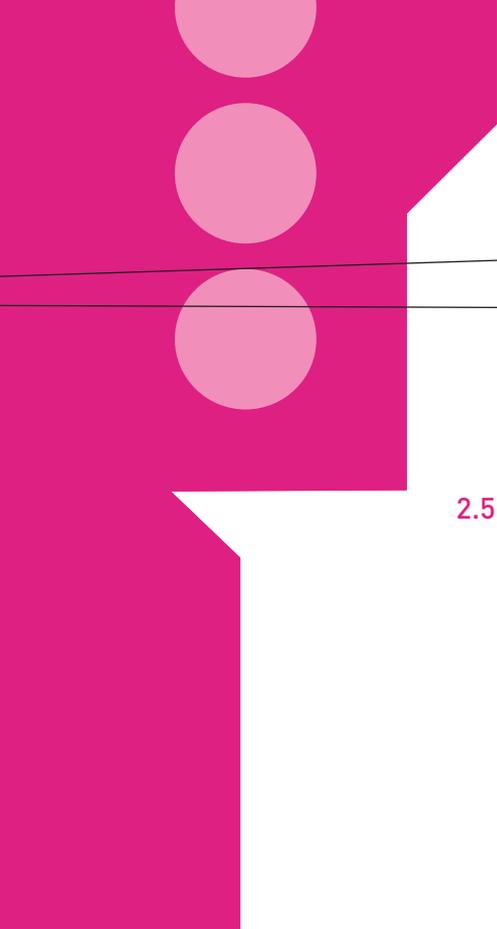
- 32 local authorities;
- 2,000 primary schools, 400 secondary schools, 200 special schools, and around 42 colleges, responsible for the direct delivery of education;
- 14 regional health boards and 8 special health boards/ organisations, and 35 independent health care providers;
- More than 60 other public bodies, including Non-Departmental Public Bodies (NDPB) and executive agencies, responsible for the delivery or monitoring of public services;
- More than 15,000 organisations delivering care services;
- More than 250 Registered Social Landlords (RSL) delivering housing services;
- More than 19,000 registered charities.

2.2 All of these organisations may be subject to some form of external scrutiny from one or more of the scrutiny organisations we have identified.

## CHANGES IN THE PUBLIC SERVICE LANDSCAPE

2.3 The landscape of government and accountability changed significantly with devolution. The devolved administration in Scotland has resulted in more Ministers and elected representatives with an interest in the delivery of public services, and accountability arrangements under the new system are still evolving. Devolution has also led to a greater level of awareness amongst the public and the media about public services, resulting in more public reporting, more Parliamentary debate and more media coverage.

2.4 The public service delivery environment in Scotland is also changing with increasing emphasis on partnership working and joint delivery across organisational boundaries and more focus on meeting the needs of service users. All of these changes have implications for the nature of the information and assessment that is required from external scrutiny and the kinds of arrangements that are needed to deliver corresponding objectives.



## THE RELATIONSHIP TO INTERNAL SCRUTINY AND PERFORMANCE MANAGEMENT

- 2.5** When defining the role of external scrutiny, we have to take account of its relationship to internal scrutiny and performance management. The Scottish Government wishes to reduce centrally imposed bureaucracy associated with planning, performance reporting and funding. However, in return providers must take greater responsibility for monitoring and evaluating their own performance and tackling poor performance when it occurs. This requires robust performance management arrangements across all public services. A constraint to date has been a lack of baseline performance information, coupled with poor performance management capacity in some places and arguably, because of a wider lack of trust between the Scottish Government and service providers.
- 2.6** Improvement frameworks are now in place in most services. Best Value has been an important constituent and is currently a statutory responsibility for local authorities and a non-statutory duty for Accountable Officers of public bodies. It places a responsibility on service providers to demonstrate continuous improvement focusing on effective decision making, use of resources and performance management.
- 2.7** The Scottish Government is working with providers to develop performance management arrangements, to make these more outcome focused, and to build a greater degree of self-assessment. For example, the performance management framework for local government is being developed in conjunction with Audit Scotland, COSLA and the local government Improvement Service. In education, HM Inspectorate of Education (HMIE) is working closely with providers to develop self-assessment. In the health sector, health boards are required to undertake an annual accountability review with the Cabinet Secretary. The ambition, which we support, is to have all providers operating effectively within these frameworks.
- 2.8** Service providers in all sectors have argued in their evidence to the Review, that the capacity of public organisations to take on responsibility for their performance has improved and that robust internal audit and performance management will address areas of weakness. Information from scrutiny regimes is also beginning to suggest that more reliance can be placed on the capacity of service providers to manage services and account for failures. For example, the 2007 Review of Best Value in local government, commissioned by the Accounts Commission, found that the Best Value regime has

been a driver of modernisation and improvement in local government and that the Best Value audit process is increasingly challenging under-performance as well as identifying success. The Best Value Review also suggested that future Best Value audits should adapt to reflect the performance, capacity and challenges facing each council and that the existence of baseline performance audit information should enable more reliance to be placed on self-assessment and more proportionate approaches to Best Value audit and other scrutiny processes. For example, by 2008/09 baseline information should be available from the following:

- Social Work Inspection Agency (SWIA) social work services inspections;
- HMIE's INEA and INEA2 and child protection and children's services inspections;
- NHS Board Accountability Reviews;
- Best Value audits of local government.

#### CHAPTER SUMMARY AND RECOMMENDATIONS

- There are thousands of organisations in Scotland delivering public services which are subject to external scrutiny by one or more of the scrutiny organisations we identified.
- Devolution has led to increased levels of external scrutiny.
- As service delivery becomes more complex, through partnership working across organisational boundaries, external scrutiny has to adapt.
- Ministers are promoting a culture of continuous improvement for all public services and wish to reduce unnecessary bureaucracy, but in return providers must take greater responsibility for monitoring and evaluating their own performance. New performance management arrangements are developing, which will mean that more reliance can be placed on the capacity of service providers to manage services and account for performance.
- Baseline performance information should become available across all services, which should enable the development of new approaches to external scrutiny.

03



# ROLE, PURPOSE, BENEFICIARIES AND PRINCIPLES OF EXTERNAL SCRUTINY

## ROLE AND PURPOSE

- 3.1 We sought to clarify the role and purpose of external scrutiny, as an important starting point in developing a framework for external scrutiny. Stakeholders had a variety of perceptions about the role and purpose of external scrutiny:
- To give or provide assurance to a range of stakeholders including users, funders and taxpayers;
  - To encourage and support, or be a catalyst for, improvement;
  - To assess and ensure safety;
  - To promote the economic, efficient and effective use of resources;
  - To report to stakeholders (including the public) on performance, including financial performance and statutory requirements, in a fair and independent way;
  - To contribute to the development and publication of standards;
  - To support, assist and challenge organisations being scrutinised;
  - To provide advice to Ministers;
  - To investigate complaints and assess complaints-handling;
  - To promote and contribute to sustainable improvements in standards, quality and achievements;
  - To improve quality.
- 3.2 We argue throughout this report that external scrutiny is part of a wider framework of performance management and reporting for public services. The unique role that scrutiny plays within this framework, which is not performed by any other player, is to provide an independent assurance that public money is being used properly and that services are well-managed, safe and fit for purpose. It does this function by assessing both compliance with regulations and standards, and performance against targets.
- 3.3 Most scrutiny bodies argue that they also have a role in helping services to improve. We argue that the primary responsibility for improving services lies with the organisations that provide them, but recognise that external scrutiny can play a part in improvement where it influences the behaviour and culture of providers, leading to improvements in the way that services are delivered.

## BENEFICIARIES

3.4 External scrutiny has a range of stakeholders that benefit from the assurance it provides and make use of the information in scrutiny reports:

- **The public** is the ultimate beneficiary of all scrutiny and should be able to take assurance that public money is being used properly and that services are well provided;
- **Ministers** require assurance on performance and information on the scope for improvements. They use scrutiny to account to the public that the services they have commissioned/purchased on their behalf are safe, use resources effectively and are of a certain quality; and to hold to account service providers and members of public bodies for their performance. Ministers and policy makers within the Scottish Government can also use scrutiny to evaluate policy impact and to develop future policy;
- **Parliament** requires assurance on performance and information on potential improvements. It uses scrutiny to hold Ministers, elected members, scrutiny bodies and service providers to account for their performance;
- **Elected members** in local government require assurance on performance and information on potential improvements. They use external scrutiny reports to hold their officials to account, but are also held to account themselves through reports on council performance. There is an increasing interest in developing the 'place shaping' role of local authorities and elected members which involves holding other local services to account, whether through Community Planning structures, outcome agreements or other emerging models;
- **Public body boards and statutory officeholders** also require assurance on performance and information on potential improvements. They use external scrutiny reports to hold their officials to account, but are also held to account themselves through reports on performance; and
- **Service providers** use scrutiny reports to account to a range of paymasters, such as local authorities, the NHS or the Scottish Government; and to provide validation of their own performance to their users.

## PRINCIPLES

**3.5** There have been a number of attempts in recent years to codify the principles of good regulation in different contexts. These have many common features and we have drawn on these in formulating our view of the principles which should drive external scrutiny of Scottish public services. Our suggestions on what the core principles should be are below and should underpin how scrutiny operates and should develop in future. The analysis in the chapters that follow illustrates areas where the current system does not meet the principles, as well as considering efficiency and co-ordination issues.

### Public focus

**3.6** The needs and priorities of service users and the public must be the prime consideration in all external scrutiny. The public is the ultimate beneficiary of external scrutiny. As such, it is crucial that it is closely involved in both decisions about the use of scrutiny and any scrutiny activity.

### Independence

**3.7** External scrutiny must be independent and must not be constrained by any party in reaching its conclusions and publishing its findings. It must be free to make judgements about service delivery and report its findings into the public domain, and it must be able to decide how it discharges its responsibilities, once its focus has been agreed.

### Proportionality

**3.8** The use of external scrutiny within the wider public accountability system must be proportionate to the particular issue, policy context or environment. Proportionality must apply at two levels. Firstly, in deciding whether it is appropriate to use scrutiny, and secondly in deciding its nature, scope and duration.

### Transparency

**3.9** External scrutiny must be transparent in all its activities, its focus, decision making criteria, business processes, assessments and reporting. There should be a transparent decision framework for regulatory intervention. It is essential that the processes and mechanisms which support the use of external scrutiny are transparent, so that all parties understand the particular purpose for which it is being used at any given time. For external scrutiny to be credible, its reports must be clear, independent and consistent.

### Accountability

**3.10** External scrutiny must be accountable for its use of resources. It must demonstrate and report on the impact of its activities on services scrutinised, on the direct and indirect cost implications and it must demonstrate value for money. Its assessments and findings must be fair and capable of being defended.

## CHAPTER SUMMARY AND RECOMMENDATIONS

- The core purpose of external scrutiny should be to provide an independent assurance that public money is being used properly and that services are well-managed, safe and fit for purpose.
- The principles of external scrutiny should be:
  - Public focus;
  - Independence;
  - Proportionality;
  - Transparency; and
  - Accountability.
- Responsibility for improving services lies with the organisations that provide them, but external scrutiny can influence behaviour and culture, and this can encourage improvement.





# PUBLIC FOCUS

- 4.1 External scrutiny and complaints handling hold service providers to account on behalf of the public and public focus is one of the five key principles we are recommending. This chapter considers how public focus is currently used in external scrutiny and how it could be strengthened in the future.
- 4.2 There are different public stakeholders. Service users (and their carers or guardians) have an immediate stake in the delivery and external scrutiny of services that they use. The public more widely may have an interest in the effectiveness of services and will also have an interest in the way that public money is being used and accounted for.
- 4.3 These stakeholders may have conflicting interests. For example, service users are likely to support highest quality services supported by robust external scrutiny, whilst the general public may wish to balance these against cost to the public purse and value for money. Different external scrutiny mechanisms have traditionally reflected these interests, with audit more focused on public interests in propriety in the use of public money, whilst regulation, service inspection and complaints handling are more focused on the interests of individual service users.
- 4.4 Whatever the level of interest, the user-voice can be an important source of information for those undertaking an independent assessment of how well public services are delivering, especially where market models and consumer choice are not well developed or appropriate.
- 4.5 We commissioned two pieces of work specifically to examine issues relating to external scrutiny and the public. The “Scrutiny and the Public” study took evidence directly from members of the public and a literature review on the “Consumer Approach to Scrutiny” pulled together a critique of issues raised by research.<sup>2</sup>

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<sup>2</sup> Both reports are available in full on the CD of evidence, together with a summary of the main issues raised.

## **PUBLIC AWARENESS**

- 4.6** Although the public have limited awareness of scrutiny organisations and processes, there is a clear public expectation that there is and should be external scrutiny of services provided to them, or on their behalf. The “Scrutiny and the Public” study found that participants were more familiar with inspection and complaints handling than with regulation and audit. Respondents were aware of some external scrutiny organisations, in particular the Care Commission, HM Inspectorate of Education (HMIE), the Health and Safety Executive and the Scottish Public Services Ombudsman (SPSO). All respondents assumed services would be checked, even when they did not know how or by whom.

## **PUBLIC INVOLVEMENT IN EXTERNAL SCRUTINY**

- 4.7** Service providers have primary responsibility to account to the public for their performance. Service providers also have primary responsibility for engaging users and the public. As Byatt and Lyons<sup>3</sup> put it:

“It should not be the role of external scrutiny to act as an intermediary between service users and service providers or to form an independent view of user priorities. It is the responsibility of providers to seek and respond to the views of users. External reviewers can and should, however, review how effectively service providers fulfil this role. This does not preclude external review including an element of gauging directly the user experience of services.”

- 4.8** There is agreement that the public have a legitimate stake in external scrutiny and that there should be greater public involvement in external scrutiny processes. Stakeholders also accept that current arrangements for involving the public are not fully developed. The work we have drawn on indicates that:

- External scrutiny organisations do not always place their work within the context of a consumer approach to public services;
- Service users are not always referred to in the organisational aims of external scrutiny organisations; nor are they routinely involved in the governance of external scrutiny organisations.

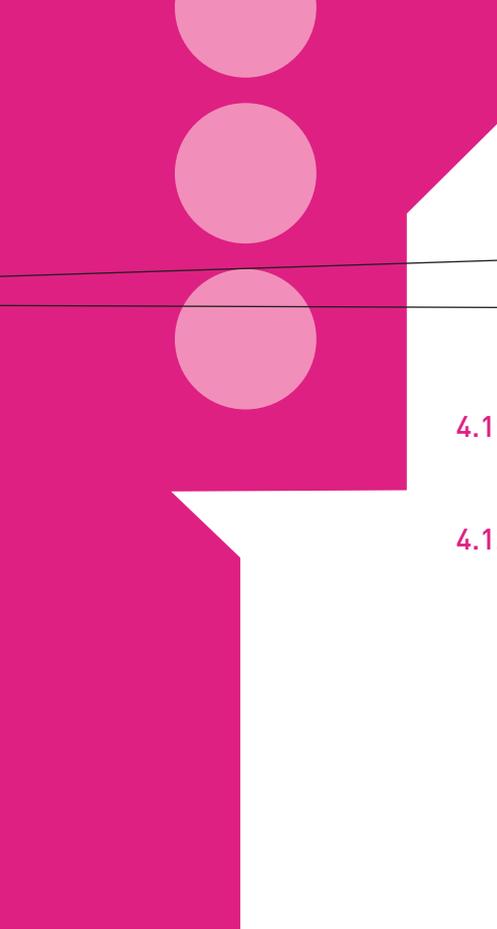
- 4.9** External scrutiny organisations attempt to capture the service user perspective and to involve the public in a variety of ways:
- Most external scrutiny organisations assess levels of satisfaction with providers and link this to evidence obtained from other sources – e.g. HMIE, Care Commission, Communities Scotland;
  - Some scrutiny organisations will make use of provider data on complaints – we consider complaints in more detail in chapter 11 of this report;
  - Some attempt to gauge how well service providers involve their clients in decisions about the service to judge whether it is meeting its clients’ needs; and
  - Most now involve service users in their processes, for example in setting the standards, or as part of the inspection team, or in their own governance arrangements. But some questions remain about how user evidence should be weighted with or against that of professionals.
- 4.10** Examples of how and why external scrutiny organisations involve users and the public are summarised in table 1.

**Table 1: Public involvement in external scrutiny activity**

Type of involvement	Aim	Methods
Governance of scrutiny bodies	To ensure openness and transparency in the governance of scrutiny bodies and balance the provider interest with the public interest.	The recruitment of board members who are not professionals in, or employed by, the service under scrutiny. For example the Care Commission must have two non-executive Board members who are users of care services or carers to service users by statute.
Inspection and review activity	To ensure openness and transparency in scrutiny activity and balance the provider interest with the public or consumer interest.	Use of “lay people” in inspections: in some cases, lay people are also consumers though this is not always the case. For example, Communities Scotland use tenant assessors, NHS QIS* use lay assessors.
Consultation with, or direct involvement of consumers	To ensure that the consumer voice is heard in the process of scrutiny.	Involvement of consumers and/or their representatives in the process of setting standards e.g. Care Commission- National Care Standards.  Active engagement with consumers in reviews/inspections (most scrutiny bodies do this to varying degrees of success).  Consultation with consumers about their experience of the service under scrutiny (most scrutiny bodies do this to varying degrees of success).

Source: “Scrutiny and the Consumer”, Scottish Consumer Council

\* NHS Quality Improvement Scotland



**4.11** But despite these aims and methodologies, public involvement is not fully developed.

**4.12** The “Consumer Approach to Scrutiny” literature review cites studies that show that the UK population does not place a high level of trust in government information. Therefore, if external scrutiny is to be credible, the public needs to be convinced that it is independent of government and that the process of external scrutiny is robust and reliable. The “Scrutiny and the Public” respondents generally accepted that external scrutiny organisations were independent, but they saw scope for “regulatory capture” where regulators get too close to service providers to give an unbiased view. One important way to overcome this is through public involvement in the external scrutiny process. Respondents also thought that the nature of the external scrutiny process was important and placed particular stress on unannounced inspection as the only way to obtain a true picture of service delivery as experienced by the public.

#### **CONSUMER FOCUSED MEASUREMENT OF PUBLIC SERVICES**

**4.13** The extent to which user-focused external scrutiny can be fully developed partly rests on the extent to which wider policy intentions and performance management frameworks are expressed in terms of outcomes for users. For example, we agree with comments made in the Auditor General’s submission on the difficulty of assessing Scottish Government policies. We agree that the intended benefits to the public have to be better articulated. The Auditor General suggests there is an opportunity for external scrutiny organisations to work in conjunction with providers, the Scottish Government and consumer representatives to strengthen the user voice at all levels of public reporting.

**4.14** The sources reviewed in the “Consumer Approach to Scrutiny” literature review are critical of traditional input and process measures for public services. Traditionally, external scrutiny organisations focus on the internal mechanisms of the delivery body, at an individual service or an organisational level. External scrutiny regimes assess leadership, management systems and internal processes, service outputs and performance management systems using a mix of performance and quality indicators, standards and statutory regulations.

- 4.15** We support the development of more outcome focused measurements of public services overall, including those used by external scrutiny. Outcome-focused scrutiny is important, and will become even more so if the Scottish Government moves to an outcome-agreement approach with public service delivery bodies. External scrutiny will need to adapt to that change as and when it happens. However, outcome measurement is still being developed for public services in Scotland and there are inherent difficulties in defining what outcomes should be and how to measure them. Outcome measures can include:
- Tangible outcomes, such as exam results for school leavers;
  - Equity outcomes, such as the differences in attainment between different ethnic groups; and
  - Consumer satisfaction, such as numbers of parents expressing satisfaction with school exam results.
- 4.16** External scrutiny organisations are already addressing measurement issues and there are several examples to draw on, for example – “Nine principles for user focus, equality, diversity and human rights for inspection” by the Audit Commission and Local Services Inspection Forum in England and “Principles for service user and carer participation” developed by the Joint Participation Steering Group in England.<sup>4</sup>
- 4.17** While outcome measurement is being developed, we cannot conclude that the system is yet ready to shift fundamentally to focus on outcomes, but should do so once the Parliament is satisfied that outcome measurement tools are in place, sector by sector.

### ACCESSIBILITY OF REPORTS

- 4.18** Studies in Scotland and the USA suggest that where external scrutiny information is available, the public do not seek it out unless reports are meaningful to them. This involves being written in language that people can relate to, containing information that is relevant to what people want to know and being trusted. The “Scrutiny and the Public” study found that external scrutiny reports are not always accessible to the public and could be improved by:
- Making reports very short or including a summary report;
  - Writing reports in plain English and avoiding abbreviations/jargon with which most service users/members of the public will not be familiar;
  - Being very clear about how any summary measures or quantitative measures are calculated and what they mean;
  - Containing both narrative descriptions and summary/quantitative measures. The latter were useful for an “at a glance” assessment, but some element of description is also needed to provide context, a feel for the overall judgement of a service and an assessment of less tangible or measurable aspects of service delivery.

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<sup>4</sup> Bridging the gap – Participation in Social Care Regulation, Better Regulation Task Force, 2004.

- 4.19** These conclusions point to a need for a collective effort by external scrutiny organisations to make information more accessible, develop common performance reporting language and explore ways of explaining the complexity of what they have found as straightforwardly as possible.

### **CONCERNS ABOUT GREATER PUBLIC INVOLVEMENT**

- 4.20** Despite the general consensus in favour of public involvement, some concerns were expressed about the potential costs of supporting more extensive public involvement; and the dangers of imposing a burden on the public by asking for feedback too frequently. There were also concerns that service user expectations could potentially act as a restraint on improvement, in circumstances where consumers are satisfied with poorly performing services and are resistant to change in service delivery. However we believe that this danger should be offset by other challenges to improve service performance and the development of robust performance standards. More consistent public involvement and a more informed public could also drive up expectations and standards.

### **CHAPTER SUMMARY AND RECOMMENDATIONS**

- Service providers have primary responsibility for engaging with users and the public.
- The public have a legitimate stake in external scrutiny and that there should be greater public involvement in external scrutiny processes. External scrutiny bodies currently involve the public, but arrangements are not fully developed across all services.
- The public believe that to be credible, scrutiny should be independent of government, and whilst they have limited awareness of scrutiny activity, they expect it to be done on their behalf.
- We support the development of more outcome focused measurements of public services overall, including those used by external scrutiny. External scrutiny organisations should work in conjunction with providers, the Scottish Government and consumer representatives to develop outcome measures and to strengthen the user voice at all levels of public reporting.
- Scrutiny reports should be written in language that people can relate to, containing information that is relevant to what they want to know and being trusted. Scrutiny bodies must make information more accessible, develop common performance reporting language and explore ways of explaining the complexity of what they have found as straightforwardly as possible.



05



# ACCOUNTABILITY AND GOVERNANCE

## ACCOUNTABILITY

- 5.1 Independence is a fundamental principle of effective scrutiny and most scrutiny bodies have a degree of independence from government and from providers. One exception is health, where scrutiny by NHS QIS is internal to the health service, because NHS QIS is itself a special health board, which makes its independence less clear.
- 5.2 Government will rely on the outcomes of, and often direct the use of, scrutiny.
- 5.3 If there is to be public and Parliamentary confidence in scrutiny, scrutiny must carry out its duties without inappropriate influence from government because central and local government is often itself part of the service delivery system, either as a funder or policy maker or the negotiator of outcome agreements. It is also important that scrutiny bodies are accountable for their actions and the use they make of resources. As the Parliament's Finance Committee Inquiry into Accountability and Governance made clear,<sup>5</sup> there is currently a range of accountability arrangements for scrutiny bodies. The Review mapping survey also found this divergence as summarised in table 2.

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<sup>5</sup> Finance Committee Inquiry into Accountability and Governance (SP paper 631) 7th report, Scottish Parliament 2006

**Table 2: Formal accountability arrangements for scrutiny organisations**

Formally accountable to:*	Number of organisations
Scottish Minister/s	17
UK Government Department**	1
Scottish Parliament (SPCB or committee)	5
Scottish Minister and Scottish Parliament	5
None of the above	8
<b>Total</b>	<b>36</b>

**Source:** Review mapping exercise.

\* As reported to the Review by scrutiny organisations and based on a question with the above options.

\*\* Health and Safety Executive (DWP)

## GOVERNANCE

**5.4** Scrutiny bodies have been assigned their functions by Ministers or the Parliament. These fall into two main types:

- **Cyclical activity** – where a particular service, organisation or sector is subject to assessment on a cyclical basis (e.g. Audit Scotland Best Value audits, HMIE schools inspections);
- **Thematic** – where a particular service, policy or theme is assessed across a range of service providers (e.g. Audit Scotland performance audits, NHS QIS thematic inspections).

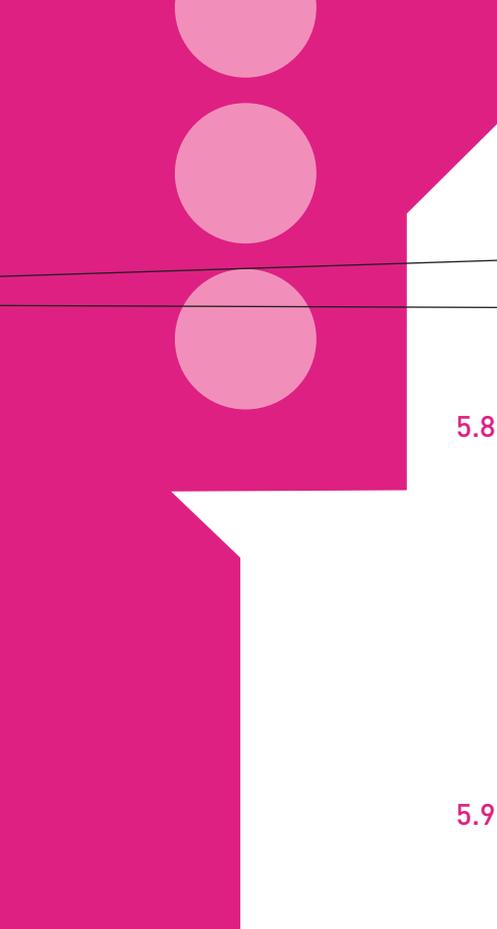
- 5.5** Governance arrangements for scrutiny bodies are diverse and bodies operate under a wide range of governance arrangements and through different organisational structures, see table 3.

**Table 3: Range of organisation types**

Organisation type	Number of bodies
Executive agency	5
Executive NDPB	11
National Health Service body	3
Advisory NDPB	2
Statutory office holder – Ministerial	9
Statutory office holder – Parliamentary	6
Non-Ministerial Department	2
Other	5
	<b>43</b>

**Source:** Review mapping exercise – includes 36 organisations surveyed plus seven new bodies introduced since the mapping exercise.

- 5.6** There is no consistent approach to setting up scrutiny bodies and it is not clear why organisations undertaking similar roles have been given different governance arrangements. This variety of governance arrangements means that each scrutiny organisation's work is directed and controlled in different ways, that reporting arrangements differ and that individual scrutiny organisations are directly accountable in different ways. For example, Ministers can instruct executive agencies to do specific pieces of work, but NDPBs must usually, but not in all cases, be instructed by their Board before they can act. Whilst there may be a logic for the governance and accountability arrangements for each of the separate scrutiny regimes, this variety of arrangements overall means that the scrutiny bodies appear to have different levels of independence from government and that accountability across the scrutiny sector is neither transparent nor consistent.
- 5.7** The complexity of organisational structures is a constraint on a strategic approach to developing and delivering an appropriate scrutiny regime across public services. It can constrain, slow down and sometimes prevent joint working between scrutiny bodies on cross-cutting issues, where there is a need for a co-ordinated response. Most scrutiny organisations are responding to their own statutory responsibilities when drawing up and implementing their work programmes and this may determine the degree of flexibility in the design and scope of their activity and in their capacity to collaborate.

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- 5.8** There is a need to create the conditions to allow a strategic and flexible allocation of scrutiny resources through removing unnecessary constraints to joint working. There is also a need to simplify and bring greater consistency to the scrutiny governance infrastructure. This allows scrutiny to perform its main role in holding to account, and makes governance and accountability more transparent. There should be greater consistency in the way that scrutiny bodies are held to account through the Parliament.

### **ACCOUNTABILITY TO PARLIAMENT**

- 5.9** Many of the external scrutiny bodies pre-date the Scottish Parliament and relationships to the Parliament are still evolving. Thirty-four of 36 scrutiny bodies in the mapping survey indicated that they had reported or given evidence to one or more Parliamentary committees and many also lay their annual reports at the Parliament. Individual committees may review, query or challenge any of these reports. For example, the Education Committee of the Scottish Parliament considers the annual reports of HMIE. The Audit Committee is most active in taking evidence, but most other Parliamentary Committees do not routinely consider the work of scrutiny organisations.
- 5.10** We propose a revised model of accountability where independence from Ministers is balanced by responsibility to Parliament. This presents an opportunity to strengthen democratic scrutiny through further refinement of the Parliament's role in the scrutiny process and for Parliament to be more proactive in seeking assurance. This would involve placing a strong and appropriate duty on scrutiny bodies to give an account for their activities and use of resources to the Parliament, which will require adapting the existing governance and reporting arrangements for scrutiny bodies.

## CHAPTER SUMMARY AND RECOMMENDATIONS

- Most scrutiny bodies have a degree of independence from government and from providers, with the exception of health.
- There is no consistent approach to setting up scrutiny bodies and it is not clear why organisations undertaking similar roles have been given different governance arrangements.
- 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 working and to simplify the scrutiny governance infrastructure.
- We propose a revised model of accountability where independence from Ministers is balanced by responsibility to Parliament. Parliament should become more proactive in seeking assurance. This would involve placing a strong and appropriate duty on scrutiny bodies to give an account for their activities and use of resources to the Parliament, which will require adapting the existing governance and reporting arrangements for scrutiny bodies.

06

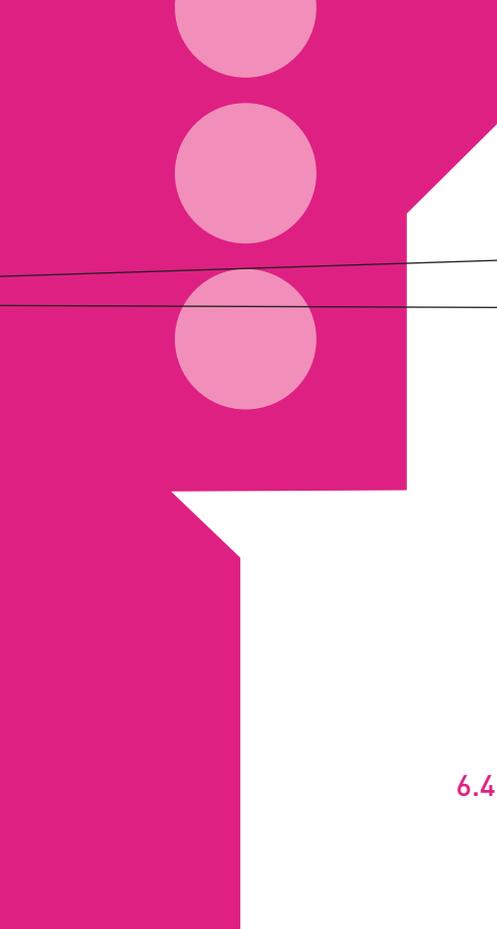


# PROPORTIONALITY OF EXTERNAL SCRUTINY

- 6.1 Applying the principle of proportionality to external scrutiny in a more strategic way will have significant implications. This chapter draws out the main issues about proportionality and the effectiveness, efficiency and coordination of existing scrutiny arrangements.

## GROWTH OF SCRUTINY

- 6.2 External scrutiny has grown in recent years in three ways:
- Eleven completely new bodies have been created since 1999 to perform scrutiny functions not previously carried out by another body;
  - A number of new bodies have been created to carry out scrutiny previously performed by other organisations and in many cases these have been given additional functions;
  - Some existing bodies have been given new or expanded scrutiny functions.
- 6.3 The most significant changes include:
- The audit of Best Value in local authorities by Audit Scotland on behalf of the Accounts Commission;
  - The creation of Communities Scotland in 2001 and a new role in regulating and inspecting local authority housing services;
  - The establishment of the Care Commission in 2002 as a national regulator of all care services in Scotland (approximately 15,000 providers in both the public and private sector ranging from child-minders to care homes for older people) and all independent health care. The Care Commission brought together the regulatory functions of 32 Local Authorities and 15 Health Boards;
  - The establishment of NHS Quality Improvement Scotland in 2003, bringing together the functions of the Clinical Standards Board for Scotland, Health Technology Board for Scotland and Scottish Health Advisory Service;
  - The establishment of a new Inspectorate of Prosecutions, covering Crown Office and Procurator Fiscal Service in 2004;
  - A new system of inspections of criminal justice social work;
  - The development of a multi-agency inspection regime for children's services, starting with child protection, led by Her Majesty's Inspectorate of Education;

- 
- The launch of the Social Work Inspection Agency in 2005 to inspect services at a local authority level;
  - The development of multi-agency inspection regimes of social work services for older people, people with learning disabilities, people who misuse substances and people with mental health problems; and
  - The establishment of the Office of Scottish Charity Regulator in 2006.

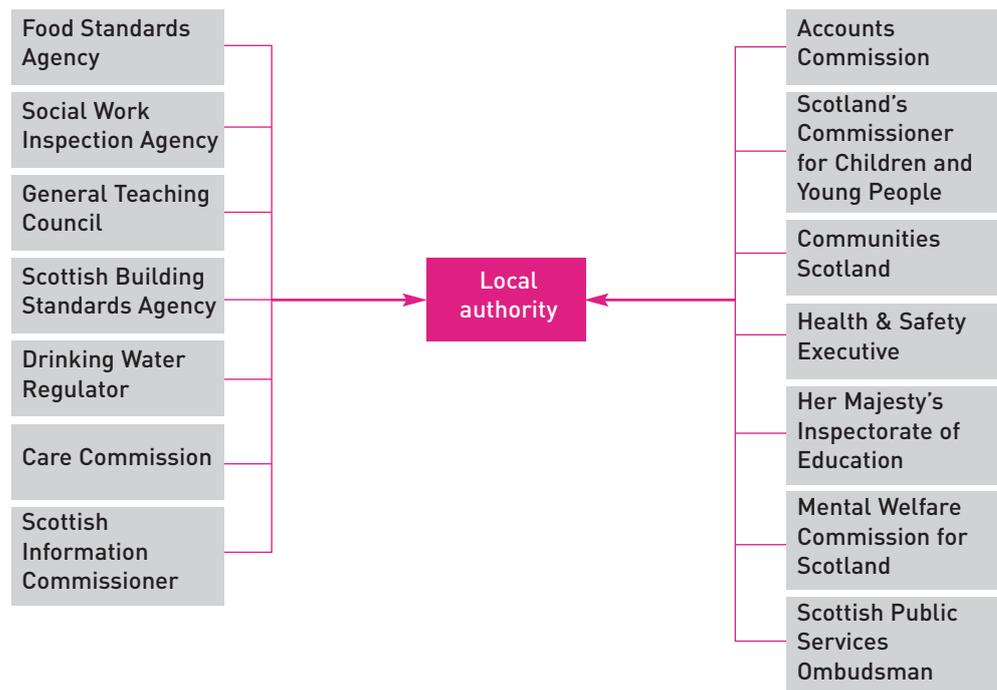
**6.4** Much of the growth reflects changes in scrutiny focus in response to more integrated models of service provision and is regarded as an important step-change in ensuring that scrutiny responds to new priorities. However it has not replaced existing external scrutiny of professions such as social work or police, or of single services such as prisons or schools. It is our view that continued growth of scrutiny is not sustainable, and there needs to be a more proportionate approach to how it is applied in future. As we noted in chapter 2, by 2008/09 baseline information should be available from new scrutiny regimes, such the Social Work Inspection Agency (SWIA) social work services inspections, HMIE's INEA and INEA2 and child protection and children's services inspections, NHS Board Accountability Reviews, and Best Value audits of local government, which should enable appropriate decisions regarding the level of scrutiny that is required and what can be reduced.

## COMPLIANCE BURDEN

- 6.5** All stakeholders, including service providers, believe that there is a need for external scrutiny. However, many providers have complained of external scrutiny becoming a burden. The point was made particularly strongly by local government, but health boards, registered social landlords and care establishments all felt that the volume of performance reporting and external scrutiny had become disproportionate to the benefit delivered and to the risk it was set up to overcome, and was distracting resources from front-line delivery. Issues raised included:
- ↗ Visits by more than one scrutiny body at the same time and particularly the impact on senior management;
  - ↗ Requests for the same or similar information in different formats;
  - ↗ Lack of co-ordination between scrutiny bodies and lack of information sharing;
  - ↗ Partner organisations being scrutinised separately, requiring them to divert resource to sectoral scrutiny priorities and away from the partnership;
  - ↗ Within the health sector, NHS Boards referred to overlap and duplication between NHS Quality Improvement Scotland (QIS) and Audit Scotland;
  - ↗ Within the RSL/care provider sector, providers referred to overlap and duplication between local authorities, Communities Scotland and the Care Commission;
  - ↗ Within local government, concerns were expressed about overlap between external scrutiny requirements and Scottish Government information requirements, for example compliance requirements of ring-fenced funding; and
  - ↗ There was also concern about potential for overlap and duplication where the scrutiny activity concerned assessment of corporate structures or processes, for example between Best Value audits and HMIE, and/or SWIA inspections.
- 6.6** We noted two very specific examples of duplication that exist in the care sector which may be the result of separate sets of statutory duties being introduced:
- ↗ Many independent care providers are contracted by local authorities to deliver care services. Any organisation that provides any of the care services set out in the Regulation of Care (Scotland) Act 2001 must register with the Care Commission. An organisation providing more than one of the services (which many do) must register each service separately;
  - ↗ Organisations providing care services are also subject to annual inspection by the Care Commission. Those same organisations are also required to demonstrate compliance with local authority contracts.

**6.7** The information in diagram 1 illustrates the crowded nature of the scrutiny landscape for the local government sector.

**Diagram 1: The range of scrutiny bodies which impact on a local authority**



Note: Local authorities are also covered by the inspections of both Fire and Police Services, as carried out by the respective Inspectorates. However, they are not included in the diagram because the inspection activity focuses primarily on the bodies delivering the service e.g. police forces, fire stations etc.

Source: Scrutiny Review Stage 1 mapping survey

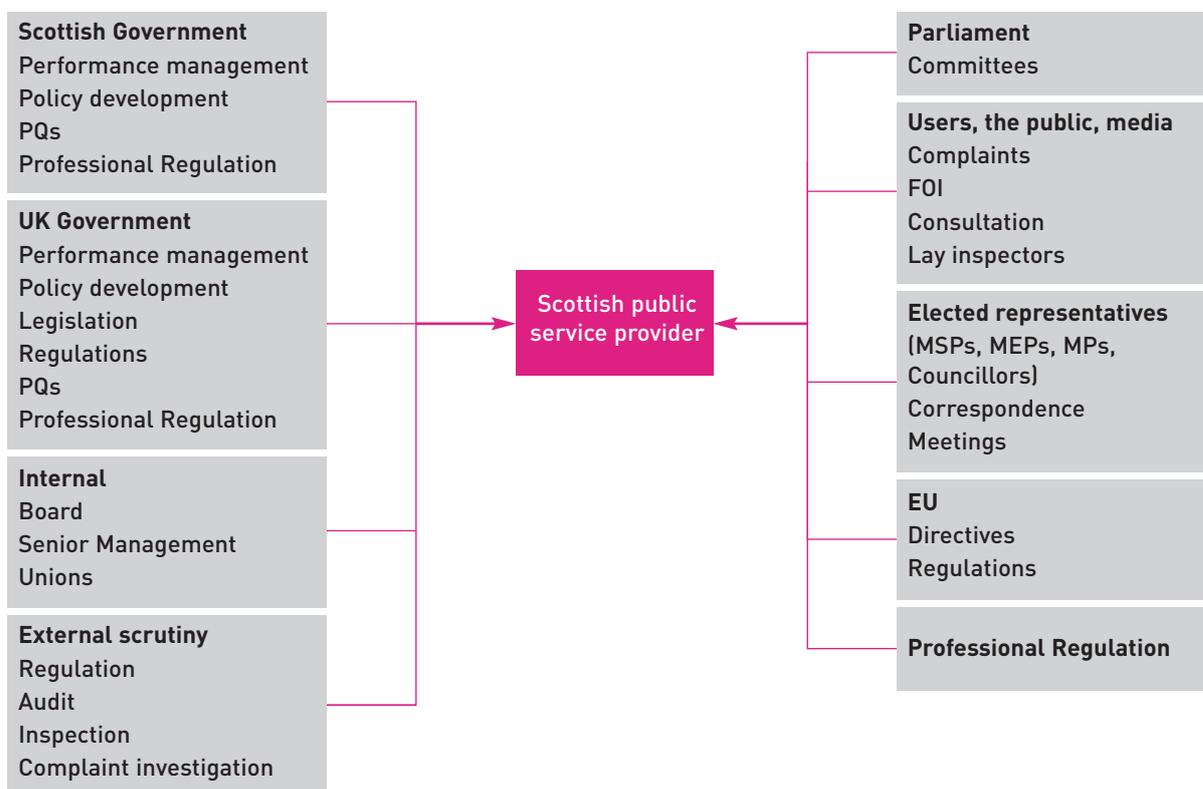
**6.8** One local authority listed 15 organisations that regulated or inspected its services, with the largest overlap in inspection being in the children's services and education areas. The local authority concluded that many of the processes looked similar, but that there was little clarity about how these are brought together. They saw a need for one framework for integrated working, one self-evaluation tool and one inspection per authority.

**6.9** Although scrutiny impacts on front-line service delivery, it has a particular impact on corporate management, who normally co-ordinate responses to scrutiny. This can divert senior management time from other priorities.

## OTHER DEMANDS FOR INFORMATION

- 6.10** External scrutiny is not the only source of demands for information. Service providers in Scotland are asked for information about their activity and performance from an increasing number of sources – diagram 2.
- 6.11** While each group or organisation may have legitimate and distinct reasons for seeking information, there is potential for collision between systems, resulting in multiple demands for information. This situation is fuelling concerns about the overall burden of compliance and reporting referred to by service providers.

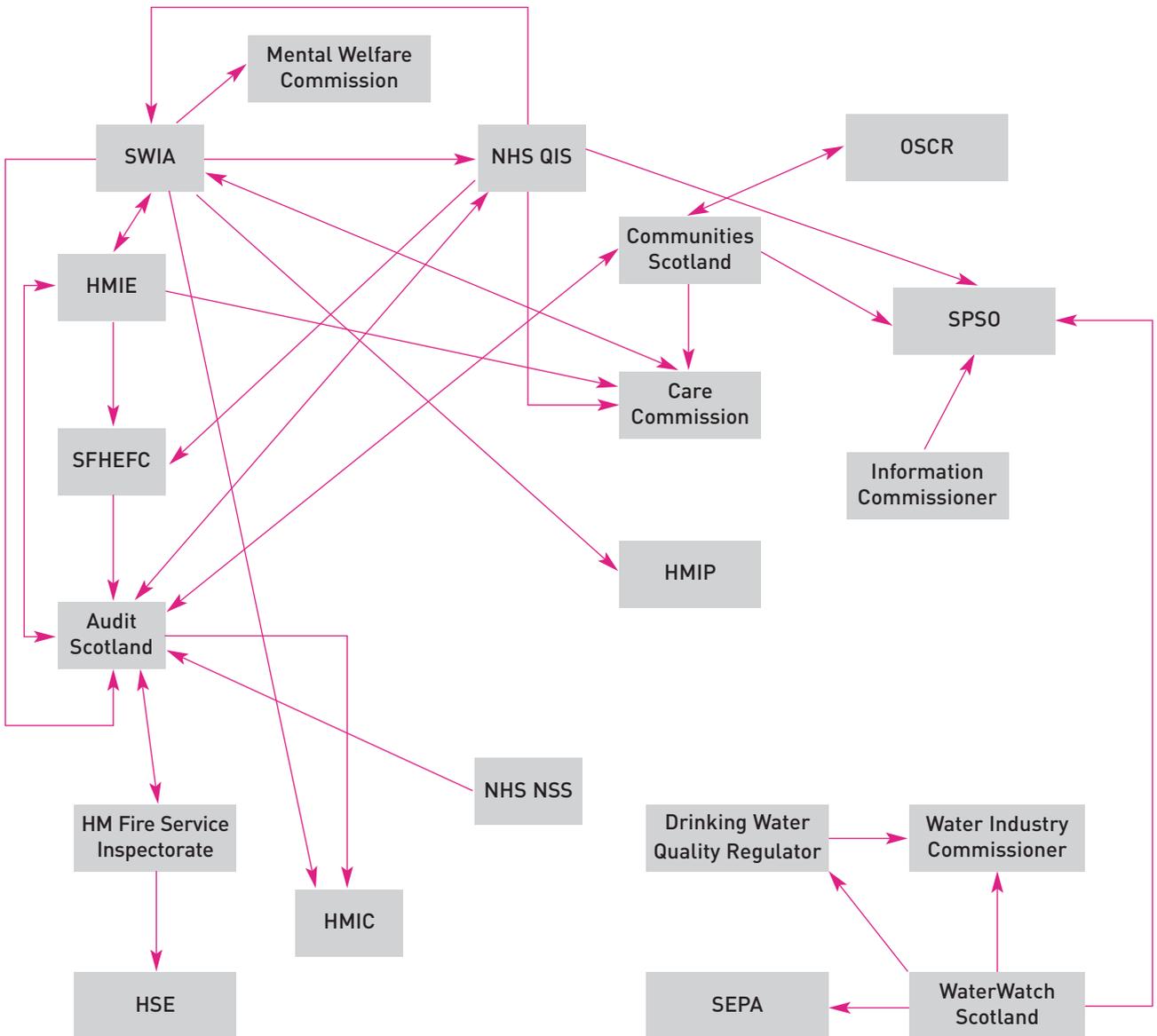
**Diagram 2: Information requests to service providers**



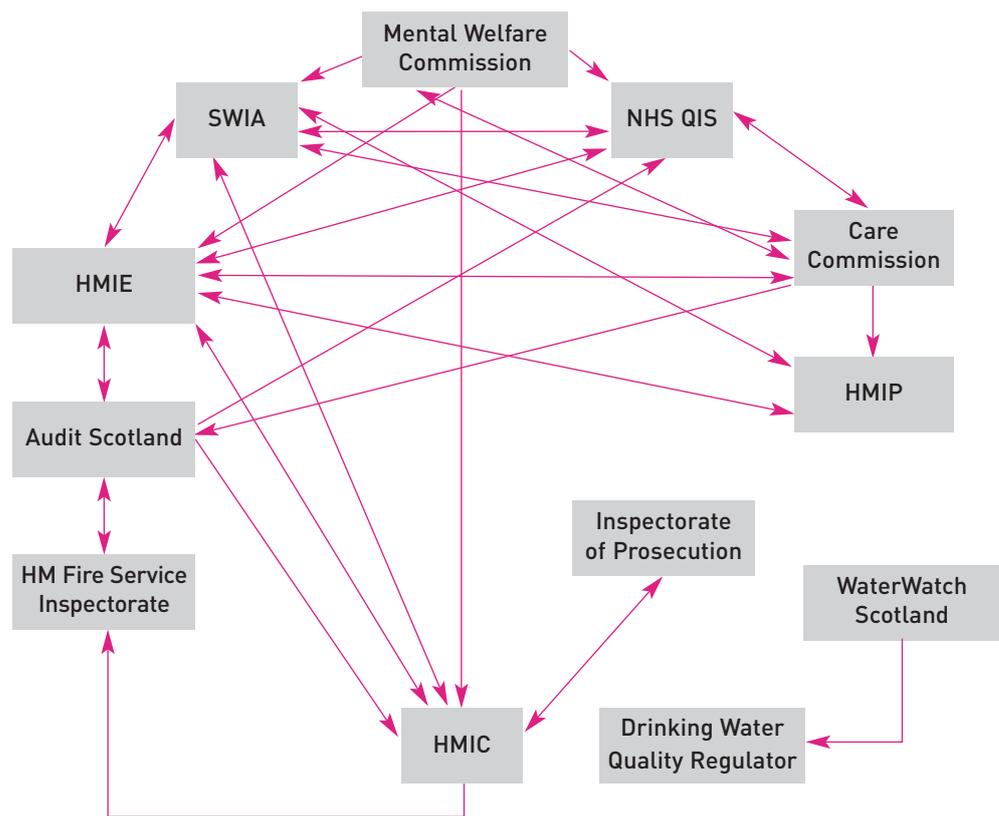
## COLLABORATIVE WORKING

- 6.12** In its report on accountability and governance, the Parliament's Finance Committee noted the potential lack of co-ordination of work between scrutiny organisations operating in the same sphere, and recognised the need for better collaboration and sharing between them. The Committee made the following recommendations to help address this issue:
- (a) Bodies with similar roles and responsibilities should be amalgamated wherever possible;
  - (b) The potential to pool the resources of existing bodies (such as sharing staff) should be considered wherever possible with a view to streamlining these organisations;
  - (c) Unnecessary direct remit overlaps should be dealt with by removing responsibility from one of the bodies involved and adjusting budgets accordingly; and
  - (d) Where bodies do not have direct overlaps but their roles inter-relate there must be an expectation from the Scottish Government that these organisations agree memoranda of understanding to minimise the possibility of a duplication of effort.
- 6.13** The Review endorses and supports the conclusions of the Finance Committee and these are reflected in our own recommendations.
- 6.14** External scrutiny organisations are aware of the potential for overlap and duplication and have developed collaborative working arrangements in response, such as:
- ↗ sharing information, coordinating visits etc;
  - ↗ utilising common frameworks;
  - ↗ placing reliance on each other's work;
  - ↗ undertaking joint scrutiny activity; and
  - ↗ sharing some performance and risk data.
- 6.15** The criticisms of this level of collaboration are that arrangements become overly complex due to the numbers of agencies involved, but at the same time the scope of coordination is limited and amount mainly to more effective scheduling of scrutiny work, with limited positive impact on providers.

Diagram 3: Scrutiny bodies' reported formal information sharing arrangements



**Diagram 4: Scrutiny bodies' reported joint scrutiny activity between autumn 2001 and 2006**



**6.16** As service delivery has become more complex and as the lack of fit between delivery and the existing silo-based scrutiny organisations has become apparent, collaboration has become necessary. The emphasis on partnership working and multi-agency service delivery has resulted in a shift to scrutiny of services for client groups or cross-cutting services in some areas. Scrutiny organisations have taken on new areas of activity, which has required new forms of collaboration. Both the Joint Inspection of Children's Services and the multi-agency inspection programmes, being led by HMIE and SWIA respectively, involve a range of scrutiny organisations sharing information and undertaking joint inspection.

**6.17** Such collaborative working arrangements can be complex, involving a wide range of stakeholders. An overview of the types of relationships and collaborative working arrangements that currently exist are reflected in diagrams 3 and 4.

- 6.18** In some cases, legislation is a constraint on joint working because it limits flexibility, for example, by specifying the nature and frequency of inspections, or limit information sharing. In some instances, joint working arrangements have been driven and enabled by legislation. For example, the Regulation of Care (Scotland) Act 2001 requires the Care Commission to work with HMIE on inspections of particular services. The Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Act 2006, both requires and facilitates joint working between HMIE and a range of other external scrutiny organisations on inspections of children's services, and between SWIA and others on service inspections.
- 6.19** Strategic groups have been established to coordinate multi-agency inspection work. Examples are set out in the box below. The size and make-up of these groups are indicative of the range of interests that need to be considered. It illustrates the level of resources absorbed by collaborative working.

#### **Multi-agency Inspection of Community Care Services**

There is a Strategic Group for the body of work covering Community Care Services. The Group has around 23 members, including representatives from the scrutiny organisations and the Scottish Government.

There is also a Knowledge Management Group, with around 13 members.

For the inspection of Learning Disabilities Services in Ayrshire (i.e. focusing on NHS Ayrshire & Arran and the three bordering local authorities), the inspection team consisted of around 29 individuals. The model for this inspection was commissioned externally.

#### **Inspection of Services for Children**

HMIE has established a lead group for the inspection of Services for Children. The group meets to discuss key developments with the inspection programme and processes. It has 22 members, representing seven organisations, six of which are scrutiny organisations.

In addition, there is the Services for Children Operational Sub-Group, with 17 members from the same seven organisations.

- 6.20** Collaboration has been widely regarded as a positive development because it is an attempt to align the scrutiny activity with emerging priorities. However, collaborative activities are additional to existing service-based or organisational scrutiny and have added to the overall volume of scrutiny activity, raising questions about the need to rationalise and to take a more strategic approach to how scrutiny resources should be prioritised.

## COSTS AND BENEFITS

### Costs

- 6.21** Audit Scotland carried out an analysis of the costs of external scrutiny for the Review. This chapter summarises the main findings, the full paper<sup>6</sup> is in Annex D.
- 6.22** Costs can be split between direct costs (those costs incurred by those carrying out the scrutiny activity) and indirect or compliance costs (those costs incurred by those subject to scrutiny e.g. service providers such as local authorities or health boards).
- 6.23** The growth of scrutiny has led to an increase in direct costs. Direct scrutiny costs in Scotland have increased by approximately 55%, from around £60 million in 2002/03 to around £92 million in 2005/06. The total managed expenditure of the Scottish Government has increased by around 22% over the same period. The direct cost of external scrutiny in Scotland is around 0.18% of overall public sector expenditure i.e. for every £100 spent on public services, 18p is spent on scrutiny. This compares with around 0.20% in England.
- 6.24** Audit Scotland notes that the scale and cost of external scrutiny cannot be estimated with precision. Despite its attempts to gather information about the costs of the various external scrutiny activities, it identified a range of difficulties. Its work has highlighted the need for greater consistency and accuracy of external scrutiny cost data in order for a comprehensive understanding of the cost (including compliance costs – see below) and performance of external scrutiny in Scotland to be achieved. It noted that the key issues that need to be addressed include:
- The adoption of common scrutiny costing methodologies;
  - More widespread use of regulatory compliance assessment models; and
  - More accurate data capture on scrutiny compliance costs within public bodies themselves.
- 6.25** In 2005/06, three external scrutiny organisations – the Care Commission, Audit Scotland and HMIE – accounted for around 80% of the direct cost of external scrutiny. Each organisation's direct cost had also risen significantly since 2002/03 – by 35%, 20% and 95% respectively. Other external scrutiny organisations also experienced significant cost increases (details can be found in Audit Scotland's paper).

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<sup>6</sup> The cost of external scrutiny of public services in Scotland, Audit Scotland

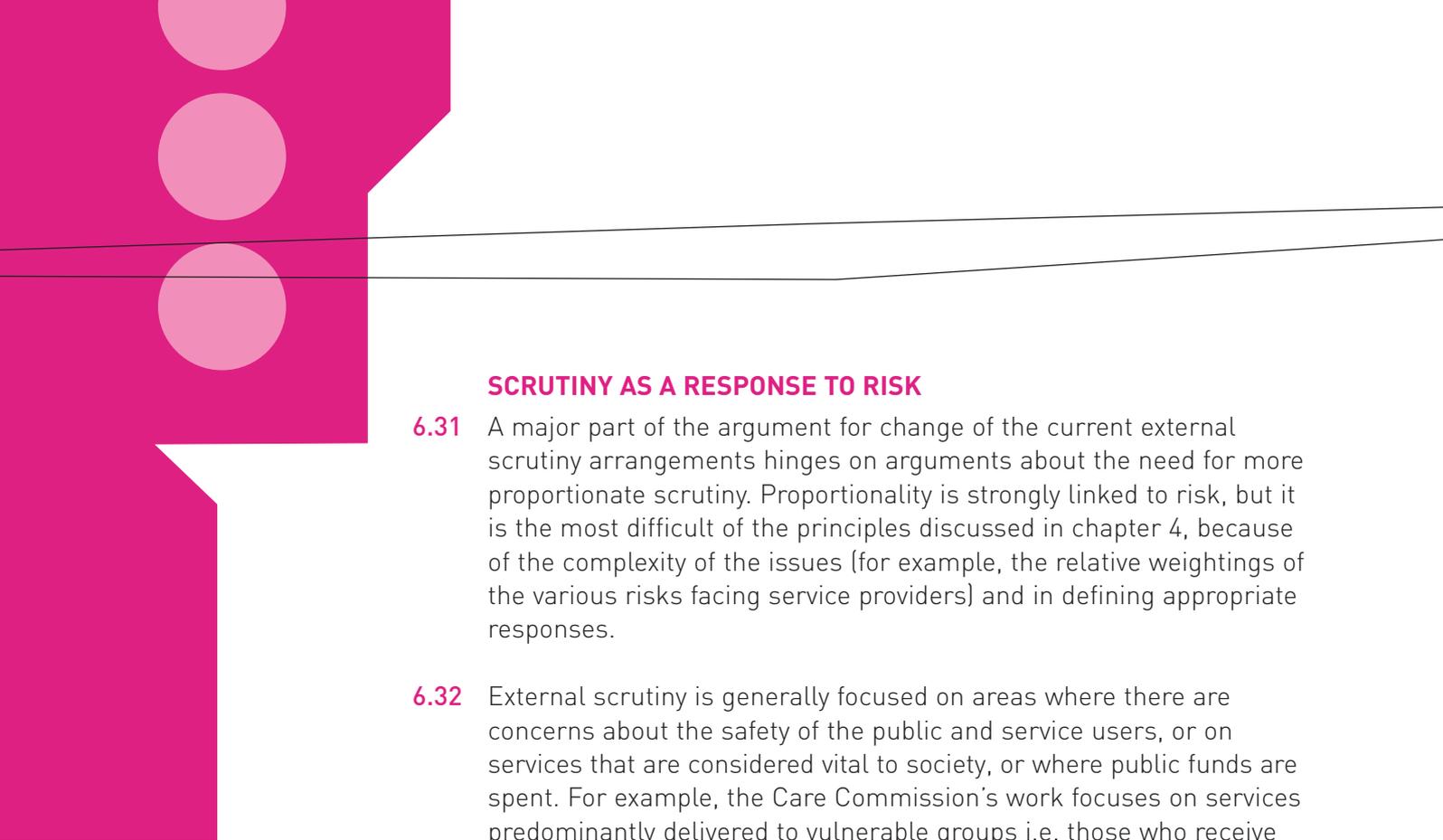
- 6.26** Audit Scotland attributes the bulk of the increase in scrutiny costs to a small number of key developments, such as the introduction of the Best Value audit regime, child protection inspections by HMIE and inspections of services for people with learning disabilities and services for older people by SWIA.
- 6.27** Service providers incur compliance costs when preparing for, participating in and responding to the outcomes of, scrutiny activity. However it is difficult to estimate these accurately. For example, the work commissioned by COSLA, SOLACE and the Improvement Service<sup>7</sup> asked councils about resources used in dealing with external scrutiny. All councils said that there were significant costs, but had difficulties in assessing these because:
- Councils do not use time recording systems;
  - All information was based on retrospective assessment;
  - Length of time that had elapsed since the scrutiny exercises reduced accuracy;
  - Many officers continue to undertake operational tasks at the same time as responding to an external scrutiny exercise.
- 6.28** A survey of health boards indicated that only two of the regional health boards felt they would be able to estimate compliance costs, with most others suggesting it would not be possible without great difficulty and significant resource input.

### Measuring Benefits

- 6.29** The costs of external scrutiny have to be balanced against the benefits, but the benefits and impact of external scrutiny are difficult to assess. One recent independent source of information about impact is the Review of Best Value Audit commissioned by the The Accounts Commission<sup>8</sup> which concluded that Best Value audits have had a significant positive impact on councils. Service providers across all sectors also identified positive benefits. However, most had difficulty in attributing benefit directly to scrutiny. In most cases, service providers across all sectors felt that the added value of external scrutiny did not justify the cost of compliance.
- 6.30** It is acknowledged that there is a significant gap in the assessment of impact and that the impact of external scrutiny is poorly understood, a point made by the Auditor General and acknowledged in the literature. The Auditor General argues that a more sophisticated understanding of the various impacts of inspection, regulation and public audit is required, in order to enable the collective impact of scrutiny to be maximised and unintended consequences to be removed. The Finance Committee's Inquiry into Accountability and Governance also noted that insufficient information on costs was made available when the Parliament's scrutiny commissioners had been set up. This reflects the need for more rigour in the way costs and benefits are measured, and the need for an improved system of impact assessment.

<sup>7</sup> Brodies LLP (2007)

<sup>8</sup> "Decisive Moment" – The independent review of Best Value Audit Process, Centre for Local and Government Research, Cardiff University, and the University of Edinburgh, May 2007

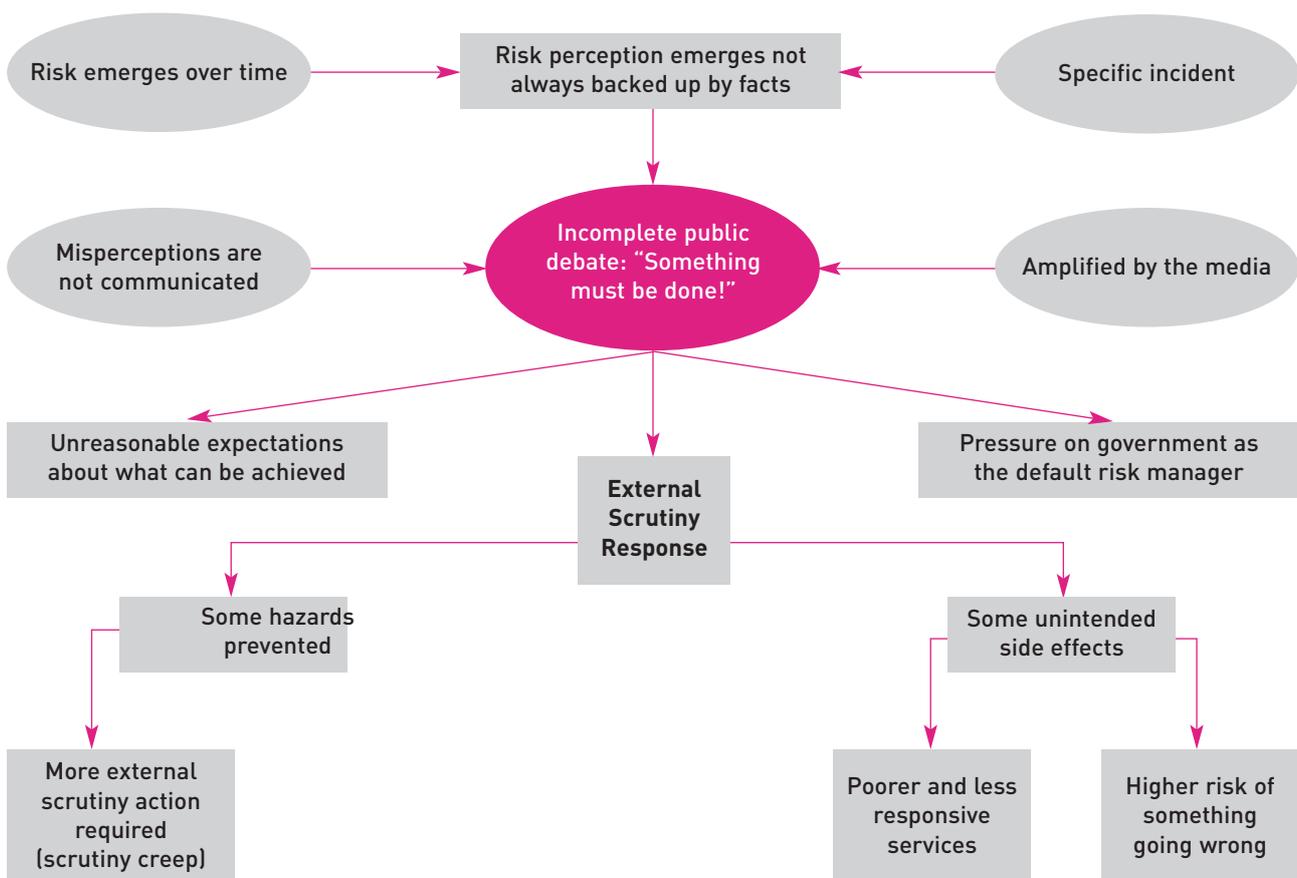


## **SCRUTINY AS A RESPONSE TO RISK**

- 6.31** A major part of the argument for change of the current external scrutiny arrangements hinges on arguments about the need for more proportionate scrutiny. Proportionality is strongly linked to risk, but it is the most difficult of the principles discussed in chapter 4, because of the complexity of the issues (for example, the relative weightings of the various risks facing service providers) and in defining appropriate responses.
- 6.32** External scrutiny is generally focused on areas where there are concerns about the safety of the public and service users, or on services that are considered vital to society, or where public funds are spent. For example, the Care Commission's work focuses on services predominantly delivered to vulnerable groups i.e. those who receive care. HMIE's work focuses on the education system. Audit Scotland's work focuses on financial probity and value for money. Ministers and the Parliament put in place processes that minimise the risk of the services failing or of money being used for the wrong purposes.
- 6.33** We have referred previously to the growth in scrutiny, particularly in recent years. Some of the recent external scrutiny activity has been introduced in response to a small number of service failures, where there was concern that the problems may be widespread and external scrutiny could uncover risks of service failures, thereby preventing things going wrong. Examples include inspections of children's services and inspections of specific aspects of social work services, such as learning disabilities services. When announcing the plans for the new inspections of children's services, the Minister was clear that no guarantees could be offered about safety, but there was clearly an expectation that the inspections would in some way reduce the risk of service failure.
- 6.34** We accept that the existence of external scrutiny is one factor that may influence service providers to minimise risks to services, but we are concerned that expectations about how far scrutiny can address perceived risks may be too high. External scrutiny cannot eradicate risk and it should not be used to manage risk – that is the business and responsibility of those who manage delivery of public services. It can assist in assessing and mitigating risk by testing the mechanisms by which organisations assess their own risk management processes and performance management systems and by reporting areas of deficiency.

- 6.35** We cannot ignore the bigger picture. Ministers and the Parliament must take responsibility for deciding what is a tolerable level of risk for particular services. Only then is it possible to consider what role external scrutiny might play in assisting service providers to manage their risks, and how else risks might best be mitigated. Only after this has been done is it possible to consider what should govern the judgements and decisions to apply external scrutiny – as opposed to other performance management functions/sanctions – as a mechanism to control and manage such risks.
- 6.36** The Better Regulation Commission’s report, “Risk, Responsibility and Regulation – Whose Risk is it Anyway”<sup>9</sup> is a helpful starting point to consider the issue of risk and the use of external scrutiny. Diagram 5, adapted from a diagram of the “Regulatory Response to Risk” in that report, provides a helpful illustration of how external scrutiny is traditionally applied to address risks to service provision and the consequences this can have.

**Diagram 5: The external scrutiny response to risk**



Adapted from Better Regulation Commission (2006)

**6.37** This approach can lead to improvement but might also deliver some undesirable outcomes, such as unnecessary increases in regulation, or poorer and less responsive services and potentially more risk of things going wrong if public service professionals are responding to externally imposed requirements rather than using and developing their professional judgement.

**6.38** While all of the existing external scrutiny organisations and regimes were put in place to help address legitimate risks at the point in time at which they were introduced, we believe there are two fundamental issues that have not been considered consistently:

First, whether the application or scale of the activity was proportionate to the overall risk to public service provision. For example, in the case of vulnerable groups, we might expect a high level of risk, but does this necessitate a cyclical inspection process spanning all aspects of the service and/or all geographical areas?

Second, whether each new activity was considered against all existing external scrutiny activity already affecting the service or organisation i.e. where does the requirement fit in the overall list of priorities?

**6.39** We believe that it is important to be realistic about the extent to which scrutiny reduces risk and contend that a major problem in the current system is that there is no consistent method by which to decide whether external scrutiny is an appropriate response to a particular risk or what the "right" amount of external scrutiny is in a particular set of circumstances. We will describe how this can be addressed later in the report.

## CHAPTER SUMMARY AND RECOMMENDATIONS

### Growth

➤ External scrutiny has grown in recent years, with 11 new bodies created since 1999 and several additional functions being given to existing bodies. Some growth has resulted from new regimes, such as Best Value, and some growth has been the result of additional multi-agency scrutiny activity. This level of growth of scrutiny is not sustainable without reduction in scrutiny elsewhere, and a more proportionate approach to the introduction of scrutiny is needed in future.

### Burden

➤ Providers agree external scrutiny is needed but believe that the volume of scrutiny has become disproportionate to the benefit delivered and to the risk it was set up to overcome. It is distracting resources from front-line delivery.

- Lack of co-ordination and information-sharing between scrutiny organisations creates duplication and overlap for providers.
- The impact of external scrutiny is a particular problem in the local government sector. Compliance ties up extensive resources.
- External scrutiny has a particular impact on corporate management, who normally coordinate responses to scrutiny. This can divert senior management time from other priorities scrutiny impacts on front-line service delivery.

#### **Collaborative working**

- Some scrutiny organisations have developed collaborative working arrangements in response to potential overlap and duplication, but with limited positive impact on providers so far.
- To reflect partnership working in service delivery, some scrutiny is now applied to client groups by a collection of scrutiny organisations working together. This alignment has been welcomed, but these collaborative activities are additional to service-based scrutiny, and have increased the overall burden of scrutiny.
- Legislation can be a constraint on joint working because it limits the flexibility of scrutiny organisations.
- We agree with the Finance Committee recommendations to rationalise scrutiny arrangements and will refer to them in our recommendations later in the report.

#### **Costs and benefits**

- Growth of scrutiny has led to an increase in costs. The costs of running external scrutiny organisations increased from £60 million in 2002/03 to £92 million in 2005/06. This 55% growth seems disproportionate to the 22% growth in the Scottish Government's total managed expenditure over the same period. For every £100 spent on public services, 18p is spent on scrutiny.
- There is a need for more rigour in the way costs and benefits are measured, and the need for an improved system of impact assessment.

#### **Risk**

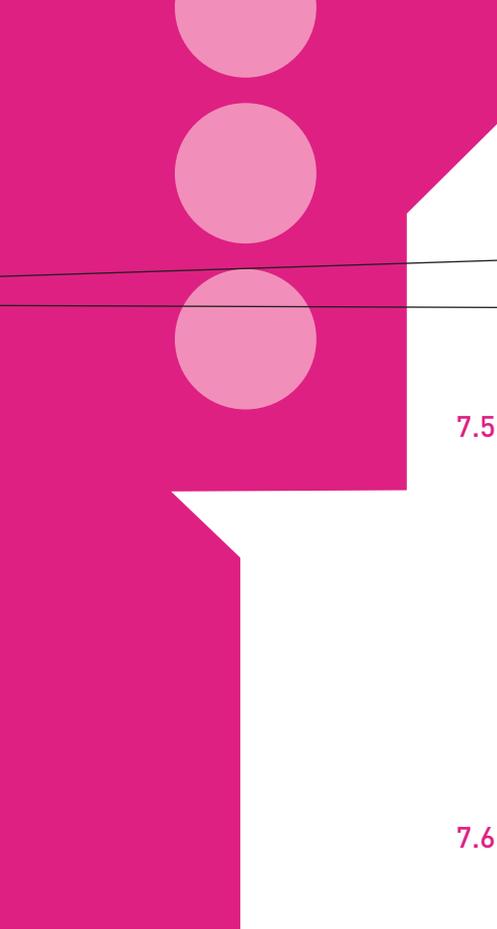
- In a proportionate framework, risk should be central to determining whether external scrutiny should be used, and, if it is, what its nature, scope and duration should be.
- External scrutiny cannot eradicate risk and it should not be used to manage risk – that is the responsibility of the providers who manage services.
- Using external scrutiny to address risk to services can lead to improvement. However, without first considering if it is a proportionate response to risk and without considering how any new scrutiny sits with existing scrutiny, new scrutiny will likely also deliver undesirable outcomes such as increased regulation or poorer and less responsive services.
- There is no consistent method by which to decide whether external scrutiny is an appropriate response to a particular risk or what the "right" amount of external scrutiny is in a particular set of circumstances.

07



# CONCLUSIONS FROM THE ANALYSIS OF EVIDENCE

- 7.1 This chapter presents the key conclusions from the preceding chapters before we go on to present our proposals for the future use of external scrutiny in chapter nine. Our analysis focuses on strategic issues rather than the operations of individual scrutiny regimes, and we highlight systems level issues about application, focus, direction, leadership and control of external scrutiny of public services in Scotland.
- 7.2 We have suggested that 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. This is an essential function of the system of governance and accountability for public services that will always be required.
- 7.3 We argue throughout the report that primary responsibility for improving services lies with the organisations that provide them, but we recognise that external scrutiny can also be a catalyst for improvement where it influences behaviour and culture of providers, leading to improvements in the way that services are delivered. We have concluded that five principles should govern the application and use of external scrutiny – public focus; independence; proportionality; transparency; and accountability. These principles are well understood and have already been adopted in some form by most scrutiny bodies. We noted a particular issue about the independence of scrutiny in health.
- 7.4 We have found that there has not always been clarity of role and purpose or principle in the way that external scrutiny has been introduced in recent years. Existing external scrutiny arrangements have evolved to serve government intentions at particular points in time. Growth in scrutiny reflects circumstances where the governments at the European, UK and Scottish levels have felt the need to increase the indirect supervision of public service delivery through increased inspection, audit and regulation. This is partly because of lack of confidence in service delivery, absence of robust performance management in many services, and partly because of new policy priorities. The Scottish Government’s intentions are changing, and it is now seeking to devolve more responsibility for managing and monitoring services to front-line providers and to streamline reporting processes. These developments have contributed to the debate about the role and future use of external scrutiny.

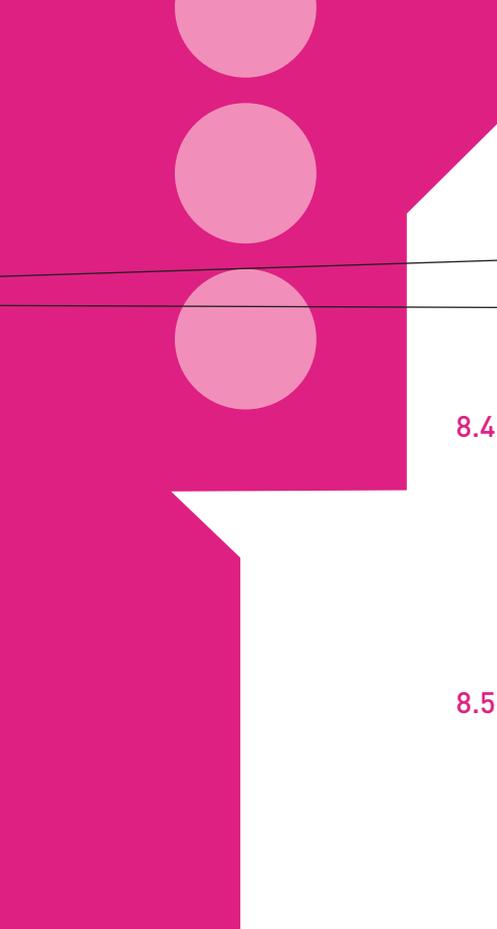
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- 7.5** The growth in scrutiny has been accompanied by a growth in scrutiny costs. Providers believe that this has had a significant impact and is diverting resources from front-line delivery. This was particularly evident in local government. However it is difficult to assess costs across different scrutiny regimes, to assess compliance costs accurately, and to judge whether the “right” amount of resource is being allocated to scrutiny activity. There is a similar difficulty in assessing the impact of external scrutiny on performance by service providers. There is therefore a need for further work to enable a more accurate assessment of costs and benefits.
- 7.6** Scrutiny arrangements are complex. This is partly a reflection of the public service delivery landscape. Each external scrutiny regime performs the role they have been asked to perform by the Scottish Government and by the Parliament in auditing, regulating or inspecting public services. We do not question the integrity of individual regimes and organisations, but we do believe that it is necessary now to re-consider the overall aims and desired effect of external scrutiny, with a view to ensuring it is proportionate and minimises workload for providers. Allied to this objective is a need for a realistic assessment about the extent to which external scrutiny is an appropriate response to risks in public service delivery.
- 7.7** Complexity also arises from the way that scrutiny bodies carry out their business and the way they are set up and run. The result of this is a wide variety of scrutiny methodologies, organisational structures and governance arrangements, and a large number of different players with the ability and right to both direct and create new scrutiny. Such complexity makes joint working on cross-cutting and complex issues more difficult to organise effectively. We believe there is scope to build more consistent leadership and control to ensure more strategic and flexible use of scrutiny resources.
- 7.8** The creation of the Scottish Parliament has changed the accountability landscape. We suggest that there is a need for a revised model of accountability where independence from the Scottish Government is balanced by responsibility to Parliament. There is scope to strengthen democratic scrutiny through further refinement of the Parliament’s role in the scrutiny process, and for Parliament to be more proactive in seeking assurance. This would involve placing a stronger duty on scrutiny bodies to account to the Parliament for their activities and use of resources.

- 7.9** Given the importance of the public as beneficiaries of external scrutiny, it is important that scrutiny contributes to wider policy intentions to focus services more effectively on their needs. We have found that whilst most scrutiny regimes are working towards this focus, there is scope to go further and to involve the public more effectively, and to improve transparency, measurement and reporting. This will require scrutiny bodies to work in conjunction with other stakeholders to develop better ways to measure and evaluate provider performance, and will require more involvement of service users and the public in the process. However, this will not be easy. It has to be done in a way that is proportionate. There are cost implications to doing it thoroughly and, as a number of stakeholders have highlighted, resources may need to be diverted to achieve this aim.
- 7.10** The system for future external scrutiny that we propose in the following chapters addresses the issues summarised here.



# WHAT NOW FOR EXTERNAL SECURITY?

- 8.1 Until now external scrutiny has not been approached in a strategic or systematic way. This in part reflects the range of external scrutiny functions and governance arrangements that have developed over time. Given a new core purpose to provide independent assurance within a wider performance management and reporting framework, the various functions of external scrutiny and the organisations responsible for carrying them out should now operate as a system and the different elements need to operate effectively together. We believe this will require a much greater degree of leadership and directed co-ordination than at present, and a much greater focus on performance management and associated self-assessment by service providers.
- 8.2 The main thrust of our conclusions is that, if the workload created by scrutiny is to be reduced, Ministers and the Parliament will need to 'let go'. This will require a new approach to the identification of and response to risk. Our findings point to a need for greater co-operation between the Parliament and Ministers and between both of these bodies and service providers. To devise a framework for the future, there needs to be a more flexible approach to dealing with concerns about public service delivery, including establishing a clear role for external scrutiny.
- 8.3 The public services delivery environment is evolving and will continue to change. Government and the public will need independent assurance about different priorities and different elements of service provision at different points in time. The scrutiny system needs to become flexible enough to respond to such changes, without requiring new organisations or regimes each time. The key elements of a revised system will include:
- Clear strategic priorities for external scrutiny;
  - A central role for self-assessment by providers as the main source of information about compliance and performance;
  - A clear system for governing the application of external scrutiny; and
  - Clear accountability and governance arrangements.

- 
- 8.4 Throughout this chapter we refer to changes as Short-term – 12 months; Medium-term – 2 years; Long-term – 4 years. The timescales are challenging and meeting them will depend on the commitment of the key stakeholders but we believe that work on all of the recommendations should begin immediately.

### **STRATEGIC PRIORITIES**

- 8.5 The external scrutiny system needs to have clear priorities enabling strategic deployment of scrutiny resources. The priorities should reflect where there is most need for assurance about public services in the public interest. Focusing external scrutiny outputs in a way that is more meaningful to the public should be an overriding principle of any change and will assist both in targeting external scrutiny and in informing stakeholders about performance. In the longer term the more that service users are empowered, the less external scrutiny will be needed as a safeguard.
- 8.6 Ministers and the Parliament should agree the priorities for external scrutiny. The recommendations in this chapter provide the basis for an assessment of such external scrutiny priorities. While it will be for Ministers and the Parliament to make decisions about these priorities, we recommend that financial audit should be one of them.

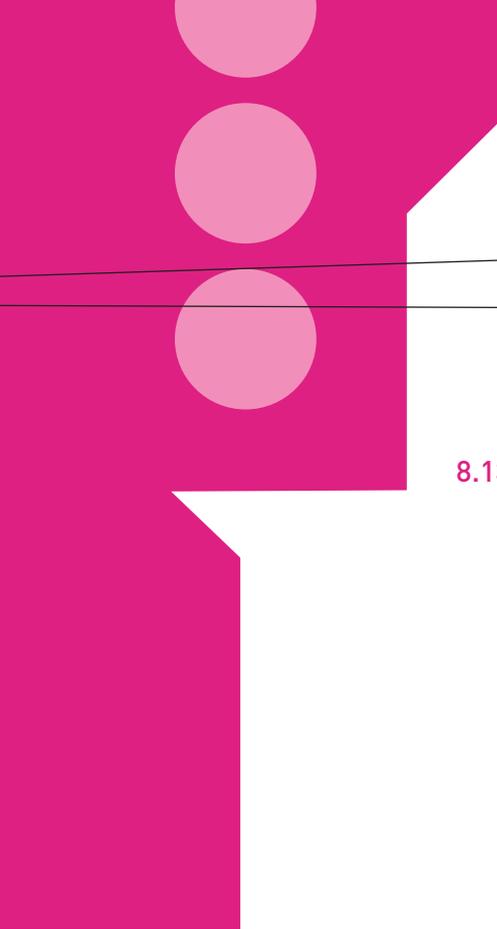
### **SELF-ASSESSMENT**

- 8.7 External scrutiny does not exist in isolation. It is part of a wider framework of performance management and reporting. A central argument in this report is that responsibility for performance (good or bad) lies primarily with the service provider and that external scrutiny should complement performance management arrangements. The external scrutiny system proposed is predicated on robust performance management and self-assessment. The self-assessment should be firmly outcome-focused and include an assessment of all necessary compliance and performance information, and will include information which is currently checked via external inspection, audit and regulatory monitoring processes.

- 8.8** We recognise that the development of coherent performance management frameworks with common reporting criteria, which enable comparisons between services, is a major task which is still in development. Also, in some areas the capacity for providers to conduct rigorous self-assessment remains under-developed and more work will be required before full reliance can be placed upon self-assessment.
- 8.9** In the short-term, this would mean a continued role for scrutiny in assessing performance, but with an emphasis on working with providers to help them deliver effective and robust outcome-focused self-assessment systems.
- 8.10** In the medium term, the application of self-assessment will reduce the volume and burden of external scrutiny. As this reduces, there will be opportunities to rationalise the application of scrutiny and this will have significant implications for the number of scrutiny organisations in the long term.

#### **FUTURE USE OF SCRUTINY**

- 8.11** Financial audit should continue to be an essential element in the scrutiny system. However, we do not believe that the full range of other cyclical external assessments of compliance with regulations or performance against targets, presently undertaken by inspection, audit and regulation organisations, will continue to be necessary. We propose that such cyclical assessment should happen only where all other options have been considered and ruled out. We propose, instead, that scrutiny be used in a much more focused and proportionate way and applied only where it is an appropriate response to any given issue. The nature and intensity of any external scrutiny response should be proportionate to the benefits it is expected to deliver. The circumstances where external scrutiny could be considered might include:
- (a) Where there is the need for periodic independent assurance about whether services are safe, meeting regulatory requirements, and/or delivering value for money;
  - (b) Where service provider self-assessments are unsatisfactory;
  - (c) Where there is the need to assess the impact of a national policy priority;
  - (d) Where a serious service failure arises in one area and assurance is required about wider implications.
- 8.12** We propose that there should be two core stages in considering the application of external scrutiny. First, there must be an assessment of risk. Second there must be an assessment of whether external scrutiny is the right tool to address the perceived risk and the nature of the external scrutiny required.



## Risk

- 8.13** Any issue where external scrutiny is being considered should firstly be assessed against agreed risk criteria. We propose that core risk criteria be agreed by Ministers and considered by the Parliament, and informed by work scrutiny organisations have developed on risk assessment.<sup>10</sup> The criteria could include:
- (a) Availability of evidence to support the perception of risk i.e. the extent to which the risk can be measured, including whether the issue identified is likely to be indicative of a wider problem;
  - (b) Societal concerns, including the number of members of the public that may be affected and the extent of any threat to the safety of individual service users and the public more widely;
  - (c) The current level of public expenditure on the area or service under consideration – it might be argued that the more public funds are expended on a service or policy, the greater the need to address any risk.

## Nature of external scrutiny

- 8.14** Any scrutiny response should be proportionate to the risk. A proportionate approach must also recognise differences in the size and complexity of service provider organisations, as well as the capacity of organisations to respond. The following questions should be considered:
- (a) Why is external scrutiny required? Why is the service provider not able to provide the required information or assurance?;
  - (b) What will the external scrutiny achieve? There must be clarity of purpose and of intended impact, including the benefit to the public.

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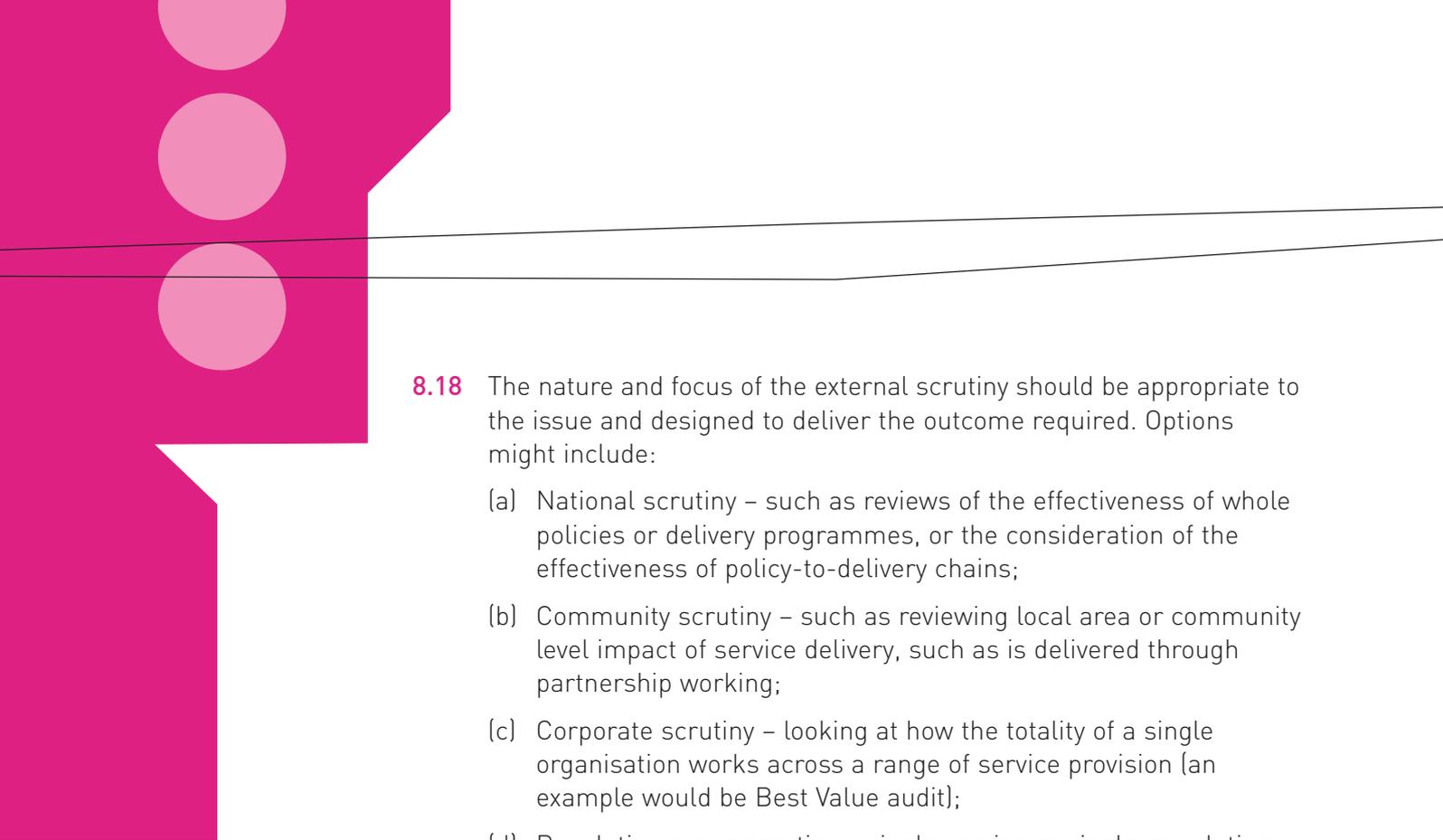
<sup>10</sup> Paragraph 19 of Risk-based and proportionate scrutiny, Audit Scotland, July 2007

- (c) Have the costs and benefits been clearly articulated? Are the benefits expected to outweigh the costs? Factors to be considered here are:
- The likely financial/resource cost both to the organisation undertaking the external scrutiny and to the service provider (in terms of compliance costs) – where a number of service providers are to be involved, variation in provider size should be considered;
  - The specific benefit to be delivered and the extent to which that benefit can be measured; and
  - The capacity of either service providers or scrutiny organisations to deliver the desired outcome from within their existing resources and skill base.
- (d) For what time period is external scrutiny required? Is there a case for ongoing, cyclical scrutiny, if so when should this cease?

**8.15** The nature, scope, intensity and duration of the external scrutiny activity would then need to be decided. We propose that, where an external scrutiny need is identified, and there is more than one existing external scrutiny organisation with a direct interest and relevant expertise, only one should be asked to do the work and to be responsible and fully accountable. The organisation should be appropriately resourced, including resources to bring in relevant skills and experience. This resource would be drawn from existing organisations, in either the scrutiny or service provider sectors. Creating a new external scrutiny organisation to attend to the issue should not be an option.

**8.16** Each external scrutiny initiative or programme should have a timeframe, recognising that issues are resolved, services change and needs alter. We therefore propose that there be a ‘sunset’ clause within any decision to initiate external scrutiny.

**8.17** A “one in one out” approach has been adopted for business regulation in order to control the overall regulatory volume and we believe something similar should be applied to external scrutiny in the public sector immediately. This approach was also suggested for the public sector by the Parliament’s Finance Committee Inquiry into Governance and Accountability. The aim would be to remove or scale back existing scrutiny whenever any new scrutiny is introduced. Mechanisms should be put in place now to ensure that this is managed in a strategic way.



**8.18** The nature and focus of the external scrutiny should be appropriate to the issue and designed to deliver the outcome required. Options might include:

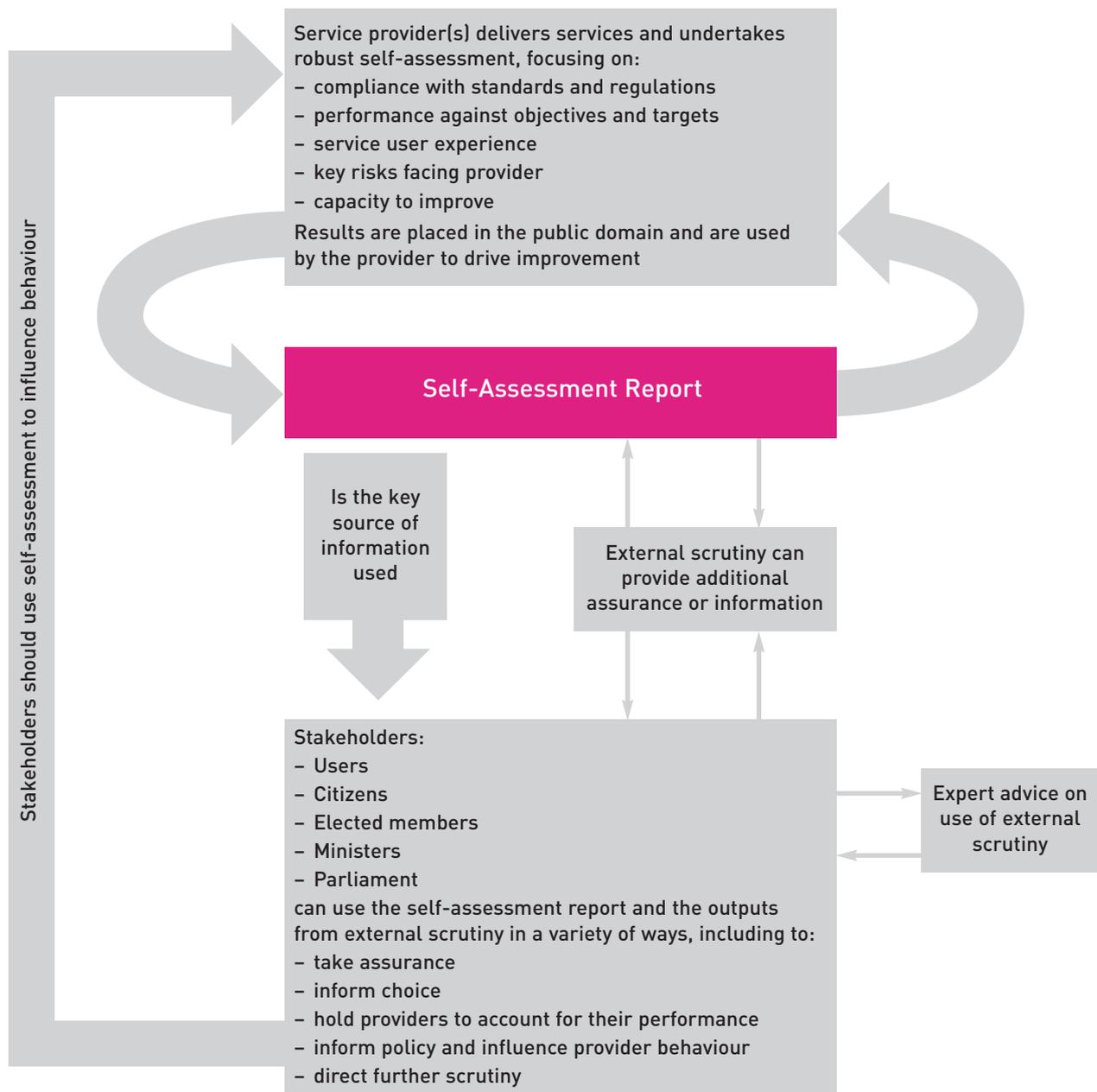
- (a) National scrutiny – such as reviews of the effectiveness of whole policies or delivery programmes, or the consideration of the effectiveness of policy-to-delivery chains;
- (b) Community scrutiny – such as reviewing local area or community level impact of service delivery, such as is delivered through partnership working;
- (c) Corporate scrutiny – looking at how the totality of a single organisation works across a range of service provision (an example would be Best Value audit);
- (d) Population group scrutiny – single service or single-population reviews/inspections such as an individual school inspection.

**8.19** In each case, a variety of methods could be applied:

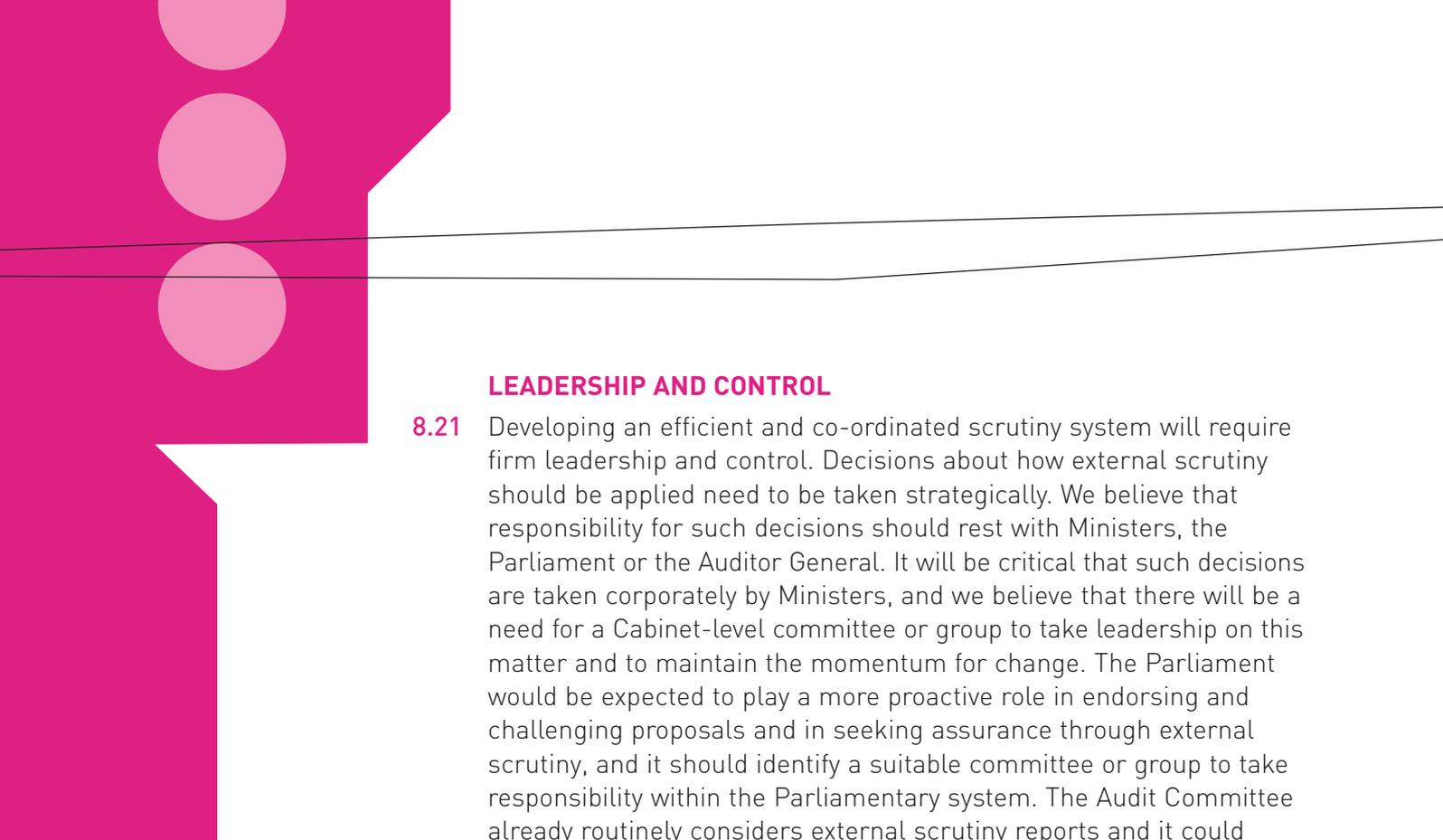
- (a) Testing of the performance management systems of the service, by focusing on a high risk issue or scenario relevant to the organisation e.g. management of MRSA in a hospital, management of “looked after” children on the point of leaving full time residential care;
- (b) Unannounced inspections of a random sample of service delivery outlets;
- (c) Lay inspections of a random sample of service delivery outlets.

**8.20** Diagram 6 illustrates where scrutiny would sit within a new performance management and reporting framework.

Diagram 6: The place of external scrutiny in a future performance management framework



Note: where a service is provided jointly (i.e. by more than one service provider), there is likely still to be a requirement for some form of self-assessment. In such circumstances it will be for the providers to agree who should take lead responsibility for its completion.



## **LEADERSHIP AND CONTROL**

**8.21** Developing an efficient and co-ordinated scrutiny system will require firm leadership and control. Decisions about how external scrutiny should be applied need to be taken strategically. We believe that responsibility for such decisions should rest with Ministers, the Parliament or the Auditor General. It will be critical that such decisions are taken corporately by Ministers, and we believe that there will be a need for a Cabinet-level committee or group to take leadership on this matter and to maintain the momentum for change. The Parliament would be expected to play a more proactive role in endorsing and challenging proposals and in seeking assurance through external scrutiny, and it should identify a suitable committee or group to take responsibility within the Parliamentary system. The Audit Committee already routinely considers external scrutiny reports and it could perform a lead role. We are not proposing any change to the statutory status of the Auditor General, but we suggest that the Auditor General could make use of the advice that we propose below when considering audit activity.

### **Supporting decision-making**

**8.22** We anticipate that Ministers, Parliament and the Auditor General will need to draw on advice in reaching decisions about the application of scrutiny. This already happens, but the process should be more transparent and consistent, and should consider the views of a wider range of stakeholders. Such advice should be provided through independent expert panels with expertise drawn from the external scrutiny sector, service users and service provider representatives. We are not suggesting that there should be a permanent established group. However we do think panels would need leadership and co-ordination and some consistent understanding of their duties. This could be provided by one agent, for example the Auditor General. The panels would consider requests only where they were referred by either Ministers collectively or the Parliament.

**8.23** Individual panels would be selected according to the issue under consideration and would offer advice on whether external scrutiny was appropriate. If they felt that it was, they would also offer advice on the nature, scope and duration of the activity. They could be used to consider decisions about new external scrutiny and on rationalisation of existing external scrutiny activities. The advice of the group would be placed in the public domain. This mechanism would contribute to consistent decision making and would help to make decisions more transparent. However, final decisions will be for Ministers, or the Parliament, or the Auditor General.

### **Co-ordination of external scrutiny**

- 8.24** Making changes happen will require co-ordination and strategic leadership of the external scrutiny sector. External scrutiny organisations will be important players both in developing the longer-term changes and in making them work. The single status for scrutiny bodies suggested below could lead to more flexible use of staff across external scrutiny organisations. All other external scrutiny organisations should be required to collaborate with the lead organisation and, therefore, there should be a duty of collaboration placed on all external scrutiny organisations.

### **CLEAR GOVERNANCE FOR SCRUTINY BODIES**

- 8.25** The report has discussed the proliferation of governance arrangements and raised the issue that this contributes to confused lines of accountability and constrains effective joint working. There is a need to develop suitable governance arrangements that take better account of the role of Parliament and overcome constraints on joint working. We suggest that one way to address this matter would be for all external scrutiny organisations to have one “status”, with a clearly defined line of accountability to the Parliament and to Ministers. This will have implications for all existing regimes and there may be organisations or office bearers for which the same single status may not be appropriate. If so, such bodies should still comply with our principles of independence and accountability. Overall we believe that a robust assessment of the status of existing external scrutiny organisations should lead to greater clarity and simplicity of governance. The introduction of a single status should also set the scene for future rationalisation of the current landscape.
- 8.26** External scrutiny organisations should account for their performance and use of public money in common with all other public organisations. There is a need to develop better measures of the impact of external scrutiny on public sector performance and to track the real cost of external scrutiny (including compliance costs). The Scottish Government and the Parliament should work with scrutiny organisations and service providers to develop impact measures. Audit Scotland has already contributed useful thinking to the Review on improving cost measurement and this should be built upon. External scrutiny organisations should report against these measures to Ministers and the Parliament and reports should be made public. This would help ensure there is sufficient independence for external scrutiny organisations.

### **Accountability to elected representatives**

- 8.27** We propose that the Parliament should be involved in all decisions about strategy for application of external scrutiny and should be notified of any referrals made to an advisory panel. Equally, where the Parliament is considering external scrutiny, Ministers should be notified.

- 8.28** The outputs of external scrutiny should be reported simultaneously to all stakeholders including Parliament, local government elected representatives, the Scottish Government, service delivery bodies and the public. This would increase the transparency of the overall system and would help to ensure that the findings of scrutiny are accessible. Enhanced reporting coupled with increased capacity to influence scrutiny would provide Parliament with an alternative means of bringing about change and could reduce the desire or necessity to effect change through legislation.
- 8.29** We noted in chapter 4 that there is an increasing interest in developing the scrutiny role of local elected members. Enhanced reporting to this group could help to build potential for local elected representatives to make more use of scrutiny reports, as a client of scrutiny. Local members could use scrutiny in this way to hold other local providers to account in their role of representing the public interest in a local or sectoral context.

## CHAPTER SUMMARY AND RECOMMENDATIONS

### Features of a scrutiny system

External scrutiny should operate as a coherent system. The features of this should include:

- Strategic priorities agreed by the Scottish Government and Parliament and focusing on areas where assurance about public services is most important. We recommend that financial audit should be one of the priorities.
- Self-assessment by providers as the main source of information about performance. Performance management frameworks are still being developed, so reliance on self-assessment is a medium/longer term goal.
- There should be two stages in considering the application of scrutiny. First, there must be an assessment of risk. Second there must be an assessment of the appropriate external scrutiny required.

- Where scrutiny is needed, if there is more than one existing organisation, only one should be asked to do the work and to be responsible and fully accountable. Creating a new external scrutiny organisation to attend to the issue should not be an option.
- Each external scrutiny initiative or programme should have a timeframe with a pre-set 'sunset' clause.
- Cyclical inspection, audit and regulatory programmes should happen only where all other options have been considered and ruled out.
- Existing scrutiny should be removed or scaled back when new scrutiny is introduced.

#### **Leadership**

- Responsibility for decisions to create scrutiny should rest with Ministers, the Parliament or the Auditor General. At Ministerial level a Cabinet-level committee or group should take leadership on this. The Parliament should also identify an appropriate corporate mechanism.
- Independent expert panels, drawn from the scrutiny sector, representatives of service users and providers, should provide advice on the application of scrutiny. Coordination of the panels could be provided by the Auditor General.

#### **Governance**

- All external scrutiny organisations should have one "status", with a clearly defined line of accountability to the Parliament and to Ministers. An assessment of the status of existing external scrutiny organisations should be carried out.
- The Scottish Government and the Parliament should work with scrutiny organisations and service providers to develop impact measures for scrutiny, against which scrutiny organisations should report to Ministers and the Parliament.

#### **Accountability**

- The Parliament should be involved in all decisions about strategy for application of external scrutiny.
- The outputs of external scrutiny should be reported simultaneously to all stakeholders.
- Enhanced reporting coupled with increased capacity to influence scrutiny would provide Parliament with an alternative means of bringing about change and could reduce the desire or necessity to effect change through legislation.

09



# IMPLICATIONS AND ACTION

- 9.1 In this chapter we set out the implications of our proposals and our recommendations for action.

## IMPLICATIONS FOR EXISTING SCRUTINY

### Review of roles and responsibilities

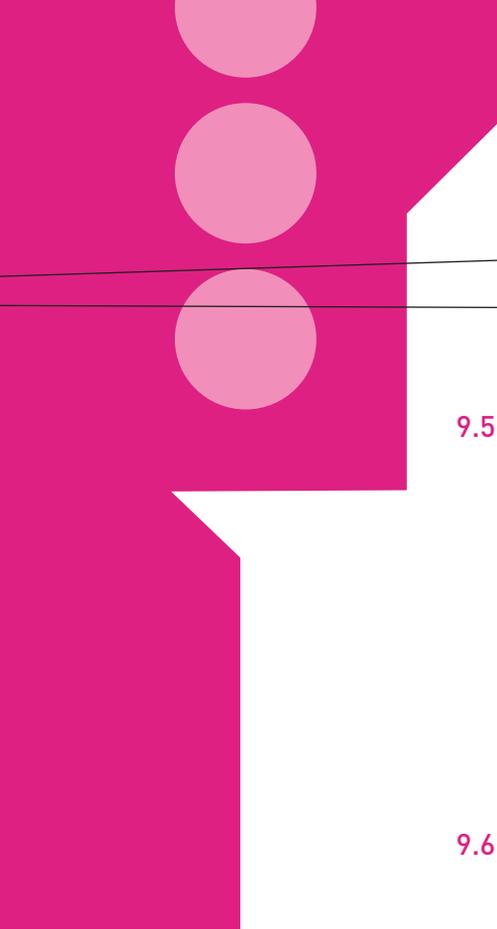
- 9.2 In this section we propose that the Scottish Government should carry out a programme of specific activity to assess existing scrutiny activity against the recommendations in this report. This work should be coordinated at Cabinet level to ensure a consistent approach. All reviews of specific inspection and regulatory functions should also assess the scope for amalgamating bodies with common interests, or reallocating responsibilities to one organisation where there are unnecessary direct overlaps. They should also identify opportunities to share resources (including staff) to deal with overlaps.

### Financial audit

- 9.3 External financial audit is currently the preserve of the Auditor General and the Accounts Commission. These financial audits are delivered on their behalf by Audit Scotland and by a number of contracted private sector providers. We propose no changes to this function – we believe financial probity is critical and requires ongoing, independent checks.

### Performance audit

- 9.4 Performance audit currently accounts for a significant proportion of Audit Scotland's activity (as directed by the Auditor General and the Accounts Commission). In the future system for external scrutiny, we envisage this type of function will still be required. However, we propose that these audits would fit directly within the system described above i.e. the Auditor General and the Accounts Commission would ensure the audits were aligned with the overarching strategic priorities for external scrutiny; and directed as required, after the advice of experts had been sought. We describe later how this advice might be secured.



**9.5** The Best Value audits of local authorities are also a form of performance audit, but are performed on a cyclical basis. We agree with the improvements to the audit process identified in the recent review of Best Value commissioned by the Accounts Commission. We believe that the Best Value audit process in the local government sector should provide the basis for a single corporate assessment and should absorb other corporate level inspections, such as INEA education inspections. The Accounts Commission should work with other external scrutiny organisations to take this forward.

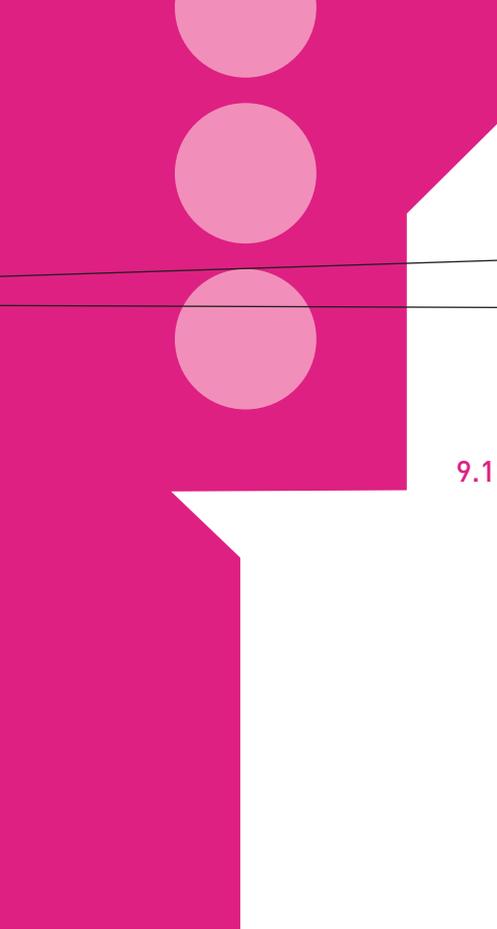
### **Inspection**

- 9.6** We are recommending that existing inspection programmes be reviewed immediately by Ministers. The implication of our recommendations is a reduction in cyclical inspection programmes, with a corresponding increase in emphasis on self-assessment and performance reporting by providers. In future new inspection would only be introduced after assessment by a panel, and in line with criteria outlined in chapter 8. We describe below some examples of where we think there should be significant change:
- (a) HMIE's INEA inspections – these would be stopped once the current round of inspections is complete. Key issues identified as part of the current round should inform, or be subsumed, into Best Value audits and into the self-assessment process for the future;
  - (b) SWIA's social work services inspections – as described above for HMIE's INEA inspections;
  - (c) HMIE joint inspections and SWIA's integrated inspections – these should be reviewed/evaluated immediately, to assess whether they are delivering the intended benefits;
  - (d) Any proposed new integrated or joint inspections should not be started unless evaluated by the criteria proposed in chapter 8. For any future integrated inspections a lead organisation would be identified and appropriately resourced (from existing organisations, either external scrutiny organisations or service providers) and given sole responsibility for delivering the inspection – other external scrutiny organisations would be given a duty to collaborate;

- (e) Service-based inspections (e.g. schools, prisons etc) – should be subject to immediate review, with a clear evaluation of benefits delivered. Immediate consideration should be given to reducing the frequency of service-based inspections;
- (f) Thematic inspections, like performance audits, should be aligned with strategic priorities and undertaken only after the advice of experts has been sought.

### Regulation

- 9.7** There will always be the need to enshrine certain elements of service provision within statutory regulations, usually to provide basic safeguards that service providers are fulfilling minimum criteria, and there is a corresponding need to monitor on-going compliance. Regulation often secures entry into the sector, and potential service providers have to demonstrate how they will comply with the regulations as a condition of entry. Compliance monitoring has traditionally been achieved through the creation of a dedicated regulatory body to register, monitor and report on compliance with regulatory requirements and to deal with non-compliance through the use of sanctions. The process of monitoring is usually achieved through cyclical inspection programmes by the dedicated regulatory body.
- 9.8** We are proposing that in future, if regulation is found to be a necessary response to a given issue, there should not be the corresponding creation of a dedicated regulatory body to monitor and ensure compliance. The monitoring of on-going compliance should be achieved primarily through self-assessment and performance reports by providers, supplemented by external scrutiny as necessary through an existing organisation. It will still be necessary to provide external scrutiny with appropriate powers of intervention, for example, where clients are vulnerable and the risk of service failure requires immediate intervention without referral to Ministers or the Parliament.
- 9.9** The implications for the two main public services regulators, Communities Scotland and the Care Commission, would be that their registration functions would continue but there would be a more proportionate approach to checking ongoing compliance and a relaxation of the frequency of inspections. There would also be a review of the 'triggers' that would identify when an inspection might be required. In the case of the Care Commission there should also be a more efficient registration process to avoid the duplication created by individual organisations having to register every service they provide separately.
- 9.10** For other regulators such as Office of the Scottish Charities Regulator (OSCR), we recommend an immediate review of the need for existing functions in line with the criteria we are proposing. It is questionable whether organisations such as OSCR would have been established if the criteria in our proposed new system had been in place.



### **Review of information requirements**

- 9.11** Existing external scrutiny organisations should review the data they gather, with a view to reducing overall requests, eliminating duplicate requests and sharing and ‘passporting’ information where possible. We recognise that the Knowledge Management Group, chaired by the Care Commission, is already undertaking work in this area which can be developed. The Scottish Government should place a high priority on this issue and ensure that priorities and leadership are assigned to taking such work forward. The Scottish Government should also ensure that parallel work to improve data gathering across public services more generally links with work in the scrutiny sector. In all cases, the focus would be on minimising the workload for service providers and we anticipate this would mean a significant reduction in the current workload.

### **Improving accessibility of reports**

- 9.12** We highlighted earlier that scrutiny reports are often difficult for the public to access and understand. We believe there is considerable scope for scrutiny bodies to collectively and individually consider how information can be made more accessible and transparent for a public audience. We recommend that scrutiny bodies should aim to develop common reporting language to communicate the complexity of what they have found as straightforwardly as possible. Scrutiny bodies should also demonstrate in their reports how their work focuses on the experience and outcomes for the public and for service users.

### **External scrutiny website**

- 9.13** An external scrutiny website, or portal, should be developed, under the direction of the Scottish Government, where all organisations that currently undertake external scrutiny should log all planned activity. The portal should allow anyone (i.e. other external scrutiny organisations, service providers, the public) to see what activity is planned for any service, organisation or sector; or by any external scrutiny organisation. Unannounced inspections will also be logged but only other external scrutiny organisations will be able to see these. External scrutiny organisations would be responsible for developing the portal.
- 9.14** The purpose of the portal would be to facilitate easier information sharing about planned activity, primarily between external scrutiny organisations. However, the portal may deliver some other benefits if used effectively by external scrutiny organisations. For example, it might be that they could undertake more work and information-gathering on behalf of each other. It would also allow all stakeholders to examine the overall volume of external scrutiny activity and to identify what specific areas were being targeted.

## IMPLICATIONS FOR KEY SECTORS

### Local government

- 9.15** Local government has experienced significant developments in external scrutiny in recent years. It has been the first sector to be required by legislation to comply with the principles of Best Value. Performance indicators and outcome measures for local government are also being developed by the Scottish Government and other stakeholders. We believe that this focus should continue, with a view to local government being the first sector in which self-assessment will become the core tool of accountability, with less reliance on external scrutiny required. Our recommendation for reviewing all cyclical inspection; and merging corporate assessment processes into the Best Value audit process will also have a significant impact on the local government sector.
- 9.16** However, until these longer term changes are implemented fully, existing scrutiny activity should be coordinated more effectively. We propose that Ministers should identify and appoint an appropriate scrutiny body to oversee the delivery of scrutiny programmes in local government, aiming to minimise compliance burdens. This body would oversee the implementation of the practical arrangements that we outlined in the previous section for local government. A natural candidate would be the Accounts Commission.

### Health

- 9.17** Much of the existing scrutiny of the health sector is not external and independent. We recognise that health boards will view the activities of NHS QIS and the Scottish Government's health directorates as external to them but it is internal to the health service. We therefore recommend that functions and resources from within NHS QIS and the Scottish Government's health directorates, as well as resources controlled by the Care Commission in relation to private hospitals and related treatment be redistributed to an external scrutiny organisation. However, this redistribution should take place only once the external scrutiny priorities for health have been identified. External scrutiny in health must balance the scrutiny of management processes and performance (aligned to the single corporate assessment) with the scrutiny of compliance with safety requirements and protective regulations.

### Legislative implications

- 9.18** Most of our recommendations can be achieved without legislative change, but some will require change. This is particularly likely where the recommendations include a review of existing governance arrangements or existing external scrutiny programmes. This will become clearer once the recommended reviews of individual scrutiny regimes have been carried out.

## LONG TERM IMPLICATIONS FOR SCRUTINY ARRANGEMENTS

- 9.19** In the longer term we believe there is scope for a significant reduction in the number of bodies. To be credible and to provide assurance, external scrutiny must include the perspective of relevant experts or professionals. At present this expertise is housed within the various individual inspectorates and regulatory bodies, with each carrying out their individual inspection and audit programmes and each using different methodologies. Departures from this norm have occurred over recent years with the introduction of multi-agency or joint inspections whereby programmes of inspection are carried out using teams made up of representatives from each of the relevant inspectorates.
- 9.20** In the medium term we are proposing better leadership and control, with existing external scrutiny resources being directed in a more coordinated way. However, in the longer term, we believe that our proposals if followed should lead to the creation of a single national scrutiny body with a core staff, expert in the business of external scrutiny, with access to a range of professionals with knowledge relevant to the area under scrutiny, enabled through flexible employment practices. The graduation of all scrutiny bodies to a single national scrutiny body may seem ambitious and difficult to achieve. We strongly believe that for a nation the size of Scotland such an ambition is both achievable and appropriate. The benefits of synergy in resources, skills and purpose far outweigh the disruption to the scrutiny sector and service providers, and we believe if all embrace this ambition, it is achievable in the long term.

## CHAPTER SUMMARY AND RECOMMENDATIONS

### Review of roles and responsibilities

- Ministers should carry out a programme of specific activity to assess existing scrutiny activity against the recommendations in this report, coordinated at Cabinet level. The main focus will be on inspection and regulation activity. All reviews of specific inspection and regulatory functions should also assess the scope for amalgamating bodies with common interests, or re-allocating responsibilities to one organisation where there are unnecessary direct overlaps. They should also identify opportunities to share resources (including staff) to deal with overlaps.

### Performance audit

- The Accounts Commission should work with other scrutiny organisations to develop a single corporate assessment which absorbs other corporate level inspections in local government.

### Inspection

- New inspection must only be introduced after assessment by a panel.

### Regulation

- No new regulators should be set up to monitor compliance. Where this function is thought necessary, it should be given to an existing scrutiny organisation.

### Improving coordination

- Existing external scrutiny organisations should review the data they gather, with a view to reducing overall requests and to eliminate any duplicate requests. The Scottish Government should place a high priority on this matter and ensure that priorities and leadership are assigned to taking such work forward.
- The Scottish Government should also ensure that parallel work to improve data gathering across public services more generally links with work in the scrutiny sector.
- The Scottish Government and scrutiny organisations should develop an external scrutiny website, or portal where all planned scrutiny activity will be logged.

### Public focus

- Scrutiny bodies must make information more accessible, develop common performance reporting language and explore ways of explaining the complexity of what they have found as straightforwardly as possible.

### Local government

- The local government sector should be the first sector in which self-assessment will become the core tool of accountability, with less reliance on external scrutiny required.
- Ministers should immediately identify and appoint an appropriate scrutiny body to co-ordinate scrutiny of the local government until the longer term changes are implemented fully.

### Health

- Ministers should redistribute resources and functions from within NHS QIS, the Scottish Government's health directorates, and the Care Commission (in relation to private hospitals and related treatment) to an independent external scrutiny organisation.

### Single national scrutiny body

- Our proposals if followed should enable the creation of a single national scrutiny body in the longer term. Ministers and the Parliament should use reductions in the volume of external scrutiny to reallocate responsibilities to a single body.

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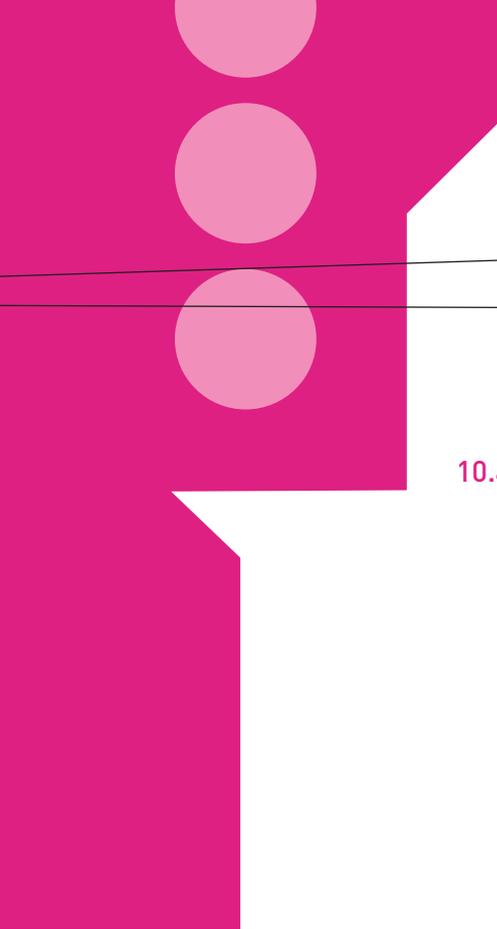
# RECOMMENDATIONS

## SCRUTINY FOR THE FUTURE

- 10.1 We have proposed that the core purpose of external scrutiny is to provide independent assurance within a wider performance management and reporting framework, and that the functions of external scrutiny and the organisations responsible for carrying them out should now operate as a system. This will require a much greater degree of leadership and directed co-ordination than at present, and a much greater focus on performance management and associated self-assessment by service providers.
- 10.2 Below we summarise our recommendations. The changes we propose will all need to be agreed and put in place by the Scottish Government in agreement with Parliament.

### Role purpose and principles

- 10.3 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. The five guiding principles for external scrutiny should be public focus, independence, proportionality, transparency and accountability. These should be adopted by Ministers, the Parliament and other stakeholders. (R1)



## Public focus

**10.4** Scrutiny priorities must reflect the public and user interest. Focusing external scrutiny outputs in a way that is more meaningful to the public should be an overriding principle of any change and will assist both in targeting external scrutiny and in informing stakeholders about performance. The Scottish Government should work with external scrutiny organisations and providers, and consumer representatives to achieve this (R2). Specific recommendations are:

- (a) The public have a legitimate stake in external scrutiny and there should be greater public involvement in external scrutiny processes. External scrutiny bodies currently involve the public, but arrangements are not fully developed across all services. Scrutiny bodies should take further steps to ensure that they involve the public in all aspects of their work, including determining priorities, gathering information, reporting and governance. (R3);
- (b) There is a need for the development of more outcome focused measurements of public services overall, including those used by external scrutiny. External scrutiny organisations should work in conjunction with providers, the Scottish Government and consumer representatives to develop outcome measures and to strengthen the user voice at all levels of public reporting. (R4);
- (c) Scrutiny reports should be written in language that people can relate to, and contain information that is relevant to what they want to know and be trusted. Scrutiny bodies must make information more accessible, develop common performance reporting language and explore ways of explaining the complexity of what they have found as straightforwardly as possible. (R5);
- (d) The Scottish Government should assess the cost implications of developing an effective public focused system and allocate sufficient resources. (R6)

## Performance management and self-assessment

**10.5** External scrutiny is part of a wider performance management and reporting framework. The primary responsibility for demonstrating compliance and performance should rest with service providers. The Scottish Government and Parliament should accept this principle and continue to support the development of robust performance management and outcome-focused self-assessment amongst service providers. (R7)

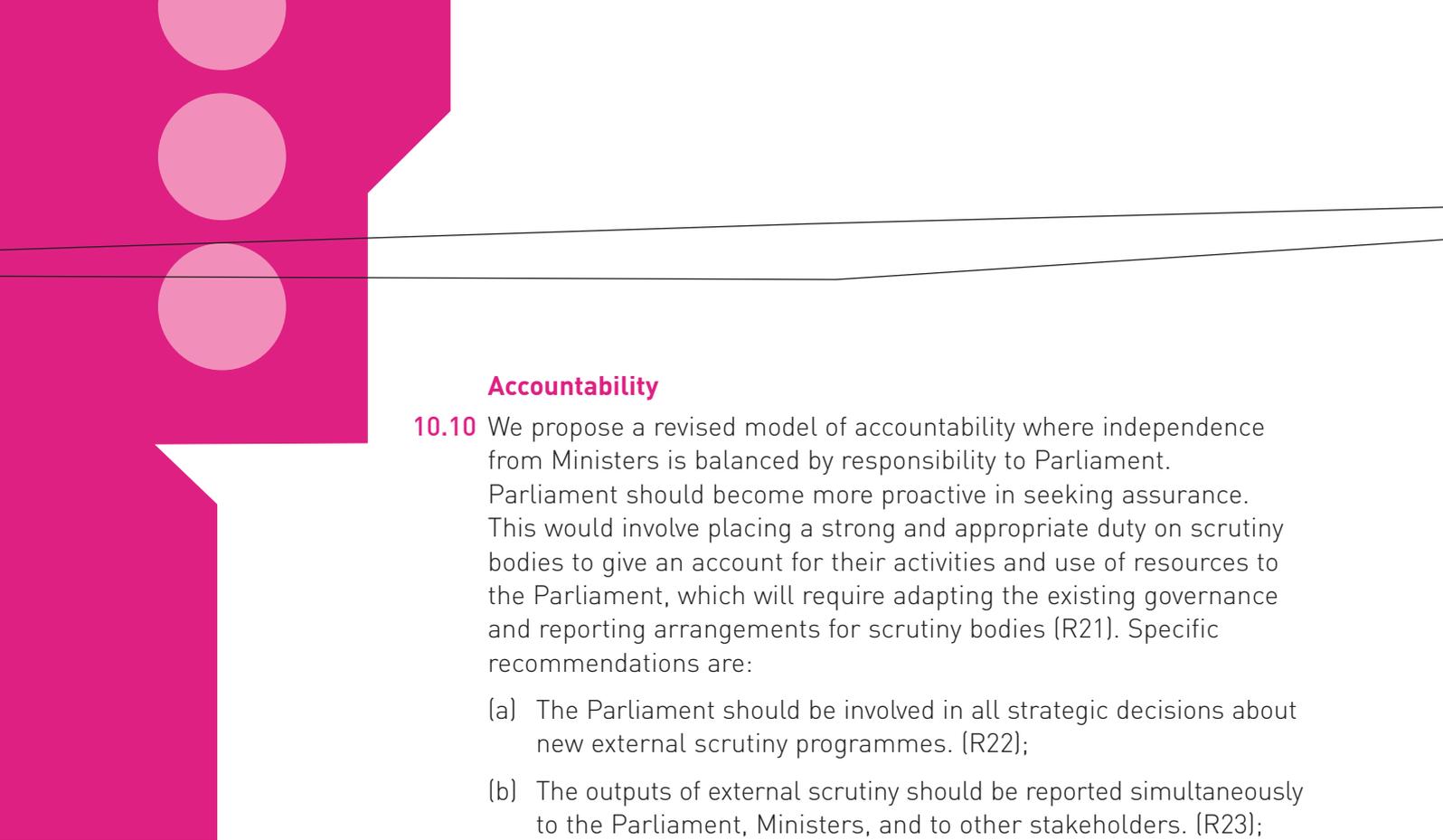
- 10.6** Over time the Scottish Government and Parliament should rely more on self-assessment by providers, enabling a reduction in the volume of external scrutiny. In future Ministers and Parliament should consider the extent to which the assurance they require can be provided by providers before commissioning external audit, inspection or regulation.
- 10.7** Scrutiny bodies should work with providers and the Scottish Government to develop robust and reliable self-assessment processes. (R8)

### Features of a scrutiny system

- 10.8** External scrutiny should operate as a coherent system. The features should include:
- (a) Strategic priorities agreed by the Scottish Government and Parliament (R9), and focusing on areas where assurance about public services is most important. We recommend that financial audit should be one of the priorities. (R10);
  - (b) Core risk criteria should be agreed by Ministers, and considered by the Parliament, to assess the need for current and future external scrutiny. (R11);
  - (c) Self-assessment by providers as the main source of information about performance. Performance management frameworks are still being developed, so reliance on self-assessment is a medium/longer term goal;
  - (d) There should be two stages in considering the application of scrutiny. First, there must be an assessment of risk against the core criteria agreed by Ministers (R12). Second there must be an assessment of the appropriate external scrutiny required. (R13);
  - (e) Where scrutiny is needed, if there is more than one existing organisation, only one should be asked to do the work and to be responsible and fully accountable (R14). Creating a new external scrutiny organisation to attend to the issue should not be an option. (R15);
  - (f) Each external scrutiny initiative or programme should have a timeframe with a preset 'sunset' clause. (R16);
  - (g) Cyclical inspection, audit and regulatory programmes should happen only where all other options have been considered and ruled out. (R17);
  - (h) Existing scrutiny should be removed or scaled back when new scrutiny is introduced. (R18)

### Leadership

- 10.9** On leadership and control:
- (a) Responsibility for decisions to create scrutiny should rest with Ministers, the Parliament or the Auditor General. At Ministerial level a Cabinet-level committee or group should take leadership on this matter. Parliament should identify a suitable committee or group to take responsibility within the Parliamentary system. (R19);
  - (b) Independent expert panels, drawn from the scrutiny sector, service users and providers, should provide advice on the application of scrutiny. Co-ordination of the panels could be provided by the Auditor General (R20).



## Accountability

**10.10** We propose a revised model of accountability where independence from Ministers is balanced by responsibility to Parliament. Parliament should become more proactive in seeking assurance. This would involve placing a strong and appropriate duty on scrutiny bodies to give an account for their activities and use of resources to the Parliament, which will require adapting the existing governance and reporting arrangements for scrutiny bodies (R21). Specific recommendations are:

- (a) The Parliament should be involved in all strategic decisions about new external scrutiny programmes. (R22);
- (b) The outputs of external scrutiny should be reported simultaneously to the Parliament, Ministers, and to other stakeholders. (R23);
- (c) Enhanced reporting coupled with increased capacity to influence scrutiny will provide Parliament with an alternative means of bringing about change, and could reduce the desire or necessity to effect change through legislation. (R24)

## Governance

**10.11** There is no consistent approach to setting up scrutiny bodies and it is not clear why organisations undertaking similar roles have been given different governance arrangements. 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 working and to simplify the scrutiny governance infrastructure. We are therefore recommending that:

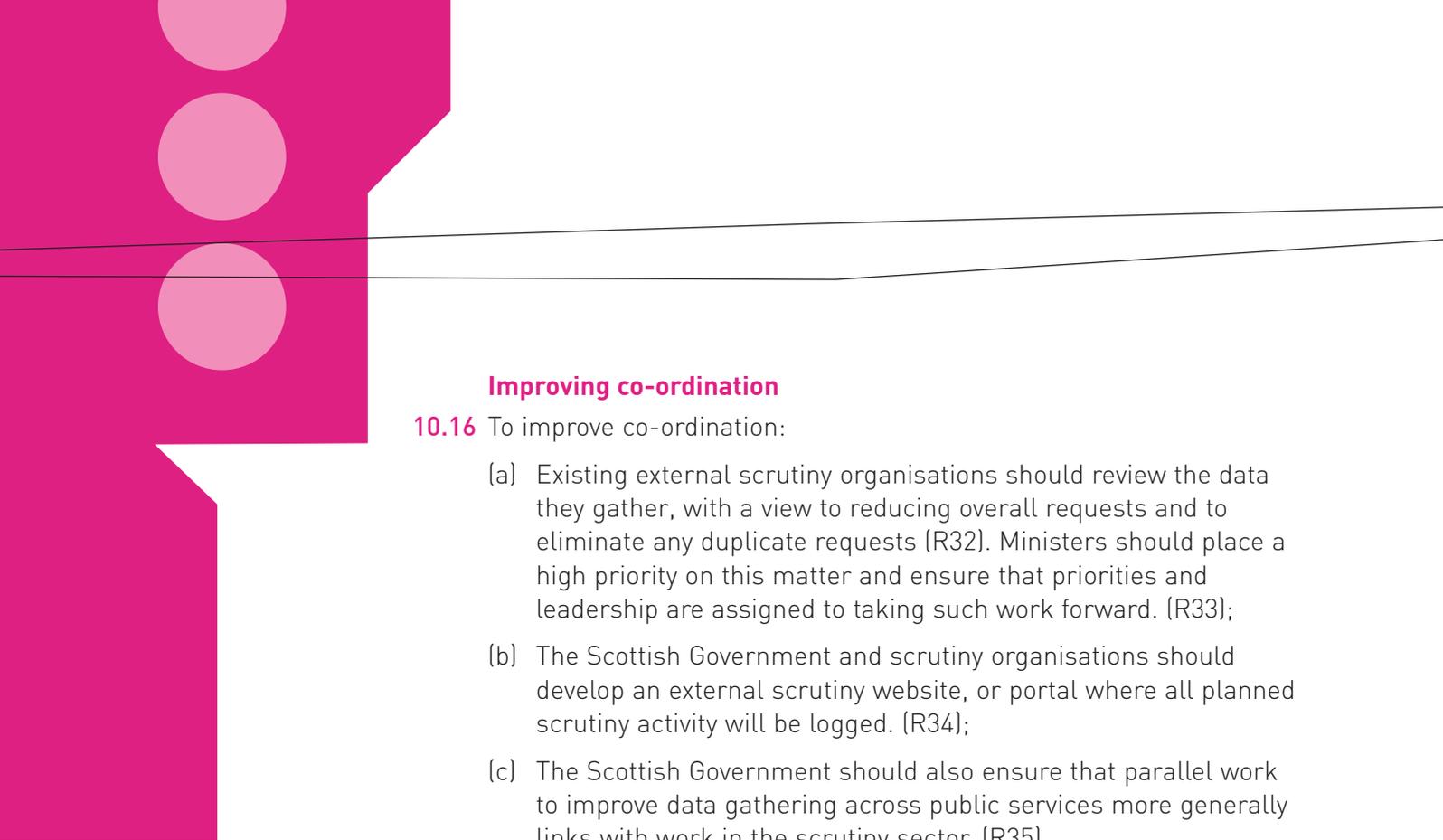
- (a) All external scrutiny organisations should have one “status”, with clearly defined lines of accountability to the Parliament and to Ministers. (R25);
- (b) The Scottish Government and the Parliament should work with scrutiny organisations and service providers to develop impact measures for scrutiny, against which scrutiny organisations should report to Ministers and the Parliament.

### Costs and impact of external scrutiny

- 10.12** It is currently difficult to assess direct costs, compliance costs, and to assess the impact of scrutiny on providers across different scrutiny regimes. There is a need for further work to accurately assess the costs and impact. We recommend that:
- (a) The Scottish Government should commission Audit Scotland to develop cost and impact measures to enable comparisons between scrutiny regimes. (R26);
  - (b) Costs/benefit analysis should become a routine element of any decisions about the use of external scrutiny. (R27);
  - (c) Scrutiny bodies should report to Ministers and the Parliament against cost and impact measures. (R28)

### Reviews of scrutiny activity

- 10.13** Ministers should immediately carry out a programme of specific activity, co-ordinated at Cabinet level, to assess existing cyclical scrutiny activity against the recommendations in this report, with the aim of reducing activity (R29). This should include reviewing:
- Cyclical inspection programmes;
  - Joint and multi-agency inspection programmes, and also ensure that no further joint or multi-agency inspections should commence without first securing the advice of independent experts;
  - Thematic inspections – ensuring that these are aligned with the strategic priorities set for external scrutiny by Ministers and the Parliament; and
  - Regulatory functions, particularly inspection activity associated with regulation.
- 10.14** We also recommend that future performance audits should be aligned with the strategic priorities for external scrutiny as agreed by Ministers and the Parliament. (R30)
- 10.15** All reviews of specific inspection and regulatory functions should assess the scope for amalgamating bodies with common interests, reallocating responsibilities to one organisation where there are unnecessary direct overlaps and opportunities to share resources (including staff) to deal with overlaps (R31). The legislative changes required should also be identified as part of this process.



### **Improving co-ordination**

**10.16** To improve co-ordination:

- (a) Existing external scrutiny organisations should review the data they gather, with a view to reducing overall requests and to eliminate any duplicate requests (R32). Ministers should place a high priority on this matter and ensure that priorities and leadership are assigned to taking such work forward. (R33);
- (b) The Scottish Government and scrutiny organisations should develop an external scrutiny website, or portal where all planned scrutiny activity will be logged. (R34);
- (c) The Scottish Government should also ensure that parallel work to improve data gathering across public services more generally links with work in the scrutiny sector. (R35)

### **Local government**

**10.17** For the local government sector:

- (a) The Accounts Commission should work with other scrutiny organisations to develop a corporate performance audit which absorbs other corporate level inspections in local government. (R36);
- (b) The local government sector should be a priority sector in which self-assessment will become the core tool of accountability, with less reliance on external scrutiny required. (R37);
- (c) Ministers should immediately identify and appoint an appropriate scrutiny body to co-ordinate scrutiny of the local government until the longer term changes are implemented fully. (R38)

### **Health**

**10.18** Ministers should redistribute resources and functions from within NHS QIS, the Scottish Government's health directorates and the Care Commission (in relation to private hospitals and related treatment) to an independent external scrutiny organisation. (R39)

### **Single national scrutiny body**

**10.19** Our proposals should enable the creation of a single national scrutiny body in the longer term. Ministers and Parliament should use reductions in the volume of external scrutiny to reallocate responsibilities to a single national body. (R40)



11



# COMPLAINTS HANDLING

- 11.1 The Review was asked to include complaints handling as a strand of external scrutiny, defined as being: “the investigation of complaints about public services carried out by a range of commissioners, ombudsmen and other public bodies with specific roles and responsibilities.” A summary of the work done on complaints handling, our findings and analysis of stakeholder views is attached at Annex O. We took evidence from the SPSO, complaints handling scrutiny bodies, service providers, the Scottish Government, the Scottish Consumer Council (SCC) and from the independent study “Scrutiny and the Public”. Most contributors to the Review, especially service users, service providers and the Scottish Government, agreed that complaints handling should be an integral part of a system of external scrutiny for public service delivery. However, some key contributors, such as the Auditor General and the Scottish Public Services Ombudsman (SPSO) preferred to describe complaints handling as an activity that played an important role aligned to external scrutiny.
- 11.2 As we examined the present complaints handling arrangements, it became clear our recommendations for improvement would have to be extended to cover the systems used by service providers. This and the uncertainty over whether complaints handling constituted ‘external scrutiny’, led us to conclude that our assessment on current arrangements and our recommendations for improvements for complaints handling needed to be dealt with separately in this report.
- 11.3 This chapter of the report considers the problems with the current systems, as reported to us and then makes recommendations to address them.

## PRESENT COMPLAINTS HANDLING SYSTEMS

- 11.4** We found that the current complaints arrangements are overly complex for service users and the public:
- There are significant variations in how complaints are dealt with between different public service sectors, within sectors and within single organisations;
  - The way complaint outcomes are used and how they are reported, varies significantly from sector to sector;
  - There are more than 20 external scrutiny bodies which handle complaints.
- 11.5** It is difficult for a complainant to navigate the present regime because of the number of complaints bodies, because providers have different ways of dealing with complaints and because it is not always clear which body should be responsible for dealing with the issue. The SPSO summarised the current system complexity in her annual report from 2004-05:
- “In handling complaints, particularly those that involve different agencies, we are struck by the diversity of complaints procedures across and within the public services in Scotland. Unfortunately in this case, diversity does not add value but rather adds to the confusion that exists for people wishing to bring a complaint when things have gone wrong. This confusion is widely recognised...”
- 11.6** A conclusion drawn by the Parliament’s Health Committee, when it considered the Care Inquiry in 2006,<sup>11</sup> was that there are too many avenues for complaints about health and social care and that, if anything, the system needs to be rationalised with a clarification of the procedure for those complaining.
- 11.7** In December 2006, the SCC published a report on “Complaints in Education<sup>12</sup>” which included the following finding: “The complaints procedure for education is complex, involving a number of different internal stages and four separate, statutory sources of external review...” In its “Literature Review on the Consumer Approach to Scrutiny” the SCC also highlights barriers that may prevent potential complainants from voicing their grievances, including: complaints procedures being complex, slow moving, expensive, time-consuming and weakly-directed to meeting consumers’ needs or expectations.

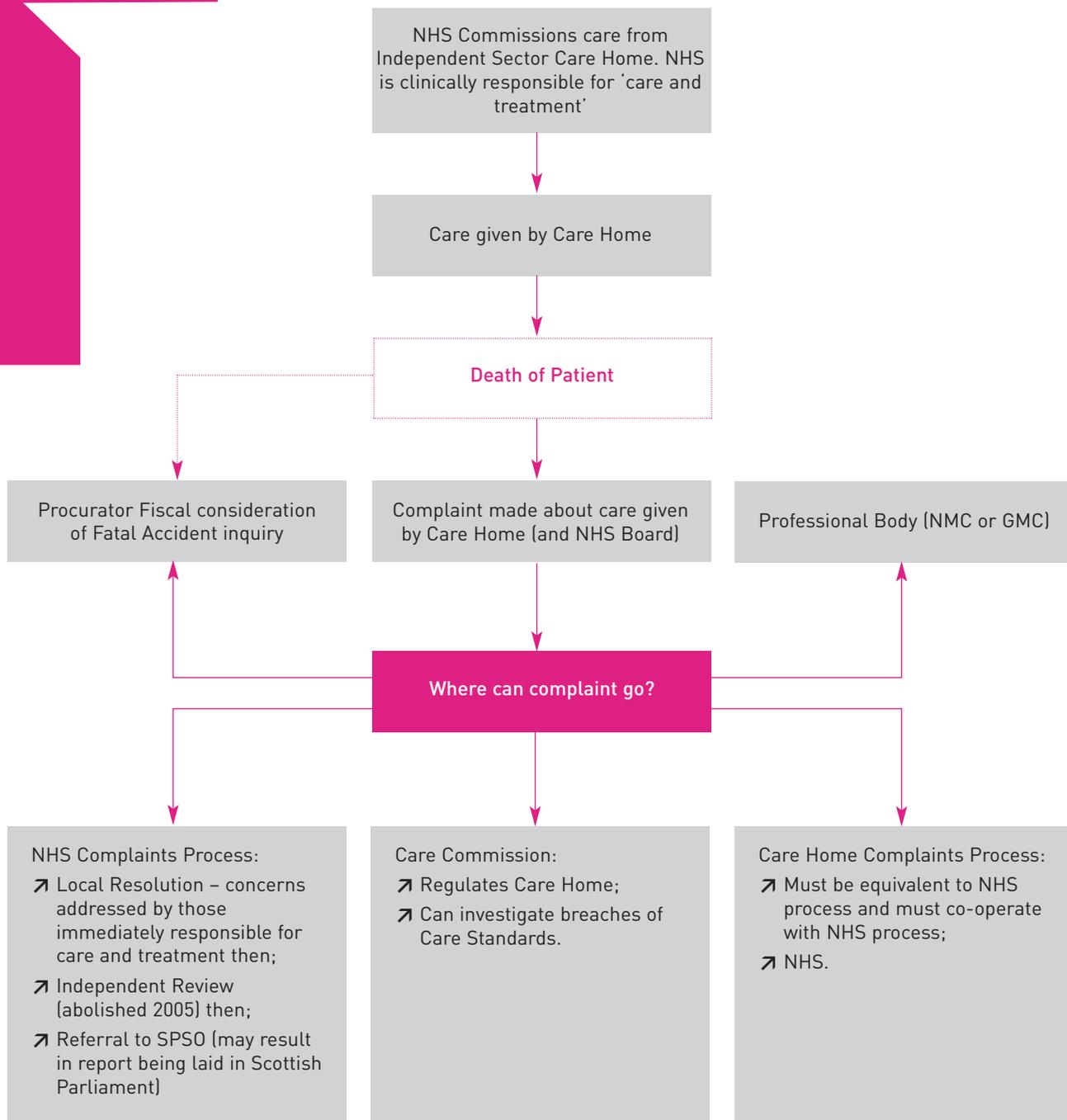
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<sup>11</sup> Health Committee Inquiry into Care (SP paper 594), 10th Report, Scottish Parliament 2006

<sup>12</sup> Complaints in Education, Scottish Consumer Council, December 2006

- 11.8** Complaints are usually made to the service provider, but in some sectors the complaint can be made direct to a scrutiny body, or to a separate complaints handling body (such as SPSO). Some scrutiny bodies only handle complaints (SPSO), while others are involved in regulation or inspection as well (such as the Care Commission). Some scrutiny bodies that inspect or regulate do not handle external complaints (such as Communities Scotland). The SCC cites this inconsistency as adding an unnecessary level of complexity to the complaints handling framework.
- 11.9** Information and outcomes from complaints are also not consistently used. There are examples of good practice in terms of making outcome information widely available – such as the distribution scheme used by the SPSO to regularly update stakeholders on her findings. However, there is little evidence that this is happening more widely. The way that HMIE makes use of complaints as part of its scrutiny process is another example of good practice. In school inspections, child protection inspections and college reviews, evidence on complaints handling is now integral to information requested by HMIE in advance of inspection. HMIE also uses complaints information in the inspection of education authorities: inspectors consider the complaints procedures in each council, discuss the nature and volume of complaints with officers and, in interviews with parents’ representatives, ask about how satisfied parents are about the complaints procedures. However, as this approach is not adopted by all external scrutiny bodies, there is a lack of consistency here too.
- 11.10** The current separate complaints systems are not designed to fit together in a way that might make the overall process simpler to understand for complainants. A practical example of the complexity and the difficulty this poses to service users was provided in evidence from the SPSO. This is represented graphically in the following diagram (diagram 7) which shows that an individual wishing to make a complaint about the provision of care for her elderly mother could have been investigated through 5 separate complaints processes: NHS, Care Commission, the individual care home, professional bodies (such as the General Medical Council or the Nursing medical Council) or through the Procurator Fiscal.

Diagram 7: Example of complaints complexity and overlap



Adapted from Scottish Public Services Ombudsman paper on the Place of Complaints Handling (2007)

## THE FUTURE FOR COMPLAINTS HANDLING

- 11.11** Service users and the public would benefit from a less complex, faster and more easily accessed system. Service providers would also benefit from a simplified system and from a more consistent way of using complaint outcomes to provide assurance and drive improvement. To provide public confidence in complaints handling and to make best use of complaints outcomes, we are recommending a rationalised and simplified standard approach to complaints handling for Scotland's public services. This should be built on the improvements which have been made recently – the rationalisation of ombudsman functions, the introduction of the Customer First initiative within local authorities and the development of an improved NHS complaints system. What we are recommending is a further development of these improvements, rather than a complete system re-design. However, there are some areas of specific concern, referred to earlier in this chapter, which must be addressed – particularly the inconsistencies identified by the SCC in the way that complaints in the education sector are addressed. Barriers that prevent information sharing and co-operation in areas which are subject to specific legislation, such as in education and in social work, need to be removed. The recommendations we are making aim to remove these barriers.
- 11.12** The recommendations not only simplify matters for members of the public but would assist the accountability process when things go wrong with the delivery of services either separately or collectively. To speed up the process of handling a complaint, we are recommending that the SPSO would no longer normally be asked to consider appeals where these have already been investigated and concluded by providers or scrutiny bodies. Some of the present SPSO functions would be devolved to service providers and scrutiny organisations with a view to setting up robust systems where complaints can be handled internally and fairly, as locally and quickly as possible.

## RECOMMENDATIONS FOR COMPLAINTS HANDLING

- 11.13** The recommendations below, aim to:
- Reduce the complexity of the current complaints handling systems;
  - Introduce a single system led by a single agency with clear remit to allocate responsibility for dealing with complaints;
  - Introduce improvements for the service user –
    - making complaining more straightforward;
    - reducing the time taken to deal with complaints;
    - dealing with complaints more locally; and
    - standardising how complaints outcomes are reported;
  - Improve consistency and co-ordination across sectors, removing potential for duplication and overlap;
  - Centralise the system-design expertise from various sectors; and
  - Allow the lessons learned from each case to be applied more easily across all public services.

**11.14** To deliver an improved approach to complaints handling across public services overseen by Ministers and the Parliament in Scotland, we recommend that:

- (a) A standardised complaints handling system should be introduced for scrutiny organisations and service providers in all public services (R41); and
- (b) The Scottish Public Services Ombudsman should oversee all public service complaints handling processes. (R42)

### **Standardised System**

**11.15** The most significant change to the present complaints handling systems we are recommending is the move to a standardised system (standard methodology and process) across all sectors. We recommend that complaints and appeals should be dealt with:

- Simply – by reducing complexity and designing systems which are easy to access and use;
- Consistently across all sectors and by all providers;
- Quickly and within an agreed and transparent timeframe; and
- Locally, where practical, to ensure the least inconvenience for those involved.

**11.16** In order to meet these **aims**, the standardised system would rely on the following **principles**:

- (a) Responsibility for dealing with complaints should rest with service providers. Where complainants are not satisfied with the outcome, an appeal should then be made to a more senior level within the provider organisation. Where that is not possible, an appeal should be made to the relevant scrutiny organisation;
- (b) Providers and scrutiny organisations should deal with complaints as locally as possible;
- (c) A common point of entry, offering guidance to complainants who are unsure where responsibility lies and assigning responsibility to providers and scrutiny bodies for leading on any specific case, should be introduced;
- (d) Where more than one organisation could respond to a complaint, or where there is no obvious lead organisation to respond to a complaint, responsibility should be allocated at a complainant's first point of contact;
- (e) A common set of principles for complaints handling should be agreed for all complaints systems;

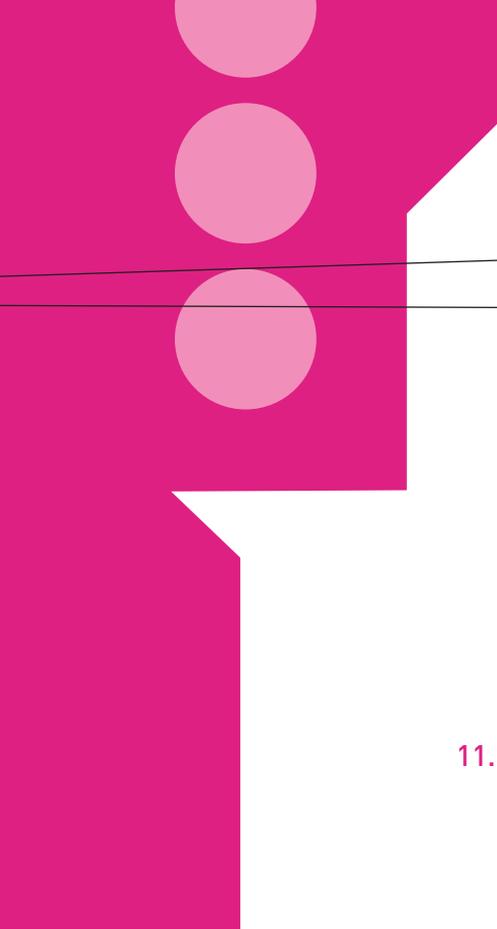
- (f) All service providers should have a published complaints procedure with the appropriate form for service users to complete;
- (g) A commitment to quick resolution and transparent time framing should be agreed for all complaints systems; and
- (h) A standard approach to reporting outcomes from complaints and appeals should be introduced, which should include details of service improvements likely to be made as a result, or details of issues that may require further investigation.

### SPSO Role

**11.17** To deliver a standardised system for complaints handling, as set out above, we are also recommending that a single agency should be responsible for developing and overseeing it. The SPSO is the natural candidate for this role. Her statutory independence and her experience and expertise in investigating service failure and maladministration give her the necessary credibility. We are recommending the remit of the SPSO should be expanded to take on additional responsibilities and duties, but the specific role of investigating front-line service failure should be devolved to service providers and scrutiny bodies, to simplify the present arrangements.

**11.18** We recommend that the SPSO should:

- (a) Be given responsibility for developing and overseeing the standardised complaints handling system described above and for delivering on each of the principles above;
- (b) Be given responsibility for directing providers or scrutiny bodies to lead on individual complaints where more than one organisation could respond to a complaint, or where there is no obvious lead organisation to respond to a complaint;
- (c) Be given responsibility for setting a benchmark for how long a complaint should take to resolve in each sector, reflecting the sectoral differences and anomalies. The statutory duty imposed on the Standards Commission, to conclude investigations within 3 months may be a useful starting point, but the presumption should be that simpler cases should take less time. All parties should then be kept up to date with progress towards a timely conclusion;
- (d) Be given responsibility for co-ordinating the way outputs and outcomes from complaints are reported and used to inform service improvement;
- (e) Be given responsibility for rationalising any overlap or duplication within the current arrangements, where more than 20 separate organisations handle complaints of some sort about providers;
- (f) Be given responsibility for ensuring that complaint and appeal handling processes are sufficiently robust to meet legal challenges on the grounds of independence, fairness or otherwise;
- (g) No longer have responsibility for investigating and making final decisions on cases, as these will now be resolved by providers or by relevant scrutiny bodies; but –

- 
- (h) Retain responsibility to investigate complaints and appeals where providers or scrutiny organisations cannot demonstrate sufficient robustness;
  - (i) Retain responsibility for investigating complaints about the failure of providers or scrutiny organisations to adhere to complaints handling processes.

### **IMPLICATIONS**

**11.19** In making these recommendations, we recognise the need to consider current legislation and the implications this will have on delivering change. We also recognise that setting up a new complaints handling system – even one built on the existing arrangements – will have costs, but we have not been able to quantify or estimate what these might be. In the longer term, these costs should be balanced by savings from future rationalisation of the complaints handling systems.

### **SPSO**

**11.20** We are recommending that the SPSO is given a wider remit, in terms of designing systems which will make it easier to make complaints and which will ensure that outcomes are more closely linked to service improvements. We are also recommending that there would normally be no right of appeal to the SPSO in relation to the merits of a case which have been dealt with by a public service provider or relevant scrutiny body. These recommendations would mean that the duties and powers of the SPSO may need to be extended and the statutory right to appeal to the SPSO may need to be removed in certain cases.

**11.21** As part of an extended role the SPSO would identify relevant appeal bodies by for each sector, and identify sectors in which there is currently no obvious appeal body.

**11.22** We recognise the presentational challenge associated with altering the roles and responsibilities of the SPSO, but we believe the adoption of the common approach to complaints handling in the way we are suggesting would provide at least as much protection for the public and for users, while providing further benefits and improvements through simplification and rationalisation.

### **Service Providers**

- 11.23** Service providers will now have to ensure their complaints handling processes are aligned with the new standardised system and must be ready to respond to direction from the SPSO on which complaints each provider should deal with. Where possible, providers will have to take advice from the SPSO on how to make their systems for dealing with appeals sufficiently robust as to stand up to legal challenge. Providers must also be prepared to learn lessons from outcomes of complaints – to themselves and also from complaints raised with other similar providers.

### **Complaints handling scrutiny bodies**

- 11.24** Scrutiny bodies which handle complaints about service providers, or which handle appeals on the decisions made by providers, must also ensure that their complaints processes are aligned with the new standard system. Advice from the SPSO should be sought on how to establish robust processes. In the longer term, it is likely that the reduction in the overall number of external scrutiny bodies, referred to elsewhere in the report, will be reflected in the complaints handling sector. Our proposals could result in a reduction in the number of external scrutiny bodies dealing with complaints. Ultimately, we could see a situation where one body handles all public service complaints in Scotland.

# APPENDIX I

## SOURCES OF EVIDENCE

The evidence gathered for the Review was either specifically commissioned from consultants or experts, or gathered from stakeholders, through questionnaires, consultation events and workshops, letters, presentations and meetings. Stakeholders included service providers, scrutiny organisations, representative bodies, experts, academics and policy makers. We also drew on other relevant, available research. This ensured the Review took account of a broad base of evidence.

The research and other submissions, or summaries of evidence submitted are available as Annexes on the Review website and on a CDRom supplied with hard copies of this report. The tables below give titles, author details, descriptions and the relevant Annex number for each submission.

### Research commissioned for the Review

Title	Author	Description	Annex
'Literature Review to Inform Independent Review of Regulation, Audit, Inspection and Complaints Handling of Public Services in Scotland'	DTZ Consulting & Research	A comprehensive review of scrutiny literature, sourcing from government reports, international literature, consultations with academics and academic publications.	A
'Literature Review on the Consumer Approach to Scrutiny'	Scottish Consumer Council	Commissioned by the Review to look at assessing services from the consumer perspective and develop the themes raised in the briefing paper 'Scrutiny and the Consumer'	B
'Scrutiny and the public: Qualitative study of public perspectives on regulation, audit, inspection and complaints handling of public services in Scotland'	Ipsos Mori and an academic team led by Edinburgh University	The study was commissioned by the Review to get direct feedback from the public about their awareness of external scrutiny arrangements, and their views on how external arrangements could be strengthened.	C

## Evidence submitted to the Review

Title	Author	Description	Annex
'The cost of external scrutiny of public services in Scotland: a preliminary analysis'	Audit Scotland	This submission was made by Audit Scotland to provide the review team with an analysis of: trends in scrutiny costs in Scotland since devolution; comparative scrutiny costs in Scotland and England; and issues linked with scrutiny compliance costs.	D
'Risk-based and proportionate scrutiny'	Audit Scotland	To provide the scrutiny review team with an analysis of the academic literature on risk-based scrutiny highlighting some of the challenges that will need to be overcome if successful risk-based scrutiny of public services is to be introduced in Scotland.	E
'Scrutiny and the Consumer'	Scottish Consumer Council	To look at ideas on the consumer perspective of scrutiny and consider further areas of study for a more detailed Literature Review.	F
'External Audit and Inspection Arrangements in Scottish Local Government'	Brodies LLP Management Consultancy	To research the impact of external regulation, audit and inspection in Scottish Local Government	G
'The Place of Complaint Handling in the Scrutiny Landscape'	Scottish Public Services Ombudsman	To provide a view on complaints handling and how it fits within the scrutiny landscape	H

## Papers written by the Review Team

Title	Author	Description	Annex
'A map of the scrutiny landscape in Scotland'	Scrutiny Review	A comprehensive document which summarises and analyses the information gathered from scrutiny bodies in questionnaires	I
'Interim Report'	Scrutiny Review	The interim report Professor Crerar provided to Ministers in March 2007, setting out interim conclusions	J
'Discussion Paper'	Scrutiny Review	Paper provided to participants in advance of Discussion events in May 2007	K
'Summary of the Discussion Events'	Scrutiny Review	Four Discussion events were held in May 2007. More than 200 people attended the events in Glasgow, Edinburgh, Aberdeen and Stirling. Written submissions were also received from those unable to attend the events	L
'Evidence from Care Providers and Registered Social Landlords'	Scrutiny Review	A summary and analysis of evidence provided from care and social housing providers – through questionnaires and at seminars	M
'Evidence from the Scottish Government as Stakeholder'	Scrutiny Review	A summary and analysis of evidence provided from policy makers and scrutiny body sponsors within the Scottish Government	N
'Complaints handling as scrutiny'	Scrutiny Review	A summary and analysis of evidence submitted on complaints handling from providers, scrutiny bodies, the Scottish Government and representative organisations. The paper also provided an expert forum with options for potential future models.	O

## APPENDIX II

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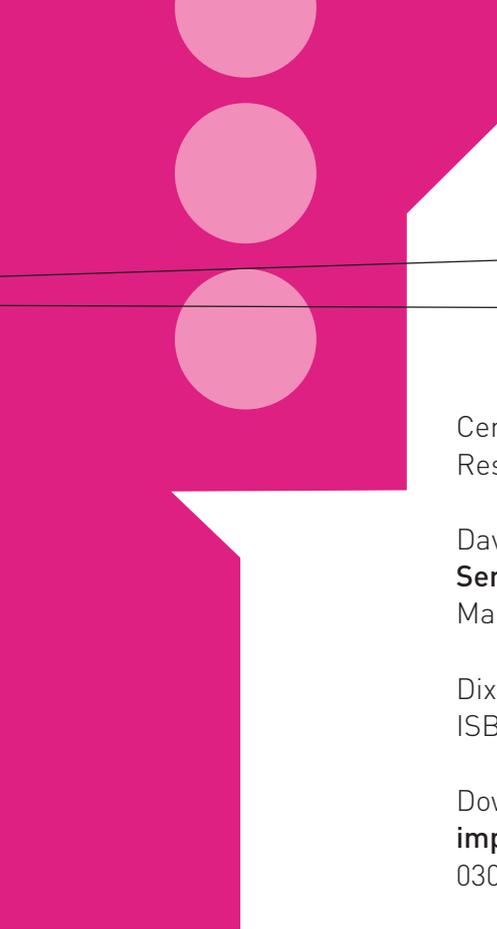
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## APPENDIX III

### CONTRIBUTORS

We would like to acknowledge the contribution made to the Review by the individuals and organisations listed below.

#### Expert Panel

Dr Clive Grace, University of Cardiff  
Professor Christopher Hood, University of Oxford  
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Douglas Sinclair CBE, Chair of the Scottish Consumer Council

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Catherine Bromley, Scottish Government Analytical Services  
Gillian Urquhart, Scottish Government Analytical Services  
Louise Appleton, Scottish Government Analytical Services  
Heather Dall, Scottish Government Housing and Regeneration

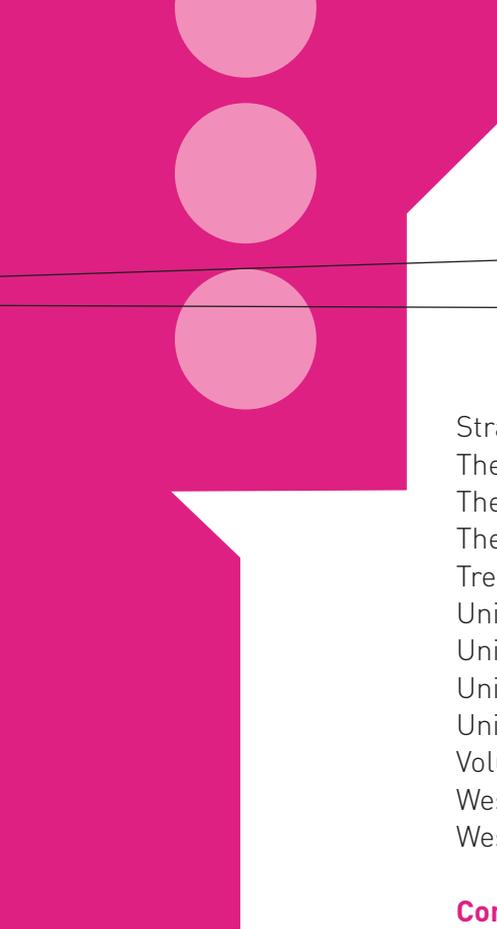
#### Academic Network

Professor Michael Adler, University of Edinburgh  
Dr Vikki Entwistle, University of Dundee  
Dr Joe Francis, University of Edinburgh  
Dr Jackie Gulland, University of Edinburgh  
Dr Jane Martin, University of Warwick  
Professor Steve Martin, University of Cardiff  
Dr Enid Mordaunt, University of Edinburgh  
Dr William Solesbury, Kings College London

#### Organisations represented at the Discussion Events

Aberdeen City Council  
Aberdeen Royal Infirmary  
Aberdeenshire Community Health Partnership  
Aberdeenshire Council  
Aberlour Childcare Trust  
Abronhill Housing Association  
Association of Chief Police Officers in Scotland (ACPOS)  
Allanpark Consultants Ltd  
Angus Council  
Arthurstone Community Library  
Association of Prison Visiting Committees

Association of Head Teachers & Deputies In Scotland  
Association of Scotland's Colleges  
Audit Scotland  
Blochairn Housing Co-operative  
British Medical Association (BMA) Scotland  
Bridgewater Housing Association  
BUPA Murrayfield Hospital  
Cadder Housing Association, Glasgow  
Cairn Housing Association  
Cairngorms National Park  
Care Commission  
Community Care Providers Scotland  
Central Scotland Fire & Rescue Service  
Glasgow City Council, Chief Executive Department  
Glasgow Council, Social Work Service  
Chief Fire Officers Association  
Chartered Institute of Public Finance Association (CIPFA), Scotland  
City of Edinburgh Council  
Clackmannanshire Council  
Communities Scotland  
Convention of Scottish Local Authorities (COSLA)  
Crown Office & Procurator Fiscal Service  
Disability Rights Commission  
Dundee City Council  
East Ayrshire Council  
East Lothian Council  
East Renfrewshire Council  
Education & Children's Services  
Educational Institute of Scotland (EIS)  
Equal Opportunities Commission  
Ethical Standards in Public Life in Scotland  
Falkirk Council  
Fife Council  
Food Standards Agency  
Perth & Kinross Council, Chief Executive Service  
Scottish Government Equality Unit  
Scottish Public Services Ombudsman  
Scottish Social Services Council  
Shettleston Housing Association  
Social Work Inspection Agency  
South Lanarkshire Council  
Standards Commission for Scotland  
Stirling & District Association for Mental Health  
Stirling Council



Strathclyde Police  
The Improvement Service  
The Institute of Chartered Accountants of Scotland  
The Prince and Princess of Wales Hospice  
Treasurer EARS Advocacy Service, Edinburgh  
Unison  
Universities Scotland  
University of Abertay  
University of Stirling  
Voluntary Arts Scotland  
West Lothian Community Health & Care Partnership  
West Lothian Council

### **Complaints Handling Forum**

Scottish Public Services Ombudsman  
Scottish Legal Services ombudsman  
Scottish Consumer Council  
Office of the Chief Investigating Officer, Standards Commission  
Scottish Information Commissioner  
Scottish Prison Complaints Commission  
Commission for the Regulation of Care in Scotland  
NHS Lothian  
City of Edinburgh Council  
Fife Council  
Delivery of Care Services, Scottish Government  
Waterwatch Scotland  
Hanover Housing Association

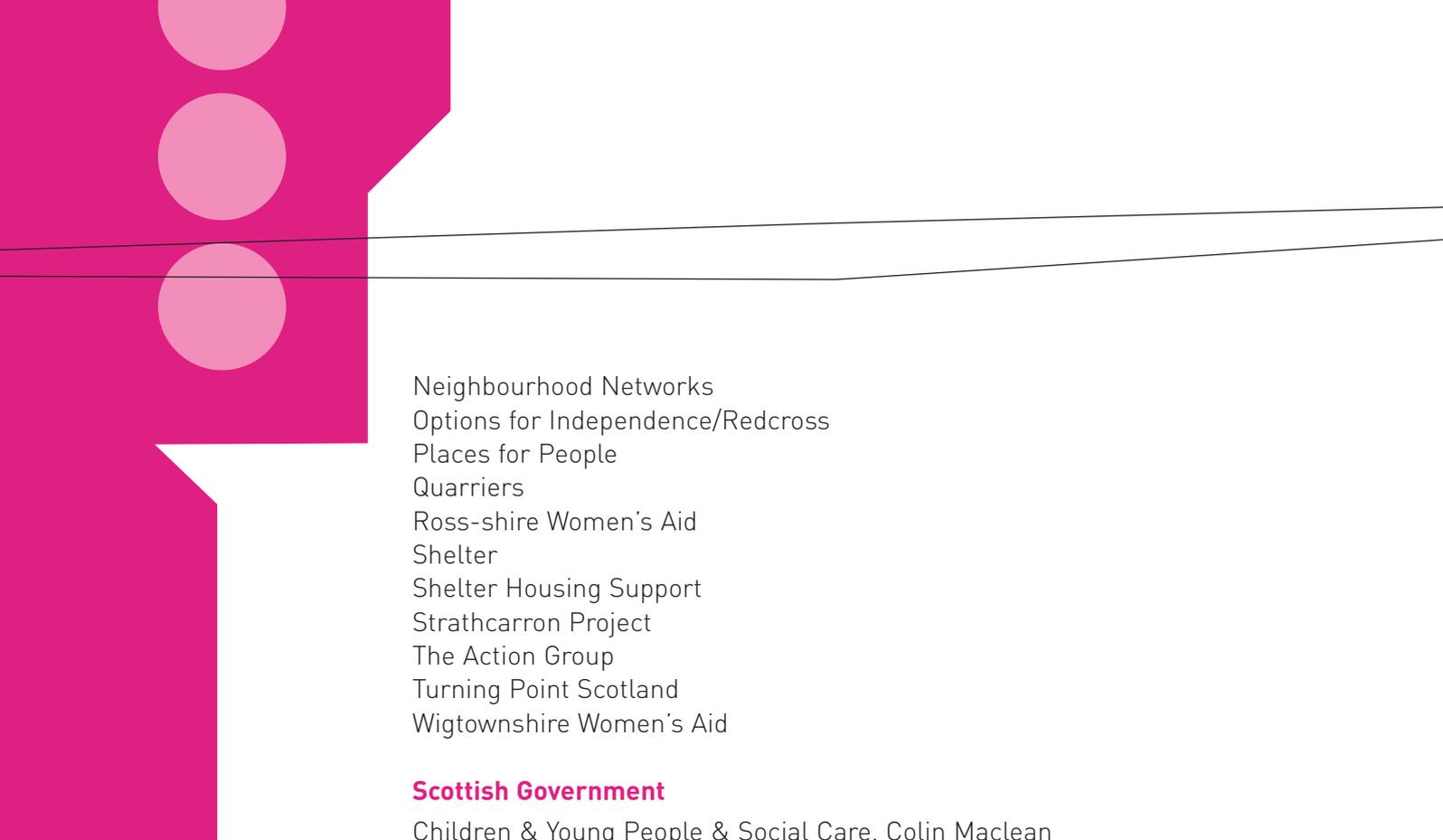
### **Meetings**

Accounts Commission, Alastair MacNish, Bill Magee  
Audit Scotland, Robert Black, Caroline Gardner  
Audit Commission, Sir Andrew Foster  
Better Regulation Commission, Rick Haythornthwaite  
Care Commission, Jacquie Roberts  
Communities Scotland, Angiolina Foster  
Community Care Providers Scotland (CCPS), Annie Gunner  
COSLA, Barbara Lindsay, Jon Harris, Rory Mair  
Glasgow Health Board, Tom Divers  
Help the Aged, Scotland, Mr James Rommele, Tara Anderson  
Her Majesty's Inspectorate of Education (HMIE), Graham Donaldson  
NHS QIS Scotland, David Steel, Sir Graham Teasdale  
Office of the Scottish Charity Regulator, Jane Ryder  
Regulation & Inspection, Communities Scotland, Karen Watt

Scottish Environment Protection Agency, Dr Campbell Gemmell  
Scottish Federation of Housing Associations, Rob Hughes  
Scottish Council of Voluntary Organisations (SCVO), Lucy McTernan  
Scottish Consumer Council, Martyn Evans  
Scottish Parliament, Paul Grice  
Scottish Public Services Ombudsman, Professor Alice Brown  
Social Work Inspection Agency, Alexis Jay  
SOLACE, Gavin Whitefield, Keith Yates, Alex Linkston

### **Care and Social Housing Provider Seminars**

Abbeyfield  
Aberlour Childcare Trust  
Albyn Housing  
Bield HA Ltd  
Blue Triangle  
Cairn Housing Association  
Calman  
Camphill Community – Loch Arthur  
Canmore Housing Association  
CHAP  
Childminding Association  
Cowal Council  
Crossroads Scotland  
Dumfries & Galloway Housing Partnership  
ELCAP  
Fife Council  
Fyne Homes  
Hanover Scotland Housing Association  
Headway House  
Helensburgh addiction rehabilitation Team  
Helensburgh Youth Project  
HELP Ltd  
Highland Council  
Home Group  
Independent Living Support  
Key Housing Association  
Leonard Cheshire  
Lifestyles  
Loch Arthur Community  
Lochbank Trust  
Lothlorien Community  
Mariners  
NCH Scotland



Neighbourhood Networks  
Options for Independence/Redcross  
Places for People  
Quarriers  
Ross-shire Women's Aid  
Shelter  
Shelter Housing Support  
Strathcarron Project  
The Action Group  
Turning Point Scotland  
Wigtownshire Women's Aid

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### **Letters/evidence sent in**

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