

## SCOTTISH CRIMINAL CASES REVIEW COMMISSION

MINUTES OF THE POLICY MEETING ON THURSDAY 15 DECEMBER 2016  
10:00, 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  
Professor George Irving CBE  
Mr Gerrard Bann  
Professor Jim Fraser  
Mr Peter Ferguson Q.C.  
Miss Frances McMenamin Q.C.

#### Also Present:

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

#### Cases & Policy Items Only:

Mr Michael Walker, Head of Casework  
Mr Daniel Fenn, Senior Legal Officer  
Mrs Fiona Govan, Senior Legal Office  
Miss Mary Frances Ralston, Legal Officer  
Miss Mairi-Claire Anderson, Legal Officer  
Mr Kevin Henry, Legal Officer  
Miss Mary Frances Ralston, Legal Officer  
Mr Jim McShane, Legal Officer

### Section 1: Governance Matters

#### 1.1 Apologies

Dr Darjee and Mr Dunipace had submitted their apologies.

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

Members were asked to declare any known conflicts of interests or gifts and hospitality. The following declarations of interest were noted:

- There were no new declarations of interest.

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

### 1.3 Minutes of Policy meeting held on 8 July 2016

The minutes of the Policy meeting held on 8 July 2016 were noted having previously been approved by the Board on 29 July 2016. The Board also noted the version of the minutes for the Publication Scheme.

### 1.4 Matters Arising

Mr Reddick referred to 3.4 of the minutes and confirmed that the Commission's counter terrorism arrangements and procedures had been discussed further with the auditors. He noted that additional guidance had been issued by Scottish Government and confirmed that this would be taken into account before the Commission's draft guidance was finalised.

## Section 2: Proposed Referral Cases (edited)

2.1 The Board considered 1 statement of reasons. After full discussion it agreed to refer that case to the High Court.

## Section 3: Stage 1 Pre Acceptance Cases (edited)

3.1–3.13 A total of 13 new applications were considered and the following decisions were made:

3 cases	Accepted for a review of conviction and sentence
1 case	Accepted for a review of conviction
1 case	Accepted for a review of sentence
1 case	Rejected: the grounds of review were a repeat of the grounds of appeal grounds
2 cases	Rejected: there were no stateable grounds of review
1 case	Rejected on conviction on the basis there were no plausible grounds of review (guilty plea); rejected on sentence on the basis there were no stateable grounds of review
1 case	Rejected: it was not in the interests of justice to undertake a full review
2 cases	Continued for one month
1 case	Continued until the February Board meeting

Professor Irving, Professor Fraser, Mr Bann and Mr Ferguson QC left the meeting for the discussion in one (different) case having previously declared a conflict of interest in it and therefore took no part in its consideration.

## Section 4: Position Papers

### 4.1 Position Papers:

- The Commission's Statutory Test
- Misdirection
- Disclosure
- Sufficiency
- Guilty Pleas
- Interviewing Jurors

4.1.1 Mr Fenn confirmed that he had concluded his periodic review and update of the circulated position papers, confirming that the specific changes were set out within the attached cover note and via tracked changes on the corresponding position paper.

4.1.2 Mr Fenn took Members through each of the position papers and set out the proposed updates within each. The Board approved all of the updates to the position papers and agreed that the updated versions should be published on the website.

## Section 5: Policy Matters

### 5.1 Governance Policy & Procedures: Code of Conduct for Board Members

5.1.1 Mr Reddick confirmed that the Code of Conduct for Board Members had initially been considered at the Policy meeting on 8 July 2016 at which point a further update in respect of preparation time was requested. Mr Reddick confirmed that he had inserted an additional point at 3.2 Conduct at Meetings, which set out the general expectation and responsibility of Members to adequately prepare for meetings.

5.1.2 After full discussion the Board approved this update without amendment.

### 5.2 Persistent & Repeated Applications Policy & Persistent & Vexatious Correspondents Policy

5.2.1 Mr Reddick confirmed that the Board had considered the annual reviews of both the Persistent & Repeated Applications Register and the Persistent & Vexatious Correspondents Register at the Policy meeting on 8 July 2016. At that point it had been agreed that both corresponding policies should be reviewed and in particular additional clarity should be given in respect of how applicants can be removed from these registers.

- 5.2.2 Mr Reddick confirmed that an applicant had recently been removed from the Persistent & Repeated Applications Register having submitted a new application which contained something new. This application had subsequently been accepted for a full review. Mr Reddick noted that this demonstrated that the existing policy operates effectively and that applicants are not being denied access to the Commission where appropriate. He referred to the updated policy and confirmed that the wording at 5.4 had been updated to provide additional clarity on this being the appropriate route for removal from the register.
- 5.2.3 Mr Reddick then referred Members to the updated Persistent & Vexatious Correspondents Policy, noting that again this policy operated effectively and did not deny applicants from access to the Commission when appropriate. He confirmed that he had updated section 6.1 of the policy by introducing a timescale for removal from the register. He proposed that an applicant should be removed from the register after a period of 3 years if, within that period, they had not continued to submit correspondence which met the registration criteria.
- 5.2.4 After full discussion the Board approved both of the revised policies without amendment. Mrs Couper noted that the updates were an extremely sensible and pragmatic approach to de-registrations.

### **5.3 Stress Management**

- 5.3.1 Mrs Govan presented the Commission's new Stress Management Policy along with the Stress Risk Assessment which had been completed. She confirmed that the Commission had never previously had any specific stress management policies or arrangements in place and that the circulated draft had been prepared following consideration of the CCRC's arrangements. She confirmed that the Commission was also in the process of signing up to the Scottish Government's Employee Assistance Programme as set out within the policy.
- 5.3.2 The policy and risk assessment were discussed in full and a number of minor updates were suggested before approving the policy.

### **5.4 Investigatory Powers Act 2016**

- 5.4.1 Mr Walker referred Members to the circulated note on the introduction of the new Investigatory Powers Act 2016 which the Commission was specifically included within. He noted it was important that specific procedures were in place to set out how these powers would be used no matter how unlikely and that this had been discussed in detail at the last management meeting. He recommended that a procedure note/standing order be put in place requiring Board approval for any use of these powers and that this could be detailed within an update to the Case Handling Procedures. After consideration the Board approved this approach.

### **5.5 Reporting of Crime**

- 5.5.1 Mr Fenn confirmed that issues relating to the reporting of crime had been discussed at the Policy meeting on 8 July 2016. He provided Members with an update on his considerations since this date and in particular the nature of

guidance that would be discussed with legal officers regarding this issue. The Board were content with Mr Fenn's recommendations on this matter.

## Section 6: High Court Decisions

1 July – 8 December 2016

Members noted that High Court decisions had been issued in the following cases:

- Case of Conor McAteer – Sentence Referral – 4 October 2016

<https://www.scotcourts.gov.uk/search-judgments/judgment?id=562a20a7-8980-69d2-b500-ff0000d74aa7>

## Section 7: Concluding Matters (edited)

### 7.1 Any Other Competent Business

7.1.1 Mr Sinclair provided Members with an update on the various ongoing legal actions.

#### Information Commissioner's Office Decision

7.1.2 Mr Walker confirmed that the ICO had ruled in the Commission's favour in this case and confirmed that the decision had been circulated for information.

#### Journal Updates

7.1.3 Mr Sinclair confirmed that he had circulated various journal articles for information purposes.

### 7.2 Date of Next Meeting

Policy Meeting – July 2017 (tbc)

At the conclusion of the meeting, on account of it being the last meeting at the Commission for Mrs Couper, Professor Irving and Mr Bann, Mrs Couper paid thanks to the Board and staff with whom she had worked with over the past 8 years. She also paid tribute to the contributions of the other outgoing Members, Professor Irving and Mr Bann, which had been invaluable during her time as Chairman. Mr Sinclair responded on behalf of the Board and staff.

**Chris Reddick**  
20 December 2016