



CASE HANDLING PROCEDURES

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3.0 STAGE 3 – DECISION

Statement of Reasons

- 3.1 Where the Committee approves a draft statement of reasons to refer or not to refer the case to the High Court, the legal officer sends an email to the DOCS to tell him that the Committee has done so, and he sends to the DOCS and the admin team the draft statement of reasons (after making any necessary amendments to the document), the supporting papers and a note for the Board. The note for the Board includes the following information: the time taken to review the case, the reason the review period was over target (if applicable), a note about the retention of papers and any interested parties who require to be told about the decision (although it is the Board which decides which parties require to be told about the decision).
- 3.2 The case is added to the agenda for the next Board meeting. **One week** before the meeting, the DOCS sends, by way of Boardbooks, the agenda, the note for the Board, the draft statement of reasons and the supporting papers to the Members, the Chief Executive, the Consultant Legal Adviser and the Head of Casework. Each Member is encouraged to email any comments or proposed amendments to the draft statement of reasons. Where the amendments to the draft statement of reasons are material amendments, the legal officer gives copies of the amended document to the Members and the Chief Executive on the morning of the Board meeting.
- 3.3 At the Board meeting, the legal officer presents the draft statement of reasons to the Members and those others present, and he answers any questions they have about the terms of the document. While the Chief Executive, the Consultant Legal Adviser, the Head of

Casework and the legal officer may express their views on the case, it is the Board which decides whether to refer the case to the High Court. A majority of the Board Members present must be in favour of any decision. The decision of the Board is noted.

- 3.4 After the Board meeting, and no later than **five working days** from the date of the Board's decision, the legal officer passes to the Chief Executive a hard copy of the statement of reasons and the covering letters to the applicant and his representative. The Chief Executive must sign the covering letters. Where, however, the Board decided that material amendments required to be made to the statement of reasons in order that it reflected the Board's decision, the legal officer, no later than **five working days** from the date of the Board's decision, emails an amended document, highlighting the amendments, to the Chief Executive. The Chief Executive must approve the wording of the amended statement of reasons. After the Chief Executive has done so, the legal officer passes to him a hard copy of the amended statement of reasons and the covering letters. The Chief Executive must sign the covering letters. (Where the Board decided that the draft statement of reasons required substantial amendments and that the case must return to committee for discussion before the Board next considers it, the legal officer revises the document and presents the draft statement of reasons to the relevant committee for discussion.)

Non-referral

- 3.5 The Commission aims to issue the statement of reasons to the applicant and his representative within **15 working days** from the date of the Board's decision. In the event that the statement of reasons is not issued to them by the date of the next Board meeting, the Chief Executive tells the Board at its next meeting that it requires to make a further decision.
- 3.6 Where the relevant Committee, on the basis of the information available to it, had concerns that the applicant's receipt of the statement of reasons might cause the applicant to self-harm or commit suicide, the legal officer must, at the Board meeting, tell the Board about those concerns. Where the Board shares those concerns, and the applicant is in custody, the Chief Executive must send the statement of reasons, in a sealed envelope, to the Governor or the Director of the relevant prison, with a covering letter in which Governor/Director is asked to pass the sealed envelope to the applicant and in which it is explained that the content of the letter may cause the applicant distress. Where the Board shares those concerns, and the applicant is at liberty, the legal officer must write to his solicitor, enclosing two copies of the statement of reasons, to ask the solicitor to ask the applicant to attend his office to collect the statement of reasons.
- 3.7 Where the applicant has alleged that a witness has lied or has otherwise acted improperly, and where the Commission has sought the views of the witness about the allegation made against him, or where it is reasonable to infer that the witness is aware of the allegation, the legal officer writes to the witness to tell him that the Board has decided not to refer the case to the High Court.
- 3.8 Where the applicant has made an allegation of defective representation against his solicitor or counsel, and where the Commission has sought the views of the solicitor or counsel about the allegation made against him, or where it is reasonable to infer that the solicitor or counsel is aware of the allegation, the legal officer writes to the solicitor and counsel to tell them that the Board has decided not to refer the case to the High Court.

- 3.9 Where the Board considers it is appropriate to do so, the legal officer writes to any other interested parties, which may include the complainer, his family or other witnesses, to tell them that the Board has decided not to refer the case to the High Court.
- 3.10 Two copies of the signed decision are retained; one copy is put in the correspondence file and one copy is put on the Solcase file. The legal officer puts on the Solcase file the date on which the statement of reasons was issued.
- 3.11 After the statement of reasons is issued, the applicant is permitted a period of **28 days** in which to consider the statement of reasons and to make any further submissions that he believes are appropriate (but the applicant may, on cause shown, have the 28-day period extended). Where the Commission does not receive any further submissions in that 28-day period (or within the extended period), the legal officer passes the final decision letter to the Chief Executive, or, in his absence, the Head of Casework, for him to sign.
- 3.12 The final decision letter is sent to the applicant and his representatives.
- 3.13 Where the legal officer has written to the parties specified in **paras 3.7–3.9**, he writes to them again to tell them the Commission’s final decision in the case.
- 3.14 Copies of the signed final decision are retained; one copy is put in the correspondence file and one copy is put on the Solcase file. The legal officer puts on the Solcase file the date on which the final decision letter was issued.
- 3.15 When the Commission issues the final decision letter, its review of the case is completed.

Further Submissions

- 3.16 Where the applicant requests an extension of time in which to make further submissions, the legal officer sends an email to the DOCS to tell him about the request and the reasons for it. Where the DOCS, or, in his absence, another member of the management team, approves the request, the legal officer writes to the applicant and his representative to tell them that they have been granted another **28 days** to lodge further submissions (which period runs from the expiry of the initial 28-day period).
- 3.17 Where the applicant requests another extension of time in which to make further submissions, the legal officer writes to the applicant and his representative to tell them that the Board will consider his further request. The legal officer sends an email to the DOCS to tell him. At the next Board meeting, the DOCS tells the Board about the applicant’s request. Where the Board grants the applicant a another extension of time, which it will do only in exceptional circumstances, the legal officer writes to the applicant and his representative to tell them the date by which the Commission must receive any further submissions.
- 3.18 Where the Commission receives further submissions, the legal officer writes to the applicant and his representative to acknowledge receipt of the further submissions. (Where it does not, the procedures set out in **paras 3.12–3.14** are followed.) The legal officer tells the admin team that the case is to call at the next Committee meeting. Where the Committee considers that further lines of inquiry are required, the legal officer carries out those inquiries.
- 3.19 After the further inquiries have been carried out (if required), the legal officer drafts a supplementary statement of reasons to refer or not to refer the case to the High Court. It is

sent to the Committee and the Head of Casework for consideration. The Committee decides whether the draft supplementary statement of reasons is suitable to be placed before the Board for its consideration.

- 3.20 The Commission aims for the Board to consider the draft supplementary statement of reasons within **three months** from the date of receipt of the further submissions. Where the Board confirms its decision not to refer the case, the procedures set out in **para 3.4** are followed. Where the Board decides to refer the case, the procedures set out in **para 3.24 et seq** are followed.
- 3.21 Where the legal officer has written to the parties specified in **paras 3.8–3.10**, he writes to them again to tell them the Commission’s final decision in the case.
- 3.22 Copies of the signed supplementary statement of reasons are retained; one copy is put in the correspondence file and one copy is put on the Solcase file. The legal officer puts on the Solcase file the date on which the supplementary statement of reasons was issued.
- 3.23 When the Commission issues the supplementary statement of reasons, its review of the case is completed.

Referral (see also the attached flowchart)

- 3.24 The legal officer, no later than **five working days** from the date of the Board meeting, passes to the Chief Executive the victim notification letter (which the Chief Executive requires to sign). The letter, which informs the Crown Agent of the decision to refer the case, is sent to the Crown Agent. The purpose of the letter is to allow the Crown Agent to attempt to tell the complainer or the next of kin that the case is being referred. The information is given at that stage to the Crown Agent solely for the purpose of telling the complainer or the next of kin, and it is given on the strict understanding that any such notification is not to be made until the Crown Agent is in possession of the statement of reasons.
- 3.25 The legal officer drafts a news release; in doing so, he considers whether the applicant’s name should be anonymised (see the Commission’s disclosure policy). He, no later than **five working days** from the date of the Board meeting, emails the news release to the Chief Executive. The Chief Executive must approve the wording of the news release. The legal officer emails the approved version to the DOCS. The legal officer tells the DOCS the date on which the statement of reasons is to be issued.
- 3.26 On the **seventh day** after the date on which the victim notification was issued, the statement of reasons and covering letters are sent to the Principal Clerk of Justiciary, the applicant and his representative (the letters to the applicant and his representative set out the procedures they require to follow to initiate appeal proceedings), the Lord Advocate and the Crown Agent.
- 3.27 On the afternoon of the day the statement of reasons is issued, the DOCS emails the news release, along with a note of issuing instructions, to the Scottish Government Press Department. The news release is embargoed until **3pm** on the **third working day** after the date on which the referral is issued.
- 3.28 When the statement of reasons is issued, the legal officer ensures that copies of the supporting documents are not sent to the applicant where they contain any material which

may be deemed to be of a sensitive nature. In such circumstances, the covering letter to the applicant's solicitor refers to the fact that, for those reasons, the supporting documentation has not been sent to the applicant.

- 3.29 The legal officer sends an electronic copy of the statement of reasons, by way of CJSM or by post on an encrypted pen-drive, to the Appeals Unit at Crown Office.
- 3.30 Where Justiciary Office requests an electronic copy of the statement of reasons, the legal officer sends such a copy, by post on an encrypted pen-drive, to the SPOC at JO.
- 3.31 Where the applicant has alleged that a witness has lied or has otherwise acted improperly, and where the Commission has sought the views of the witness about the allegation made against him, or where it is reasonable to infer that the witness is aware of the allegation, the legal officer writes to the witness to tell him the Board's decision in respect of that ground of review.
- 3.32 Where the applicant has made an allegation of defective representation against his solicitor or counsel, and where the Commission has sought the views of the solicitor or counsel about the allegation made against him, or where it is reasonable to infer that the solicitor or counsel is aware of the allegation, the legal officer writes to the solicitor and counsel to tell them the Board's decision in respect of that ground of review.
- 3.33 Two copies of the signed decision are retained; one copy is put in the correspondence file and one copy is put in the Solcase file. The legal officer puts on the Solcase file the date on which the statement of reasons was issued.
- 3.34 When the Commission issues the statement of reasons to refer the case, its review of the case is completed.

Date of Approval: November 2014
Date of Last Review: October 2018
Date of Next Review: October 2019

Flow Chart of the Chronology of the Procedures to be followed in a Referral Case

Date of the Board's decision to refer the case



No later than **five working days** from the date of the Board's decision, LO emails the statement of reasons to CE; CE must approve any amendments LO has made to reflect the terms of the Board's decision)



No later than **five working days** from the date of the Board's decision, LO passes the victim notification letter to CE for him to sign; the victim notification letter is issued



No later than **five working days** from the date of the Board's decision, LO drafts the news release and emails it to CE; CE must approve the wording of the news release; LO emails the approved version to DOCS; LO informs DOCS of the date on which the statement of reasons is to be issued



On the **seventh day** after the date on which the victim notification was issued, the statement of reasons and covering letters are sent to the Principal Clerk of Justiciary, the applicant, his representative, the Lord Advocate and the Crown Agent



On the afternoon of the day on which the statement of reasons is issued, DOCS emails the news release, along with a note of issuing instructions, to the Scottish Government Press Department. The news release is embargoed until **3pm** on the **third working day** after the date on which statement of reasons is issued