

CROFTING COMMISSION

MINUTE OF THE COMMISSION MEETING HELD IN ST KILDA, GREAT GLEN HOUSE, INVERNESS AT 9.30am ON 27 SEPTEMBER 2022

Present:	Malcolm Mathieson	Convener
	Mairi Renwick Mackenzie	Vice Convener
	Rod Mackenzie	Commissioner
	Colin Kennedy	Commissioner
	Iain Maciver	Commissioner
	Donald MacDonald	Commissioner
	Duncan Gray	Commissioner
	Andrew Thin	Commissioner
	Duncan Macaulay	Commissioner (by Teams)
	Bill Barron	Chief Executive
	Chris Reynish	Director of Operations & Policy
	Aaron Ramsay	Director of Corporate Services
	David Findlay	Commission solicitor
	Finlay Beaton	Head of Grazings
	Arthur Macdonald	Head of Development
	Karen MacRae	Development Team – item 10(b) (by Teams)

Observers: BBC Alba journalist (in Great Glen House); staff and members of the public (by Teams)

1 APOLOGIES AND WELCOME

The Convener welcomed everyone to the meeting in Gaelic and in English.

Apologies had been received from Joseph Kerr, Neil MacDonald, Heather Mack and Anne Williamson. Minutes were to be taken by David Findlay and Chris Reynish.

2 DECLARATION OF INTERESTS

No interests were declared for the open session.

3 MINUTES FROM 18 AUGUST 2022

The Board Minute of 18 August had been circulated, agreed and published. Commissioner Mackenzie and Commissioner Kennedy thanked that day's minute taker for the accuracy and detail of the record and requested that future minutes could adopt a similar style.

4 REVIEW OF ACTION POINTS FROM PREVIOUS MEETING

All action points were completed or on schedule.

5 MATTERS ARISING FROM THE PREVIOUS MINUTES

There were no matters arising.

6 DRAFT POLICY PLAN

The Convener sought any comments, by exception, on the amendments to the draft paper that had been proposed following stakeholder consultation. The Board noted the comments that had been made by consultees but felt that none of them needed to be incorporated into the previously approved draft. The Policy Plan was approved for submission to the Scottish Government.

7 UPDATE ON STAFF RECRUITMENT

The CEO updated the Board on the staff recruitment campaign within the Commission, as per the paper issued in advance.

There was a discussion about the training required by the regulatory casework teams. The Board was advised that caseworkers are considered trained after a year of bespoke and on-the-job training; although they undertake some regulatory casework almost from the outset. Commissioners explored what options there might be for improving the training offered to regulatory caseworkers or reduce the training time, including whether external advisors could help shape the activity.

Commissioner Mackenzie's offer to help provide opportunities for Commission staff to visit crofts to learn about crofting, was welcomed.

8 OUTSTANDING CASEWORK UPDATE

The Director of Operations and Policy outlined that the number of cases discharged in August had increased on previous months, reducing the total number of outstanding cases. He thanked colleagues for their work to achieve that. He set out that it was not possible at this stage to attribute the change confidently or directly to specific interventions but that the recruitment of new staff may be having an impact on the throughput of cases.

The Director of Operations and Policy advised that it is also difficult to predict future trends in the numbers of discharges. As the throughput of cases changes, there would also be changes – some unpredictable – to frictions and bottlenecks. The team had considered which other elements of the system may come under pressure if the throughput of cases increases, including the tier two process. The team would monitor the system carefully to identify and address problems that arise.

The Convener clarified that a normal number of cases being processed at any one time by the Commission is approximately 700, which means that the current "backlog" is approximately 300 cases.

Commissioner Mackenzie noted that some of the cases are very old (age profile), and that most of these older cases are time-consuming and difficult.

Commissioner Macaulay asked why a historic level of 700 live cases should be used as a benchmark rather than, for example, 300-400, and suggested that setting a lower target might be beneficial in future. The CEO said that the level of applications cannot be controlled, and that there are some constraints on how quickly cases can be processed to take account of, for example, advertising and the statutory timescales for objections.

Commissioner Kennedy said that he thought that the number of cases being dealt with by the Commission had been 350-400 when he was previously a Board member and Convener, but acknowledged that the number of applications might have increased. The Convener indicated that there had been an increase in the number of cases made to the Commission.

The CEO clarified that the outstanding cases are ones that are awaiting a decision. Further processing is often needed after the decision point, but cases at that stage are not included in the monthly statistics.

Commissioner Mackenzie said that he supported having a potential target for the number of cases and wanted to know that the organisation is working as efficiently as it can in the circumstances. The CEO replied that this matter could be discussed in the context of the corporate plan.

Commissioner Kennedy asked if there could be a dedicated team looking at older cases. The CEO responded that the regulatory manager had been asked to have a balanced approach that does not give priority exclusively to new or old cases.

Commissioner Thin said the key issue here is the credibility issue, and there has to be better communication with external people/ solicitors/ stakeholders so that they understand better Commission processes and timescales, the reasons for any delays and the progress that is being made.

9 REDUCING THE COMMISSION'S CARBON EMISSIONS

The Convener invited comments on the paper circulated in advance. It was suggested that action would be important for the Commission's reputation; and that action should be publicised. Mixed views were expressed about the likely size and impact of the Commission's emissions; and the opportunities for reducing them were not felt to be well understood.

The Board agreed the paper's recommendations to publish a Climate Emergency Charter and to engage external expertise to develop a Climate Action Plan. They did not agree a 2040 target for the Commission to be net zero, believing that a more ambitious aim should be possible. This will be considered as part of the work on a Climate Action Plan.

The Board also agreed that some of its meetings should be conducted remotely, including the November meeting.

10 DEVELOPMENT TEAM

(a) Dealing with underused crofts

The Head of Development set out the plans for the team, especially with regard to underused crofts. The team is also seeking to “demystify” crofting processes, which includes highlighting crofting opportunities (for instance, financing, carbon sequestration). The Head of Development set out the scale of the task, with the team having only three officers, one of whom has very recently joined the team. He set out that the team will work closely with existing teams such as the grazings team and with assessors, landlords and crofters.

Commissioner Mackenzie asked if there is any potential duplication of work between the development team and FAS, SAC and SCF, and asked if the team are qualified to give advice. He asked if, alternatively, the team could be more involved in the achievement of targets for crofter applications. The Head of Development said that the role of the team would be to signpost crofters and others to sources of more information and guidance, rather than give advice themselves. The CEO noted that the Commission has a statutory function to promote the interests of crofting, and not just to regulate crofting.

Commissioner Kennedy asked where the development team is located, as he does not see much presence in Argyll. The Head of Development said that the team’s focus was the whole of the crofting counties, but as there were only three development officers they would need support. Training of assessors could be important for developing crofting locally, for instance in helping people in what should be included in a Commission form. The Head of Development emphasised that the focus is on developing crofting as a system, rather than developing individual crofts.

Commissioner Renwick Mackenzie asked about how the development team would deal with carbon footprints and neglected crofts. The Head of Development noted that the team is working with government departments on this issue.

The Convener asked if there was any feedback from Commissioners who had attended agricultural shows. Commissioner Gray said that people value seeing Commission officers on the ground, and Commissioners Maciver and Mackenzie concurred. Commissioner Renwick Mackenzie underlined the importance of Commission staff, Commissioners and other organisations and stakeholders all being at a single event such as a show or a mart. Commissioner MacDonald said that local meetings could be valuable.

The Convener asked how the success of the development team would be measured. The Head of Development said he would like to collate statistics on underused crofts to see if the team is having an impact, and was exploring possibilities including through a data sharing agreement with RPID. He also said if there is some means of measuring how many people are becoming new crofters, that could indicate whether the team is being successful.

Commissioner Macaulay asked why owners and tenants are not willing to give up crofts, and asked if the Commission could look at the matter from a croft supply and demand point of view.

Commissioner Thin underlined that an important issue within the paper is about the broader benefits of the development of crofting tenure within the Highlands & Islands of Scotland. He added that the development of crofting tenure and its associated benefits should be communicated clearly to the wider public, including non-crofters outwith the crofting areas.

The Head of Development highlighted the issue of crofters who are “hanging on” to crofts, but not using them.

(b) Assessors

The development officer (Karen MacRae) set out the proposals for the development of the assessors network. She said that the role of assessors has developed since 1955. She asked if the Board agreed with the proposed role for assessors set out in the paper, and how many assessors there should be.

The development officer set out the current roles of assessors, as set out in the paper, and also their potential involvement in any Commission campaigns, such as the development team campaign on underused crofts.

Commissioner Gray said that from his experience as an assessor for many years, assessors had not been asked to do much. Commissioner Renwick Mackenzie agreed that she thought that assessors had been underutilised. Commissioner Kennedy said that there is a potential role for assessors, but emphasised that the role is largely voluntary. Commissioner Mackenzie said that the list of roles in the paper was too long for a voluntary job, and asked if assessors had been asked if they would apply again to be assessors. The Head of Development confirmed that conversations had taken place with existing assessors, most of whom were keen to continue, and he explained that it was not expected that any assessor would fulfil all of the functions in the list.

The Convener said the matter should come back to the Board after the assessors meeting in October 2022 for more discussion about the role. There was also a short discussion about whether the name “assessor” is appropriate and whether it should be changed in any forthcoming Bill, an idea which was supported by Commissioner Maciver.

11 ONLINE APPLICATIONS SYSTEM

The Director of Corporate Services referred to feedback the Commission had received from a recent meeting with some solicitors and agents regarding online applications, most of which was highly positive and which included feedback that the applications do not take a long time to complete. They had however been reluctant for the Commission to force the digital application forms over paper forms, recommending that paper applications should continue to be available. There was also some feedback as to whether digital applications could be “fast tracked” or prioritised in order to incentivise use of them. The Director of Corporate Services said that there would be a minute from the meeting with solicitors that would be made available to the Board. He noted that 6 online applications had been submitted online in August, and 14 (so far) in September.

The Convener had been present at the meeting with solicitors and agents and he confirmed that the meeting had given extremely positive feedback. He also explained that a benefit of the digital process was that the quality of applications should improve.

Commissioner Gray asked when crofters would be able to use digital applications for assignation applications. There was a discussion about the potential for fraudulent applications where Commission consent is associated with a high value transaction. The CEO agreed to revisit the arguments and see if a way of delivering this facility could be brought forward.

Commissioner Mackenzie said it was a good news story. He asked what prevents a larger uptake of online applications, and also asked what the benefit is to the Commission, and if there is a role for the development team here. He also suggested there should be a target for the number of online applications, such as reaching at least

50% in two years' time. The Director of Corporate Services said that although a lot of online accounts are being created, this is not translating at the present time into a large number of online forms. He also noted the carbon footprint benefits of online applications.

Commissioner Kennedy suggested that the Commission should be cautious about the impact of online forms on staff, because of the potential for a serious increase in the number of applications received, if the form is relatively easy to complete. However, the Convener doubted that changing the process would lead to any significant change in the number of applications.

The Board accepted the recommendation from the Director of Corporate Services that the first 3 out of the 5 suggestions in the paper should be taken forward, but not the other two.

ITEM 12 WAS DEFERRED UNTIL THE NOVEMBER BOARD MEETING

13 ANNUAL NOTICE DATA SHARING

The CEO introduced the paper. He explained that RPID are going to start their own initiative with crofters who may be in breach of crofting duties, which could involve taking action against crofters in breach. RPID have indicated that they would like to obtain the annual notice data for crofters on their estates from the Commission to assist with this process. The CEO said that the legalities of transferring personal data in this way would need to be checked, but he invited the Board to give their views in principle.

Commissioner Kennedy said that he was against any data sharing because it might have a negative impact on how many people would complete the annual notice. Commissioner Mackenzie supported the proposal if it were compatible with legislation and if there was a clear expectation of benefits to crofting and the Commission. The Head of Digital said that there would need to be a data sharing agreement if the Board was minded to go ahead with data sharing. Commissioner Maciver said that penalising crofters for their "honesty" in filling the form could be reputationally damaging, but the CEO argued that this would be no different than when the action is taken by the Commission's own RALU team.

Commissioner Gray said that legal advice would be required to consider further. Commissioner Thin suggested delegating this matter back to the CEO.

14 CORPORATE PLAN, 2023-2028

The CEO set out the role of the Corporate Plan and invited Commissioners to discuss their aspirations for the Commission over the next 5 years. He set out that the Commission has received enhanced funding and has an expanded workforce and a new management team, and suggested it would be appropriate for the plan to be suitably ambitious.

The Convener asked if anything is missing in terms of overall objectives. Commissioner Thin said it should be aligned with the Bute House coalition agreement and it should be simple and clear and aware of the political dynamics. Commissioner Kennedy concurred.

Commissioner Mackenzie said the plan needs to demonstrate how funding for the Commission is being used.

The matter will be discussed at the forthcoming private meeting on 26 October 2022.

15 UPDATE ON MEETINGS WITH SPONSOR DIVISION

The Convener reiterated that there is an open invitation to Commissioners to join his regular meetings with Sponsor Division.

The CEO briefly outlined the meeting of 24 August 2022, which had been requested by Sponsor Division to discuss aspects of law reform with senior Commission officials. He saw no conflict between attending such meetings on behalf of the Commission, and the principle in the 2021 Deloitte report, that “on matters which are strategic in nature, management should ensure that it does not commit or be seen to commit in any way in discussions with the Sponsor Division on matters which the Board should be making a final decision on”. The Board agreed.

16 DATES OF NEXT MEETINGS

A closed meeting to discuss the corporate plan and any other urgent matters will be held on 26 October 2022 at Great Glen House. The Board meeting on 30 November 2022 will be held by Teams.

17 ANY URGENT BUSINESS

There was no urgent business.

18 EXCLUSION OF THE PRESS AND PUBLIC

The meeting was closed at 1445hrs with thanks for everyone’s contributions.