Scottish Parliament Region: Highlands and Islands

Case 200500736: Crofters Commission

Summary of Investigation

Category

Scottish Executive and devolved administration: Crofters Commission; Apportionment

Overview

The complainant (Miss C) was concerned she had been encouraged by the Crofters Commission (the Commission) to submit an application for apportionment as part of a planned scheme and that this was then considered as a single application and rejected.

Specific complaint and conclusion

The complaint which has been investigated is about the Commission's handling of Miss C's application *(upheld)*.

Redress and recommendations

The Ombudsman recommends that the Commission:

(i) apologise to Miss C for their handling of her application;

(ii) reimburse her for any expenses she can demonstrate were reasonably incurred in the course of making this application following the Commission's decision to proceed in April 2004 and include an additional payment of £150 for the inconvenience and distress caused to her; and

(iii) review the advice and training given to staff as to the procedures to be followed when a planned scheme is envisaged and, in particular, ensure staff are aware of the need to clarify applicants' understanding of this process and respond appropriately to any changes in circumstances which occur during the application process which may affect this.

The Commission have accepted the recommendations and will act on them accordingly.

Main Investigation Report

Introduction

1. A crofter, referred to in this report as Miss C had made several attempts to deal with concerns she had surrounding the boundaries of her croft. She had taken this to the Scottish Land Court in 1997 and 1999 and subsequently, following their advice, made an application for the apportionment of common grazings associated with the croft[1]. This had been rejected by the Crofters Commission (the Commission) in 2000. On 8 May 2003 Miss C wrote to the Commission about her boundaries and related matters and in June/July 2003, an officer for the Commission (Officer 1) visited Miss C and the other three crofters who had a share in the common grazings. On 24 September 2003 a letter was sent to all four crofters saying the Commission 'are of the view that each of you submit an apportionment application for the areas you consider appropriate'. Only two (Miss C and Mr B) proceeded as suggested. Miss C's application was refused at a Board meeting on 28 April 2005 while Mr B's was granted subject to additional conditions. On 21 April 2006 Miss C complained to the Ombudsman.

2. The complaint from Miss C which I have investigated is about the Commission's handling of Miss C's application.

Investigation

3. In investigating this complaint I have seen relevant documents held by the Commission and correspondence between Miss C and the Commission. It should be noted that there was no dispute between Miss C and the Commission about the facts surrounding this complaint.

4. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Miss C and the Commission were given an opportunity to comment on a draft of this report. There is a list of abbreviations in Annex 1 and Annex 2 sets out the legislation and policies considered.

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[1] Apportionment is a process by which a crofter can have a section of the common 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.

Complaint: The Commission's handling of Miss C's application

5. In the discussions held in July 2003 (see paragraph 1) one of the four crofters with shares in the grazings (Mr D) indicated that he would oppose any apportionment application. Miss C's first application in 2000 had been rejected on the grounds that the land was not currently stocked. Following the letter to him of 24 September 2003 suggesting he submit an application of apportionment, Mr D corresponded with the Commission about his own concerns as to why this process had been initiated.

6. In November 2003 the grazings committee responsible for the common grazings recommended Miss C and Mr B's applications be refused. It is Commission policy that applications be discussed with such committees prior to submission. Miss C copied the letter recommending refusal to the Commission. Miss C and Mr B both proceeded to submit their applications for apportionment. On her application form next to the boxes which refer to discussions with the grazings committee and the landlord Miss C had written that this was 'a proposal put forward by the Crofters Commission'.

7. On 6 January 2004 the Commission wrote to Miss C to thank her for the apportionment application and said that it would be held until all four had been received. On 28 April 2004, the Commission wrote to Miss C to say they were proceeding with the application and had arranged for the newspaper advertisement. The letter said in the event of 'objections to your proposal', the process would take longer than the five month average. Miss C was concerned about the terms of the advertisement and on 3 May 2004 wrote to the Commission to say:

> 'I trust it will be made clear, in any advertisement, that my application is not merely a re-application for apportionment, but is in response to the proposal put forward by the Crofters Commission (not by me).'

8. On 11 May 2004 the Commission wrote to Miss C to say they had only received two applications but had decided to proceed with these and that they had advertised this in 'the normal manner'.[2] The letter concludes: 'Your own and [Mr B's] applications will be considered as part of the overall planned scheme for the common grazings that takes into consideration the interests of all of the shareholders'.

[2] The advert said that the Commission had received applications as detailed below and how objections could be made. Both applications were listed separately.

9. Objections to the applications were made in response to the advertisement. Miss C received copies of the objections and contacted the Commission about this. A file note indicates there were two telephone conversations on 25 May 2004 in which Miss C was told her application was following the normal procedure and noting Miss C was unhappy about the way this was being handled. It appears clear from the file note that Miss C's main concern remained the question of the boundaries. Miss C wrote in response to the objections on 5 June 2004 saying:

> 'I note that in the letters of opposition to my application no mention is made of it as part of a joint application, or of the Crofters Commission's apportionment scheme. My application is in response to this proposal.'

10. On 28 May 2004, the Commission requested a report into the matter from the local Scottish Executive Environment and Rural Affairs Department (SEERAD) office.[3] The letter said 'Can you please negotiate this as a planned scheme'.

11. The SEERAD report, dated 28 August 2004, is headed 'Report on apportionment (individual)'. The report recommends refusal of the application and notes that although Miss C was 'insistent' that the application was part of a proposal for a scheme involving all four crofts only two had applied. In concluding, the report states that Miss C had sublet the land but that it was not fully stocked and: 'As this is part of a proposed scheme it does not seem appropriate to approve only part of the area proposed in isolation given that only two of the four crofts involved have applied'.

12. A hearing was held on 10 March 2005 in the area of the grazings chaired by a member (the Chair) of the Commission's board (the Board). The hearing dealt with both applications but the notes of the meeting and reports made subsequent to the hearing for the Commission on each application show that they were dealt with separately. Mr D spoke at the hearing and, amongst a number of objections, queried the legality of an application when land had been sublet. An officer from the Commission who was present accepted this was not

[3] This is in line with their normal procedure

standard practice.[4] The current grazings clerk[5] for the common grazings queried why the application had been submitted at all given it had been opposed twice by the grazings committee. A former grazings clerk (Ms A) questioned why so much time had been spent discussing the boundaries at the hearing and why the Commission had suggested crofters apply for apportionment in the first place. The Chair is noted as having 'confirmed that the hearing was into Miss C's application but it was necessary to be aware of the background of the application'. Miss C again said she had not seen the point of a reapplication but when encouraged by the Commission had been optimistic. Ms A is reported to have said she:

> 'was of the opinion that [Miss C] was misled in applying for an apportionment as her previous application was refused as was her application to the Scottish Land Court to have her croft boundaries redefined. She felt that in being encouraged to apply it had given [Miss C] reasons to be optimistic about her application.'

13. The Commission noted that the letter of 24 September 2003 stated that the outcome would depend on an application being submitted and the normal consultative process concluded.

14. As stated in paragraph 1, at the Board meeting on 28 April 2005 Miss C's application was refused. The Board did so on the grounds that: the grazings committee did not support the application; and Miss C did not work the croft and had sublet the croft and the grazings share.

15. Miss C has said she was advised to sublet to assist with the application. The Commission deny this but accept a note was made on 25 July 2003 to the effect that an officer had been advised she intended to do so. Miss C then corresponded with the Commission about the sublet between October and June 2004 when she sent the Commission a copy of the lease.

Conclusion

16. Miss C's apportionment application was dealt with in line with the Commission's normal procedures for individual applications. The decision to

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[4] Following the hearing and prior to the Board meeting in April 2005, the legal position was clarified and it was decided this was competent given the sublet occurred subsequent to the application for apportionment and the individual who had sublet was aware of this.

[5] Each grazings committee has a grazings clerk

allow Mr B's application was made in the light of individual circumstances and there is no evidence of bias in that decision.[6] Despite the repeated reference to a scheme both by the Commission and Miss C, on the evidence I have seen there never was a planned scheme but what appears to have been a hope on the part of the Commission that if all or the majority of crofters applied they could look at what they had applied for and create one. This never occurred and, although SEERAD were asked to 'negotiate' a scheme, they correctly pointed out that with only part of the land involved this was not appropriate.

17. Although I do not criticise the Commission's decision to try and create a planned scheme or their final decision not to grant Miss C an apportionment, I am concerned that in April 2004 they made the decision to proceed with Miss C's application and to advertise this without clarifying explicitly with Miss C that she wished to proceed given that all four applications had not been received. Further, given the opposition of Mr D and the grazings committee, this was now likely to be contentious. The statement in the letter from the Commission dated 23 September 2003 indicating that the normal consultative process would apply does nothing to alter this as the letter refers to the scheme where all four applications would be dealt with simultaneously and not the circumstances of Miss C's application. It is notable that in response to Miss C's concerns about the process following the Commission's decision to proceed, the letter of 11 May 2004 refers to her application being considered as part of 'the planned scheme'. Yet, at the public hearing, this was dealt with on its individual merits.

18. While the decision of the Board itself is not under review, I have noted that the reasons for refusal were similar to the reasons given for refusal in 2000. Given this the Commission should have been aware that these issues had not been resolved. Therefore, although I have not commented on the Board's actual decision, I am critical of the fact that Miss C was not given the opportunity to reflect in the light of changed circumstances. In all the circumstances, I uphold the complaint.

Recommendation

19. The Ombudsman recommends that the Commission

(i) apologise to Miss C for their handling of her application;

[6] I have seen the relevant documents for Mr B's application.

(ii) reimburse her for any expenses she can demonstrate were reasonably incurred in the course of making this application following the Commission's decision to proceed in April 2004 and include an additional payment of £150 for the inconvenience and distress caused to her; and

(iii) review the advice and training given to staff as to the procedures to be followed when a planned scheme is envisaged and, in particular, ensure staff are aware of the need to clarify applicants' understanding of this process and respond appropriately to any changes in circumstances which occur during the application process which may affect this.

20. The Commission have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the Commission notify her when the recommendations have been implemented.

27 March 2007

Annex 1

Explanation of abbreviations used

Miss C	The complainant
The Commission	The Crofters Commission
Officer 1	Member of Commission staff who visited Miss C and the other crofters in July 2003
Mr B	The crofter with a share in the common grazings who submitted the other application
Mr D	The crofter with a share in the common grazings who objected to Miss C's application
SEERAD	Scottish Executive Environment and Rural Affairs Department
The Chair	The member of the Board of the Commission who chaired the hearing into Miss C's apportionment application
The Board	The Board of the Crofters Commission
Ms A	Clerk to the grazings committee

Annex 3

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)