CROFTING COMMISSION

MINUTE OF THE COMMISSION MEETING
HELD ON 16 AUGUST 2023, ST KILDA, GREAT GLEN HOUSE

Present: Malcolm Mathieson   Convener
                                       (via Teams until 11.45, and for the closed session)
            Andrew Thin   Commissioner (and Chair)
            Mairi Renwick Mackenzie   Commissioner (via Teams)
            Duncan Gray   Commissioner
            Iain Maciver   Commissioner
            Colin Kennedy   Commissioner
            Donald Macdonald   Commissioner
            Rod Mackenzie   Commissioner (via Teams)
            Bill Barron   Chief Executive
            Christopher Reynish   Director of Policy (via Teams)
            Aaron Ramsay   Director of Operations
            David Findlay   Commission Solicitor
            Jane Thomas   Director of Corporate Services
            Heather Mack   Head of Policy, Grazings & Development and
                                       minute taker

            Observers   Members of staff, Assessors and public via Teams

1   APOLOGIES AND WELCOME

The Convener welcomed everyone to the meeting, with a greeting in Gaelic, followed in English. He explained that since he was joining via Teams and could not be sure his connection would be good enough, he had asked Commissioner Thin to chair the meeting.

Commissioner Thin opened with thanks to staff involved in the meeting and the Board and staff that had recently attended shows. Apologies were received from Duncan Macaulay.

2   DECLARATION OF INTERESTS

No Commissioners declared any interests.

3   BOARD MINUTES FROM 28 June 2023

The Board agreed to accept the minutes from the last meeting.

4   REVIEW OF ACTION POINTS FROM PREVIOUS MEETING

The Chief Executive explained that Action Point 9 regarding publicising emergency measures had not been discharged and had required some consideration. He explained that there is some imminent communication on this, with respect to incomplete applications.

5   MATTERS ARISING FROM PREVIOUS MINUTES

There were no matters arising from the minutes.

6   Report from the Audit and Finance Committee

Vice Chair of the committee introduced the item and explained the discussions surrounding risk appetite. This was in relation to casework and speed of decision making. He proposed that the Board consider some concrete examples and the process and risk based approach surrounding this. Several Commissioners commented and agreed that a careful consideration of risk with respect to specific examples would be helpful.

Action 1	*Afternoon discussion with Board/ET in October, looking at Bullet Point 1 in AFC paper regarding Risk Appetite, using case studies, circulated in advance.*

Vice Chair of the committee also relayed concerns discussed at AFC about the medium-term financial outlook, with respect to uncertainty around pay and financial sustainability. He proposed that action is taken on this, including pro-active comms on the importance of crofting and the Commission to the public. Additionally he proposed that the Commission should prepare itself to be ready to adapt to future financial challenges. The Convener commented that a discussion with Sponsor on this topic was coming up in the next fortnight.

Action 2	*Paper for Oct Board addressing the second and third bullet points from the recommendation in the AFC paper.*

7   Report on business plan KPI's

The Chief Executive introduced the paper and highlighted several aspects, including improvement in turnaround times for assignation and croft house site and garden ground, in contrast to part croft decrofting which has not made any significant improvement. He touched on the activity within the Residency and Land Use measures.

He highlighted that the customer satisfaction measure was concerning. This indicator had to be redefined to ensure the data was reflecting the range of summary scores given by respondents. More problematically, the low level of responses puts doubt on how meaningful the data is.

Several Commissioners expressed concern about the Commission not being contactable and the casework delays that had been experienced being a considerable negative to customer satisfaction, and suggested these would be reflected in poor customer survey results.

8   Review of the Strategic Risk Register

The Chief Executive introduced this paper and explained that it had been rewritten following the new corporate plan, and discussed at a previous Board meeting with two new risks included following that discussion. He highlighted 'S7' which refers to budget allocations already discussed earlier in the Board meeting. Commissioners commented this is the only risk that the Board has limited influence over, although the Board can mitigate the impact of this by forward planning.

9   Structure of Tier 3 decision-making

The Chief Executive introduced the paper and explained that it outlines how the Commission take the hardest regulatory decisions. He picked up on the key issues for the Board to focus on of whether the process and structure is conducive to ensuring decisions are taken consistently. He flagged up that the system has worked thus far although there is an informal element to it in terms of a short reflection period for the decision makers. He explained the different options presented for how the process could be modified and the rationale behind the recommendation.

There was considerable discussion amongst the Board and several issues were raised. Several Commissioners commented on the concerns around consistency of decision making when the decisions are taken by different Commissioners. There were also comments about how Commissioners were selected for the Tier 3 panels and how this should be clarified. There were comments on whether the options presented in the paper could have been more extensive and whether some analysis could be done to assess the impact of Commissioner involvement in Tier 3 decision making.

Several Commissioners also commented positively on the value of their involvement in the Tier 3 decisions for their development and understanding of key issues.

Head of Regulatory Support was invited to comment and gave his view that whilst the Commission staff bring policy, procedure and legal expertise, Commissioners bring a real-world view which is very valuable. He also commented on the progress made over the years in increasing the numbers of decisions that have been delegated, and on the growing confidence in the delegated system due to the number of precedent cases which the Commission now has reference to. The Commission Solicitor explained that any inconsistencies can be picked up when the grounds are drafted and any particular issues can be raised with the Chief Executive in his role as Accountable Officer.

Commissioners asked how the Policy Plan related to the parameters and the Chief Executive confirmed that the policy is the high level position of the Commission and the parameters were more specific to determine what level of scrutiny is applied to each decision.

Several Commissioners expressed their wish to agree the recommendations put forward in the paper. Commissioner Thin wished his dissent to be recorded and Commissioner Kennedy abstained.

Decision	*The Board agreed to implement Option A presented in the paper.*

Action 3	*Draft paper to create Rules of Procedure for the Tier 3 process.*

10   CIS Release Build 1063 Assurance

The Chief Executive introduced the paper and clarified that the Board are being asked whether they are happy to proceed based on the evidence presented with respect to the process of assurance. He explained that the detail provided in the paper is just to give a flavour of the thoroughness and explained that the tests had all been passed with a high degree of confidence. There was discussion around the importance of understanding the risks involved. There was emphasis on the fact that the risks involved were low in terms of likelihood, but high in terms of impact.

There were comments from some Commissioners that they thought it was too complex for them to be able to decide on and that they would like to seek external assurance. Several views were given around this and other Commissioners didn't think external assurance would add much further value when there was already a high level of internal assurance given.

Staff were invited to give more information on the risks involved and the mitigations in place. Director of Operations explained that when the system goes live it is likely that staff will notice quite quickly if something is wrong and if needed the system can be switched back. He explained that the greatest risk is if a fundamental error was not noticed straight away and the loss of work that would occur in the time that the issue went unnoticed before switching back to the old system, should a correction of the error not be possible on the current live system. Head of Digital also commented that he was satisfied by the level of assurance in place and the Board are being asked if they are satisfied with the level of assurance checking done rather than the technical aspects. He commented that there is a good rollback plan in place and that any errors in the new system will need to be fixed anyway and it is likely they will be addressed without the need to roll back to the old system.

The Chief Executive commented that the impacts on the outstanding caseload are likely to include short term negative effects whilst staff are familiarising themselves with the new system. However, long term impacts are likely to be positive due to an increase in speed and efficiency. Director of Corporate Services also reminded the Board that the new system is necessary to ensure GDPR compliance for the Commission.

The Chair went round Commissioners in turn and the overall view was to accept the recommendation from the paper.

Decision	**Board agreed to sign off on proceeding with the release of CIS build 1063 on the basis that they are satisfied with the assurance protocols applied.**

11   Milestones for Digital Applications

The Director of Operations introduced the paper, explaining that the benefits of digital applications are forecast and outlined in the paper. He also highlighted the challenge of the Registers of Scotland (ROS) paper application forms and that customer feedback indicates that the ROS forms not being part of the digital system was holding them back from using it. Some Commissioners commented that the paper was not clear enough in forecasting exactly what the milestones are and how the Board know if they are being achieved or not.

Several Commissioners commented that they were concerned about the potential blocker being the Registers of Scotland forms and that they want to know more about this issue and what is being done to address it. Director of Operations explained that ROS does not follow the same process for electronic signatures that has been agreed within the Commission for the purposes of online applications. He commented that we are working with them and that a change to their forms does require a change to secondary legislation.

The Chair brought the discussion to a conclusion, clarifying two actions: milestones for growth of take-up are required as is a paper explaining what is being done to address the issues holding this back.

Action 4	**Reprise AP on Milestones for digital applications to show 3/6/9/12 month targets/aspirations.**

Action 5	*Draft report detailing what has been done to engage with RoS to address digital rollout blockers and what is being done to solve the problem.*

12 Update on progress with the implementation of the Emergency Measure relating to Assignations

The Chief Executive introduced the paper and explained what had been done to implement this measure and the impact it has had. 29 out of 39 cases have been cleared since the measure was implemented, 8 of which were done under the new measure. So he reflected that whilst the measure had had an impact, it was relatively limited.

Some Commissioners felt it was unfair to implement policies that might apply only for a limited time, but others argued that this was inevitable with short-term 'emergency' measures to move on swiftly from the backlog. These measures were by definition short-term, but decisions on whether to continue some or all of them could be made later.

13 Crofting Activity Survey 2022

This paper was noted and Commissioners agreed to the recommendation proposed in the paper.

Decision	*The Board agreed to the proposal to change from an annual survey to issuing it once every three years.*

14 Proposed Board meeting dates for 2024

The Board agreed the recommended meeting dates.

Action 6	*Dates for 2024 agreed – place on website, make staff aware.*

15 Regulatory Casework Update

The Chief Executive introduced the paper and commented on the numbers. He also commented on relevant work to speed up casework including: reviewing cases over 18 months; the new process to close incomplete cases which is imminent; and the time savings made by reducing the requirements for case papers at Tier 2 meetings. He commented that the overall trend is in the right direction but there was still a long way to go.

Several Commissioners commented that they are pleased to see things going in the right direction and that there is light at the end of the tunnel, commenting that thanks should go to the staff for their hard work through a difficult time.

There was discussion about the target that has been set for the year end of 800 outstanding cases. This included whether the target itself was the right one and whether the Commission is in a position to meet the target. The Chief Executive Officer confirmed that the target had been agreed by Commissioners and that it is an interim target with a lower overall caseload to be set for the following year. He also commented that getting the overall caseload lower than 700 may be impossible due to the number of incoming cases and statutory time periods involved with processing most cases.

There was mention of the fact that whilst the Commission are on one hand trying to reduce the caseload on the other it is pursuing a higher caseload, by chasing up crofters that are in breach of their duties. Some Commissioners commented on the value of the Residency and Land Use work and the need for this to be sustained over long timescales. There were also comments from Commissioners about the importance of positive communications and whether more could be done on this.

Director of Operations gave further information about what steps are being taken to speed up regulatory casework and how the caseload could be appraised in terms of cases that have already exceeded their expected duration as an alternative measure of Commission operational performance.

There were several comments on managing expectations with regards to casework. The Board noted that they would like further consideration and discussion on this. Commissioner Gray raised that he would like to know the breakdown of outstanding cases specific to his area. Some other Commissioners commented that they thought this would be useful.

There was some discussion about whether further emergency measures should be considered but also the view that staff should be left to get their heads down. There were comments that Commissioners would appreciate views from staff in the regulatory team.

There is unease amongst the Board about the outstanding casework figures and future trends. Commissioners agreed to review this again at the October Board meeting.

Action 7	***Draft paper on Comms Plan needed to manage customer expectations, promote good news stories and highlight work of RALU team.***

Action 8	***Draft paper on how to provide analysis for elected Commissioners showing caseloads by area, highlighting 'hard' cases.***

16   Abusive Callers – Policy and Process Update

The paper was noted by the Board without further discussion.

17   Convener Report on Appraisals

The Convener was not available so it was agreed the paper could be revisited at a future Board meeting.

Action 9	***Forward Paper 17 to December Board Planner (Commissioner Appraisals).***

18   Report on Meetings with Sponsor Division

The paper was noted by the Board without further discussion.

19   DATE OF NEXT MEETING

The next meeting will be held in Great Glen House on 4 October 2023.

20   ANY URGENT BUSINESS

No urgent business was raised and the Chair closed the public session of the meeting at 12.45pm.

21   EXCLUSION OF THE PRESS AND PUBLIC

The Acting Chair thanked everyone for their efforts and contributions throughout the day and closed the meeting at 14:52.