

**MINUTES OF THE MEETING OF THE POLICY MEETING ON FRIDAY 28  
SEPTEMBER 2007, 10:00, PORTLAND HOUSE  
FOR DISCLOSURE VIA THE PUBLICATION SCHEME**

In line with the Commission's Disclosure policy, various paragraphs have been edited or deleted from these minutes as the information contained therein relates to specific case information and/or personnel related matters. Where the summary of discussion has been edited, this is indicated at the start of the relevant paragraph or section.

Present:

The Very Reverend Graham Forbes, Chairman  
Mr David Belfall  
Mr James Mackay  
Mr Robert Anthony Q.C.  
Mr Gerard McClay  
Mr Gerard Sinclair, Chief Executive  
Mr Chris Reddick, Director of Administration

Mr Robin Johnston, Senior Legal Officer  
Mr Andrew Beadsworth, Legal Officer  
Mr Michael Walker, Legal Officer  
Mr Gordon Newall, Legal Officer  
Mr Daniel Fenn, Legal Officer  
Mr Jim McShane, Legal Officer  
Miss Mary Frances Ralston, Legal Officer

**Apologies**

Sir Gerald Gordon Q.C., Mr Graham Bell Q.C., Professor Brian Caddy and Mr Stewart Campbell had submitted their apologies.

**Minutes**

The minutes of the previous Policy Meeting, held on 21 December 2006, were issued for information, having previously been approved by the Board on 23 February 2007.

**Matters Arising**

Mr Belfall asked if any information regarding data protection retention periods had been obtained from Mr Mullan as referred to in 3.1 of the minutes. Mr Sinclair confirmed that this matter had been discussed with Mr Mullan prior to his departure from the Commission and considered within the Retention Policy.

Mr Belfall referred to 5.3 of the minutes and requested an update on data collection and reporting in relation to equalities. Mr Reddick confirmed that the 2006-07 annual report made specific reference to gender equality of applicants and steps to be taken by the Commission to address. He also

confirmed that more analysis would be taken forward during the year with regard to ethnicity, using data collected on application forms and general demographic information in relation to Scottish population and Scottish prison population.

### **Judicial Reviews (edited)**

Mr Sinclair provided an overview of four current judicial reviews, noted that legal aid had been granted in two cases, one case had an initial hearing date set and the remaining case was calling at the inner house.

Mr Sinclair confirmed that Mr Moynihan Q.C. had again been instructed to act for the Commission. Mr Sinclair also noted that the increasing number of judicial reviews made it important that the Commission ensures consistency of both decisions and approach to judicial review. He also noted that Solcase would be developed further in order to specifically deal with future judicial reviews.

Mr Beadsworth confirmed that another previous case had been refused legal aid to seek judicial review of the Commission's decision.

### **Matrix Management & Performance Reporting**

Mr Sinclair referred initially to the copy letter from the Permanent Secretary, Sir John Elvidge, which had been issued with the discussion paper on Matrix Management. He explained that the letter basically set out the reasoning behind the change of name and structure of the Scottish Executive to the Scottish Government, with more focus on the delivery of the Government's five strategic objectives rather than day to day management of departmental policies. He summarised the strategic objectives which aim to build a Scotland which is:

- Healthier;
- Wealthier and fairer;
- Greener;
- Smarter; and
- Safer and stronger.

Mr Sinclair then went on to explain the concept of matrix management and how this could be adopted within the Commission to provide clearer links to the Scottish Government's strategic objectives as well as the Commission's objectives and commitments in terms of customer delivery etc. Having said all of that, he was not recommending a formal matrix management structure for the Commission as, in his view, the organisation was too small.

Mr Sinclair went on to suggest that the Commission's achievement of objectives which relate to 'social delivery' could be enhanced significantly as part of potential research and development activities, such as proactive involvement in development and review of legislation based on the Commission's experiences over the first ten years.

Mr Belfall confirmed that Mr Sinclair's approach appeared sensible, particularly in relation to the ongoing review and involvement in wider issues. He agreed however that the Commission was possibly too small to apply such a structured matrix management approach. Mr Mackay also noted that Mr Sinclair's proactive approach was very encouraging, although reiterated Mr Belfall's comment that the methodology was more appropriate for larger organisations. After discussion it was agreed that the Board should revisit these issues on an ongoing basis.

Mr Sinclair continued by relating the matrix management issues to research and development activities, separately listed at item 10 on the agenda, suggesting that they be discussed together as this would clearly show the purpose behind taking forward such activities. He referred to recent section 275 themes as a recent example of where the Commission could make comment and potentially be involved in a suitable arena/forum for discussion.

Provost Forbes referred to the Commission's objective of 'enhancing public confidence,' suggesting that this was a different and more complex issue to address. Mr Belfall suggested that this could be covered more fully in future annual reports, by identifying issues and legislative matters which appear to be problematic etc. Provost Forbes also suggested that such research information could form the basis for some form of published academic papers.

Mr Sinclair highlighted that the Commission was approaching its 10<sup>th</sup> anniversary and that the planning for any events or associated research projects would need to commence soon. He suggested that a possible 9 to 12 month research project, providing an in depth look at cases, might be valuable and may also provide useful information and questions relevant to the development of the criminal justice system. He also confirmed that this would potentially require Criminal Justice Directorate budgetary support and approval for external independent review.

A full discussion was then held in relation to areas of the law/legal system where the Commission's knowledge and experience could be extremely useful. Provost Forbes identified the Law Commission's review of the law on rape as an example. Mr Walker referred to Lord Emslie's comments in his recent judicial review judgment concerning the Commission's statutory function and moving away from its legal tests. He suggested that such research and development activities may strengthen such opinion. Mr Beadsworth highlighted "disclosure" as being a prime example of where the Commission's experiences would be valuable in future development.

Mr McClay questioned if the Commission currently provides input on proposed Acts, Bills or Consultation Papers relevant to the workings of the Commission. Mr Sinclair confirmed that it does when given the opportunity.

Provost Forbes referred back to the Commission's 10<sup>th</sup> anniversary commenting that a reflective and external review would be very beneficial, although setting the parameters of such a review would be very important. Mr

Johnston, referring to Professor Caddy's research and development paper, agreed that a key factor would be in defining the parameters of the review.

Mr Sinclair agreed that external involvement in such a project would bring additional benefits and credibility and he agreed to consider further along with the Commission's overall performance objectives, reporting back to the Board in due course.

Mr Reddick referred to the draft Quarterly Performance Against Key Objectives Report which had been issued with papers. He confirmed that this had been drafted in order to satisfy an internal audit recommendation arising from their review of the sponsor team. The main aim of the report is provide the sponsor team with quarterly performance updates on all areas covered within the Commission's key objectives. Historically, quarterly meetings have focused on financial and case management performance. He also confirmed that this report would be an exception report, ie providing additional performance information when and where there were updates.

On the basis that the Board Members were content with the draft report format, Mr Reddick confirmed that he would present this to the next quarterly meeting with Criminal Justice Directorate for comment as well as circulating it to internal audit for review.

#### **Draft Protocol with Scottish Police Forces (Disclosure)**

Mr Sinclair confirmed that the draft protocol was not back from ACPOS. He proposed that the protocol be discussed later in the meeting if there was any impact from discussions concerning items 7 and 8.

#### **Police & Crown Access to Sensitive/Classified Information (edited)**

Mr Sinclair referred to the distributed papers and in particular the handling of Crown Office's request to obtain details of documentation referred to in the statement of reasons produced by the Commission in its review of a case. He also discussed the response drafted by Mr Beadsworth and the amount of work involved in putting together the itemised list of documents. It had previously been agreed by the Board to respond to Crown Office in this manner because of the urgency of their request and then to further consider the policy for this type of request at the Policy Meeting.

Mr Beadsworth suggested that the Commission now needs to be in a position to effectively deal with such requests, in compliance with disclosure obligations. A full discussion followed on what the Commission's obligations were with regard to the disclosure of information, particularly in relation to third party references. After further discussion it was agreed that the Commission's policy to such requests should be considered further and drafted.

Mr Sinclair referred to the administrative processes required to deal with such requests in future. He suggested that this would create additional work for staff

in terms of itemising materials as they are received or classifying them under various categories of documents. Mr Sinclair also noted that it was important to develop consistency under the Commission's confidentiality and disclosure obligations.

After further discussion it was agreed that the Commission's retention policy should be reviewed, with particular emphasis given to the electronic storage of documentation, and return of documentation to source.

### **Crown Office Redactions (edited)**

Mr Sinclair referred to a set of copy letters distributed with papers which showed the ongoing correspondence between the Commission and Crown Office regarding its disclosure to SCCRC. He confirmed that the key issues related to the supply of documents by the Crown which are being heavily redacted.

Mr Sinclair summarised the ongoing communication with Crown Office and set out the implications to the Commission of their current approach. A full discussion took place regarding Crown Office's approach and the course of action to be adopted by the Commission.

Mr Sinclair stressed his concern that treatment on a case by case basis would possibly impact on review timescales. He also referred back to the draft protocol and the impact of different freedom of information requests. He reiterated Strathclyde Police's aim of enhancing consistency of approach across FOI Officer and suggested that getting Crown Office involved in the process may build up confidence in this area.

Mr Belfall referred back to the Crown Agent's response to Mr Sinclair's communications and suggested that Crown Office need to be challenged directly at the next such occasion. After further discussion it was agreed that Mr Sinclair should contact Crown Office outlining the Commission's position and indicating that the Board is seeking a response from Crown Office for the October Board meeting. Otherwise it should be made clear that the Commission intends to challenge the Crown in court.

### **Case Handling Procedures**

Mr Sinclair confirmed that the Commission's Case Handling Procedures would need to be reviewed and updated to take account of all discussions and agreement from today's Policy Meeting. He also confirmed that as part of the review of these procedures, updates would be made as necessary to template letters and documents as well as implementing any necessary system changes to Solcase.

Mr Sinclair also confirmed that additional enhancements to Solcase would be considered further and details of which would be reported back to the next Policy Meeting in December.

## **Research & Development & 11.0 Staffing Structure**

It was agreed that the topics of research & development and the Commission's staffing structure would be further discussed at the next Policy Meeting scheduled for December 2007. Provost Forbes did however reiterate the Board's commitment to external research and development as part of the Commission's 10<sup>th</sup> anniversary.

## **High Court Decisions since Policy Meeting on 21 December 2006**

Mr Sinclair provided an update on High Court decisions issued since the date of the last Policy Meeting as follows:

- Case of Raymond Gilmour – successful, conviction and sentence quashed.
- Case of John Angus – successful, sentence reduced.
- Case of James Robertson – appeal abandoned.

## **Any Other Business**

Mr Reddick and Mr Fenn confirmed that the Appeals Team were now getting email notification regarding Commission referrals in order to facilitate timely victim notification.

## **Date of Next Meeting**

It was agreed that the next Policy Meeting would be held in December 2007, proposed dates for which to be distributed and agreed.

**CHRIS REDDICK**  
**10 OCTOBER 2007**