

Scottish Parliament Region: Highlands and Islands

Case 200401919: Crofters Commission

Summary of Investigation

Category

Scottish Executive and Devolved administration: Crofting; Delay

Overview

The complainant (Mr C), a crofter, had submitted an application for the apportionment of common grazings (the grazings) which was received by the Crofters Commission (the Commission) on 30 September 2002. Mr C complained about delays in dealing with the handling of the application.

Specific complaint and conclusion

The complaint which has been investigated is that there was delay following the application for apportionment in 2002 (*partially upheld*).

Redress and recommendations

The Ombudsman recommends that the Commission:

- (i) apologise to Mr C that they did not pursue the planned scheme with full effectiveness; and
- (ii) review their procedures for monitoring outstanding applications to ensure that they are progressed effectively.

Main Investigation Report

Introduction

1. In January 2005, the Ombudsman received a complaint from the tenant of a croft, referred to in this complaint as Mr C. As part of the tenancy of the croft Mr C had shares in the local common grazings (the grazings). There were five shares in total and Mr C's croft had 2 ½ shares. The remaining 2½ shares were vacant. Mr C said he had applied to the Crofter's Commission (the Commission) for an apportionment of the grazings in August/September 2002.¹

2. The complaint from Mr C which I have investigated is that there was delay in dealing with his application for apportionment.

Investigation

3. In investigating this complaint, I met with the complainant and representatives of the Commission, identified relevant legislation and reviewed policies and procedures. (An extract from the Commission's rules of procedure and a copy of their policy on apportionment are set out in annexes 3 and 4) I also had sight of relevant correspondence between Mr C and the Commission and viewed maps of the area.

4. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the Commission were given an opportunity to comment on a draft of this report. Abbreviations used in this report are set out in annex 2.

Complaint: There was delay following the application for apportionment in 2002

5. Mr C's initial application was dated 21 July 2002. This was stamped as received on 30 September 2002.² From 10-11 December 2002 the Commission

¹ Apportionment is a process by which a crofter can have a section of the grazings fenced off for their own use. Under Crofting legislation, the Commission may make such an apportionment subject to such conditions as they think fit. The Scottish Land Court (the Land Court) have jurisdiction over any dispute concerning the boundaries of a croft or grazings.

² Mr C carried out some necessary pre-application formalities between 21 July and 30 September 2002

undertook a fact finding visit to the area. In a letter dated 21 March 2003 to Mr C, the Commission said that the boundaries of the grazings needed to be identified and ownership of the grazings clarified through the Land Court before they could proceed and the application was returned. The Commission confirmed to this office that the application was returned in March 2003.

6. Mr C resubmitted his application through agents on 29 January 2004. On 26 March 2004 the Commission wrote to the agents apologising for the delay in response. They confirmed that the matter had not yet been dealt with by the Land Court and returned the application. The Commission say they received another resubmission on 22 April 2004.

7. On 24 and 25 May 2004 the Commission had held a further visit to the area to review crofting. As part of this they considered Mr C's apportionment application. This report was discussed at a board meeting on 10 June 2004. While the report recommended that no movement be made on the apportionment application until the vacant 2 ½ shares were re-let, the minute of the meeting records that the Commission decided that the apportionment application be taken forward as a planned scheme in discussion with interested parties. On 15 June 2004 Mr C's agents wrote to confirm that the application before the Land Court to determine the grazings had been sisted as Mr and Mrs A (the Landlords) had agreed a 1922 map set out the boundaries of the grazings.

8. In correspondence with Mr C's solicitors, dated 22 July 2004 and with his agents dated 23 July 2004 the Commission said they did not consider that there was any urgency in processing his application on agricultural grounds as Mr C, in effect, had benefit of the whole of the grazings and was grazings constable. (A grazings constable is appointed to administer a common grazings where the shareholders have not elected a committee to do so.) The Commission said they had seen the application before the Land Court and, although the boundaries of the grazings was now resolved, there remained unanswered questions. Specifically, whether Mr and Mrs A referred to in the application were the only landlords, what land had been resumed from the grazings and whether land that

had been fenced had or had not been resumed.³ It appeared that some land which, according to the 1922 map, were part of the grazings had been fenced and sold. Mr C's agents submitted a new map on 31 August 2004 which they said excluded 'various contentious areas'. On 29 October 2004, Mr C submitted a formal complaint to the Commission about the delay.

9. The Commission responded on 12 November 2004 and, following further complaint from Mr C, again on 2 December 2004. The Commission said that while the Land Court had determined the extent and boundaries of the grazings it was clear that within these boundaries sections of the grazings were in the hands of a number of different people and that they had been seeking to clarify this. They also said they were in consultation with the principal landlords on the question of re-letting the vacant shares. The Commission confirmed that Mr C's appointment as grazings constable was for renewal but that he would not be reappointed.

10. From the documentation I have seen, I am aware that there was substantial correspondence between Mr C and the Commission, particularly following the submission of his formal complaint and the decision of the Commission not to renew his appointment. Mr C complained to the Ombudsman on 26 January 2005.

11. In March 2005 consultation began on the apportionment application and a number of objections were received. On 23 June 2005 information was sent to the local Scottish Executive Environment and Rural Affairs Department (SEERAD) office and they were asked to prepare a report⁴. A SEERAD official visited the area on 5/6 September 2005. This report was dated 21 September 2005 and recommended refusing the application.

12. A hearing held in public in the area of the croft was held on 8 November 2005 and a further report was produced by a Commission board member. This report set out the policy aims of the Commission and recommended granting an

³ Resumed is a technical crofting term and refers to land which was formally part of the grazings but is no longer held in common by the crofters and has been removed from crofting tenure.

⁴ The information leaflet by the Crofters Commission on apportionment makes it clear they may do this to help them to come to a decision. Rule 17(1) of their rules of procedures (see Annex 3) allows them to make such inquiry as they consider necessary.

apportionment. On 24 November 2005 this was discussed at an open board meeting where the decision to apportion part of the grazings was made.

13. In response to my questions about their actions between June 2004 and March 2005, the Commission has said that:

'We did not process [Mr C's] apportionment application as we were awaiting the outcome of the application by [Mr C], in his role as Grazings Constable, to the Land Court to determine the boundaries of the grazings. It became apparent that there were other persons who, along with [Mr C], had titles or interest in the ... Grazings. We took some time to research this. [Mr C] himself mentioned that there were 20 or so people who owned or occupied sites on the grazings. Given he had some knowledge of who they were, we expected to work along with [Mr C] to establish their identities and the areas they owned. It is not uncommon for the Commission to work with applicants using their local knowledge to determine boundary details. However, [Mr C] did not supply the information.'

'With regard to the re-letting proposals [Mrs A] and her partner [Mr A] were at that time joint owners of the land relating to the shares and they told us of their plans to change title into [Mrs A's] name and then she would apply to us for our consent to re-let the shares to [Mr A]. That title change took place in March 2005 and we then received an application to re-let the 2½ vacant shares which was subsequently refused by the Commission at its meeting on 24 November 2005.'

14. The Commission have not supplied any documentary evidence of this apart from the correspondence with Mr C referred to in paragraphs 8 and 9.

Conclusion

15. I have found no evidence of delay following the decision of the Commission to proceed with Mr C's application in March 2005. This proceeded in line with their publicly available rules of procedure and policy guidance (see Annexes 3 and 4). I also consider that the Commission's decision to wait until the Land Court had considered the boundary of the grazings was reasonable and, therefore, there was no delay in processing the application prior to June 2004. There was some delay

in responding to Mr C's agents following the receipt of the application of 29 January 2004 and the Commission apologised for this on 26 March 2004.

16. Although the decision to proceed as part of a planned scheme was in line with policy, I consider that, on the basis of the evidence I have seen, that this was not carried out effectively. The decision was taken by the Commission to proceed with the application in June 2004 and initially it appeared there was no evidence of action then being taken by the Commission to progress this. However, when commenting on the draft report the Commission provided a copy of a letter sent by them to the Land Court in July 2004 requesting details of land that had been resumed from the common grazings. A response was received on 3 August 2004 that four small pieces of land had been resumed. Notwithstanding this there is no evidence of any further action being taken to progress this matter to conclusion. In particular, it was only in March 2005 that they began consultations.

17. However, it is also true that the Commission were dealing with considerable communication with Mr C on this subject and that, particularly following the decision not to renew his appointment as grazings constable, this became very regular. Mr C also made suggestions about alternative routes forward including a possible application for him to re-let the vacant shares and compromise options relating to the disputed land in the grazings which would have contributed to the delay. He has also communicated to the Commission directly and through agents and solicitors and the Commission at one point were clearly confused about who they were communicating with.

18. On the basis of the evidence, I conclude that there was some unnecessary delay in proceeding with Mr C's application between August 2004 and March 2005. However, as stated in paragraph 17, Mr C did contribute to the delay and this is reflected in the recommendations made in paragraph 19. Accordingly, I partially uphold this complaint.

Recommendations

19. The Ombudsman makes the following recommendations:

- (i) that the Commission apologise to Mr C that they did not pursue the planned scheme with full effectiveness; and

- (ii) review their procedures for monitoring outstanding applications to ensure that they are progressed effectively.

27 February 2007

Explanation of abbreviations used

Mr C	The complainant
The Commission	The Crofters Commission
The grazings	The common grazings connected with Mr C's croft
The Land Court	The Scottish Land Court
Mr and Mrs A	The Landlords identified in Mr C's application
The Board	The Board of the Crofters Commission
SEERAD	Scottish Executive Environment and Rural Affairs Department

List of legislation and policies considered

Crofters (Scotland) Act 1993

The Crofters Commission Rules of Procedure (dated November 1996)

The Crofters Commission policy on apportionment (dated April 2003)

Extract from the Crofters Commission Rules of procedure

'APPORTIONMENT OF COMMON GRAZINGS

1 apportionment to a crofter

(Crofters (Scotland) Act 1993 s.52(4) - (6))

16 (1) Application by a crofter for apportionment of part of a common grazings for his exclusive use shall be made on the appropriate form provided by the Commission.

(2) On receipt of an Application on the said form, properly completed and accompanied by written confirmation that it has been seen by both the Grazings Clerk/Constable and landlord and has been advertised in a newspaper circulating in the district (and by notice posted in appropriate public place or places), the Commission shall proceed as per Rule 17(1).

(3) On receipt of an Application on the said form, properly completed but which has not previously been served on both the Grazings Clerk/Constable and landlord, the Commission shall serve on the Clerk of the Grazings Committee (or Grazings Constable) and the landlord a copy of the Application together with a notice requesting them to make any representations they may wish to make in writing within fourteen days from the date of service.

(4) If the application was not previously advertised by the applicant, the Commission shall, either by advertisement in a newspaper circulating in the district or by notice posted in such public place or places in the district as the Commission may specify or in such other manner as the Commission may think sufficient, give the shareholders notice that a copy of the Application may be seen in the hands of the Clerk of the Grazings Committee (or Grazings Constable) and that he may make representations in writing to the Commission within fourteen days.

17(1) The Commission shall make such enquiry and carry out such inspection as they consider necessary to inform themselves about local crofting conditions, the circumstances of the Applicant, the quality of the grazings, the effect the apportionment would have on the interests of other shareholders, and what conditions should be attached if apportionment were granted.

(2) If the Commission are satisfied that apportionment should be granted and that there is no objection from the landlord, the Grazings Committee (or Grazings Constable) or the other shareholders to the apportionment or to the conditions to be attached thereto, they shall, without further procedure, grant the apportionment and intimate their decision to interested parties. If the Commission are not satisfied, the procedure specified in the following Rule shall apply.

18 (1) The Commission shall consider any representations received from the landlord, the Grazings Committee (or Grazings Constable) and the other shareholders together with all other information available and shall reach a provisional decision as to what apportionment, if any, should be granted and on what conditions.

(2) If the provisional decision is to grant an apportionment, the Commission shall give to the landlord, the Clerk to the Grazings Committee (or Grazings Constable) and the other shareholders, notice of the proposed apportionment and conditions together with a written statement specifying the nature of and the reasons for such provisional decision and shall afford them an opportunity within fourteen days from the date of service both to make representations in writing and to ask for a Hearing. The Commission shall also give the Applicant notice in writing of their provisional decision and a like opportunity of making representations in writing and asking for a Hearing.

(3) If the provisional decision is to refuse an apportionment, the Commission shall serve on the Applicant, the landlord and the Clerk of the Grazings Committee (or the Grazings Constable) notice in writing to that

effect together with a written statement specifying the nature of and the reasons for such provisional decision and shall afford them an opportunity, within fourteen days from the date of service, both to make further representations in writing and ask for a Hearing.

- (3) The Commission shall consider any further representations made to them, whether in writing or at a Hearing, in response to a notice given under paragraph (2) or (3) of this rule. Where the final decision would differ materially from the provisional decision and a Hearing has not been held, the Commission should consider whether to make a further provisional decision thus affording a further opportunity for representations and requests for a Hearing. Thereafter they shall intimate their final decision to the Applicant, the landlord and the Clerk of the Grazings Committee (or Grazings Constable), together with a written statement specifying the nature of and the reasons for such decision.'

Crofters Commission policy on apportionment

'APPORTIONMENT

Crofters (Scotland) Act 1993 (s.52(3)-52(8))

A shareholder in a common grazings can apply to the Commission for an apportionment of part of the common grazings to obtain the exclusive use of that area of the grazings for the development of the shareholder's croft. There is no automatic right to an apportionment. If the application is granted, the apportionment may be made subject to conditions, including fencing, drainage, land improvement or any other conditions the Commission think fit. Any part of a common grazings planted and used as woodlands with the registered consent of the landlord and approval of the Commission cannot be apportioned.

When two or more townships share a common grazings, any shareholders interested can apply to the Commission for an apportionment of the grazings into separate parts for the exclusive use of one of the townships. The Commission can make such apportionment subject to such conditions, as they consider appropriate.

Any landlord or crofter interested in lands held in runrig is entitled to apply to the Commission to apportion the lands among the holders of these lands.

Key Policy Aims

To encourage shareholders in a regulated grazings to discuss and, where possible, agree apportionment proposals with the landlord, shareholders and Grazings Committee before the application is submitted to the Commission.

To encourage shareholders in an unregulated grazings to discuss and agree the extent, shareholder and entitlement position with the landlord and other shareholders before the application is submitted to the Commission.

The Commission will not normally grant an apportionment of such part of a common grazings where a management agreement, between the Grazings

Committee and majority shareholders, has been or will be entered into within the next 6 months.

The Commission will not normally grant apportionment applications from an absentee tenant.

Achieving these Aims we will consider:

- proposed or existing management schemes
- whether a planned scheme is agreed and whether an appropriate environmental impact assessment is considered appropriate
- opinions, extent, location, proposals and applicant's use of existing croft land
- costs, benefits and impacts in relation to value for money
- conditions attached to previous apportionments granted to the applicant/predecessors
- township interests: access, water resources, peat rights, future development potential for benefit of local community
- need for a house site where no suitable site exists on the croft
- impacts of enclosure, shelterbelts, tree planting or regeneration of existing woodland on the management of grazings'.