

Written submission from the Scottish Information Commissioner, 6 February 2025

SPCB Supported Bodies Landscape Review Committee

Background

The Scottish Information Commissioner (SIC) was established in 2003 to promote and enforce the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs).

The legislation enables tens of thousands of requests for information to be made to Scottish public authorities each year. These often involve high profile, controversial or sensitive matters. If requesters are dissatisfied with the response they receive from a public authority, they can appeal to me to determine whether information should be disclosed. Around 500 appeals are made to my office each year.

I have statutory duties to promote Freedom of Information (FOI) law, which helps drive openness and transparency within Scottish public authorities and supports accountability and democratic engagement. This includes approving authorities' publication plans, promoting FOI rights to the public and promoting good FOI practice to authorities. Where an authority's FOI performance is not compliant, I may intervene to improve performance and/or proceed to enforcement action.

My jurisdiction extends to many hundreds of bodies ranging from GP surgeries to the Scottish Government. This includes the Scottish Parliament and all other supported bodies putting my office in a distinct space from other Commissioners.

Uniquely amongst the Supported Bodies, I have strong statutory enforcement powers and use them when appropriate. When it comes to practice improvement, we work collaboratively with stakeholders to bring about lasting improvement.

My office is based in St Andrews, a policy position that aligned to the distribution of other Scottish bodies across Scotland such as the Scottish Public Pensions Agency (Tweedbank)¹ and NatureScot (Inverness)². Consequently, my estate costs are significantly lower than those found in Edinburgh and the majority of my specialist staff are based a short commute from my office.

Office occupancy rates have increased threefold in the last year as staff have returned to more regular office attendance. I have nonetheless offered to explore co-occupancy opportunities at my St Andrews office with any newly created Commissioner.

I shall now address some of your specific questions.

¹ [BBC News | SCOTLAND | Pensions quango moves to Borders](#)

² [Scottish Natural Heritage HQ will move to Inverness | The Herald](#)

How do you measure and demonstrate outcomes, and how are these outcomes selected and prioritised? What improvements could be made to this process?

My work is determined by a four-year strategic plan, from which our operational plan derives - this is monitored and reported on³.

My outcomes are defined in legislation – a target of completing cases, on average, within four months of receipt of a valid appeal. I have also adopted and publish a suite of other KPIs that shows performance on case handling⁴.

Since coming into post, I have introduced live business analytics (Power BI) to the organisation so that we can visualise, manage and understand our caseload better. Some of these reports are published on our website to enable FOI-users, public bodies and other stakeholders to easily track and monitor our performance⁵.

We report all our performance in our Annual Report⁶ and publish Investigations Performance Management Reports and minutes on our website too.

This proactive publication of our corporate data is part of my pathfinding process for all public authorities as I seek to move us away from a “model publication scheme” to a wider public sector commitment to publish.

I conduct and publish⁷ an annual Public Awareness Survey every year which provides good feedback on awareness of Information rights and on areas where we need to strengthen our promotional activity.

How has Parliamentary committee scrutiny worked in practice and how has this impacted performance? How could scrutiny be improved and/or standardised?

I attend the Parliament’s Standards, Procedures and Public Appointments Committee once a year to give evidence on my Annual Report. This is a helpful piece of scrutiny. However, the evidence sessions are usually three months after the report is laid and nine months after the reporting year has concluded. Discussions invariably focus on operational performance at the time of the meeting as opposed to the content of the report. This is not problematic but does highlight a delay between event, reporting and scrutiny.

I have found the scrutiny of the committee challenging and the questions to be well-informed. It certainly focusses my mind on performance and is a good opportunity to communicate how we have tackled organisational challenges.

³ [Our strategic and operational approaches | Scottish Information Commissioner](#)

⁴ [Operational performance | Scottish Information Commissioner](#)

⁵ [Current investigations | Scottish Information Commissioner](#)

⁶ <https://www.foi.scot/annual-reports>

⁷ [Public awareness of FOI | Scottish Information Commissioner](#)

I attend meetings of the Scottish Parliament Corporate Body (SPCB) twice a year to update on my performance and corporate functions. Again, this is a helpful forum to explore current issues, opportunities and challenges. Should I need additional funding, applications are made to the SPCB, so it is important that they understand what I am doing and how I am doing it.

I appreciate the level of scrutiny that I get from the Parliament and welcome the support it provides to enable me to deliver my functions effectively. There is an opportunity cost to this though as it detracts me and my small team away from our core business. It is currently manageable, but any further scrutiny must be proportionate, must preserve my operational independence and have a cost/benefit analysis applied.

I am less convinced with the financial funding model. 80% of my budget goes on salaries, terms and conditions of which are aligned to, and therefore set by, the Parliamentary Authorities. After fixed costs such as energy, ICT and estate, this gives me minimal discretionary spend.

In practice I consider my funding to be authorised expenditure, not budget. I am only allowed to spend the money that is allocated to me in a single year. If I were to sell assets then I would not realise the benefits of that and they would be deducted from the cash I am able to draw down. If I were to charge for any services, this would not be of any financial gain to my organisation. Similarly, I have to seek permission to employ additional staff and move money between staff and non-staff budget lines.

My expenditure in 2023-4 was £2.15m, whereas my core and authorised contingency expenditure was £2.39m. There is no option for me to roll this £250k 'saving' into a new financial year.

I feel financially hamstrung by that arrangement and it prevents any medium-term financial planning.

How do you work in practice with other public bodies or services and what are the main barriers faced? How can these barriers be overcome to improve efficiency and reduce costs while ensuring that shared services maintain high standards of quality and accountability?

The nature of my work requires the Commissioner to be strictly independent. As noted above, I have a statutory responsibility to regulate the FOI compliance of other public bodies, including officeholders. I don't recognise any current barriers to more integrated working and I feel any previously perceived risks to have been overstated. Whilst I am financially and strategically accountable to the Parliament, I am not operationally accountable to it. The Parliament has never questioned nor sought to interfere with my decisions, investigations or interventions.

I am committed to the concept of a shared services agenda but have found that that is an easier concept to propose than to implement. Some of the challenge comes with chronology but, as accountable officers, Commissioners also have to consider that we all have different governance models, structures and workforce cultures.

There will be some services that will need to be tailored to each organisation, and that won't make them viable for sharing.

The Commissioners as a collective are however committed to developing as much common servicing as possible and we now have access to most Scottish Parliament and some Scottish Government frameworks.

Personally, I would like to see all of Scotland's public services utilising common procurement frameworks and sharing estate and infrastructure. I sense that that is an aspiration shared by the Minister for Public Finance. I am cautious, then, that if we move to a shared services model for the seven supported bodies, we will get there just as other authorities move to a national shared services model. That, of course, is where the real savings will be.

From a functional perspective, I think I stand both alone in the public sector landscape and alone in the Commissioner landscape. I am principally a regulator but have a statutory duty that goes beyond that in terms of both promoting and enforcing Scotland's FOI regime⁸. I see no opportunities for incorporation into other bodies and, indeed, such a move would be likely to be viewed internationally as a retrograde step for Scotland's information rights regime, where an appeal to an independent oversight body such as an Information Commissioner, is viewed as a model of international best practice⁹.

Beyond the disproportionality of the governance model, which is subject of an ongoing discussion with the Auditor General, I now have a lean organisation that has an agility and team culture that allows it to flex in response to business demands.

I meet with the other officeholders quarterly to discuss any areas of common practice and we have established a Shared Services group to explore shared procurement opportunities.

There are no barriers on the road to further shared services, it's more that we are on different roads going to different destinations! My assessment is that the need is variable, savings are modest and disbenefits can be significant.

Criteria were developed by the Session 2 Finance Committee to help guide decisions on whether to create a new commissioner. These criteria (Clarity of Remit, Distinction between functions, Complementarity, Simplicity and Accessibility, Shared Services and Accountability) are considered by the Scottish Government and Members when proposing Commissioner related bills. Are these criteria currently adequate and how could they be improved?

The proposals for new commissioners are for rights-based advocates. Beyond the name Commissioner and my funding source I have very little in common with the other Commissioners or indeed the new proposed roles. I therefore feel unable to comment in my role as SIC, beyond noting that the approach of the Finance Committee makes intrinsic sense.

⁸ [Freedom of Information \(Scotland\) Act 2002](#)

⁹ [Centre for Law and Democracy](#)

What should the optimal model and structure for commissioners look like, and what key features should it include?

I think, with respect, that this question fundamentally misunderstands the diversity of function of existing Commissioners. It is a mistake to lump them together as a homogenous entity just because of their name or funding route.

The Scottish Information Commissioner model is defined in legislation and allows the Commissioner to fulfil their statutory duties. It is a model that follows international best practice and a model that many countries have since followed, by choice, over other options. Any change to a model that has an independent standalone Commissioner with legally enforceable powers would see slippage in Scotland's international Right to Information rankings. I cannot comment on the applicability of that model to other Commissioners as I simply don't know their operational and statutory obligations.

I look forward to answering any questions on my submissions or any further matters the Committee may wish to explore.