

SCOTTISH CRIMINAL CASES REVIEW COMMISSION

MINUTES OF THE MEETING OF THE BOARD ON FRIDAY 30 MAY 2008 9:30 AM, PORTLAND HOUSE FOR DISCLOSURE VIA THE PUBLICATION SCHEME

In line with the Commission's Disclosure policy, various paragraphs may 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
Sir Gerald Gordon Q.C.
Mr Graham Bell Q.C.
Professor Brian Caddy
Mr Stewart Campbell
Mr Gerard McClay
Mr Gerard Sinclair, Chief Executive
Mr Chris Reddick, Director of Corporate Services

Apologies

There were no apologies.

Minutes

The Board approved the minutes of the Board meeting held on 25 April 2008. The Board also approved the version of the minutes for the Publication Scheme, subject to minor amendment.

The Board approved the minutes of the Remuneration Committee meeting held on 25 April 2008, subject to minor amendment.

Matters arising (edited)

Mr Sinclair confirmed that he had issued a further letter to the MSP who was acting on behalf of one of the applicants, following their meeting at the Commission on 28 March 2008, requesting a response to his previous communications by 26 June 2008.

Chairman's report

Provost Forbes confirmed that in-depth appraisals had now been completed for all of the Board Members.

Provost Forbes advised Members that Professor Graham Zellick, of the Criminal Cases Review Commission, would be sitting on the sift and interview panel for the current Chair and Board Member recruitment exercise.

Provost Forbes confirmed that he had accepted an invite from OCPAS to participate in a diversity awareness exercise.

Chief Executive's report

Mr Sinclair provided the Board with an update as follows:

- Mr Sinclair confirmed that Mr Reddick and he had attended a quarterly meeting with CJD on 1 May 2008.
- Mr Sinclair confirmed that he had met with Professor Chrisje Brants, from the University of Utrecht, on 21 May 2008 to discuss the operation of the Commission. He also confirmed that he had extended an invite to Professor Brants's students to visit the Commission later in the year.
- Mr Sinclair confirmed that Mr Fenn and he had attended a meeting with Tayside Police on 22 May 2008.

Mr Sinclair confirmed that he had issued a response to the SLC consultation exercise on 8 May 2008, a copy of which had been circulated to Members. Mr Belfall queried if the response had been issued in a personal or Commission capacity. Mr Sinclair advised that he had not identified it as a formal Commission response, although the response was issued by him to reflect the thoughts of the Commission, and were non-contentious. After a full discussion about future input into consultations it was agreed that respondents should use a personal disclaimer unless the response has been approved by the Board in advance of issue.

Mr Sinclair advised Members that Criminal Justice Directorate (CJD) were in the process of revising the Criminal Law (Consolidation)(Scotland) Act 1995 to adjust the procedure for cases referred by the Commission. He provided Members with an overview of the proposed amendments and confirmed that he had passed back his initial comments on the amendments to Mr George Burgess, noting that the initial draft was possibly too restrictive. The initial proposal was to restrict grounds of appeal solely to the Commission's grounds of referral. Mr Sinclair confirmed that this would be discussed further with CJD at the next quarterly meeting.

Mr Sinclair confirmed that the Commission's new application and information packs had been produced and circulated copies to Members.

Mr Sinclair provided an update on procedural hearings, which was noted by the Board.

The Board subsequently met as the Remuneration Committee to discuss annual appraisals. A separate minute was taken.

Subject Access Request (edited)

Mr Walker and Mr Johnston joined the meeting at this stage to discuss a subject access request from an applicant. Mr Walker had prepared and circulated a report on this request, which he summarised, outlining the Commission's current policy on disclosure and treatment of subject access requests in the past. Mr Walker specifically outlined the current approach to the refusal of such requests using the Commission's own legislation and Section 29 of the Data Protection Act 1998. This matter was debated by the Board and Mr Bell Q.C. agreed to review the matter in more detail and provide an update.

Mr Johnston outlined previous attempts by the Commission and CCRC to resolve this type of issues through a specific provision within the DPA. He confirmed that a previous attempt had run out of Parliamentary time and suggested that this should be taken forward again as a long term solution. He also set out the issues in respect of Data Protection arising from the Commission's planned research project and confirmed that the Commission's DP registration would need to be updated.

2007-08 Annual Report

Mr Sinclair provided the Board with an overview of the Commission's performance against its key targets, confirming that the review targets for both conviction and sentence cases had not been met, albeit by 0.2 and 0.1 months respectively. He identified that a significant contributory factor for these results was the delay in obtaining materials from Crown Office, whereby the average time from request to receipt of materials was in the region of 11 weeks, instead of the maximum 6 weeks. Mr Sinclair confirmed that this clearly had a knock on effect on Legal Officers' ability to complete reviews within target timescales, especially with regard to sentence cases. He also confirmed that this matter had been raised with Crown Office, which had been resolved positively and would now be monitored closely. Mr Campbell suggested some amendments to the wording of this section within the annual report and agreed to pass these suggestions on to Mr Reddick.

Mr Sinclair circulated an insert in relation to defective representation which was proposed to be inserted within the trends section of the annual report. He confirmed that this had been an area for numerous FOI queries over the past few months and given that 19% of applications claim defective representation, with only 5% of referrals based on this point, that a section within the annual report was appropriate.

Mr Belfall referred to the paragraph on forensic evidence and queried who the intended audience was for this information. Professor Caddy provided an update on this section which he had drafted. He confirmed that the points raised were general observations in relation to the use of forensics from case reviewed by the Commission. He also confirmed that it would be useful if copies of the annual report were issued to investigators and police forces.

Mr Reddick provided the Board with an overview of the main sections within the annual report and requested that any subsequent updates or suggested changes be passed to him by 4 June 2008 at the latest, so that these could be incorporated into the final version to be sent to the printers. He also confirmed that the annual accounts section, including the independent auditors statement, would be signed off on 4 June 2008 following the meeting of the Audit Committee.

Corporate Plan – 2008-09 Update

Mr Reddick provided the Board with an overview of the revised Corporate Plan, which had been updated following the completion of 2007-08, and included details of targets, objects and general performance during 2007-08. He confirmed that the Corporate Plan would also be updated with year end figures for 2007-08, once the annual accounts for the year have been signed off, and an updated copy of the Commission's Corporate Risk Register, following Audit Committee approval on 4 June 2008.

Mr Belfall referred to Annex 2 of the Corporate Plan, highlighting the increase in the unit cost figure for 2007-08. Mr Reddick confirmed that the increase in unit cost was primarily a direct result of the decrease in cases received during the year and the relative increase in expenditure resulting from the capital improvement works undertaken during 2007-08. He also confirmed that the proportion of cases being accepted for full review during the year had increased, resulting in less cases completed at the initial application stage and having a subsequent knock on effect on the unit cost figures.

In relation to staffing, as set out within the Corporate Risk Register, Mr Sinclair confirmed that Mr Fenn had been offered a secondment opportunity with the PDSO, subject to interview. Mr Sinclair also noted that other Commission staff were considering external opportunities.

After further discussion it was agreed that the Audit Committee should consider the Corporate Plan at their meeting on 4 June 2008 and report back to the Board.

Research & Development

Mr Sinclair provided the Board with an update on the research project, confirming that a full tender document had been prepared, which set out the scope of the project as well as the anticipated timescales etc. Mr Sinclair agreed to circulate copies of the tender document to the Board.

Mr Sinclair confirmed that after full consideration of the skills required, four researchers had been approached and requested to submit notes of interest/proposals within a 14 day period. He also confirmed that he hoped to be in a position to make a selection by mid June 2008. Mr Sinclair also confirmed that the completion dates were included within the tender document, whereby the final report is required by 31 March 2009 and available for the Commission's 10th anniversary.

Charter Mark Application Update

Mr Reddick confirmed that the Commission's Charter Mark application form had been submitted and the date of the on site assessment had been set for 26 June 2008. He confirmed that as part of the assessment, the assessor would need to speak to a sample of Board Members, although this could be done over the telephone. Mr Reddick confirmed that he would contact Board Members nearer the time to check their availability.

Commission Calendar – July to December 2008

A copy of the draft Commission Calendar for July to December 2008 had been issued with papers. Mr Sinclair reiterated that dates were draft and that changes could be made subject to Member's approval.

Notification by Commissioners of non-case related work requiring Board's approval

It was agreed that Board Members attending the Commission talks/seminars were entitled to claim relevant travel expenses and hourly attendance rates.

It was also confirmed that Provost Forbes had completed Members' appraisals.

Training & Development

Since the last meeting of the Board the following training had been undertaken by staff:

- Mr Moynihan Q.C. had given a talk to Members and staff on 23 May 2008.
- Mr Fenn had attended a Viper Parade on 20 May 2008 in Glasgow.
- Mr Johnston and Ms Ralston had attended a Human Rights seminar in Edinburgh on 19 May 2008.

Cases (edited)

New applications

Five new applications had been received since the last meeting of the Board. In addition two continued applications were also considered by the Board. Of these, two were accepted for review of sentence alone; and one was accepted for review of conviction alone. Three cases were rejected on the basis that there were no new grounds of review. One case was continued for one month in order to obtain additional information

Target cases

Mr Sinclair discussed the cases listed on the target case report which were duly noted by the Board.

Notification of cases where final decisions have issued since the last meeting of the Board

The Board noted that a final decision had issued in two cases since the date of the last meeting:

Notification of decision cases agreed at previous meetings of the Board but not yet issued

There were no cases in this category.

Referral Press Releases issued since last meeting of the Board.

There were no referral press releases issued.

Requests for extensions of time

The Board approved two requests for extensions of time, both for a period of four weeks

Want of insistence cases

There were no cases in this category.

Conflicts of interest noted since the last meeting of the Board

There were no conflicts noted since the last meeting of the Board.

Discussion cases

The Board discussed one case in detail. After full discussion, the Board agreed that their decision should be based on all available information in the case, and that the Legal Officer should update the statement of reasons not to refer on this basis and present the updated version to the Board in June 2008.

Decision cases

The Board considered nine statements of reasons and decided that interim decisions not to refer the case to the High Court should be issued in respect of eight of these cases. The Board agreed that the other case should call at the meeting of the Board in June for a decision once additional case information had been received and considered.

The Board considered two supplementary statements of reasons and decided that in both cases final refusal letters should be issued.

Any Other Business

Mr Sinclair referred to one case. Mr Sinclair confirmed that the review of the case was ongoing and would be referred to the Board in due course.

Date of Next Meeting

The Board noted the date of the next meeting as 27 June 2008.

CHRIS REDDICK
10 June 2008