

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Fourth Delegated Legislation Committee

INFORMATION COMMISSIONER  
(REMUNERATION)

*Wednesday 14 March 2018*

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**Sunday 18 March 2018**

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**The Committee consisted of the following Members:**

*Chair:* SIR HENRY BELLINGHAM

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|--|--|
| † Brennan, Kevin ( <i>Cardiff West</i> ) (Lab)                   | † James, Margot ( <i>Minister of State, Department for Digital, Culture, Media and Sport</i> ) |
| † Burghart, Alex ( <i>Brentwood and Ongar</i> ) (Con)            | † Lefroy, Jeremy ( <i>Stafford</i> ) (Con)   |
| Coaker, Vernon ( <i>Gedling</i> ) (Lab)                          | † O'Brien, Neil ( <i>Harborough</i> ) (Con)  |
| † Cooper, Rosie ( <i>West Lancashire</i> ) (Lab)                 | † Reeves, Ellie ( <i>Lewisham West and Penge</i> ) (Lab)                                       |
| † Davies, Chris ( <i>Brecon and Radnorshire</i> ) (Con)          | † Sheppard, Tommy ( <i>Edinburgh East</i> ) (SNP)  |
| † Dunne, Mr Philip ( <i>Ludlow</i> ) (Con)                       | Smeeth, Ruth ( <i>Stoke-on-Trent North</i> ) (Lab)   |
| † Ellman, Mrs Louise ( <i>Liverpool, Riverside</i> ) (Lab/Co-op) | † Wragg, Mr William ( <i>Hazel Grove</i> ) (Con)   |
| † Elmore, Chris ( <i>Ogmore</i> ) (Lab)                          | Robert Cope, <i>Committee Clerk</i>  |
| † Freer, Mike ( <i>Finchley and Golders Green</i> ) (Con)        | † <b>attended the Committee</b>  |
| † Huddleston, Nigel ( <i>Mid Worcestershire</i> ) (Con)          |  |

# Fourth Delegated Legislation Committee

Wednesday 14 March 2018

[SIR HENRY BELLINGHAM *in the Chair*]

## Information Commissioner (Remuneration)

2.30 pm

**The Minister of State, Department for Digital, Culture, Media and Sport (Margot James):** I beg to move,

That the Committee has considered the motion, That, from 1 April 2018—

(1) the Information Commissioner shall be paid a salary of £160,000 per annum and pension benefits in accordance with the standard award for the civil service pension scheme;

(2) this salary shall be increased by 1% each year on 1 April;

(3) the Information Commissioner in post on 1 April 2018 shall also be paid, as part of their salary, a non-consolidated, non-pensionable annual allowance of £20,000 for the duration of the single-term appointment; and

(4) all previous resolutions relating to the salary and pension of the Information Commissioner shall cease to have effect.

It is a great pleasure to serve under your chairmanship for the first time, Sir Henry. The Information Commissioner, as data protection registrar, was first introduced in 1984. The current structure of the role arises from three key pieces of legislation: the Data Protection Act 1984, the Data Protection Act 1998 and the Freedom of Information Act 2000. It also arises from duties in relation to the Privacy and Electronic Communications (EC Directive) Regulations 2003.

Since its introduction, the role has demanded great independence and integrity, not least in the important function of holding the Government to account, combined with an ability to make difficult and finely balanced judgments. That is particularly the case now, when data is at the forefront of the political agenda domestically—with the Data Protection Bill in Parliament—and internationally. As the Prime Minister highlighted in her recent Mansion House speech, the UK's exceptionally high standard of data protection is one of the foundations that will underpin our post-Brexit trading relationship with the European Union.

It is crucial, therefore, that we can attract and retain world-class individuals, such as the current commissioner, who bring to the role the skills and experience that enable them to navigate the delicate balance of protecting the rights of the individual while enabling growth and innovation at an important time for our economy. They must also be able to represent the UK effectively in the international arena.

The Government have carefully considered the commissioner's salary in the light of changes to the role and its responsibilities since it was last reviewed in 2008. The proposed increase is justified for the following reasons. First, the changing data protection landscape has vastly increased the Information Commissioner's responsibilities and the challenges she faces. The digital revolution has turned data into the new oil and has enabled a constant stream of technological innovations that support growth to bring benefits to society.

**Kevin Brennan (Cardiff West) (Lab):** The Minister has rightly pointed out that it is a bit of an oddity that the salary has not been uprated annually and has been frozen for some years. Does she have the figure for what the salary would be now, had it been uprated in line with other public sector pay?

**Margot James:** I do not have that information for the hon. Gentleman. If it is available or can be worked out, I will write to him and provide it.

Data protection laws and the role played by the Information Commissioner are critical to retaining the right balance between innovation and privacy. The changing commercial and technological landscape brings new challenges to the Information Commissioner and her office on an almost daily basis. For that reason, we are modernising our data protection laws and providing new and stronger powers for the commissioner. Those changes are necessary, but they expand the remit of the commissioner's role significantly, with new responsibilities, including an age-appropriate design code, and new requirements, such as supervising data protection impact assessments and breach notifications. It is important to ensure that the remuneration for the role reflects the increased importance, challenges and responsibilities.

Secondly, the salary has fallen below the market average for comparable roles. As data protection becomes an increasingly important concern for organisations, recruitment for well-qualified staff has become increasingly competitive. We must be able to compete for the best talent for such a critical role in our economy. The regulator must be able to keep up with the organisations it regulates, some of which—Google and Facebook, for example—have seemingly limitless reserves.

Third, it is of vital importance to Britain's place in the world that the Information Commissioner's Office benefits from the best possible leadership for the foreseeable future. As the Prime Minister made clear in her speech, we see the UK and the Information Commissioner continuing to play a role in data protection issues with the European Union. This will be possible only if the commissioner's role is appropriately rewarded in order to continue to attract individuals who will have an impact on the world stage.

The commissioner's role in relation to freedom of information remains of key importance. The number of FOI requests received by all monitored bodies increased from just under 35,000 in 2008 to more than 45,000 in 2016. Again, the burden of casework for which the commissioner is responsible has also increased significantly, from 2,646 cases received in 2008, to 5,433 received in 2017.

I would also like to mention the commissioner's increasing role in the regulation of the privacy and electronic communications regulations. In particular, the ICO continues to tackle nuisance telephone calls and texts, which, as hon. Members will know, can cause a great deal of distress. The commissioner took on responsibility for the telephone preference service last year. In the same year, the commissioner issued 23 companies with over £1.9 million of fines for nuisance marketing.

The incumbent commissioner, Elizabeth Denham, brings a high level of expertise to the role. Ms Denham previously held the position of Information and Privacy

Commissioner for British Columbia and Assistant Privacy Commissioner of Canada. To date she has steered the ICO through a number of important issues, such as several landmark enforcement cases, representing the UK in collaborative work with EU colleagues on the implementation of general data protection regulation and a period of rapid expansion.

It is in recognition of her unique mix of skills and the current heightened complexity of the role that the motion also includes a £20,000 per annum allowance for the current incumbent. In previous debates on the matter, hon. Members have highlighted the undesirability of fixing for many years a salary for a senior public official and then having to compensate for this with a relatively large increase. To that end, we have also included an annual 1% increase to help the commissioner's salary keep pace with the salaries of comparable roles.

In summary, we believe that the increase in the commissioner's salary appropriately reflects the importance of the role and their achievements to date in growing the ICO and supporting data controllers across the country to prepare for the new data protection framework. In the context of the expanding remit of the ICO, Ms Denham's record of outstanding leadership is vital to maintaining the UK's reputation as a global leader in data protection. I would like to take this opportunity to thank her for the excellent work she does.

2.38 pm

**Kevin Brennan:** It is a pleasure to have a knock under your captaincy, Sir Henry, and it is no different this afternoon. This is an interesting proposal. As I understand it, the proposal will bring the Information Commissioner's remuneration to at least £10,000 more than the Prime Minister's remuneration. It would be interesting if the Minister, when she sums up at the end of the debate, could explain why the commissioner should be paid more than the Prime Minister, given that in recent years the Government have often used that as a benchmark for the most highly paid in the public sector, including chief executives in local government and so on. I am interested to know whether the Minister has considered that and thought it through.

Earlier I asked the Minister what the commissioner's pay would have been had it been uprated. It is an odd affair. I agree with her that this is something that comes every few years and the salary is frozen in the meantime. I do not know whether the situation is unique, but it is unusual. She should have that figure—I do not know whether she has received any in-flight refuelling during the course of her speech, but she might be able to tell us more at the end of the debate.

With regard to the reasons for the increase, we need to know how much of it is justifiably related to inflation, the cost of living and so on in the meantime—in other words, what the salary would have been uprated to had it been treated like any other public sector or public service job—and how much of it is related to extra responsibilities. The Minister said that one of the reasons for the extra pay is the extra responsibilities under data protection and that another was because the market for this set of skills, for one reason or another, has become tighter—presumably either supply has dried up or demand has increased—and therefore it is justified to attract a

world-class person to the role. Her third reason was really the same as the second: having a world-class person in the role.

The Minister also cited the increased workload in relation to the number of freedom of information requests now received by the Government. I might say that the reason Governments receive more requests is that often they do not give out the information they are asked for in the first place, as they should by law. Most of my requests are turned down at first, and I have to threaten to contact the Information Commissioner before the Government usually cough up what they could have given out after the first request. I will leave that aside, though. It is a fact that they are dealing with more freedom of information requests, whether that is because the thirst for information has become more acute over time or because the Government are turning down more requests, which have to go up to the commissioner.

The Minister also cited new responsibilities on nuisance calls and texts and for the telephone preference service, which I welcome. Actually, I introduced a ten-minute rule Bill for that about 15 years ago, and when I was a consumer Minister we increased the fines for companies that make nuisance calls. I welcome the further progress that has been made since. It would be useful to receive that information from the Minister when she replies, if she has received it in the meantime through the usual inspired route.

The other point I want to make relates to paragraph (3) of the motion, which says that

“the Information Commissioner in post on 1 April 2018 shall also be paid, as part of their salary, a non-consolidated, non-pensionable annual allowance of £20,000 for the duration of the single-term appointment”.

Just to be clear, will the commissioner not be earning £180,000 per annum, rather than £160,000, as a result of the Government's proposal, albeit with that additional allowance being non-pensionable and for the duration of the single-term appointment? Will she clarify what that is all about? It seems to be an unusual proposal. Why do the Government not simply pay the rate that they say is needed to attract the right person? Why is that additional emolument being added to the regular salary? Will the Minister confirm that in practice the commissioner will earn a salary of £180,000, to be increased by 1%? Just to check—I think the answer is no—will the 1% increase also apply to the additional £20,000?

I agree that the role of Information Commissioner is very important. Not least, they have to process very important requests, like the one pointing out the failure to meet data protection legislation by important apps, such as Matt Hancock. I know that there is a lengthy complaint on her desk in relation to the numerous breaches of data protection law that that app is responsible for. It will be interesting to see her report when she eventually gets around to telling us what she thinks of that complaint. I recommend it to hon. Members—it has very detailed and interesting observations on the way that app illegally hoovers up people's data for use. There are other examples of that practice, but I give that as one.

We all have to be careful and take stock when discussing very high rates of pay in the public sector. In recent years, lots of public sector workers have seen a real fall in their salary. It is an insult that public servants have

[Kevin Brennan]

seen seven years of real-terms pay cuts, while many at the top have been awarded with large pay increases. Labour's 2017 manifesto recommended that we roll-out maximum pay ratios of 20:1 in the public sector and in companies bidding for public contracts. It cannot be right that wages at the top keep rising while everyone else's stagnate. I have checked, and it appears that this salary does not breach that 20:1 pay ratio. We appreciate that the commissioner's remuneration has not been increased since 2008.

At this moment, I am not minded to ask my hon. Friends to vote against the increase, but I am interested to hear the Minister's answers to the questions that I have asked.

2.47 pm

**Tommy Sheppard** (Edinburgh East) (SNP): I came to the Committee wanting an explanation and a rationale for the proposed increase. In fairness, the Minister gave that explanation to my satisfaction in her opening remarks. I will therefore not seek to divide the Committee or offer any opposition to the proposal. If the job was judged to be worth £140,000 ten years ago, it is not unreasonable to say that it is worth £160,000 today.

I, too, am concerned about the exact nature of the additional £20,000 that is proposed as a bonus. Could the Minister clarify whether this money is going with the incumbent—following the individual—or being attached to the job as an enhancement of the post's terms and conditions? If it is the latter, it seems unnecessary not to consolidate it into the salary and simply value the post at £180,000—if that is the effect of this decision. If, however, this is an attempt to reward the incumbent, and it would not necessarily flow with the post were the job to become vacant and be re-advertised, that is a different matter. I think that would be a more satisfactory solution.

2.48 pm

**Margot James:** I thank both hon. Gentlemen for their questions and scrutiny, which I will do my best to answer.

I can now answer the question posed by the hon. Member for Cardiff West during my opening remarks. He asked whether the commissioner's salary, had it been increased since 2008 in line with annual permissible public sector increases, would now amount to just over £154,000. I can confirm that he is right in his calculations. The salary plus the £20,000 uplift comes to £180,000. As he said, that exceeds that of the Prime Minister.

The hon. Member for Cardiff West posited most of the reasons for the judgment that we have come to. He mentioned the greater workload, which will be infinitely greater after the implementation of the GDPR into British law this summer. There is no doubt that the workload has increased and will increase further. He also talked about the very limited supply of the sort of skills the current commissioner has. It is a global recruitment market, and we consider ourselves very fortunate to have Elizabeth Denham in the role. There is a very limited number of people who have her global reputation, her skill set and her experience.

The hon. Gentleman also talks about salary levels for comparative roles. We looked at comparative public sector roles and found that the average for such a

position, looking at all the regulators, is £184,000. Some are paid less and some are paid more, but that is the average.

**Kevin Brennan:** I am extremely grateful to the Minister. I am just trying to follow her logic. In practice, then, the baseline salary she is proposing represents a real increase of £6,000, if we take into account the uprating, because she says it would have been uprated to £154,000 by now had it simply been uprated for inflation. The only real increase that she is proposing to the salary is that £6,000. I am struggling to understand, given everything she has said, why the Government have decided to package it up in this way with the additional £20,000. If, as she has explained, the role is more important and needs a world-class individual, why does that not form part of the overall salary? What is the logic for that?

**Margot James:** The logic for that was touched on in remarks made by both the hon. Gentleman and the hon. Member for Edinburgh East. It is packaged up in that way because the allowance is only for the current incumbent; it is attached to the individual, rather than the role, as expressed in the regulations. That is the reason for the decision.

The app introduced by my right hon. Friend the Member for West Suffolk (Matt Hancock) was mentioned. I can assure the hon. Member for Cardiff West that the app complies 100% with data protection law—I am sure he will share my pleasure at that confirmation. I think I have dealt with all the questions I have been asked. I am pleased to be able to confirm this new salary and package for the Information Commissioner. As I said earlier, I consider that we are very fortunate to have Elizabeth Denham in this role.

2.53 pm

**Kevin Brennan:** I agree with the Minister's last remark; Elizabeth Denham is a highly talented individual and she was extremely impressive when she gave evidence last year on the Digital Economy Bill. She is obviously an exceptional individual, so I understand what the Minister is saying. It is preferential, however, when we come to public service and public sector-type appointments, to have a rate for the job and a salary that we recruit to. We can get into all sorts of issues if we start deciding those personal types of payments tied to the individual.

Nevertheless, it is not our intention to divide the Committee. I will only say, without trying your patience too much, Sir Henry, that the investigation into apps and whether they comply with the Data Protection Act is the responsibility not of Ministers but of the Information Commissioner, whom the Minister is proposing to pay rather handsomely to carry out the task. If I were the Minister, I would not be so emphatic in judging from the Front Bench whether any particular app complies with data protection legislation. She can say that she believes it does, but she cannot confirm that, because it is not her role.

2.54 pm

**Margot James:** On that last point, perhaps I stand corrected—time will tell. It is indeed the responsibility of the Information Commissioner to make such emphatic remarks about whether something qualifies as 100% compliant.

I have highlighted three justifications for the entirely reasonable increase in the Information Commissioner's salary, and I am delighted to have the Committee's agreement that that should be put into law.

*Question put and agreed to.*

2.55 pm

*Committee rose.*

