



CASE HANDLING PROCEDURES

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2.0 STAGE 2 – FULL REVIEW

NB: not all the procedures in this section are prescriptive: in most areas a level of discretion is afforded to legal officers and Committees in their conduct of investigations, to account for the individual circumstances of each case.

- 2.1 Where the Board decides to accept an application for a Stage 2 review, the Chief Executive, taking into account the workload of each legal officer and each Committee, confirms the allocation of the case to a legal officer (which will normally be the legal officer to whom the application was allocated initially) and a Committee for the Stage 2 review.
- 2.2 Within **three working days** from the confirmation of the allocation, the legal officer writes to the applicant and his representative, telling them that the application has been accepted, and allocated to him, for the Stage 2 review, and enclosing the Commission's Terms of Service.
- 2.3 The Chief Executive writes to Crown Office, the single point of contact at Police Scotland (SPOC at PS)¹ and the solicitors who hold the defence papers to request that they preserve, for the duration of the Commission's review, the case papers they hold.
- 2.4 The legal officer carries out an examination of the papers the Commission has obtained, identifying any further papers that require to be obtained. He conducts preliminary inquiries – eg, he may interview the applicant at this stage (he normally interviews the applicant during the review period).

¹ In accordance with the agreed protocol between the Commission and Police Scotland.

2.5 In most cases, the legal officer prepares a case plan, in which he sets out the case history, the summary grounds of review and his recommendations about how to address the grounds of review. The case plan is sent to the Committee for discussion. In some cases – where, for example, he considers that the grounds of review can be addressed without the need to prepare a case plan – the legal officer simply proceeds to prepare the draft statement of reasons to refer or not to refer the case to the High Court for determination (see **para 2.10** and **Stage 3**).

Committee Meetings

2.6 The purpose of the Committee meetings is to allow the Members, the Chief Executive and the legal officer to meet to discuss the progress of a case. After the allocation of the case to the legal officer is confirmed, a Committee meeting takes place within **two months** from that date. The Committee considers the case regularly – a maximum of **three months** elapses between each calling of the case at the Committee.

2.7 The legal officer prepares a Committee report for each meeting to update the Committee on the progress of the review and particular lines of inquiry. The Members and the Chief Executive will assist and advise the legal officer on strategic matters (including whether expert witnesses need to be instructed), as well as suggesting further lines of inquiry. Where the legal officer identifies a particularly complex issue in a case, he consults with the Chief Executive who may request the assistance of a particular Member. Where any policy issues arise, the matter may be referred to the Commission's next Board or Policy meeting.

2.8 Decisions of the Committee are noted in the Committee minutes. After each Committee meeting, the legal officer writes to the applicant and his representative to update them about the progress of the case.

2.9 In addition to his role on the Committee, the Chief Executive reviews the progress of each case after it is allocated to a legal officer, and monitors that both the progress and quality of review are in line with the Commission's set targets, aims and objectives; he reviews all correspondence and discusses the case with the legal officer, and his ongoing review is facilitated via access to all legal officers' schedules and the review of individual case histories on Solcase. In addition, the senior administration officer updates monthly case target sheets which the Chief Executive reviews as part of the allocation process and general performance management arrangements.

2.10 At the end of the Committee process, the legal officer prepares a draft statement of reasons to refer or not to refer the case to the High Court. The document is sent to the Committee and the Head of Casework for consideration. The Committee decides whether the draft statement of reasons is suitable to be placed before the Board for its consideration.

2.11 Where it is a conviction (or conviction and sentence) case, the Commission aims for the Board to consider the statement of reasons within **eight months** from the date of the confirmation of the allocation of the case to the legal officer. In a sentence-only case, the Commission aims for the Board to consider the statement of reasons within **four months** from the date of the confirmation of the allocation. Where the legal officer foresees that he will be unable to complete the statement of reasons by the target date, he tells the Committee the reasons for the delay, which are noted.

Prison Visits and Video Conferences

- 2.12 Where the legal officer intends to interview a prisoner, he decides whether to interview the prisoner in person or by video-link between the Commission's office and the relevant prison (where a video-link is available). In each case, he follows the protocol that has been agreed between the Commission and the Scottish Prison Service.
- 2.13 In summary, the legal officer telephones the relevant prison, no later than **five working days** in advance of the proposed interview date, in order to book an interview or video-conferencing room. He tells the prison for how long he requires the interview or video-conferencing room. After the arrangements for the interview have been agreed, he writes to the Governor or, where applicable, the Director of the prison to confirm those arrangements. He writes to the prisoner and his representative to tell them the proposed date and time for the interview. The legal officer must not attempt to interview the prisoner without having made the aforementioned arrangements.
- 2.14 Where the legal officer requires to interview a prisoner at short notice – ie, within the above-mentioned five-day period (which procedure should be carried out only when necessary) – he telephones the prison. After the arrangements for the interview (either in person or by video-link) are agreed, he sends a fax to the Governor/Director to confirm the arrangements for the interview, and he contacts the prisoner and his representative to tell them the proposed interview date and time. (The Governor/Director will, so far as is practicable, tell the prisoner the proposed date and time for the interview.)

Evidence at Trial

- 2.15 Where the legal officer considers that a transcript of evidence is required, he obtains the agreement of the Committee that it is required before he asks the SPOC at JO to instruct the transcribers to transcribe the evidence. Where the legal officer considers that the transcript is required immediately, he obtains the agreement of the Chief Executive that it is required immediately before he asks the SPOC at JO to instruct the transcribers. Where the Commission does not receive the transcript within **four weeks** from the date of instruction, the legal officer contacts the SPOC at JO or the transcribers to find out the date by which the Commission will receive the transcript, and he tells the Chief Executive and Director of Corporate Services (DOCS) that there has been a delay in receiving the transcript.
- 2.16 Where the legal officer considers that he requires to listen to the evidence, he writes to the SPOC at JO or, where applicable, the appropriate sheriff court to tell them that he wishes to attend Justiciary Office/sheriff court to listen to the tapes of the evidence.

Papers from a Person or a Public Body

- 2.17 Where the legal officer considers that a person (including a solicitor) or a public body has papers which may assist the investigation of the case, he writes to the person or public body to ask for the papers. Where the person or public body does not respond within **two weeks** from the date of the letter of inquiry, the legal officer sends a reminder letter, enclosing a copy of the original letter. Where the person or public body does not respond within **one week** from the date of the reminder letter, the legal officer telephones the person or public body.

Where the legal officer does not receive a response to that inquiry, the legal officer tells the Committee that he has not received a response.

- 2.18 The failure of the person or public body to respond to legal officer's inquiries – or where the person or public body has expressly refused to send the Commission the papers – may result in the Commission's applying to the High Court for an order requiring the person or public body to produce the papers or to provide the Commission with access to the papers (under section 194I of the Criminal Procedure (S) Act 1995). The Board takes the decision whether to raise a court action against the person or public body.
- 2.19 Where requested papers (including solicitors' files) are reported to be missing the legal officer will obtain a written explanation and vouching of the circumstances in which they were lost from the prior holder of the papers.

Information from a Witness

- 2.20 Where the legal officer considers that a person (including a solicitor) may have information which may assist the investigation of the case, he writes to the person to tell him that the Commission wishes to obtain a statement from him and, where necessary, to explain to him the role of the Commission, enclosing the leaflet entitled 'Information for witnesses'. If he considers that it may encourage co-operation – where, for example, the individual is a complainer – he may suggest that the witness may be accompanied by a friend or relative, or he may approach Victim Support to facilitate any meeting.
- 2.21 When the person contacts the Commission, the legal officer arranges a place, date and time to interview him. Where the interview is to be conducted face-to-face, rather than by video-link, it should take place at the Commission's office or another suitable location – eg, a local authority building, a sheriff court or a police office. The legal officer must not interview a witness (including an applicant) in the witness's home, unless he considers there are exceptional circumstances which require him to conduct the interview in his home. If he considers there are such circumstances, he must tell the Chief Executive that he intends to interview the witness in his home.
- 2.22 If the legal officer, in taking into account the Commission's Personal Safety Policy, considers that he requires another person to be present at the interview, the other person must be another legal officer or member of staff.
- 2.23 The legal officer may, with the agreement of the Chief Executive or the DOCS, arrange to reimburse expenses reasonably incurred by the interviewee in attending the interview.
- 2.24 Unless the legal officer considers that there are good reasons to justify a contrary approach, he will arrange to have the interview digitally recorded. After the interview, he will transfer a copy of the digital recording to the Commission's case management system and prepare a draft statement with reference to it.
- 2.25 After the interview, the legal officer writes to the witness, enclosing his statement, and asks him to confirm in writing his approval of the terms of his statement. The legal officer may ask him to sign his statement and to return the signed statement to the Commission.
- 2.26 Where a witness expresses concern at the prospect of the disclosure of his personal details to people outwith the Commission, and in particular to the applicant, the legal officer should

explain that the Commission's practice is for a witness's address to be given as 'c/o the Commission', and that if the Commission is asked to disclose contact details for the witness, it will facilitate contact between the witness and relevant third parties. The legal officer may discuss with the Chief Executive or the Committee whether it is appropriate to offer assurances that the witness will not be identified at all.

- 2.27 Where the Commission does not receive a response within **14 days** from the date of the initial letter of inquiry, or where the person fails to attend an interview previously arranged with the legal officer and fails to agree alternative arrangements for interview, the legal officer may send a reminder letter by recorded delivery, telling the person: the Commission has the power to seek a warrant to cite him to give a precognition on oath; if the warrant is granted, he will require to attend a sheriff court to answer the questions the Commission wishes to ask him; and his failure to attend the court, or to provide information within his knowledge, is a criminal offence for which the penalty is up to £1000 fine and/or 21 days' imprisonment. Alternatively, if the legal officer considers it to be appropriate in the circumstances, he may first issue a reminder letter which does not refer directly to the power to obtain precognition on oath or, where contact details are known, telephone the witness to discuss his request.
- 2.28 Where the Commission does not receive a response within **seven days** from the date of the reminder letter, the legal officer, after obtaining the agreement of the Committee, sends a further letter by recorded delivery, telling the person that if he does not contact the Commission within **14 days**, the Commission will make an application to a sheriff for a warrant to cite him to give a precognition on oath (as set out in **appendix 1** to these procedures).
- 2.29 Where he is obstructed from progressing a case owing to unacceptable delays by a solicitor, the legal officer must seek the opinion of the Committee about whether the matter should be brought to the attention of the Board with a view to its determining whether the solicitor should be reported to the Scottish Legal Complaints Commission. The Board will take the final decision whether the solicitor should be reported to the SLCC.
- 2.30 Where the legal officer is obstructed from progressing a case owing to unacceptable delays by the applicant's current representative, he must seek the opinions of the Committee about whether it would be appropriate to tell the applicant and his representative that, unless the required information and/or action is provided within **28 days**, a decision in the case will be taken on the basis of the information the Commission was able to obtain, or about whether the case should be closed through want of insistence.

Instruction of a Third Party/Case-related Expenditure

- 2.31 Where the legal officer identifies that a chargeable service is required, he must obtain authorisation from the DOCS or the Chief Executive before instructing the third party to carry out the work.
- 2.32 In relation to the instruction of an expert witness, the legal officer obtains quotes for the work from different experts where it is practicable and/or appropriate to do so. At the stage of obtaining the quote from the expert, the legal officer normally does not disclose to the expert details about the case. However, where the legal officer is required to do so in order to provide the expert with informed instructions, he must tell the expert that the information disclosed to him must not be disclosed to a third-party/must be treated in the strictest confidence.

- 2.33 When the legal officer receives the quote from the expert or other third party, he completes the case-related expenditure Form 1, which he gives to the DOCS or the Chief Executive for him to authorise the expenditure. Where standard fees are in place, the legal officer still completes a Form 1 and obtains the necessary authorisation for expenditure before instructing the third party. The legal officer gives a copy of the Form 1 to the senior administration officer for finance purposes.
- 2.34 The legal officer writes to the expert/third party to set out the terms of the instructions, enclosing the Commission's standard confidentiality agreement. The expert/third party must sign the confidentiality agreement and return the signed agreement to the Commission before the legal officer instructs him to start the work.
- 2.35 After the expert/third party completes the work, and the Commission receives his invoice, the legal officer completes the case-related expenditure Form 2, which he gives to the senior administration officer who ensures that the appropriate payment is made. He puts copies of the completed Forms 1 and 2 in the correspondence file, and updates the list of expert advisers on Solcase with details of any new expert or relevant comments about an existing expert.

Interviewing Jurors

- 2.36 Where the legal officer considers that one or more members of the trial jury may hold information relevant to the review, he should raise the matter with the Committee. The Committee must approve any decision to interview a juror or jurors. Where the issues involved are complex, the Committee should consider referring the matter to the Board as a discussion case. Before agreeing to proceed, the Committee/Board should satisfy itself that the proposed line of investigation relates to matters 'extrinsic' to the jury's deliberations and that the material provided in support of the application meets 'the *McCadden* standard'.
- 2.37 In order to obtain contact details for the juror/jurors, the legal officer should obtain from the SPOC at JO a copy of the list of assize. Where necessary, the legal officer may instruct inquiry agents to obtain the address of any juror who appears to have moved house since the trial, although in that instance the legal officer should request that the agents act with the utmost discretion.
- 2.38 The legal officer should tell the SPOC at JO that the Commission intends to conduct investigations into a jury-related matter. He should obtain from the SPOC at JO one or more points of contact to whom the Commission can refer jurors in order to establish the good faith of the Commission's investigation.
- 2.39 Initial contact with jurors should be made by recorded delivery letter. The letter should explain, in general terms, the matters the Commission is entitled to discuss with the juror. It should tell the juror that it may be unlawful to breach those parameters.
- 2.40 Where the juror does not respond to the initial contact letter, the legal officer should send a reminder. Where the juror does not respond to the reminder, the legal officer should seek instructions from the Committee about what steps, if any, he should take next.
- 2.41 A form of interview schedule should be agreed between the legal officer and the Committee before any interview takes place. The Committee should satisfy itself that the proposed lines of questioning are exclusively concerned with 'extrinsic' matters.

2.42 At the outset of any interview with a juror, the legal officer should, with a view to preventing the accidental disclosure of 'intrinsic' matters, establish ground rules for the discussion.

Case-related Information taken out the Office

2.43 All case-related information an employee takes out the office must be held on an encrypted pen-drive until he returns the information to the office, unless he requires to take case papers to a meeting outwith the office – where, for example, a legal officer requires case papers for reference, in order that he can interview an applicant or a witness properly. On such an occasion, the legal officer must keep the case papers securely until he returns them to the office.

2.44 Where an employee is working from home (the limited occasions in which employees are entitled to work from home are outlined in the relevant note of procedure), and he is adding case-related information to a new or an existing electronic document, he must use one of the Commission's laptops. All such information must be saved to an encrypted pen-drive only.

2.45 **Board Members and employees must not email case-related information from their home computers to their work email addresses (and vice versa).**

Letters, Emails and Faxes

2.46 All employees must take care to ensure that all correspondence and any accompanying documentation, whether sent by post, fax or email, is sent to the intended recipient.

2.47 In relation to post, all documents containing case-related information which are attached to post must either be stapled to the letters or otherwise attached securely (but not by way of a paper clip).

2.48 **Case-related information must not be sent by way of an unsecure email system.** If the employee is sending case-related information by way of a secure email system, such as the Criminal Justice Secure eMail (CJSM) or Egress, the employee must take care to ensure that the right address is selected before he clicks 'send'.

2.49 In relation to faxes, the employee should consider whether the sending of the information should be done by a more secure method than fax, such as a courier service or the Royal Mail. Where the employee still wishes to send a fax, he must double-check the fax number of the intended recipient before sending the fax, he must send only the information required, and he should check that the recipient has adequate security measures in place; the fax should not be sent whereby it is left uncollected in an open-plan office.

2.50 Where the fax contains sensitive information, the employee must use a cover sheet (which will let the recipient know that the information is sensitive), and the employee should ask the recipient to confirm that he is at the fax machine, and is ready to receive the document; the employee should call the recipient to confirm that the whole document has been received.

Administration

- 2.51 The legal officer puts in the correspondence file the following papers: the case plan; the letters from the applicant, his solicitor, Crown Office, the police and other organisations or bodies; copies of emails from the applicant and third parties; copies of Commission correspondence, including emails; the witness statements the legal officer obtains; mandates; confidentiality agreements; copies of the case-related expenditure Forms 1 and 2; and notes of all meetings and discussions, whether in person or by telephone, the legal officer has with the applicant, his representative and any other person connected to the case.
- 2.52 The administrative assistant puts in the correspondence file copies of Committee minutes. Copies of Commission correspondence, notes of meetings and discussions and any other documents the legal officer creates on the Solcase file are automatically retained on the Solcase file.
- 2.53 The legal officer puts on the Solcase file copies of the emails he sends and receives, including internal case-related emails from Members; the administration assistant puts on the Solcase file copies of the letters from the applicant and third parties. The legal officer puts in the box file any other documents he obtains.

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