

CROFTING COMMISSION

MINUTE OF THE COMMISSION MEETING HELD AT GREAT GLEN HOUSE ON 14 DECEMBER 2016

Present:	Colin Kennedy	Convener
	IG Macdonald	Vice-Convener
	David Campbell	Commissioner
	Arnie Pirie	Commissioner
	Marina Dennis	Commissioner
	Murdo MacLennan	Commissioner
	Kathleen Sinclair	Commissioner
	Bill Barron	Chief Executive
	Joseph Kerr	Head of Regulation
	John Toal	Head of Policy
	David Findlay	Commission Solicitor
	Posy MacRae	Communications Manager
	Trudi Sharp	Scottish Government
		BBC Alba
		BBC Alba
	One member of public	

The Convener welcomed everyone to the meeting.

The Convener proposed to move item 3 and item 4 to the Exclusion of the Press and Public. Commissioner MacLennan questioned why it was to be moved to the private section of the meeting when it is to discuss minutes of a public meeting. The Convener informed Commissioner MacLennan that this was due to legal advice being discussed as part of the item.

Commissioner MacLennan announced that under Standing Orders Section 12(1) he wished to be granted a fair hearing on a number of matters he would like to raise relating to the Special Meeting held on 9 December 2016. Commissioner MacLennan questioned why a Special Meeting was held two working days before a Board meeting and the costs associated with holding the meeting. Commissioner MacLennan also asked why the letter he sent to the Convener and Chief Executive detailing his reason for not attending was not read out at the public part of the meeting as requested. Commissioner MacLennan proceeded to read out the letter.

The Convener stated that proper notification had not been received and therefore he did not accept it as an item on the day.

Commissioner MacLennan moved on to question who commissioned the legal advice regarding the status of the Special Meeting held in Brora on 28 September 2016. The Commission Solicitor confirmed that the Chief Executive had commissioned the advice after e-mailing Commissioners for approval. The Chief Executive stated that the Commission's Solicitor worked with the Chief Executive to formulate the questions in respect of which legal advice was sought.

Commissioner MacLennan asked the Convener if there was a threat of legal action against the Board, individual Commissioners and the Cabinet Secretary. Convener Kennedy stated that there is no legal threat at this moment in time. The Convener stated that there should be no need for concern provided that they remain within the agreed code of conduct.

Commissioner Campbell stated that he had e-mailed the Convener three times requesting two items to be added on to the agenda for today's Board meeting and questioned why the items are not on the agenda. The items were in relation to members of the Board discussing issues in the press, breaching media protocol and the Board's position on a Commissioner publicly declaring their intention to stand for re-election in the 2017 Crofting Elections.

The Convener confirmed that the request had been discussed the previous day with the Chief Executive. The Chief Executive stated that some of the items had been discussed at the Special Meeting on 9 December as part of the discussion around tensions within the Board but unfortunately had not been carried over to the agenda for the Board meeting. The Convener stated that it is at the discretion of the Convener what goes on the agenda.

Commissioner Campbell asked the Convener to clarify the threat of legal action following comments made in the press. The Chief Executive stated that he had asked the Convener to confirm that there were no legal threats against the Commission and Commissioners and that there never would be. However, the Convener had not been willing to confirm this and therefore the Chief Executive could make no guarantees to Commissioners.

Commissioner MacLennan proposed waiting for the outcome of the current governance review of the Commission before holding any further Board meetings. Commissioner Dennis asked when the outcome of the review will be available. Deputy Director, Trudi Sharp, stated that it is a report to Scottish Government and they are due to have an informal meeting with the review team the week commencing 19 December 2016.

Commissioner Sinclair stated that the Board has a duty to crofters to move forward with day to day business.

Commissioner MacLennan expressed concern about the process by which legal advice on the status of the Brora meeting had been obtained. He felt that as one Commissioner was challenging the Commission's position on the validity of that meeting, it was anomalous for that same Commissioner to be involved in advising on the questions on which legal advice was sought. The Chief Executive confirmed that the final decision on the framing of those questions had been taken by himself with the Commission's solicitor, after considering all points raised by Commissioners.

1 APOLOGIES AND WELCOME

Apologies were received from Donna Smith, Deputy CEO and Jane Thomas, Head of Corporate and Customer Services.

1.1 STATEMENT FROM CEO

The Chief Executive read out the following statement:

"We've heard apologies for absence from Donna Smith, my deputy, and Jane Thomas our Head of Corporate and Customer Services. They've asked me to explain why they're not attending. This is about Fairness at Work and I and my other SMT colleagues support them on this. For many months they feel that the normal business of the Commission has been regularly undermined by a failure to adhere to decisions taken, and there have been occasions when blame has been unfairly made of staff, who don't have the right of reply. This has culminated in an e-mail we received yesterday which advises that Mr Kennedy intends to challenge the conclusions the Board reached at its Special Meeting on Friday.

Secondly, I want to recap the conclusions we reached in our Special Meeting on Friday. Most of it was in the press statement we issued following that meeting:

The Board also discussed the status of the meeting held in Brora in September and how to move forward. The Board decided that there was one meeting in Brora which took place in two valid parts, the meeting previously referred to as a Special Meeting being a continuation of the scheduled Board meeting. Any consequences from this will be considered at their Board meeting on Wednesday 14 December 2016.

We also discussed two more things that you may wish to pick up today. One of these was the question of whether the Board can revisit its own decisions. For a regulatory decision, once notified to the applicant that generally isn't possible – others will have acted on our decisions and moved on. However, for regulatory decisions that have not yet been notified, and for other types of decision such as about our policies or procedures, the Board is at liberty to revisit its decisions whenever it sees fit to do so. I hope that won't often be necessary, but it's important that you know that you have that flexibility.

The other thing we discussed on Friday was the way in which the item of Any Other Business was called at Brora, and there are doubts about whether this was properly done. We can discuss that when we look at the Minutes of the Brora meeting, but the suggestion is that we record in the Minutes that this may not have been a correctly-called item of business.

Finally, can I note that our press statement on Friday said this:

"The Commissioners present reaffirmed the importance of working together effectively in the final months of their terms."

For my part, I and my colleagues will do our best to give you the best possible advice on all the matters that you need to consider.

For yourselves as Commissioners, I think the key to this will be what happens between meetings, and especially if there is disagreement within the Board. You have to be able to take decisions and act on them as a Board. If one or two Commissioners disagree with a decision, they can have their dissent made known in a low key way, and it can be recorded in the minutes; depending on what the issue is, it may be a matter that can be revisited; but in the meantime they must uphold and not undermine the Board's position.

The other key to working together will be the respect you show for each other, for the staff and for crofters, crofting communities and stakeholders. This Board often has to grapple with difficult issues and I understand that feelings can be strong, but it will help if we can focus as much as possible on the issues rather than the personalities."

Commissioner Campbell stated that it is extremely disturbing to him that two members of staff feel unable to be present at the meeting and unable to work with the Board in a public forum.

Commissioner MacLennan expressed concern over not having a governance adviser present at the meeting and the reasons staff feel they are not able to come to the Board meeting.

The Convener commented that the Minutes from Board meetings are consistently not implemented and that might be at the heart of the issue. Commissioner Campbell stated that he has not been made aware of this issue and questioned why it had taken this action for the matter to be raised. The Vice-Convener confirmed that some of the issues had been discussed at the Special Meeting.

2 DECLARATION OF INTERESTS

The Convener declared an interest in Barrachoile Common Grazings.

The Vice-Convener declared an interest in the Mangersta Common Grazings.

Commissioner MacLennan declared an interest in the Mangersta Common Grazings.

Commissioner Dennis declared an interest in Bohuntin Common Grazings.

3 APPROVAL OF DRAFT BOARD MINUTES OF 28 SEPTEMBER 2016

To be discussed under Exclusion of the Press and Public.

Commissioner MacLennan dissented against moving item 3, review of public Board Minutes, to Exclusion of Press and Public.

4 MATTERS ARISING FROM PREVIOUS MEETING

To be discussed under Exclusion of the Press and Public.

5 ADVANCED PAPERS FOR APPROVAL

(a) Parameters in Delegated Decision Making (DDM)

The Head of Regulation informed Commissioners that the paper in respect of parameters for Apportionment and Part Croft Decrofting had been e-mailed and now came to the Board for formal approval.

The Commission approved the Paper.

Decision	The Commission approved the Paper
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6 SHORT TERM WORKING GROUP UPDATES

Vice-Convener Macdonald stated that there had been two meetings of the grazings stakeholder group which is looking at grazings regulations.

The Head of Regulation informed the Board that there is still a STWG looking at DDM section 50B applications with the next meeting taking place in January 2017. There will also be a review of the decrofting function in the New Year.

7 REPORT FROM COMMISSIONERS – EVENTS PLANNED AND/OR ATTENDED

Vice-Convener Macdonald attended three of the Crofting Roadshows at Connel, Gairloch and Skeabost, and attended a meeting held by the Commission with Skye Solicitors.

Commissioner MacLennan attended the Cross Party Group meeting, attended the Crofting Roadshows in Stornoway and Benbecula and two meetings with Upper Coll shareholders.

Commissioner Pirie attended the Crofting Roadshows in Kirkwall and Thurso.

Commissioner Dennis was unable to attend the Newtonmore Crofting Roadshow due to bad weather.

Commissioner Sinclair attended the Crofting Roadshow in Lerwick.

Commissioner Campbell attended the Crofting Roadshows in Bonar Bridge and Thurso, the Convention of the Highlands & Islands, the Cross Party Group meeting and the two grazings meetings with the Vice-Convener. Also had a tele-conference on the Quality and Assurance Committee, attended the Audit & Finance Committee, a legal services training session in Glasgow and ongoing meetings with Assynt Foundation.

Discussion took place about the lack of engagement with Assessors and developing the role.

Convener Kennedy attended the Cross Party Group meeting and the Quality and Assurance Committee meeting.

8 EQUALITY AND DIVERSITY POLICY

The Chief Executive presented the Paper. The Commissioners approved the paper and agreed to recommend it to the new Board.

Decision	The Commission approved the paper and agreed to recommend it to the new Board.
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9 DRAFT CORPORATE PLAN

The Chief Executive presented the paper and explained that the Deputy CEO is consulting with a number of stakeholders. It is an initial draft and there will be further revision but initial comments were invited from the Board at this stage. The plan is to be finalised ahead of the new Board and implemented from April 2017.

Commissioner Campbell requested that page 37 includes reference to transparency.

An updated draft will come to the February Board meeting. The Board approved the paper.

Decision	The Commission approved the paper with an updated draft to be on the agenda for the February 2017 Board meeting. Page 37 to include reference to transparency.
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10 AUDIT AND FINANCE COMMITTEE REPORT

(a) Update from Committee Member

Commissioner MacLennan provided an update to Commissioners on the work of the Committee and talked through the Risk Register.

(b) Approval of Draft Minutes from 19 October 2016

The Board noted the draft minutes.

(c) Risk Register

Vice-Convenor Macdonald asked that the wording was changed on item 150 'Controls in Place' from 'new Board to receive media training' to 'new Board receive further training'.

Commissioner MacLennan highlighted that the Commission had agreed to look at a 'decentralisation' paper for the Commission by placing staff outside of Inverness and a paper was discussed at the AFC meeting. Commissioner MacLennan requested that the paper comes to the next Board meeting.

Vice-Convenor Macdonald asked that the Framework document is highlighted to the new Board.

(d) Key Performance Indicators

Commissioner MacLennan talked through the KPIs.

(e) Approval of Commission Policies

The Audit & Finance Committee reviews a number of Commission policies on an annual basis as part of its agreed Work Plan. The Board reviewed and approved the updated policies:

- Board Scheme of Financial Delegation
- Commission Standing Financial Instructions
- The Audit & Finance Committee Terms of Reference
- Commission Whistleblowing Policy

Decision	<p>Risk Register item 150 'Controls in Place' wording to change from 'new Board to receive media training' to 'new Board receive further training'.</p> <p>The Board noted the draft Minutes from 19 October 2016.</p> <p>A 'decentralisation' paper looking at placing Commission staff outside of Inverness to be presented at the next Board meeting.</p> <p>Vice-Convenor Macdonald asked that the Framework document is highlighted to the new Board.</p> <p>The Board approved the Commission policies:</p> <ul style="list-style-type: none">• Board Scheme of Financial Delegation• Commission Standing Financial Instructions• The Audit and Finance Committee Terms of Reference• Commission Whistleblowing Policy
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11 COMPLAINTS QUALITY ASSURANCE COMMITTEE UPDATE

(a) Update from Chairperson

Vice-Convenor Macdonald provided an update to the Board of the Complaints Quality Assurance Committee meeting which took place on 5 October 2016.

(b) Approval of Draft Minutes from 5 October 2016

The Convenor commented that there is a complaint that he has been made aware of which doesn't feature in the complaint statistics. The Convenor is to provide details to the Head of Regulation to look into the matter.

Decision	Convenor to provide more information to Head of Regulation on a complaint he is aware of that he believes is not included in the complaint statistics.
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12 DATE OF NEXT MEETING

8 February 2017 at 10.15am in Great Glen House.

13 ANY URGENT BUSINESS

Commissioner MacLennan advised Commissioners that he was stepping down as media spokesperson. It was agreed that the Chief Executive would be the spokesperson for the Commission until the next Board meeting when the position can be formally discussed.

Commissioner MacLennan requested that cuttings which have appeared in the press since the Brora meeting in September be included on the agenda for the next Board meeting.

Commissioner Dennis asked when the announcement will be made about the two appointed Commissioners. SG Deputy Director stated that the announcement will be made in the New Year.

Commissioner Campbell requested to discuss Standing Order 10.3 and the process of agreeing how matters are to be discussed under public or private sections of the agenda. Vice-Convenor Macdonald suggested that the Standing Orders in full are reviewed and a paper is brought to the next Board meeting.

The Commission's Solicitor agreed that the Standing Orders do not detail how it is agreed that matters are decided as being 'sensitive'.

The Convenor asked who was in favour in discussing the agenda items 3 and 4 in private or public. The Board agreed to discuss the items in private

Decision	Chief Executive to be Commission's media spokesperson until the next Board meeting in February 2017 and for the matter to be included on the agenda.
	Standing Orders to be reviewed and a paper brought to the next Board meeting.

14 EXCLUSION OF THE PRESS AND PUBLIC

The Vice-Convener thanked everyone for their attendance and closed the meeting at 15:50 hrs.