

**SCOTTISH CRIMINAL CASES REVIEW COMMISSION MINUTES OF THE POLICY MEETING
ON FRIDAY 16 AUGUST 2013
10.00 AM, PORTLAND HOUSE**

FOR DISCLOSURE VIA THE PUBLICATION SCHEME

In line with the Commission's Disclosure policy, various paragraphs may have been edited or deleted from these minutes as the information contained therein relates to specific case information and/or personnel-related matters. Where the summary of discussion has been edited or the names have been deleted, this is indicated at the start of the relevant paragraph or section.

There have been no edits to these minutes.

Members Present:

Mrs Jean Couper CBE, Chairman
Mr Stewart Campbell
Professor Brian Caddy
Professor George Irving CBE
Mr Gerard McClay
Miss Frances McMenamin Q.C.
Mr Gerrard Bann

Also Present:

Mr Gerard Sinclair, Chief Executive
Mr Chris Reddick, Director of Corporate Services
Sir Gerald Gordon Q.C., Consultant Legal Adviser

Mr Michael Walker, Senior Legal Officer
Miss Mary Frances Ralston, Senior Legal Officer
Mr Daniel Fenn, Senior Legal Officer
Mr Jim McShane, Legal Officer
Miss Mairi Claire Anderson, Legal Officer

1.1 Apologies

1.1.1 Mr Ferguson Q.C. had submitted his apologies.

1.2 Conflicts of Interest/Declarations of Interest/Gifts & Hospitality

1.2.1 Members were asked to declare any known conflicts of interests or gifts and hospitality. There were no conflicts of interest or gifts or hospitality declared.

1.3 Minutes of Policy meeting held on 14 December 2012

1.3.1 Mrs Couper confirmed that the minutes of the Policy meeting on 14 December 2013 had been circulated for noting as they had previously been approved on 25 January 2013.

1.4 Matters Arising

- 1.4.1 Mr Walker referred to 14.4 of the minutes and confirmed that he would be producing a paper on the “National Action Plan for Human Rights” next quarter.
- 1.4.2 Mr Campbell referred to 9.1 of the minutes and confirmed that he was still working on a paper on “Miscarriages of Justice” and that he would update the Board in due course.

1.5 Criminal Justice (Scotland) Bill – Updated Justice Committee Response

- 1.5.1 Mr Fenn provided a summary of his paper on the Bill, confirming that the Scottish Government had published the Bill in June 2013 and subsequently the Scottish Parliament’s Justice Committee had called for written evidence in advance of their scrutiny of the Bill. The Board had previously confirmed that they wished to provide updated evidence to the Justice Committee. Mr Fenn confirmed that a copy of the Commission’s previous submission had been provided for information and set out the main points of the 2013 Bill on which the Commission could consider commenting on and providing evidence.
- 1.5.2 Members discussed the Bill in detail and requested that an updated response be prepared and presented to the Board on 30 August 2013 for approval. They requested that the update should include reference to the Commission’s earlier submission, questions regarding the stage at which the Interests of Justice would be considered by the Appeal Court and the overall concept of introducing two different appeals process by the Appeal Court.

1.6 Human Rights & Domestic Legal Traditions – Paper by Lord Reed

- 1.6.1 Mr Sinclair confirmed that Lord Reed’s paper was yet to be published and that he would circulate it to Members as soon as this was done.

1.7 *Cadder*

- 1.7.1 Mr Sinclair provided Members with a summary of the *Cadder* timeline and details of the volume of cases received raising *Cadder* points. He confirmed that to date all such cases had been considered on their own merits. The question had previously been raised as to whether the Commission should consider the time factor in submitting an application on a *Cadder* ground and whether there should be any “cut off” point. Mr Sinclair confirmed that this type of approach would not hinder applicants where there was a satisfactory reason for exceeding such a time limit.
- 1.7.2 Members discussed this type of approach in detail and after full discussion agreed that the Commission should continue to deal with these applications on a case by case basis, particularly given the relatively low volume of such cases.

1.8 Scottish Independence Referendum

- 1.8.1 Following previous discussion by the Board, Mr Fenn had produced a paper on the implications for the Commission if the result of the referendum is for Scottish independence. Mrs Couper thanked Mr Fenn for the paper and confirmed that he had captured the Board’s previous thinking on this matter well.

- 1.8.2 Mr Fenn talked through the main points of his paper, confirming that many of these were speculative at this stage. He noted the area of Courts Martial as perhaps being an area of greater significance. Members discussed this point in detail and it was agreed that this was something worthy of discussion with the Criminal Cases Review Commission in terms of volumes of these types of cases.
- 1.8.3 Mr Sinclair advised Members that the Law Society had also undertaken a similar exercise and that their report was published on their website. He agreed to circulate copies for information. It was also agreed that the Commission should undertake a review of the Scottish Government's Independence Referendum paper once published and could then return to reconsider the potential impact on the Commission.

1.9 The Public Records (Scotland) Act 2011

- 1.9.1 Mr Walker provided Members with an overview of the Public Records (Scotland) Act which came into force on 1 January 2013 and set out the main provisions regarding the management of public records by the named Scottish public authorities. He confirmed that the first aspect of this was the creation of a Records Management Plan which should be approved by the Board before being submitted to the Keeper of the Records for agreement.
- 1.9.2 Mr Walker confirmed that he had met with staff at the National Records of Scotland as part of the development of the Commission's draft plan and related documents. He confirmed that the draft plan had been circulated along with the following related documents for consideration:
- Records Management Plan – Glossary of Terms
 - Draft Records Management Policy
 - Business Classification Scheme
 - Data Retention Policy
- 1.9.3 Mr Walker talked Members through each of the documents with comments and feedback provided. In particular, Mrs Couper asked that the documents be updated to provide clear and consistent Board and management responsibilities. Members also discussed the various data retention periods and suggested a number of changes. After full discussion, the Records Management Plan and supporting documents were approved subject to the suggested updates and amendments.

1.10 Data Protection Policy

- 1.10.1 Mr Walker referred to his paper on the Data Protection Policy review and confirmed that the review had taken place with regard to the Data Protection Act and guidance issued by the Information Commissioner's Office. He confirmed that the updated policy had been circulated with updates to the following related documents:
- Data Protection Act – Glossary of Terms
 - Draft Breach Management Plan
 - Case Handling Procedures
- 1.10.2 Mr Walker provided an overview of the updated Data Protection Policy and the related documents which were discussed in full. All documents were subsequently approved subjected to the suggested updates and amendments.

1.11 Persistent & Vexatious Correspondents Policy

- 1.11.1 Mr Reddick referred to his paper on the updated Persistent & Vexatious Correspondents Policy, confirming that the policy had initially been approved by the Board in August 2012. He also reported that a subsequent Persistent & Repeated Applications Policy had been approved by the Board in April 2013 and this had instigated the review of the Persistent & Vexatious Correspondents Policy to ensure consistency and to expand the review and appeals procedures.
- 1.11.2 Mr Reddick set out the key changes to the existing policy which were discussed in detail. Members requested that reference to and procedures to deal with violent, abusive, aggressive or intimidating behaviour should be removed and dealt with under a separate policy. Following further discussion the updated policy was approved subject to the agreed updates and amendments.
- 1.11.3 Mr Reddick advised Members of a registration on the Persistent & Vexatious Correspondents Register which was noted.

1.12 Boardbooks Update

- 1.12.1 Mr Reddick provided Members with an update on the rollout of Boardbooks, confirming that this would be taken forward following the upgrade of the office PCs and migration to Windows 7. He confirmed that office wifi was also being installed and this was a requirement for Boardbooks.
- 1.12.2 Mr Reddick advised Members that Boardbooks full rollout was anticipated for September/October 2013 and agreed to keep them up to date on this.

1.13 Register of Interests of Members

- 1.13.1 Mr Reddick confirmed that annual declaration of interest forms had been issued with policy papers and requested that this be updated and returned to him so that the office register could be updated.

1.14 Any Other Competent Business

- 1.14.1 Mr Reddick circulated copies of the Commission's Complaints Procedure and identified a small proposed change to this to identify Scottish Government as the appropriate route for external complaints once the internal procedure had been exhausted. He confirmed that this mirrored the Commission's initial complaints procedure and reflected that the Commission was not included within the remit of the Scottish Public Services Ombudsman. After discussion the updated Complaints Procedure was approved.

1.15 Date of Next Policy Meeting:

- 13 December 2013 @ 10:00

Chris Reddick
21 August 2013