


CROFTING COMMISSION

MINUTE OF THE COMMISSION MEETING HELD AT BRORA GOLF CLUB ON 28 SEPTEMBER 2016

Present:	Colin Kennedy	Convener
	IG Macdonald	Vice Convener
	David Campbell	Commissioner
	Kathleen Sinclair	Commissioner
	Arnie Pirie	Commissioner
	Murdo MacLennan	Commissioner
	Marina Dennis	Commissioner
	Donna Smith	Deputy CEO
	Joseph Kerr	Head of Regulation
	David Findlay	Commission solicitor
	John Toal	Head of Policy
	Posy MacRae	Communications Manager
	Jane Thomas	Head of C&CS + Minute-taker
	Trudi Sharp	Scottish Government
	Lucy Carmichael	Scottish Government
		BBC Alba
		BBC Alba

5 members of public

1 APOLOGIES AND WELCOME

The Convener welcomed everyone to the meeting in Brora and paid tribute to the work of Catriona Maclean on behalf of the Commission, as this would have been Ms Maclean's last Board meeting as Chief Executive, before she leaves to take up a new post with Scottish Government.

Ms Maclean had sent her apologies as she was unable to attend, due to suffering an injury after being in an accident and was currently on sick leave.

2 DECLARATION OF INTERESTS

Commissioner MacLennan informed the Convener that he had two matters he wished to raise; one related to an Interest and the other related to the Convener's own position.

Commissioner MacLennan explained that he had previously declared an interest in Mangersta and Upper Coll. As circumstances had changed, he had sought guidance from the Standards Commissioner on whether it was necessary to maintain this position. The advice from the Standards Commissioner is that the connection is now so remote or insignificant that it does not represent an interest. Therefore, Commissioner MacLennan wished to receive any papers circulated to Board members on these cases and would take part in any discussion on them.

The Convener questioned what had changed and stated that he wished to see a statement in writing from the Standards Commissioner. Commissioner MacLennan enquired if the Convener doubted the word of the Standards Commissioner. The Convener repeated that he wished to see the Standard Commissioner's ruling in writing before making a decision on Mr MacLennan's withdrawal of interests. Commissioner MacLennan asked if the Convener doubted the word of a fellow Commissioner. He asked if the Convener was denying the elected member from the Western Isles the right to see papers. The Convener repeated that he wanted to see documentation. At this point the Convener drew attention to Commissioner MacLennan's registered interest in the Bethesda charity and indicated that this body was mentioned in a paper to come before the Board. Commissioner MacLennan confirmed his Registered Interest in Bethesda. The Convener stated that he did not accept that Commissioner MacLennan could relinquish the previously declared interest. He did not accept that Commissioner MacLennan could raise this issue at the Board meeting.

The Deputy CEO read out a statement from the CEO, as Accountable Officer, confirming the position as stated by Commissioner MacLennan:

"Commissioners given the controversy around conflicts of interest I have taken advice from the Commissioner for Ethical Standards who has provided guidance on this matter.

I will separate the issue into two examples which are relevant to the current situations. The first is where the individual has declared an interest and then circumstances have changed. In the view of the Commissioner for Ethical standards it is acceptable for a declaration of interest to become concluded. The example that he gave me was that if a Board member had shares in Tesco bank and the Board were considering a contract to Tesco bank then the Board member should declare that interest and remove themselves from the decision making process. If however the Board member then sells their shares and the Board are considering a contract to Tesco bank then the circumstances are different and the Board member can reasonably explain that they had declared an interest but that on the sale of the shares the interest is concluded and they are therefore able to participate in decision making. Ultimately it is for the individual to decide."

The Convener maintained his opposition to the item being accepted at the Board meeting.

As Standards Officer, the Head of Corporate and Customer Services explained that it was in order for Commissioner MacLennan to make Commissioners aware of a change in a previously declared interest at this point in the Board Meeting, as Declaration of Interests appears as Item 2 on all Board Meeting Agendas. She further confirmed that it is appropriate for Commissioners to communicate any changes in interests in this way and for the Board to accept such public notification of a change.

The Convener then adjourned the meeting to discuss the issue in private with the Standards Officer. The Convener, Standards Officer and Deputy Chief Executive left the room. On their return, the Convener announced that he was bringing the meeting to a close and was leaving the meeting.

At this point, Commissioner Campbell said that he would write to the Accountable Officer requesting that a Special Meeting of the Commission be held.

The Convener then left the meeting at 9:45am.

The Board then progressed to conduct further business with the same people present apart from the Convener. At the time this was seen as a Special Meeting but the Board believes it should correctly be regarded as a continuation of the Board meeting.

A notice was placed on the Commission website and the Board meeting recommenced at 10:15am. This was communicated to the Convener straightaway. As Deputy CEO, Mrs Smith re-opened the meeting and asked the Board to nominate a Chair. IG Macdonald was asked to fulfil the role and agreed to do so. This was proposed by Commissioner MacLennan, seconded by Commissioner Campbell and agreed by the remaining Commissioners.

1 APOLOGIES AND WELCOME

Commissioner Macdonald re-opened the meeting and apologies were noted from Catriona Maclean.

The Convener was not present.

2 DECLARATION OF INTERESTS

Commissioner Macdonald maintained his declared interest in Mangersta.

Commissioner MacLennan explained that he had previously declared an interest in Mangersta and Upper Coll but, as circumstances had changed, he sought and received guidance from the Standards Commissioner; the advice being that the connection was now so remote that it was of no significance. Therefore, Commissioner MacLennan wished to receive any papers on Upper Coll and Mangersta that he had been excluded from because of the previously declared interest and asked for time to read them, as necessary. This was agreed.

Commissioner MacLennan informed the Chair that he had an urgent item of business to raise. He explained that the Convener had received two letters the previous day, from himself and from Commissioner Campbell, asking him to resign. Commissioner MacLennan informed the Board that he had a Motion to put to the meeting and the Motion had a Secunder. The Chair considered when the item should be discussed, agreeing that it could be taken under Item 14 on the Agenda.

3 APPROVAL OF DRAFT BOARD MINUTE OF 17 AUGUST 2016

The Minute of the Meeting of 17 August 2016 was approved with no amendment.

4 MATTERS ARISING FROM PREVIOUS MEETING

Commissioner Campbell highlighted Item 5 on page 8 of the Minutes and requested that Commissioners receive information on the dates of the papers referred to by the Convener, as there was not a paper presented to the Board Meeting referenced.

Head of Regulation gave an update on the development of a protocol with RPID.

5 ADVANCED PAPERS FOR APPROVAL

(a) *Audit & Finance Committee 2015-16 Statement of Activity*

Head of C&CS explained this paper represented a summary of the committee's activity in the previous financial year. It was provided to the Board each year. Five Commissioners had responded by e-mail accepting the paper, one Commissioner had not responded (a nil response being taken as acceptance) and the Convener had requested a discussion by the full Board.

Commissioner MacLennan, as Chair of the committee, explained that the report had been submitted by Commissioner Campbell due to the resignation of William Swann, the previous Chair of the committee. Commissioner Sinclair, as the other member of the committee, confirmed she was content with the report. It was therefore accepted by the Board.

6 MEETING WITH CABINET SECRETARY ON 21 SEPTEMBER 2016

With the exception of Commissioner Pirie, all members of the Commission met with Cabinet Secretary, Fergus Ewing, on 21 September. Prior to the meeting, Commissioners had received a copy of a letter from the Cabinet Secretary, setting out the issues he wished to discuss. This made it clear that he required the Commission to make a public apology over the way certain recent grazings cases had been handled. Commissioner Macdonald read out the following sentence from the Cabinet Secretary's letter: *"I would be grateful if, before we meet, you and the Commissioners could consider the position that the Crofting Commission has taken to date in relation to these points generally in relation to Upper Coll, and to decide whether a public apology might serve to restore the equilibrium."* At the meeting on 21 September this position was confirmed by the Cabinet Secretary, who requested that the apology come from the Convener, on behalf of the Commission.

The Deputy CEO explained that Commissioners met informally on 27 September to discuss the position and prepare a draft statement. Commissioner Macdonald read out the following statement, which would be issued to the press, placed on the Crofting Commission website and communicated to the relevant grazings shareholders:

"The Crofting Commission wishes to apologise for the way it has handled recent grazings committee cases.

Three unprecedented cases have been considered by the Commission under section 47(8) of the Crofting Act and resulted in committees being put out of office. The decisions taken by the Commission have created a poor result for everyone involved. The actions taken in these cases did not enable communities to work together for the benefit of crofting and, in fact, have had an adverse impact on the crofting community. The Commission acknowledges that the recent decisions have caused prolonged uncertainty and anxiety, not only for the three communities involved but for all crofters, and for this we are sorry.

The Commission continually seeks ways to ensure it is delivering in the best interests of crofters and will ensure that the lessons learned from the cases can inform future procedures and decision-making. We will also continue to engage with Scottish Government to look at greater flexibility in crofting legislation.

The Crofting Commission will continue to work alongside stakeholders to develop good practice guidance for grazings committees. We would like to reassure crofters that, as the regulator of crofting, our main focus continues to be securing the future of crofting through effective regulation and we look forward to working constructively with crofters, grazings committees and crofting stakeholders.”

Commissioner MacLennan explained that he wished to disassociate himself from the statement, not because he disagreed with the sentiments expressed but because of his belief that the failures referred to in the statement lie with the Convener and that, while the current Convener is in place, the Commission cannot move on.

Commissioner Campbell wished to record that he fully supports a full and meaningful apology to the crofting communities concerned but agrees that it will not be possible to move on with the current Convener in place.

Commissioners Macdonald, Dennis, Pirie and Sinclair confirmed their support for the statement and there was a short break to allow the Communications Manager to issue the statement to the press.

7 CIS UPDATE

Deputy CEO tabled a paper providing current information on CIS processing. She explained there had been a few teething problems with the new system, which was to be expected but that, given the significance of the change, things had gone well. A User Group has been established and this is proving an effective way to progress issues and improvements.

Along with bedding in the new system, the Commission is experiencing a significant rise in applications, probably caused by the Crofting Census. Even in the second year of the Census, over 4000 changes to the RoC were notified by crofters and had to be examined.

A comparison exercise has been carried out between the old CADS system and CIS, which found that CIS is quicker and provides staff with more information. As Head of Information Systems, Mrs Smith will ensure a further review is carried out in 3 months to monitor progress. She would report back on any apportionment applications more than 2 years old.

Commissioners wished to thank Mrs Smith personally for her work on managing the switch to the new system, which has gone more smoothly than was perhaps envisaged.

8 REPORT FROM COMMISSIONERS – EVENTS PLANNED AND/OR ATTENDED

Commissioner Macdonald had attended an Assessor Workshop, livestock sales, met with individual crofters, who would like the Commission to place more emphasis on Duties work, had participated in the Stakeholders meeting on grazings regulations on 20 September, which he saw as a very positive step forward, a DDM meeting on part croft decrofting and the meeting with the Cabinet Secretary on 21 September.

Commissioner Campbell had taken part in the meeting on grazings regulations, which he agreed was positive and helpful, a SLE sub-group meeting, had met a community landowner on the creation of new crofts, attended livestock sales and the meeting with the Cabinet Secretary.

Commissioner Dennis had a meeting on 16 August with an interested party, a DDM meeting, a Casework meeting, the Assessor Workshop and the meeting with the Cabinet Secretary.

Commissioner Pirie had attended two or three sales and hoped to get to the Scottish Ploughing Championships.

Commissioner MacLennan had attended livestock sales, the Cross-party group and the meeting with the Minister.

Commissioner Sinclair had attended the Yell Show, lamb sales in Shetland and the meeting with the Cabinet Secretary. She had a LAG meeting coming up and a local NFUS meeting.

Commissioners wished to record that this level of activity illustrates that 4 days per month is not an accurate reflection of the time actually spent on Commission business.

9 MEDIA PROTOCOL/INFORMATION SECURITY

This item had been brought to the Board purely as a reminder to adhere to the agreed Media Protocol and Information Security policy. It was, for instance, important that Commission work was not saved to personal e-mail addresses.

10 INSTRUCTIONS TO THE LEGAL TEAM (Item 10 taken in private due to it containing legal advice)

11 AREA ASSESSORS – PANEL UPDATE

Commissioner Dennis introduced a brief paper. She explained that the term of the current Assessor Panel comes to an end in October 2017. Commissioners were asked to consider whether to confirm this or to recommend to the new Commission Board that the panel term is extended by a further 12 months, to allow the new Commissioners time to become familiar with their role.

Commissioners agreed to recommend to the new Board that the Assessor panel is extended by a further 12 months.

Following the meeting with local Assessors the previous evening, Commissioners agreed that there had been insufficient engagement by the Commission with the panel and that every effort should be made to improve communication, training and engagement, as Assessors are an underutilised asset to the organisation. Care should also be taken when planning the location of local meetings, to allow the maximum number to attend.

Decision	Commissioners agreed to recommend to the new Board of Commissioners that the term of the current Assessor Panel is extended by 12 months.
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12 DEEMED CROFTS (taken in private because discussion and paper contain legal advice)

13 DATE OF NEXT MEETING

9 November 2016– Great Glen House

14 AOB

Commissioner Campbell had an issue that was dealt with under Item 15.

As expressed earlier, Commissioner MacLennan had an urgent issue he wished to bring to the public part of the meeting.

He explained that at an informal meeting of Commissioners yesterday the Convener had been handed two letters, from himself and from Commissioner Campbell, asking him to resign. The Convener had declined to read the letters so Commissioner MacLennan had conveyed the contents of his letter to Commissioners at the meeting on 27 September, including the Convener. Commissioner Campbell had done likewise. Both had made it clear that a Motion calling on the Convener to resign would be brought to the Board meeting on 28 September.

Commissioner MacLennan wished to place a Motion before the Board:

“That the Commission thank Mr Colin Kennedy for his period as Convener of the Crofting Commission. Nevertheless, given the current reputational damage attached to the Commission, for the advancement of crofters, the crofting community and the future of the Crofting Commission, including staff, you are requested to tender your resignation to the Cabinet Secretary with responsibility for crofting, forthwith.”

The Motion was seconded by Commissioner Campbell.

Commissioner Macdonald asked if there were any counter motions or amendments and it was confirmed that the Motion represented a request to the Convener, not an instruction, as the Board does not have the power to remove the Convener.

There was no counter motion or amendment and, as Chair, Commissioner Macdonald received confirmation from all Commissioners present that they supported the Motion, which was therefore carried unanimously.

This concluded the business taken in public.

15 EXCLUSION OF THE PRESS AND PUBLIC

There was then a break for lunch, following which Commissioner Macdonald returned to the room. The Commission then went on to discuss Item 10, which it was agreed should be taken in private.

The Chair thanked Commissioners and officers for their input throughout the day and closed the meeting at 4:05pm.