

**REPORT TO PARLIAMENT
THE SCOTTISH INFORMATION COMMISSIONER**

This paper has been prepared by the SPCB to inform debate on consideration of the Scottish Information Commissioner, Kevin Dunion OBE for re-appointment.

The Scottish Information Commissioner

Background

1. The Freedom of Information (Scotland) Act 2002 makes provision for the appointment of the Scottish Information Commissioner who will be nominated by the Scottish Parliament and appointed by Her Majesty The Queen.
2. The Act provides that the SPCB will set the Commissioner's terms and conditions of appointment and provides that a person whose term in office expires, is eligible for re-appointment.

Office of the Scottish Information Commissioner

3. The Scottish Information Commissioner is responsible for enforcing and promoting Scotland's freedom of information laws under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004, both of which came into force on 1 January 2005.
4. The Act and Regulations give anyone, anywhere, rights to access the information held by more than 10,000 public authorities in Scotland. Where a person is dissatisfied with the way in which a Scottish public authority has responded to a request for information, and has asked the authority to review its decision but is still unhappy with the outcome, they can make an application to the Commissioner for a decision on their case.
5. The Scottish Information Commissioner's decisions are legally enforceable and he may require an authority to give out information that has previously been withheld or take other action. He may uphold the decision of an authority to withhold information but he will have rigorously investigated the decisions to ensure it is legal.
6. In addition to enforcing the Act, the Commissioner also undertakes a programme of activity including training and education, producing briefings and guidance and speaking at events, to inform people about their rights under the freedom of information laws and he also promotes best practice to public authorities.
7. The Commissioner is currently supported in his work by 24.5 members of staff.

The Commissioner

8. The Scottish Information Commissioner is Kevin Dunion OBE. He was appointed on 24 February 2003 for a period of 5 years. The Commissioner's starting salary was £72,000 and is currently in the range of £80,000 to £85,000.

9. Biographical details of the Commissioner are attached at Annex A.

Office of the Scottish Information Commissioner - Statistics

10. Set out below are statistics relating to the numbers of enquiries and complaints dealt with by the office and funding. These figures are based on information contained in the Commissioner's Annual Reports and quarterly performance statistics submitted to the SPCB.

Workload

Year	Enquiries	Appeals	Total
2005-2006	2,450	571	3,021
2006-2007	1,617	511	2,128

Statistics Overview 2007/08

Quarter	New applications	Cases Closed	Enquiries	Backlog
1	114	134	310	107
2	105	172	257	58
3	111	138	362	21
Total	330	444	929	

Funding

Year	2003/04	2004/05	2005/06	2006/07	2007/08
Budget	£900,000	£1,200,000	£1,175,000	£1,337,000	£1,435,000
Expenditure	£912,000	£1,118,000	£1,125,000	£1,327,000	

Term of office

11. The Commissioner is a Crown appointee who is nominated to Her Majesty The Queen for appointment on the recommendation of Parliament. His first term of office will expire on 23 February 2008. Any additional appointment, if agreed by the Parliament, will be for a period of 4 years, the maximum time recommended by the Procedures Committee.

The Re-appointment Panel

12. SPCB Members sat as a re-appointment panel on 9 January 2008 to consider the Commissioner for re-appointment. The panel was chaired by the Presiding Officer and the other members were Alex Johnstone MSP, Trish Marwick MSP and Mike Pringle MSP. The Independent Assessor was Dr Bernard Kingston.

Remit of the Panel

13. The remit of the panel was to determine whether the Commissioner should be nominated to the Parliament for re-appointment.

Information provided to the panel

14. Prior to the interview, the following information was made available to the panel:

- Part A of the Commissioner's application form;
- The Independent Assessor's Report;
- Budget and performance statistics;
- Information about the Commissioner's Office
- The Commissioner's Strategic Plan
- Parliamentary Questions
- A selection of media coverage; and
- Copies of the Commissioner's Annual Reports.

Independent Assessor

15. The Independent Assessor's role is to oversee that the re-appointment process conforms to good practice and to confirm or otherwise that the nomination of the appointee is being made on merit after a robust and fair process. A copy of the Independent Assessor's report is attached at Annex B and the Validation Certificate at Annex D.

16. As recommended by the Procedures Committee, prior to interview an independent evaluation was carried out for the SPCB by Dr Bernard Kingston its Independent Assessor, on how effectively the Commissioner had performed throughout his term in office based on the following criteria: fulfilling the functions of the post as set down in legislation; competent management of workload; staffing and budgets and having a forward plan to meet anticipated challenges.

17. The SPCB would like to record its thanks to Dr Kingston.

Interview

18. The Commissioner's interview was held on Wednesday 9 January 2008.

19. In keeping with the criteria used for the independent evaluation mentioned above, the panel agreed that the Commissioner should be tested at interview on the following criteria and scored against each of them:

- managing change;
- management of staff, workload and finance;
- fulfilling functions of the post;
- communication;
- leadership and motivation skills;
- forward planning; and
- achievements

20. Based on the agreed scoring criteria, panel members awarded the Commissioner a pass mark in every competency.

Decision of panel

21. The unanimous decision of the panel was that Kevin Dunion should be nominated to the Parliament to be considered for re-appointment by Her Majesty The Queen for a second, four year term.

BIOGRAPHICAL INFORMATION

Kevin Dunion, OBE

Kevin was born in December 1955 in Bridge of Allan, and brought up in Alloa and Glenrothes. He was educated at the University of St Andrews (MA (Hons) Modern History 1978) and at the University of Edinburgh (MSc (Dist) African Studies 1991).

Following spells in the civil service and university administration, Kevin joined Oxfam as Campaigns Manager and then took up the post of Chief Executive of Friends of the Earth Scotland. From 1996 to 2000 he also served as Chairman of Friends of the Earth International, heading delegations to the United Nations and European Commission. It was for this role that he was awarded an OBE in 2000.

Reappointment of Kevin Dunion OBE, The Scottish Information Commissioner

Short Report by Dr Bernard Kingston, the Independent Assessor

My terms of reference were agreed with the SPCB and are attached as Annex C.

I met the Information Commissioner on 10 Oct 2007 for an in-depth discussion of his role and responsibilities in the context of criteria determined by the Procedures Committee. Ahead of that meeting I was provided with a comprehensive set of background papers.

These discussions enabled me to evaluate the Commissioner's stewardship during his first term in office and they formed the basis of a detailed report subsequently made available to the SPCB.

In addition to that report, the Re-appointment Panel had received in advance an application form, statistics on caseload and budgets, annual reports and newsletters, the SIC strategic plan, Parliamentary questions and media cuttings.

I returned to Edinburgh on 9 Jan 2008 for a pre-interview briefing with the four members of the Panel and was present throughout their discussions with Mr Dunion.

My role was strictly that of observer of the process to see that it met best practice and I took no part in the discussions at interview.

Once again, the questioning stayed within the remit laid down by the Procedures Committee and the interview followed a pre-determined pattern with occasional supplementaries.

Each member of the Panel scored the Commissioner against the agreed criteria with the outcome that he was scored above the line for each criterion by each member.

The Panel was unanimous in recommending that The Commissioner be reappointed for a further four years.

I am fully satisfied that the report on that interview is an accurate reflection of what took place.

I am pleased to enclose my Validation Certificate as Annex D.

Finally, I wish to place on record my warmest thanks to the Commissioner, the Presiding Officer and his SPCB colleagues and Mrs Janice Crerar for responding openly and comprehensively to my varied queries and requests.

Bernard Kingston (Dr)

January 2008

APPOINTMENT SPECIFICATION FOR INDEPENDENT ASSESSOR

Scottish Information Commissioner – Re-appointment

OBJECTIVE

The Independent Assessor will assist the Scottish Parliamentary Corporate Body (SPCB) when considering the current Scottish Information Commissioner for re-appointment. The assessor's role will be to:-

- oversee that the process conforms to good practice;
- confirm or otherwise, that the nomination of the Commissioner has been made on merit after a fair, open and transparent process; and
- assist the SPCB in making an appointment that commands the Parliament's and the public's confidence.

DUTIES

- To evaluate the Commissioner's performance against agreed criteria;
- To meet with the Commissioner and thereafter prepare a written report for the SPCB;
- To comment, if necessary, on the paperwork concerning the re-appointment;
- To participate in a pre-briefing meeting with the Re-appointment Panel prior to the interview;
- To oversee the interview;
- To raise concerns, if necessary, about any shortcomings in the process; and
- To certify, or otherwise by way of a Validation Certificate that the interview process complied with good practice.

Validation Certificate from Independent Assessor

Scottish Information Commissioner – Re-Appointment

I confirm that I have been involved in the key stages associated with the re-appointment of the Scottish Information Commissioner. My report and terms of reference are appended at Annex B and C respectively.

In my view, the nomination is made on merit after a fair and robust process which conformed to good practice.

Signed Bernard Kingston.....

Name: Dr Bernard Kingston

Date: 21 January 2008