

CROFTING COMMISSION

MINUTE OF THE COMMISSION MEETING HELD BY 'TEAMS' AT 9AM, 8 FEBRUARY 2022

Present: Malcolm Mathieson Convener
Mairi Mackenzie Vice Convener
Andy Holt Commissioner
Archie Macnab Commissioner
Iain Maciver Commissioner
David Campbell Commissioner*(From Agenda item 5)
Billy Neilson Commissioner
Cyril Annal Commissioner

Bill Barron Chief Executive
David Findlay Commission Solicitor
Joseph Kerr Head of Regulatory Support
Neil Macdonald Head of Finance
Heather Mack Head of Operations: Regulation
Aaron Ramsay Head of Digital & Improvement
Finlay Beaton Head of Grazings & Planning

Members of staff, Scottish Government officials, and
the public (Open Session)

Minute Takers

Neil Macdonald Agenda items 1-12
Heather Mack Agenda items 13-20
Bill Barron Agenda item 21
Aaron Ramsay Agenda items 22(a)-(h)

1 APOLOGIES AND WELCOME

The Convener welcomed everyone to the meeting, including the staff, and members of the public observing, with a greeting in Gaelic, followed in English. Apologies were received from Commissioner James Scott and from Jane Thomas, Head of Business Support & Compliance.

2 DECLARATION OF INTERESTS

The Convener asked if anyone had any declaration of interests that they wished to inform the meeting of. No declarations were recorded.

3 BOARD MINUTES FROM 3 DECEMBER 2021

The Board Minutes of 3 December 2021 had previously been circulated and approved, and subsequently published. They were brought to the meeting for information only.

4 REVIEW OF ACTION POINTS FROM PREVIOUS MEETING 3 DECEMBER 2021

The majority of the Action Points have been completed, and the Chief Executive confirmed he was comfortable that the remaining two Actions would be discharged by March 2022.

5 MATTERS ARISING FROM PREVIOUS MINUTES

There were no Matters Arising.

6 ANNUAL REVIEW OF STANDING ORDERS

The Standing Orders governing Commission meetings were reviewed by the Board on 3 December 2021. The Head of Business Support & Compliance had been asked to make several revisions.

The Board engaged in a robust discussion of the revised Standing Orders and proposed amendments. The Convener also referred to a detailed written submission from Commissioner Scott that was received prior to the meeting, that highlighted a number of recommendations including ensuring greater transparency regards the appointment of the Vice Chair of the Commission's Audit & Finance Committee.

The Convener highlighted that the aim of the review was to ensure that the Standing Orders were as unambiguous as possible to ensure the orderly and effective conduct of formal meetings of the Crofting Commission and of its constituted Audit & Finance Committee.

The changes proposed were accepted. In addition, the following recommendations were approved by either unanimous agreement or a majority consensus:

- **Section 2.6** – There was an in-depth discussion regards what constitutes an informal meeting between Commissioners, and a private meeting of the Board. For transparency purposes, it is important to distinguish between an informal catch-up between Commissioners and a specific private meeting of the Board. The consensus summarised by the Convener was that Section 2.6 should be adopted without adjustment and it was ultimately the Convener's responsibility and judgement to decide what should be recorded if a substantive discussion has taken place.
- **Section 2.8** – This section should also refer to Commission staff to ensure that there is not a two-tier system regards the submission of an agenda item. Agreed to amend third sentence from "*A Commissioner.....*" to "*Anybody.....*".
- **Section 2.9** – p "*(with the decision of the Chief Executive on the matter being final)*". Replace '*Chief Executive*' with '*Convener*'.
- **Section 2.9** – Concerns were raised within Commissioner Scott's written submission and by Commissioner Campbell that the scheduling of urgent business under '*Any Other Business*' should only be used in exceptional circumstances. A general discussion ensued and the Convener agreed that requests for an agenda item that are received 14 days prior to a meeting will be specifically detailed within the agenda, as per the current Standing Orders, rather than placing it under 'AOB'. Any urgent requests received after this timeline and approved for inclusion will whenever possible be added to the face of the agenda as an item, to ensure that Board Members are aware of issues in advance of a meeting.
- **Part 4 – Commission Committees:** It was agreed that there needs to be an unambiguous process regards appointing Members to the Audit & Finance Committee (AFC) and the selection of a Vice-Chair of the AFC. It was agreed that in future the Board would appoint a Commissioner to be Vice-Convener of the

Board and Vice-Chair of the AFC. Commissioner Mackenzie stated that this would be beneficial to whomever holds the role of Vice-Convener as they will have a clear understanding of AFC governance that will assist with future strategic decisions. The decision also provides transparency within the Board when considering the appointment of a Vice-Convener as the role will automatically include the expectation of 'heading up' the AFC. Advice should be sought to assure the Board that this decision does not contravene good governance principals.

Footnote to Minute:

N.B. On circulation of the draft Minute, four Commissioners did not agree that the point raised on Part 4 of Standing Orders, on the position of the Vice Convener and membership of the Audit & Finance Committee, had been agreed as recorded. This issue will therefore be raised under Matters Arising at the public Board meeting on 31 March 2022.

7 UPDATE ON MEETINGS WITH SPONSOR DIVISION

The Convener referred to the paper provided by the Chief Executive to the Board, itemising recent meetings between the Commission and Sponsor Division. The Chief Executive directed the Board to the agenda items within the update regards meetings with the Cabinet Secretary and Sponsor. He noted that these meetings provided both support and also the scrutiny of the Scottish Government.

While acknowledging that the minutes issued from such meetings were drafted by Sponsor, Board Members raised concerns that there could be a substantial delay between meetings and receiving feedback. The Convener acknowledged that it had been his undertaking to provide a bullet point update to Commissioners after such meetings, and in the future would do so within 5 working days.

Commissioner Holt queried why the Scottish Government was not moving more swiftly to recruit suitable expertise for appointed Commissioner positions within the Board? The Convener confirmed that there were a number of governance steps that had to be completed to ensure that such appointments are fair and transparent. Along with Sponsor Branch, input is required from other departments such as the Public Bodies Unit. The appointment process was on schedule, and it is anticipated that candidates will have been identified by the middle of March, with interviews in early April, with the anticipation of post holder(s) being in place by May 2022.

The Chief Executive added that there was interplay between the crofting elections and Scottish Government appointments. Dependent upon the outcome of the democratic election process, skill sets had to be balanced within the appointment process (for example ensuring a Gaelic speaker is represented within the Board).

In summary, the Convener advised the Board that the Cabinet Secretary is being incredibly supportive of the Commission.

8 AUDIT & FINANCE COMMITTEE REPORT

(a) Update

Commissioner Neilson, in his role as Vice-Chair of the AFC, provided a brief update to the Board. He confirmed that the AFC were satisfied with the level of detail being provided within papers. Overall External Audit (Deloitte LLP) and Internal Audit (Azets Ltd) were satisfied with progress to date, but the caveat being this is subject to the scrutiny of evidence within agreed audit plans.

Commissioner Neilson advised the Board that staff turnover remained a key risk to the Commission with regard to the efficient and effective use of resources.

(b) Draft Minutes from 26 January 2022

The Head of Finance summarised each of the agenda items contained within the draft AFC minute from 26 January 2022.

There were no specific material comments on the content of the minute.

The Convener urged Commissioners to complete the 'Board Member Self-Assessment Questionnaire' timeously.

9 CONVENER REPORT ON APPRAISALS

The Convener advised that the initial documentation has been completed for all Board members. He emphasised that each appraisal was confidential, the detail of which is only available to the Commission Head of Compliance who secures the information. It has been an interesting but difficult process to date given the restraints of Covid.

In response to Commissioner Campbell's query whether the Convener viewed the process as complete, the Board was advised that it is the intention of the Convener to physically meet with individual Board members (where practicable) by the beginning of March 2022 to finalise the process.

10 REVIEW OF QUARTER 3 – 2021/22 PERFORMANCE REPORT

The Chief Executive introduced the Q3 Performance report and highlighted 'red' and 'amber' indicators to the Board. It has been a difficult year to date regards staff turnover, which is the primary reason for the readjustment of expectations.

The Board was advised that there will be a lead in time regards reducing the regulatory backlog. Plans were in place regards the recruitment and training of staff, with five A3 Regulatory Administrators arriving on Monday 14 February 2022 as the first stage of a material recruitment package.

The majority of Commissioners raised concerns regards the current position of the regulatory backlog, which can be broadly summarised as follows:

- While welcoming the initial recruitment, the Board is aware of the continuing stress levels on Commission staff, particularly as there will be a training lead in time before recruitment has any significant impact upon workloads.
- The Commission's focus should be primarily on managing the backlog of regulatory applications, and resource should be focused within this operational area from other areas of the Commission.
- The Board is aware of the stress within the crofting community regards the extended timelines to process applications, and also the associated reputational damage for the Commission.
- The Commission needs to ensure that new colleagues are provided with support as crofting regulation is complex.
- The Board has to be clear regards setting the priorities and direction of the Commission. Various Board members have pushed for a resource review in recent years, and while the Commission budget has been increased for 2022/23, the Board must ensure that it continues to have constructive dialogue with the Scottish Government. (The current regular meetings between the Convener and the Cabinet Secretary for Rural Affairs & Islands being an example).

- The independent workforce review of the Commission, undertaken in Quarter 3, details a medium to long term outlook regards managing applications, but the Board is concerned about the short to medium term, and how these pressures will be addressed.
- The Board will review the additional resource and Senior Management re-structure proposals detailed within the agenda and direct the Chief Executive and Convener as a matter of priority to submit a detailed business case to the Scottish Government to secure full access to the draft budget outlined by the Scottish Parliament for 2022/23.
- The Commission must manage the expectations of the crofting community.

The Convener summarised the discussion stating that the Commission has to move forwards. The independent staffing review has provided valuable information which is being acted upon. In addition, the Commission is focusing upon more streamlined working practices, such as the introduction of online regulatory applications. The Board is clear that the short-term priority of the Commission must be on managing casework response times and redeploying more resource from other areas of the Commission's operations as necessary to achieve this.

11 STRATEGIC RISK REGISTER

The Chief Executive introduced a refreshed Strategic Risk Register which has incorporated Deloitte recommendations and current Scottish Government best practices regards how risks are captured.

The Convener summarised the presentation and the Board had no additional comment from what was covered within Agenda Item 10. The Chief Executive acknowledged the concerns of the Board and undertook to ensure that Commissioners are regularly updated regards regulatory application response times.

The Board noted the report.

12 INTERNAL AUDIT REPORT ON HOME WORKING

The Chief Executive advised the Board that the audit was generally favourable.

There were a number of good practice points such as a governance group managing issues as they arose during uncertain times, the underpinning work to move IT processes to the cloud and a range of IT equipment available on request.

Areas identified for improvement include the development of a framework that can provide assurance to the Commission that home working challenges are being monitored. Sample testing by the audit manager reflected that staff were receiving support, but actions should be captured in a manner that is straightforward to scrutinise within an overall framework.

The Board discussed home and office working in relation to the wellbeing and performance of staff. The Chief Executive advised the Board that the future preference for the majority of colleagues was a hybrid working pattern between home and the office. This is an issue that the Commission is monitoring (along with other public bodies). It is a case of getting the balance right between working productively and offering terms and conditions to secure the highest calibre of staff as vacancies within the Scottish Government become more location neutral and therefore more attractive to existing colleagues and potential recruits.

The Board noted the report.

13 CENSUS DATA – HOW INPUT IS USED

The Commission solicitor introduced the paper and gave an overview of how the data is used. The data is used directly by the Residency and Land Use team to take action in certain instances where duties are not met. It is also used for Commission records, and updates are valuable especially in cases such as where crofters have died. This has meant there has been improvements in data quality since the Annual Notice started.

Head of Digital gave an update on the current census which is live and has seen 4807 (35%) returns so far. If crofters have any difficulties with the digital return, they have the option of calling the Commission and this has been well received. The team have been making phone calls to crofters who have not returned their census for 3+ years and have adjusted their approach in response to feedback by extending calls into the evening and looking to update the area code.

There was some discussion from Commissioners about the length of time given to complete the census, with some views that it was too long.

14 EXTENDING THE SCHEME OF DELEGATION ON DDM

Head of Regulatory Support presented the paper and explained that delegated decision making had been an evolving process since it first came in in 2015 as a pilot. The paper outlines the extension of the functions to delegation.

Registration forms are processed by the Commission for the Crofting Register held by Registers of Scotland. These require a decision as to whether they are forwarded, more information requested or refuse to forward. The Board agreed to the delegation to Tier 2.

Regarding duties enforcement, Head of Regulatory Support explained the proposal to delegate to officials. This is for instances when the person doesn't provide an undertaking to meet their duties or doesn't meet an agreed undertaking. Letting and division may then be considered in these cases. There were some queries and discussion from Commissioners and the Board agreed to the proposal.

For whole croft decroftings this is something the Board has been very consistent on, so it is logical for this to be delegated since the parameters are clear. Additional recent refusals which have been taken at Tier 3 will now be taken at Tier 2 following an update of the Commission guidance on this. The board agreed to these proposals.

15. RE-APPOINTMENT OF GRAZINGS COMMITTEES

Head of Grazings and Planning introduced the paper and explained that the use of the provision in 47(3) Crofters (Scotland) Act 1993 had allowed the continuation of grazings committees over the period of the pandemic. He posed the question to Commissioners whether they want to continue with this option over the coming months. Several Commissioners commented that it had been valuable, but it is also good to get back to normal. There was agreement that it would be continued for now and will be reviewed again in April by Head of Grazings and Planning.

16. WORKFORCE PLAN

This was discussed very briefly and the Convener noted that key questions would be considered in the private session of the meeting.

17. UPDATE ON DELOITTE RECOMMENDATIONS

Head of Finance gave an oral update on the 41 recommendations that stemmed from the Deloitte audit report. He noted that there remained six outstanding actions. A brief discussion followed about it including what qualifies an action to be confirmed as done.

18. UPDATE ON AZETS REPORT ON CIS

Head of Digital gave an update on action against the recommendations from the Azets audit report on CIS. He noted that there had been a considerable delay around appointing a product owner and this was because the post required someone with an in-depth knowledge of CIS and there had been difficulties in releasing from casework given the backlog issues.

19. DRAFT BUSINESS PLAN

The Convener introduced the paper and noted that it was scheduled to come to the Board, but that it is really for the next Board to consider at the next meeting, after the elections. There was a brief discussion about the corporate outcomes and that the third one (crofting is regulated in a fair efficient and effective way) should take top priority. The Chief Executive noted that this outcome may be split into two in the next Corporate Plan, to cover both delivery and IT or other improvements.

20. DATE OF NEXT MEETING

The Convener noted the date of the next meeting as 31 March 2022 and proposed that it be held as a face to face meeting. There was agreement from several Commissioners.

21 ANY URGENT BUSINESS

Acknowledging that this item had been requested more than 14 days before the meeting and therefore should have been an agenda item in its own right, the Convener invited Commissioner Campbell to raise his concerns about reputational damage to the Crofting Commission.

Commissioner Campbell was very concerned that the Commission's automatic reply does not commit to responding to enquiries within 20 working days, but now only says that we will aim to respond in that timescale. He asked when this change had been made, and said that it put the Commission in a very poor light, if we could not even commit to answering queries within 4 weeks.

Several other Commissioners said that they agreed. Commissioners (including Commissioner Campbell) emphasised that this was not a criticism of the regulatory staff whose work under great pressure was much valued; but there was great frustration on the Board that response times to casework and enquiries were not much better. Commissioner Holt suggested that a news release would be an effective way to let all crofters know about the difficulties being encountered and the steps being taken to remedy the situation.

The Chief Executive explained that the change to the automatic response had been made in August, by which time the amount of live casework was making it unrealistic to commit to replying to all enquiries in that timescale; and since then, the position had only got worse, due to further staff turnover. The only real solution was the planned sustained increase to the capacity of the regulatory team, which will begin with the recruitment of

several new administrators next week. Meantime, he had discussed the problem with frontline staff who had emphasised that many general enquiries are complex and the time taken to investigate and answer them detracts from progressing casework itself. The Chief Executive believed that staff themselves were in the best position to judge how to prioritise their work, and that insisting on a strict 20-day deadline for responses would be counterproductive. When casework was more under control, a firmer commitment to 20 day responses to enquiries could be re-introduced.

The Head of Operations said that many general enquires did get responses well within 20 days and that she was in discussion with the Customer Services team to improve this as far as possible.

The Convener said that whenever management were considering changes to communications about the Commission's standard of service, these should be seen by the Board before they are implemented – because these can have a strong impact on the way the Commission is perceived.

The Chief Executive agreed to review the wording of the current automated response.

22 EXCLUSION OF THE PRESS AND PUBLIC

The Convener thanked everyone for their participation and closed the meeting at 1640hrs.