

## SCOTTISH CRIMINAL CASES REVIEW COMMISSION

MINUTES OF THE POLICY MEETING ON THURSDAY 24 JULY 2014  
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.

#### Members Present:

Mrs Jean Couper CBE, Chairman  
Mr Stewart Campbell  
Professor Brian Caddy  
Mr Gerard McClay  
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

#### For Policy Items:

Mr Michael Walker, Head of Casework  
Mr Daniel Fenn, Senior Legal Officer  
Mr Kevin Henry, Legal Officer  
Mr Jim McShane, Legal Officer  
Mrs Fiona Govan, Legal Officer

### Section 1: Governance Matters (names deleted)

#### 1.1 Apologies

Mr Ferguson Q.C., Miss McMenamin Q.C. and Professor Irving had submitted their 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. Mr Ferguson Q.C. and Mr McClay had declared a conflict in one (different) case

1.2.2 There were no new declarations of interest or gifts and hospitality.

### 1.3 Minutes of Policy meeting held on 13 December 2013

The minutes of the Policy meeting held on 13 December 2013 were noted having previously been approved by the Board on 31 January 2014. The Board also noted the version of the minutes for the Publication Scheme.

### 1.4 Matters Arising

There were no matters arising.

## Section 2: Stage 1 Pre Acceptance Cases (edited)

2.1–5 A total of 5 new applications were considered and the following decisions were made:

1 case	Accepted for a review of conviction on the basis of the disclosure point only
1 case	Accepted for a review of conviction
1 case	Rejected: the grounds of review were a repeat of the grounds of appeal
1 case	Rejected: it was not in the interests of justice to review the sentence
1 case	The Board agreed to recall the case from suspension and continue the case for further consideration

## Section 3: Policy Matters

### 3.1 Model Code of Conduct

3.1.1 Mr Reddick provided an overview of the new Model Code of Conduct which all public bodies had been asked to adopt. He confirmed that the Model Code had been specifically updated to address financial interests arising from Members who were advocates or solicitors as well as addressing individual case related interests.

3.1.2 Mr Reddick identified the main updates to the current Code of Conduct and confirmed that there were a number of sections that had previously been included in the Commission's Code of Conduct which were not now specifically included within the Model Code i.e. Confidentiality Requirements, Register and Making Declarations. He recommended that these sections be reinserted within the Model Code and submitted to Justice Directorate for approval. The Board approved Mr Reddick's recommendation.

## **3.2 Persistent & Repeated Applications Policy**

- 3.2.1 Mr Reddick confirmed that the Persistent & Repeated Applications Policy had been in operation for a full year and in accordance with the agreed policy review cycle, the policy had been reviewed after 12 months. He provided Members with an overview on how the policy had operated since its implementation and on the applicants who had been registered on the Persistent & Repeated Applications Register. Mr Reddick confirmed that he was not making any recommendations in respect of updating the policy which was agreed by the Board.
- 3.2.2 Mr Reddick also confirmed that, in accordance with the policy, the first annual review of one applicant's registration had been undertaken and continued registration had been agreed. This was noted by the Board.

## **3.3 Potential Miscarriages of Justice**

Mr McClay introduced his paper on potential miscarriages of justice based on his recent experience of a jury trial. Members discussed the paper in full and agreed that this had been of great interest and thanked Mr McClay for his paper.

## **3.4 Interests of Justice – Analysis of Case Decisions**

- 3.4.1 Mr Fenn provided Members with an overview of his papers on the Interests of Justice, based on his analysis of stage 2 cases. He confirmed that this was a useful exercise in identifying a number of consistent and common factors relevant to the use of the Interests of Justice test.
- 3.4.2 Mr Sinclair noted that Members would be discussing the legacy project later and confirmed his intention of providing case summaries of all referrals, the circulation of these and possible publication along with the Commission's Position Papers which again would be considered later.
- 3.4.3 Mr Walker referred to the previous paper on Interests of Justice and suggested that this was more simplistic, although not all inclusive. Mr Sinclair suggested that this could be used as the basis of a possible information leaflet which could be sent out to applicants as part of the application pack in order to raise awareness of some of the Interests of Justice criteria. Mrs Couper and Mr McClay both agreed that this would be a useful approach.
- 3.4.4 Mr Sinclair asked for the Board's view on the matters raised within the paper and conclusions drawn. The Board discussed the matter in full. In conclusion, Mrs Couper confirmed that this was a particularly helpful paper and had assisted the Board in arriving at general agreement and an approach for subsequent discussions on the matter.

## **3.5 The Application of the Interests of Justice Test**

- 3.5.1 Mr Walker presented his paper on the application of the Interests of Justice test confirming that this led on from Mr Fenn's previous paper on Interests of Justice. In particular he confirmed that his paper focused on the classification of stage 1 rejections and Interests of Justice issues that should be considered at stage 2. He also identified potential consequences of the current approach in respect of judicial review and impact on the Commission's case related statistics.

3.5.2 After full discussion it was agreed that many of the answers to the questions raised would be contained within the Commission's position papers.

### 3.6 Legacy Project

3.6.1 Mr Fenn presented his paper on the legacy project, setting out the background to this and the Commission's intention to effectively utilise case related resources. In particular he asked for input from Lay Members in respect of the materials that they would find particularly useful to have access to.

3.6.2 Mrs Couper confirmed that access to the position papers would be of immediate assistance as a resource for Members. Mr Sinclair suggested that these papers could be updated depending on the audience i.e. Members and the Public, confirming that more detail could be provided on the Member's resource. Mr McClay requested that these versions should be agreed by the Board in advance of publication.

3.6.3 Mr Walker raised the issue of disclosure and in particular the danger of inadvertently publishing something which may be contained within a statement of reasons not in the public domain. Mr McClay suggested that the papers should clearly identify that they are based on a summary of Appeal Court decisions.

3.6.4 After full discussion it was agreed the publication of position papers would be the priority in the first instance and further debate could be had on disclosure of additional information/analysis. The Board agreed that a full version of the position papers would be made available as an internal resource and a summary would be used for publication. The Board also agreed to the introduction of a new numbering and version control system as part of the drafting of position papers.

## Section 4: Position Papers

4.1 **Defective Representation** (Mrs Govan)  
**Moorov** (Miss Anderson)  
**Fresh Evidence** (Mr Henry)  
**Unreasonable Verdict** (Mr Lynn)

4.1.1 Prior to the individual legal officers presenting their position papers, Mr Sinclair reminded Members that it was his intention that, once agreed, the position papers should be published. He confirmed that approved position papers would be subject to annual review in order to identify any required changes to the Commission's position resulting from, for example, changes in the law or High Court decisions. Mr Walker suggested that the published position papers should contain a standard waiver confirming that they are the Commission's position at a given time and subject to review and update.

4.1.2 Each of the respective legal officers presented their position papers to the Board. The Board were content with all papers subject to minor amendment and update.

## Section 5: High Court Decisions

### 5.1 Any Other Competent Business

Mr Sinclair confirmed that details of past High Court decisions had been provided to Members for information.

## Section 6: Concluding Matters

### 6.1 Any Other Competent Business

6.1.1 Mr Fenn referred Members to his original paper on the independence referendum and potential impact on the Commission. He confirmed that he had reconsidered this paper and in his view there were no further matters to consider.

6.1.2 Mr Sinclair provided Members with extracts from The Journal – Court Updates for information as previously agreed.

### 6.2 Date of Next Meeting

Policy Meeting – Friday 19 December 2014 @ 10:00

**Chris Reddick**  
22 August 2014