

**REPORT TO PARLIAMENT  
THE DEPUTY SCOTTISH PUBLIC SERVICES OMBUDSMAN**

*This paper has been prepared by the SPCB to inform debate on consideration of the three Deputy Scottish Public Services Ombudsmen; Eric Drake, Carolyn Hirst and Lewis Shand Smith for reappointment.*

## **Deputy Scottish Public Services Ombudsmen**

### **Background**

1. The Scottish Public Services Ombudsman Act 2002 makes provision for the appointment of the Scottish Public Services Ombudsman and up to three deputy Ombudsmen who will be nominated by the Scottish Parliament and appointed by Her Majesty.
2. The Act provides that a person whose term in office expires is eligible for reappointment and that the SPCB will set the Ombudsman and deputies' terms and conditions of appointment.

### **Office of the Scottish Public Services Ombudsman**

3. The Ombudsman's remit covers an extensive range of public authorities who deliver many services to those living in Scotland. They receive complaints about local government, the health service, including individual doctors and dentists, opticians and pharmacists, housing associations, government departments and government agencies, the enterprise network, further and higher education and the SPCB.
4. They look into complaints where a member of the public claims to have suffered injustice or hardship as a result of maladministration or service failure. They investigate cases only when the complainant has exhausted the formal complaints procedure of the organisation concerned.
5. They aim not only to provide justice for the individual but also to share learning from their work in order to improve the delivery of public services in Scotland. They have a programme of Outreach activities that raises awareness of their service among the general public and promotes good complaint handling in bodies under their jurisdiction.
6. The Scottish Public Services Ombudsman is Professor Alice Brown.

### **The Deputy Ombudsmen**

7. The Deputy Ombudsmen who assist the Ombudsman in her work are Eric Drake, Carolyn Hirst and Lewis Shand Smith. Biographical details of each of the Deputies is attached at Annex A. All three Deputies were appointed on 30 September 2002 for a period of 4 years on a part-time basis (18 ½ hours per week). Their starting salary was £25,000 and is currently £29,045.

### **Deputies Role**

8. Each of the deputies has either the lead or secondary responsibility for different sectors under the Ombudsman's jurisdiction and provide a point of contact for policy makers and other stakeholders. They also have an

important role in making connections across sectors to ensure a co-ordinated approach to complaint handling. Their areas of responsibility are set out below:-

Area of Jurisdiction	Lead Role	Secondary Role
Health	Eric Drake	Carolyn Hirst
Higher and Further Education	Lewis Shand Smith	Eric Drake
Housing – both RSLs and Local Government	Carolyn Hirst	Lewis Shand Smith
Local Government excluding housing	Lewis Shand Smith	Carolyn Hirst
Scottish Executive Departments	Eric Drake	Lewis Shand Smith
Scottish Executive Agencies including NDPBs and the Enterprise Agencies	Carolyn Hirst	Eric Drake

9. Based on information on the Ombudsman's Annual Report, we have set out below statistics relating to the numbers of enquiries and complaints dealt with by the office:

#### Office of the Scottish Public Services Ombudsman - Statistics

Year	Enquiry	Complaint	Total
2003-2004	498	1293	1791
2004-2005	990	1387	2377
2005-2006	1974	1724	3698

Enquiries and complaints received by sector 2004-05

Sector	Enquiry	Complaint	Total
A Subject Unknown	177	2	179
Out of Jurisdiction	66	1	67
Housing Associations (Registered Social Landlords)	88	131	219
Local Authorities	539	925	1464
Health	82	239	321
Scottish Executive & Devolved administration	38	89	127
<b>Grand Total</b>	<b>990</b>	<b>1387</b>	<b>2377</b>

Enquiries and complaints received by sector 2005-06

Sector	Enquiry	Complaint	Total
A Subject Unknown	146	2	148
Out of Jurisdiction	214	15	229
Other (e.g Outreach enquiry)	106	1	107
Health	255	477	732
Housing Associations (RSLs)	180	145	325
Local Authority	949	931	1880
Scottish Executive & Devolved	102	127	229

Administration			
Scottish Further & Higher Education	22	26	48
Grand Total	<b>1974</b>	<b>1724</b>	<b>3698</b>

### **Term of office**

10. The Deputy Ombudsmen are all Crown appointees who are nominated to Her Majesty on the recommendation of Parliament. Their term of office expires on 29 September 2006. Any additional appointment, if agreed by the Parliament, will be for a period of 12 months ending on 29 September 2007.

11. In considering the length of the second term, the SPCB sought the views of the Ombudsman. The SPCB accepted the Ombudsman's view that although the existing structure had worked well during the transition to a one-stop shop, that having four Crown appointees in a relatively small office did appear to be disproportionate and that a better model would be for the Ombudsman to be supported by full-time employees in senior posts which would be in line with similar Ombudsman's offices elsewhere and would also provide continuity together with the necessary flexibility for the Ombudsman's office to respond to changing circumstances and demands.

12. Taking account of these factors, the SPCB determined that it would invite the Deputy Ombudsmen to be considered for reappointment on the expiry of their current term of office, but that the length of any reappointment would be restricted to a period of 12 months from 30 September 2006. This 12 month period will provide the Ombudsman with the necessary continuity whilst she restructures her office.

13. In reaching this decision, the SPCB was aware of the Procedures Committee view in its report on Crown reappointments that a second term should normally be limited to 4 years, but on this occasion it considered that such a period was not appropriate due to the factors mentioned above.

### **The Reappointment Panel**

14. SPCB Members sat as a reappointment panel on Wednesday 30 September to consider Eric Drake; Carolyn Hirst and Lewis Shand Smith for reappointment. The panel was chaired by the Presiding Officer and the other members were Kenny MacAskill MSP, Duncan McNeil MSP, and John Scott MSP. The Independent Assessor was Dr Bernard Kingston.

### **Remit of the Panel**

15. The remit of the panel was to determine whether the deputy Ombudsmen should be nominated to the Parliament for reappointment.

## **Information provided to the panel**

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

- Application forms from each of the deputies;
- A background note on the work of the Deputy Ombudsmen; and
- Copies of the Ombudsman's Annual Reports.

## **SPCB Reappointment Panel**

### **Interview**

17. In line with the Procedures Committee's report on the reappointment of Crown appointees, work is underway to devise an appraisal system to appraise annually officeholders nominated by the Parliament.

18. In the absence of annual appraisals, the panel agreed that that the Deputy Ombudsmen should be tested at interview on their skills and knowledge of the work of the office and how they had discharged their functions and that they be scored against each of the following criterion:-

- Knowledge of the remit and role of a Deputy Ombudsman;
- Interpersonal skills;
- Communication skills; and
- Commitment.

19. Based on the agreed scoring criteria, panel members awarded each of the Deputy Ombudsmen a pass mark in every competency.

### **Decision of panel**

20. The unanimous decision of the panel was that Eric Drake, Carolyn Hirst and Lewis Shand Smith should be nominated to the Parliament to be considered for reappointment by Her Majesty for a further 12 month period.

### **Report from Independent Assessor**

21. Attached at Annex B, is the Independent Assessor's report and at Annex C, the Independent Assessor's terms of reference.

22. The Independent Assessor's Validation Certificate is attached at Annex D.

**BIOGRAPHICAL INFORMATION**

**ERIC DRAKE**

Eric Drake has worked in Ombudsman services since the early 1990s, mainly with the Health Service Ombudsman for England and the former Health Service Commissioner for Scotland but he also worked for six months on secondment with the Irish Ombudsman in Dublin.

He has lead responsibility for complaints and enquiries concerning the Health Sector and Scottish Executive Departments and secondary responsibility for Higher and Further Education and the Scottish Executive Agencies.

**MS CAROLYN HIRST**

Carolyn Hirst worked in social rented housing in Scotland for 18 years. She is currently a Board member of a small Black and Minority Ethnic (BME) Housing Association in Manchester (the Tung Sing Housing Association) and is a member of the Chartered Institute of Housing.

She has lead responsibility for complaints and enquiries concerning the Housing Sector and Scottish Executive Agencies including NDPBs and the Enterprise Agencies and secondary responsibility for complaints and enquiries concerning the Health Sector and Local Government.

**LEWIS SHAND SMITH**

Lewis Shand Smith was a member of Shetland Islands Council from 1990-1999 and Convener from 1994-1999. He is a former Vice-President of COSLA, served on the boards of Scottish Homes and Dumfries and Galloway College and was a Director of UHI Ltd (University of the Highlands & Islands' Project). He is a Fellow of the Royal Society of Arts and is a priest in the Scottish Episcopal Church.

He has lead responsibility for dealing with complaints and enquiries concerning the Local Government Sector (excluding Housing) and the Higher and Further Education Sector and secondary responsibility for complaints and enquiries concerning Housing and Scottish Executive Departments.

**Report by Dr Bernard Kingston, the Independent Assessor**

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

I have been involved with these re-appointments since 22 June 2006 and have been provided with a comprehensive set of background papers.

I scrutinized and commented on the re-appointing process and the associated papers and was fully satisfied that they would conform to good practice. The paperwork was revised and updated and the Deputy Ombudsmen were asked to complete new application forms.

I returned to Edinburgh on 30 August 2006 for a detailed pre-interview briefing with members of the Selection Panel and was present throughout the interviews with the Deputy Ombudsmen. Given that these interviews were pivotal to re-appointment, the exchanges were searching and robust. Nonetheless, all three were treated with respect and courtesy by those present.

Each member of the Panel scored each Deputy against pre-determined criteria with the outcome that all three were scored above the line for each criterion by each member.

The Panel was unanimous in recommending that the Deputy Ombudsmen be reappointed for a further one year.

In response to a specific question, the Deputies expressed reservations about some aspects of the re-appointing process but had been content to take part. They intimated that they intended to write to me with their observations but emphasised that this was in a spirit of cooperation and collaboration.

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

I am pleased to enclose my Validation Certificate. In addition, this re-appointing process has highlighted, once again, my concern regarding the absence of regular formal appraisals of Crown appointees nominated by The Parliament.

This runs counter to good practice which requires that public bodies must have in place regular and transparent performance assessment procedures to provide necessary and robust evidence when considering re-appointments.

I recognize the argument put that it is difficult to independently investigate the independent investigator but I do not accept that this is insurmountable. I strongly recommend, therefore, that The Parliament continues to give urgent consideration to this matter for these and similar appointments.

That said, I well recognise that this is new territory for us all and one that requires in-depth consideration, wide consultation and due diligence and sensitivity to get it right. A number of other good practice elements emerged during this re-appointments process and I will write an additional note on these for future consideration and action.

Finally, I wish to place on record my warmest thanks to the Presiding Officer and to Mrs Janice Crerar and Mr Huw Williams for responding so transparently and comprehensively to my varied queries and requests.

Bernard Kingston (Dr)  
2 September 2006

**APPOINTMENT SPECIFICATION FOR INDEPENDENT ASSESSOR**

**OBJECTIVE**

The Independent Assessor will assist the Scottish Parliamentary Corporate Body (SPCB) when considering the Deputy Scottish Public Services Ombudsmen for reappointment. The assessor's role will be to:-

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

**DUTIES**

- To liaise with Parliament staff on guidance to the SPCB reappointment panel;
- To comment, if necessary, on the paperwork concerning the appointment;
- To participate in a pre-briefing meeting with the Selection Panel prior to the interview;
- To oversee the interview and participate in any subsequent discussions;
- To raise concerns if necessary about any shortcomings in the process; and
- To certify or otherwise by way of a written report that the process complies with good practice.

**DEPUTY SCOTTISH PUBLIC SERVICES OMBUDSMEN**

**Validation Certificate from the Independent Assessor**

The Scottish Public Services Ombudsman Act 2002 provides that Her majesty may, on the nomination of the Parliament, appoint individuals to be deputy Scottish Public Services Ombudsmen and that a person whose period of office as deputy Ombudsman expires, is eligible for reappointment.

Consideration of a person for reappointment is by means of an administrative mechanism with SPCB Members forming an interview panel.

An Independent Assessor is appointed to oversee the process to ensure that it is robust and conforms or otherwise to good practice.

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I confirm that I have been involved in all the key stages to date associated with the reappointment of the Deputy Scottish Public Services Ombudsmen. My report and terms of reference are appended at Annex B and C respectively.

I have scrutinised and commented upon drafts of the Panel Interview Report and the Report to Parliament. These Reports provide an accurate record of the process followed, the background papers provided to the panel, and the outcome of the process.

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

Signed (Independent Assessor)..... *B M Kingston* .....

Name: Dr Bernard Kingston

Date: *2* September 2006