

Scottish Parliament Region: Highlands and Islands

Case TH0024_04: Crofters Commission

Summary of Investigation

Category

Scottish Government and Devolved Administration: Crofting

Overview

The complainant (Mrs C) made 43 separate complaints to the Ombudsman's office about the Crofters Commission (the Commission). The Ombudsman decided to investigate 28 of these complaints, which have been grouped together and investigated under seven separate heads of complaint. The complaints investigated include delay and inaction relating to an apportionment application, failure to take action with regard to the conduct of a Grazings Clerk, delay in providing Minutes and Accounts, mishandling and falsely reporting an Annual General Meeting, failing to deal with and resolve acceptably complaints about the financial accounts of a Grazings Committee, failure to give adequate notice of a meeting, wrongly calling this meeting and recording inappropriate and false statements in the Commission minutes; and failure in the handling of a second application for apportionment.

Specific complaints and conclusions

The complaints which have been investigated are that the Commission:

- (a) delayed and did not take action in respect of an application for apportionment (*upheld*);
- (b) failed to take prompt or effective action in respect of the conduct of the Grazings Clerk (*upheld*);
- (c) delayed in providing the requested Minutes and Accounts for an Annual General Meeting held on 30 March 2001 (*partially upheld*);
- (d) seriously mishandled an Annual General Meeting held on 14 December 2001, produced a false report of that meeting and refused to correct the report or apologise (*not upheld*);
- (e) failed to deal with complaints made about the financial accounts of the Grazings Committee, including failure to provide correct information on dealing with a formal complaint and putting forward an unacceptable solution to resolve the complaint (*partially upheld*);

- (f) failed to give adequate notice of a meeting that took place on 22 July 2002, wrongly called and conducted the meeting and recorded inappropriate and false statements in the Commission minutes (*partially upheld*); and
- (g) failed in the handling of an application for a small area of apportionment out of the Common Grazings (*partially upheld*).

Redress and recommendations

The Ombudsman recommends that the Commission:

- (i) put systems in place to ensure that their staff know how to deal with representations received after an apportionment has been granted;
- (ii) put guidance in place to ensure that both the Commission and the crofting community are clear about the role of the Commission in relation to disputes between shareholders, and between a shareholder and a Grazings Committee;
- (iii) give consideration to the merits of introducing a process whereby an individual shareholder can request an investigation of an alleged breach of the Grazings Regulations;
- (iv) give consideration to introducing an appropriate mechanism to assist in the resolution of disputes between a shareholder and a Grazings Committee;
- (v) Chief Executive reports to the Commission that Mrs C could not have expected that a meeting needed to take place before 27 July 2002 and that the Commission provides a response to Mrs C in relation to this matter; and
- (vi) provide Mrs C with a meaningful apology for the shortcomings identified in the Report.

Main Investigation Report

Introduction

1. Mrs C bought a croft house in a township in 1993 and in 1994 became the tenant of the croft that she continues to run with her husband (Mr C). Mrs C has told me that she has experienced hostility and opposition from her fellow shareholders from the time she was granted a croft tenancy. Mrs C initially made 43 separate complaints to the Ombudsman's office about the Crofters Commission (the Commission). She summarised the majority of these complaints in a nine-page attachment to her complaint letter of 1 June 2003 and also submitted three lever-arched files of related paperwork.

2. The complaints submitted by Mrs C were considered under the Ombudsman procedures that were current at the time. Mrs C was advised in April 2004 that none of her complaints would be investigated. This decision not to investigate was reviewed and confirmed in May 2004. Mrs C submitted detailed responses to both decision letters and extensive amounts of additional evidence in support of her complaints, including copies of documents and detailed correspondence between her and the Commission.

3. I carried out a second review of the decision not to investigate, which included a meeting with Mr and Mrs C and further enquiries to both the Commission and Mrs C. The outcome of this review, notified to Mrs C and the Commission on 1 September 2005, was a decision to investigate 28 of the complaints submitted. The complaints that were not investigated related to the application to assign the tenancy of two crofts in 1995/1996 and to related events that took place subsequently, including matters relating to a court action.

4. The 28 complaints from Mrs C which I have investigated (which I decided to investigate under seven separate heads of complaint, grouping together what I considered to be related complaints) are that the Commission:

- (a) delayed and did not take action in respect of an application for apportionment;
- (b) failed to take prompt or effective action in respect of the conduct of the Grazings Clerk;
- (c) delayed in providing the requested Minutes and Accounts for an Annual General Meeting held on 30 March 2001;

- (d) seriously mishandled an Annual General Meeting held on 14 December 2001, produced a false report of that meeting and refused to correct the report or apologise;
- (e) failed to deal with complaints made about the financial accounts of the Grazings Committee, including failure to provide correct information on dealing with a formal complaint and putting forward an unacceptable solution to resolve the complaint;
- (f) failed to give adequate notice of a meeting that took place on 22 July 2002, wrongly called and conducted the meeting and recorded inappropriate and false statements in the Commission minutes; and
- (g) failed in the handling of an application for a small area of apportionment out of the Common Grazings.

5. Mrs C considers that each of her complaints are significant in their own right and that they have been cumulative in their effect. In relation to the injustice or hardship suffered, Mrs C also considers that the actions/inaction of the Commission, as set out in her complaints, condoned and encouraged prejudice against her by her fellow shareholders and that this has made it practically impossible for her to exercise her rights as a member of the Common Grazings. Also, that by impugning her truthfulness, the Commission damaged her reputation and the relationship of trust and respect between herself and the Commission staff.

6. The primary legislation in force during the period in which these complaints were raised was the Crofters (Scotland) Act 1993 (the 1993 Act). However, there have been significant changes since then, including the Crofting Reform etc Act 2007. Scottish Ministers established a Committee of Inquiry on Crofting in December 2006 and this Committee presented its Final Report and recommendations to the Scottish Government in May 2008. On 1 October 2008, the Environment Minister announced the Government's response to this report, including proposals to reconstitute the Crofters Commission (with more concentration on their role in crofting regulation and enforcement), a new Crofting Bill to effect the legislative changes needed (which would be available for consultation in early 2009) and a future Crofting Consolidation Bill to consolidate existing crofting legislation.

Investigation

7. Investigation of these complaints involved meeting Mrs C and her husband, making further enquiries of the Commission and Mrs C, meeting the

Chief Executive of the Commission who was in post when the complaints were made (Chief Executive 1) and the Head of the Regulatory Division, considering the relevant legislation, associated guidance, procedures and rules relating to the complaints and confirming the factual accuracy of the details in the Report with the current Chief Executive of the Commission (Chief Executive 2) and with Mrs C.

8. An explanation of the abbreviations used in this report is contained in Annex 1. Explanations of crofting terms are contained in Annex 2. Extracts from the Crofters Commission Rules of Procedure relating to the Apportionment of Common Grazings are in Annex 3, information about Grazings Regulations in Annex 4 and relevant extracts from the 1993 Act and the Explanatory Notes to the Crofting Reform etc Act 2007 in Annex 5.

9. I very much regret that for a variety of reasons the process of investigating these complaints has taken much longer than it should have done. I apologise to Mrs C and the Commission for that.

10. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mrs C and the Commission were given an opportunity to comment on a draft of this report.

(a) The Commission delayed and did not take action in respect of an application for apportionment

11. Mrs C made three complaints to the Ombudsman about an application she made to the Commission in 1999 for apportionment of part of the Common Grazings. These complaints essentially related to inaction and delay on the part of the Commission.

12. Apportionment is a process by which a crofter can have a section of the Common Grazings fenced off for their own use. Sections 16 to 18 of the Rules of Procedure of the Crofters Commission deal with the Apportionment of Common Grazings to a Crofter (see Annex 3). Mrs C made her application for two areas of apportionment on 9 April 1999. She made the Grazings Committee (which comprised the three other active shareholders in the Township, one of whom was the Grazings Clerk) aware of the details of the application at the same time. Mrs C was advised that one of the areas included an area of hillside down which sheep were traditionally taken off the hill. She agreed to a modification so that this gathering route was excluded from the

apportionment. She later walked the new boundary with one of the shareholders on 21 June before the official site visit. Mrs C, another shareholder and a Scottish Executive¹ Environment and Rural Affairs Department (SEERAD) Officer walked the boundary at the official inspection of the proposed apportionment on 29 June 1999. SEERAD were involved as they acted on behalf of the Commission in providing crofting grant and other administration services.

13. The Commission prepared an amended plan of the apportionment areas. As they proposed to approve the application, they sent a copy of the amended plan to all parties. In the absence of any further representations, the Commission confirmed approval of the apportionment on 23 September 1999. This granted Mrs C an apportionment of two areas extending in total to approximately 11.15ha for stock management purposes.

14. On 15 November 1999, Mrs C arranged for her fencing contractor to start the fencing work. Soon after she was told by the other shareholders that they were not happy with the boundary. The Commission received individual letters of objection from the three other shareholders, one dated 18 November and two dated 22 November. These letters stated that a long established sheep-track had been included in the area enclosed. The letter from the Grazings Clerk said that the sheep track had been completely closed off despite Mrs C's promise that it would not be included in her apportionment. In view of this, the Grazings Committee objected strongly to that piece of apportioned fence, because Mrs C had not adhered to their agreement with her. Mrs C has told me that she considered these remarks to be defamatory.

15. In support of this complaint, Mrs C provided the Ombudsman's office with a letter from the SEERAD Officer to the Commission dated 25 November 1999. In this letter, the SEERAD Officer advised that he visited the site on 24 November at the request of Mrs C and that he confirmed that the fence line did in fact follow the line approved. His letter went on to say that 'The applicant went to great lengths to ensure that the line was known by providing comprehensive narrative of the route in question. In addition to this was liberal use of blue spray to show the proposed fence line on the ground'.

¹ On 3 September 2007 Scottish Ministers formally adopted the title Scottish Government to replace the term Scottish Executive. The latter term is used in this report as it applied at the time of the events to which the report relates.

16. This letter also said that of the active shareholders only the Grazings Clerk had not walked the hill prior to the fence being erected (because he was not fit to do so) and commented that it seemed strange for the two other shareholders to complain about the fence line at this stage when they had knowledge of it right from the start. It also commented that only the Grazings Clerk had a valid case for not knowing the exact line of the fence and even he was aware of all the correspondence involved. The letter concluded that 'these objections seem to me to be too late to do anything about the area to be fenced and [Mrs C] is not prepared to alter the fence in any way'.

17. Mrs C wrote to the Commission on 14 December 1999, giving a detailed rebuttal of the claims from her fellow shareholders, and advising that the SEERAD Officer had, at her request, inspected the fencing on 24 November and confirmed that the line followed was that which had been applied for. She wrote again to the Commission on 20 December, advising that both areas had now been enclosed and that she was looking forward to receiving the Apportionment Order and a copy of the respective plans.

18. Mrs C has told me that she only discovered much later, by an inspection of the Commission's files, that the negative representations from her fellow shareholders had resulted in questions as to whether a Crofting Counties Agricultural Grants Scheme (CCAGS) fencing grant should be withheld. She has complained that these negative representations led to the Commission failing to process her application for a CCAGS fencing grant. Records show that SEERAD received the apportionment fencing claim from Mrs C on 16 February 2000. Mr C contacted SEERAD some time after this application was submitted and was told that no approval had been received from the Commission. Mr C then telephoned the Commission and was told that the application had not been processed as the Commission had not known what to do about it in view of the letters of objection received.

19. Mrs C also provided the Ombudsman's office with a letter from the SEERAD Officer to the Commission dated 21 February 2000. In this letter the SEERAD Officer said that he had a concern that a 'dog-leg' in the fenced line could present a danger for stock getting trapped within the apportionment in times of snow drift. The letter also stated that he had invited Mrs C to change the line of the fence and exclude this 'dog-leg', but that she completed the fencing on the original line approved. When this particular complaint was

investigated by the Commission, an internal file note to Chief Executive 1 dated 18 November 2002 said that 'on 21 February 2000 as part of ongoing correspondence on the apportionment a SEERAD Officer advised that the claim had been received and raised the question whether grant on the fence could be withheld until the apportionment fence line was amended'.

20. It is known that the question of withholding the grant was discussed within the Commission, as there is reference to a Copy Minute dated 3 March 2000 which stated that after consideration of this matter the Commission concluded that: 'If [Mrs C] has fenced the line of apportionment in accordance with the mapped area which accompanied the order, there is no case for withholding grant. Costs were incurred by [Mrs C] on the basis that they would be offset by grant assistance if she fenced the area agreed, we cannot therefore impose sanctions against her for not complying with the alternative fencing arrangements'. In response to this conclusion, Mrs C pointed out to me that there could not have been any 'alternative fencing arrangements' as the fencing had followed the approved line and this meant that there could be no grounds for acceding to any belated demands to alter it. The 18 November 2002 file note to Chief Executive 1 (paragraph 19) confirmed that that the SEERAD Office was notified by letter on 13 March 2000 that there were no grounds for withholding the grant. The claim was subsequently certified and authorised for payment on 9 May 2000. Payment was made in full by SEERAD on 6 June 2000.

21. The Commission Copy Minute dated 3 March 2000 also proposed that it remained for the Commission to inform the shareholders that they had looked into the matter and they had confirmed that Mrs C had fenced in accordance with the approved line. Mrs C has told me that the Commission did not inform her fellow shareholders that they were satisfied, as proposed above. I understand that Mrs C views this inaction, and particularly the failure to investigate and reply to these letters as soon as they were received, as giving the 'green light' to further prejudice and intimidation by her fellow shareholders.

22. Finally, Mrs C has also complained that the Commission failed to issue the Apportionment Order and only did so in May 2002 after she queried the absence of the accompanying plan that she needed to process an application for agricultural subsidy. Mrs C made no reference to financial loss in her complaint, and stated that she simply sought an assurance that procedures had been put in place to ensure that this did not happen again.

23. Chief Executive 1 wrote to Mrs C on 10 May 2002, saying that he had investigated the delay in the production of the final plans and issue of her Apportionment Order. He found that once the queries relating to the line of the fence had been sorted out, the process of requesting final plans was not followed through by the Commission and he apologised to Mrs C for this oversight. He went on to say that he had checked whether the delay would have caused Mrs C any financial loss relating to her agricultural subsidy application and had been reassured that it had not. He enclosed a copy of the Apportionment Order and Plan with his letter.

(a) Conclusion

24. It is understood that the role of an appointed Grazings Clerk is to act on behalf of, and on the instructions of, the Grazings Committee, which in turn manages grazings on behalf of the shareholders who appointed the Committee (see Annex 4). It should be stated at the outset that the purpose of this investigation was not to consider or reach a view on the alleged actions of the Grazings Clerk or the Grazings Committee referred to in these complaints, but to consider the actions of the Commission in response to the complaints raised by Mrs C. The alleged actions have, by necessity, been included in this Report in order to describe the background.

25. The first of the three complaints considered under this heading was that the Commission took no action in response to the letters of objection received from the other shareholders in November 1999. The evidence set out above confirms that the Commission were advised in writing by the SEERAD Officer on 25 November 1999 that the fence line did in fact follow the line approved. The evidence also indicates that the Commission took no action in relation to this confirmation until after Mrs C submitted her Apportionment fencing claim on 16 February 2000.

26. It is noted that the Rules of Procedure dealing with the Apportionment of Common Grazings to a Crofter end with the Commission intimating the final decision to the Applicant, the landlord and the Clerk of the Grazings Committee (which they did in this case on 23 September 1999). The Commission have confirmed that they do not have the power, without the consent of the applicant, to amend a line of fencing once it is in place and according to the plan.

27. However, there is no evidence that the Commission ever responded to the letters of objection, as had been proposed in their 6 March 2000 internal file note. The outcome of this non-response was that the other shareholders were not told that the Commission had looked into the matter and had confirmed that Mrs C had fenced in accordance with the approved line. The Commission cannot be held responsible for relations between shareholders, but this lack of response was unfortunate in the circumstances.

28. The second complaint was that the Commission delayed in processing the application from Mrs C for a fencing grant related to the Apportionment. As the fencing claim was received from Mrs C on 16 February 2000, payment was not made until 6 June 2000 and the time for processing CCAGS claims was 90 days, it is clear that payment was not made within the stated time period.

29. There appears to have been some uncertainty with the Commission on how to progress the fencing claim in relation to the letters of objection about the Apportionment. It is known from the evidence above that consideration took place during this time, in response to a suggestion by the SEERAD Officer in relation to his concern about animal welfare, as to whether the grant could be withheld until the fence-line was adjusted. The Commission concluded this consideration properly, in terms of the legislation, with the decision that the grant could not be withheld. However, I am critical of the fact that Mrs C was not kept informed about the potential and as it turned out, actual, delay in her grant payment.

30. The third complaint was that the Commission failed to issue the Order relating to the Apportionment until this was drawn to their attention by Mrs C. I note that Chief Executive 1 has already apologised to Mrs C for this oversight. I also note that there was no resulting financial loss to Mrs C, but do consider that she was put to extra trouble in both contacting SEERAD and in chasing up the Apportionment Order.

31. In summary, I consider that there was both delay and inaction by the Commission in relation to the application for apportionment, and for these reasons I uphold the complaint.

(a) Recommendation

32. As part of this investigation I asked the Commission whether any procedures had been put in place to ensure that the oversight in relation to the

issue of the Apportionment Order would not happen again. In response, I was assured that procedures had been amended and in confirmation received a copy of the amended desk instructions dated September 2003.

33. The Ombudsman recommends that the Commission puts systems in place to ensure that their staff know how to deal with representations received after an apportionment has been granted.

(b) The Commission failed to take prompt or effective action in respect of the conduct of the Grazings Clerk

34. Mrs C complained to the Ombudsman's office about the Commission failing to take prompt action in respect of the conduct of the Grazings Clerk and that, after action was taken, they failed to follow up and check whether the necessary action specified by the Grazings Officer had been taken.

35. Mrs C complained that the Grazings Clerk had changed established practice by, without warning, taking the remaining sheep (including her own) off the Common Grazings on 31 December 1999 and driving them out on the open hill. The normal practice was for a gather to be arranged, sheep sorted and each crofter to take their own sheep to where he or she wanted them. Section 17 of the Township Grazings Regulations deals with the Gathering of Stock (see Annex 4).

36. Mrs C has told me that she had not been advised about the 31 December 1999 gather and this resulted in her newly purchased and newly in-lamb sheep (which she is adamant that the Grazings Clerk knew them to be) being scattered over the open hill. Mrs C has also told me that 11 of her sheep went missing as a result. Seven of them were never recovered. Mrs C is of the opinion that this was intimidating and harmful behaviour which resulted directly from the Commission failing to respond promptly to the negative representations from her fellow shareholders (see complaint (a)), stating that their failure to respond gave the 'green light' to this further intimidation.

37. Mrs C wrote to the Grazings Clerk on 3 January 2000, raising 13 points of complaint about this change in practice and the subsequent effect on her flock. She also asked what he intended to do about recovering her lost sheep. Mrs C has told me that she had no response to this and subsequent letters and that the Grazings Clerk has not admitted or denied giving the instruction to take her sheep off the Common Grazings. Mrs C then complained in writing to the

Secretary of the Commission (a position held by Chief Executive 1) on 23 February 2000 about the behaviour and conduct of the Grazings Clerk, stating that she was not told what was happening and that she had never seen any accounts.

38. As a result of this letter, Mrs C met the Grazings Officer on 25 February and later raised other concerns, such as not being told about another gather on 28 February 2000, the fact that Annual General Meeting (AGM)s of the Grazings Committee were not being held and that the Grazings Clerk was refusing to respond to her requests for information. Mrs C wrote to the Grazings Officer on 7 March, 12 April and 10 May, asking what action he had taken or intended to take in the matter and what, if anything, had happened as a result. The Commission has advised that an acknowledgement letter was sent to Mrs C on 13 April also that Mrs C was contacted by telephone on 26 April and 18 May (the cause of delay being that the Grazings Officer was on leave on the first date and travelling on circuit dealing with common grazings questions on the second).

39. The Grazings Officer met the Grazings Clerk on 10 May 2000. A follow-up letter from the Grazings Officer to the Grazings Clerk (dated 24 May 2000), which was copied to Mrs C, pointed out, amongst other issues, that the Township Grazings Regulation 17 (see Annex 4) required that the Grazings Committee arrange the gathering of sheep from the Common Grazings and that shareholders should be informed of these arrangements. The letter also advised that Regulation 10 said that an AGM should be held each November, asked for advance notice of this year's AGM as he would like to attend and that minutes of all meetings should be kept by the Grazings Clerk and available for inspection at the AGM. Also, now that the Township had a Countryside Premium Scheme, there would be income and expenditure incurred by the Township, which meant that detailed accounts must be kept and a report of the financial situation given at the AGM.

40. Mrs C has complained that the Commission did not follow up to make sure that the actions specified in the 24 May 2000 letter did in fact take place. She considers that this failure to follow up in effect gave a further 'green light' to the Grazings Clerk and the Grazings Committee that they could behave as they liked without the Commission troubling them.

41. In response to my enquiries relating to these complaints, in a letter dated 28 June 2007, Chief Executive 2 advised that the Commission had no duty to supervise the conduct of Grazings Clerks or to require them to undertake specific tasks. Supervision and control is the responsibility of the Grazings Committee, and in instructing the Grazings Clerk, the Committee needs to be accountable and subject to the voting and elective powers of the shareholders. Therefore, although the Grazings Officer had agreed to discuss the concerns raised by Mrs C with the Grazings Clerk, there was no obligation or duty on the Grazings Officer to undertake this task. Also, the work of the Grazings Officer involved considerable local contact and travel among over 600 Common Grazings spread over a wide area.

42. Chief Executive 2 explained that the Grazings Officer had accepted the task in hopes that he might be able to build bridges between the individuals concerned. Also, the letter of advice issued by the Grazings Officer to the Grazings Clerk on 24 May 2000 was followed by three separate reminders of the need to hold an AGM (issued on 22 November and 5 December 2000, and 8 January 2001). The Grazings Officer also met Mrs C on 22 December 2000, acknowledged her January 2001 letter and wrote to her on 6 February about the AGM date. There was further contact by telephone between the Commission and the Grazings Clerk concerning reasons for delay in holding the AGM, involving sickness, unavailability of individuals and the advisability of postponing the AGM until conclusion of a Crofter Forestry study. The Commission have explained that the outbreak of foot and mouth disease prevented the Grazings Officer from attending the AGM on 30 March 2001, as he intended, as Scottish Executive staff employed on rural matters were restricted to their offices in order to avoid risk of spreading infection. Mrs C also did not attend the AGM and has advised that reasons for not attending were the short notice given for the meeting and her concern as to how the meeting would be conducted, particularly in the absence of the Grazings Officer.

43. In summary, the view of Chief Executive 2, as stated in his 28 June 2007 letter, was that the particular complaints by Mrs C concerned actions which did not constitute duties required of the Commission and which were carried out at discretion in order to assist her by seeking to build bridges in the community. He went on to express his regret that these efforts by the Commission had not produced improved relations among shareholders, but did not see that censure of the Commission was appropriate.

(b) Conclusion

44. Mrs C has complained that the Commission failed to take prompt or effective action in respect of the conduct of the Grazings Clerk. An issue central to the complaints investigated under this heading is the role of the Commission in relation to the conduct of a Grazings Clerk and whether the Commission was required to take any action at all. It is apparent that the Commission and Mrs C have differing expectations on this matter.

45. Functions of the Commission include regulation of the management and use of Common Grazings. However, the Commission are clear that that they had no duty to supervise the conduct of the Grazings Clerk or to require him to undertake specific tasks. As will be discussed further under complaint heading (e), in relation to the conduct of grazings clerks and committees, the Commission has one power only (given under Section 47(8) of the 1993 Act) which provides discretion to remove grazing clerks and committees from office where they are not properly carrying out their duties.

46. However, in relation to these complaints, Chief Executive 1 must have decided that the resolution of the concerns raised by Mrs C could be assisted by the Commission through involving the Grazings Officer. I consider that once the Commission decided that the Grazings Officer would become involved with the concerns raised, then Mrs C could reasonably expect to either receive a response within established time-scales or to be advised why this was not possible. It is noted that the Commission has Standards of Service relating to correspondence and that these were not met on this occasion. I appreciate the difficulties and restrictions relating to the foot and mouth outbreak, but consider that the Grazings Officer could have progressed matters by telephone or post.

47. Also, while it is commendable that the Commission decided to play a role in resolving disputes between shareholders, I am concerned that imprecisely defined actions of this nature, as set out under this heading and in a number of the complaints below, have resulted in differing expectations and a blurring of the Commission's role.

48. Mrs C also complained that after action was taken by the Grazings Officer, with the issue of the 24 May 2000 letter, the Commission failed to follow up and check whether all the necessary actions specified by the Grazings Officer had been taken. Again, I appreciate the position of the Commission that their actions were carried out at discretion, but consider that once they had taken on

the task, they needed to follow it through to a conclusion, which might, in some cases, include advising why further action was not either appropriate or possible.

49. In summary, I uphold the complaint to the extent that once the Commission had decided to take action, they should have then followed through on that action. In not doing so, there was a failure in a service that they had chosen to provide.

(b) Recommendation

50. The Ombudsman recommends that the Commission puts guidance in place to ensure that both the Commission and the crofting community are clear about the role of the Commission in relation to disputes between shareholders, and between a shareholder and a Grazings Committee.

(c) The Commission delayed in providing the requested Minutes and Accounts for an AGM held on 30 March 2001

51. Mrs C complained to this office about delay by the Commission in providing her with the requested Minutes of the AGM held on 30 March 2001 and that she requested a copy of the Accounts in April 2001, but did not receive them until March 2002.

52. The management of Common Grazings are governed by regulations based on statute, which include matters relating to the responsibilities of the Grazings Clerk and the holding of AGMs. The relevant Grazings Regulations can be found in Annex 4. It is the responsibility of the Grazings Clerk to record Minutes of all meetings, keep up-to-date accounts which should be audited annually, and include a financial statement in his report to the AGM. The Township Grazings Regulations are silent on how and when the Minutes of meetings should be circulated to shareholders.

53. Mrs C wrote to the Commission on 24 April 2001, requesting a copy of the 30 March 2001 AGM Minutes and the Common Grazings accounts. In response she was advised that the Commission had recently asked the Grazings Clerk for this information, were yet to receive the documents and that copies would be sent to her once they were received. Mrs C made a second written request for these documents on 7 July 2001. On 25 July 2001 the Grazings Officer sent a copy of the requested Minutes to Mrs C, with a letter in

which he apologised for the delay in sending the Minutes and advised that he had received the Minutes from the Grazings Clerk on 4 June 2001.

54. When asked by this office in July 2006 about the seven week delay between receiving the AGM minutes and sending a copy to Mrs C, Chief Executive 1 advised that the delay related to staff workloads and accessibility to areas during the period of foot and mouth.

55. In relation to the Accounts, it is noted that the Minutes of the AGM held on 30 March 2001 said that the Grazings Clerk had issued a statement outlining the relevant income and expenditure for the two years to October 2000. The Commission has advised that they received this Financial Statement of Income and Expenditure from the Grazings Clerk on 4 June 2001 (along with the AGM Minutes) and that this Statement included an imbalance to the figures. The Grazings Officer drew this to the attention of the Grazings Clerk and sent reminders to him in July and August 2001. The matter of the imbalance had still not been clarified by October 2001, by which time Mrs C had submitted her formal complaint about the Grazings Clerk and the financial accounts of the Grazings Committee (see complaint head (e)).

56. Mrs C faxed the Commission on 12 March 2002, referring to the 30 March 2001 Minutes and asking whether a copy of any accounts (in whatever form) had been received. Mrs C asked that these be faxed to her that day. The Solicitor to the Commission that day faxed Mrs C a copy of the Financial Statement of Income and Expenditure produced by the Grazings Clerk at the 30 March 2001 meeting. In his accompanying letter he advised that although the Grazings Officer had asked the Grazings Clerk to correct or explain this Statement, no correction or further explanation in writing had yet been sent to the Commission.

57. Mrs C continues to be concerned that she was deprived for considerable time of financial information to which she was entitled as a shareholder. She also considers that the delay by the Commission reflected an attitude that there was no urgency in tackling matters that were to her detriment and contributed to the perception that the Commission were tolerant of the Grazings Clerk presenting inadequate and incorrect financial statements.

58. The position of the Commission is that they have no power to require Grazings Committees to produce Minutes and accounts and to provide these to

shareholders. It is understood that in this case, the Commission sought to persuade the Committee to provide these documents in the hope of reducing local disharmony.

59. Chief Executive 1 has told me that he dealt with the actions of the Grazings Officer in relation to the accounts in a letter to Mrs C dated 7 March 2002. In this letter he said that the Grazings Officer 'pressed in the Spring of last year for the Grazings Committee to hold an AGM and he had established at that time that the Committee's accounts were inadequate. He had asked the Committee to make sense of the accounts. He did not follow up with the Committee to ensure that the accounts were correct or explained and he should have followed up on this. However, as you will recall last year was a difficult and disrupted year for everyone involved with livestock because of Foot and Mouth disease and for a long period last year [the Grazings Officer] and other Commission staff were unable to travel and visit crofters and grazings committees'. Chief Executive 1 went on to say that, with hindsight, perhaps other actions should have been chosen, that the Grazings Officer should have followed up on the accounts, that this had been addressed directly with him and that in future, he would be expected to follow significant concerns to a conclusion.

60. Chief Executive 2 disagrees with Mrs C about the lack of urgency. In his 28 June 2007 letter he considered that the actions of the Grazings Officer between February 2000 and December 2001 brought about the calling of two Grazings Committee AGMs and the preparation of accounts covering a three year period. He stated that 'given that [the Grazings Officer] had no authority to require these actions be taken and has instead had to rely on persuasion and negotiation between parties, this is a notable achievement'.

(c) Conclusion

61. In relation to providing Mrs C with a copy of the 30 March 2001 AGM Minutes, I note that the Commission had no powers to require the Grazings Clerk to produce Minutes and provide these to shareholders. However, in relation to this complaint, they did agree to provide Mrs C with a copy of the Minutes once received at the Commission. It is not disputed that there was a seven week delay between receipt of the Minutes at the Commission and their dispatch to Mrs C. However, the Commission has provided an explanation for the delay and it is noted that the Grazings Officer has already apologised for the

delay (in his 25 July 2001 letter to Mrs C). For these reasons I do not uphold this aspect of the complaint.

62. Mrs C's concerns about her lack of access to the accounts are understandable. Common Grazings are a shared asset of shareholders and without access to the accounts, Mrs C had no knowledge about the financial position or informed say in what was being done in relation to any financial transactions. Grazings Regulations do require a grazings clerk to keep up-to-date accounts and include a financial statement in his or her report to the AGM. However, I again note that the Commission say they had no powers to require the Grazings Clerk to produce Minutes and provide these to shareholders.

63. Mrs C requested a copy of the Accounts in April 2001, the Financial Statement of Income and Expenditure was received by the Commission on 4 June 2001, but was not sent to Mrs C until March 2002, subsequent to a further request. I understand that the Commission was trying to clarify anomalies in this Statement after receipt, but having agreed to send it to Mrs C when received, I can see no compelling reason for delaying to do so for over six months. I uphold this aspect of the complaint.

64. In summary, I partially uphold this complaint in that there was delay in producing the requested Accounts.

(c) Recommendation

65. The Ombudsman has no recommendation to make.

(d) The Commission seriously mishandled an AGM held on 14 December 2001, produced a false report of that meeting and refused to correct the report or apologise

66. Mrs C complained that the Commission seriously mishandled an AGM held on 14 December 2001. Mrs C told the Commission before this meeting about her concerns that it would not limit itself to appropriate business, as an AGM held in March 2001 had included inappropriate mention of a legal dispute. She trusted that the presence of the Grazings Officer at the December 2001 AGM would prevent a recurrence.

67. The Commission have told me that there is no duty on a Grazings Officer to attend such meetings at the request of a shareholder, but the Grazings Officer willingly agreed to attend this meeting in the hope that his presence

would reassure Mrs C and encourage reasonable debate. The Commission have also stressed that the Grazings Officer made a particular effort to attend this meeting, which included foregoing a family event. It is understood that he had intended to attend this meeting as an observer, and to give any necessary guidance. However, his report of the meeting (dated 19 December 2001) records that he eventually agreed to chair it after being asked to do so by the Grazings Clerk. The report records that the Grazings Clerk suggested that the wife of a shareholder should take the Minutes and it goes on to say 'This was agreed by his fellow Committee Members, but [Mr C] urged his wife to abstain from this agreement, and this she did'.

68. The Report records that, prior to setting an agenda, the Grazings Officer/Chair wanted to make it clear to all those present that there were two subjects that should not be discussed. One was outstanding court action which affected some of those present, the other was complaints made against the Committee by a shareholder (Mrs C).

69. It is recorded, in the section of the report dealing with the formal approval of the Minutes of the last AGM, that the Grazings Officer/Chair suggested that the reference to the court case in the minutes of the last AGM (30 March 2001) be deleted. The Report goes on to record that a shareholder did not agree and said that that should be left in and 'At this point [Mr & Mrs C] left the meeting although I said to them that they should not leave. It was just after 7.25pm'.

70. Mrs C has told me that she considers that the shareholder was correct to have said that the reference in the previous minutes should be left in, as the Minutes were a historical record of a previous meeting. She also considers that it was not competent for the Grazings Officer, who had not been at that meeting, to propose an amendment. Also, that his inept suggestion had actually provoked the very subject that Mrs C had told him must not be discussed. Mrs C states that the reason she and her husband left the meeting, leaving their papers and outdoor winter clothing on their chairs, and waited in the foyer (which she has advised is connected by a glass door to the meeting room) was not related to the recorded disagreement by the shareholder to the amendment. It was the fact that the shareholder had continued by saying that the court action had caused problems within the Grazings. Mrs C considered this statement to be clearly out of order, that the Grazings Officer had failed to call the shareholder to order immediately and that she and her husband had left

the meeting to avoid the risk of any compromise to the legal issue by being drawn into discussion.

71. Mrs C has also told me that she had expected to be invited back in once the Grazings Officer had called the meeting to order. This had not happened. Mrs C also denies strongly that the Grazings Officer made a request that she should remain and considers that if this had happened, it would have been improper for her to have been asked to stay in the face of what she considered to be an attack for bringing the court action.

72. Mrs C considered that the report showed her in a bad light as someone who only acts when prompted by her husband and who walks out of meetings despite being asked by the Chairman to stay. Mrs C has told me that this caused her distress, since it was untrue and also that the inaccurate representation may have affected her reputation and future dealings with the Commission. She has provided me with a detailed note made by her husband immediately after the meeting, in which there is no mention of Mr C urging his wife to abstain or the Chairman asking them to remain. It is noted that in a letter to Chief Executive 1 dated 10 January 2002, Mrs C advises that she abstained of her own accord and that her husband simply suggested that she ensured that her abstention was recorded.

73. In a subsequent letter to Chief Executive 1, dated 20 January 2002, Mrs C asked that the report of the AGM be corrected for all past and future recipients and attached details of the corrections that she considered were needed. She asked Chief Executive 1 to confirm whether the report would be corrected, and if it was not to be, asked that a note from herself (to be provided) be sent to all recipients to put the record straight.

74. In his response letter to Mrs C dated 7 March 2002, Chief Executive 1 addressed the specific handling of the AGM by the Grazings Officer saying 'He attended the AGM in the interests of all concerned, yet seems to have been obliged to take over responsibility for the management of the meeting. It was not the Commission's meeting it was the graziers' meeting. It would seem that [the Grazings Officer] had two choices – chair the meeting and try to make sure it ran smoothly or decline to chair and risk the meeting degenerating into acrimony because he had prompted the meeting in the first place but refused to chair it. He did not have many choices and both choices would allow some or all of the graziers to criticise him if the meeting did not develop the way they

wished'. Chief Executive 1 also advised that Mrs C's comments on the report of the AGM (as set out in her letter dated 20 January) would be supplied to the Commission.

75. Mrs C remains dissatisfied with this response from Chief Executive 1. Her concern is that the report of the meeting may have been circulated more widely than simply to the Commissioners and that the report would remain as an unchallenged record amongst other recipients. Mrs C also has a concern that by not amending the report or circulating her husband's notes of the meeting, that her image and character among Commission employees has been tarnished and that may have prejudiced their consideration of her other complaints and their attitude to her generally.

76. In a letter to the Ombudsman's office dated 28 June 2007, Chief Executive 2 advised that the Commission has no supervisory role in relation to Grazings Committee AGMs, including the taking and issue of their minutes and accounts. He also explained that on taking the Chair of the meeting at the request of the Committee Chairman and Grazings Clerk, the Grazings Officer was faced with the fact that the minutes of the preceding AGM contained reference to a legal case involving Mrs C, a subject which Mrs C had specifically put to him as one which should not feature in discussion. Realising the delicacy of this inclusion, and aware of the accustomed practice that minutes are put to a meeting for ratification of accuracy, he attempted to meet Mrs C's wishes and prevent the subject arising by proposing that reference be deleted. A shareholder disagreed, arguing that this would result in an inaccurate record of the previous AGM.

77. The letter goes on to say 'At that point [Mrs C] and her husband left the meeting without warning or reference to making return, making no response to [the Grazings Officer]'s request that she remain. It is not clear how [the Grazings Officer] could have known how she remained nearby awaiting invitation to re-enter the AGM. The reference by [Mrs C] to [the Grazings Officer] calling the meeting to order is inappropriate as the meeting did not lose order'. Chief Executive 2 has also advised that '[The Grazings Officer] had more pressing business at hand than noting whether coats were on chairs, considering to whom these might belong and hypothesizing as to possible implications. As to the door, this was situated beyond [the Grazings Officer]'s immediate field of vision, so he was unaware of any persons in the adjoining space beyond the door'.

78. The letter also confirms the position of the Commission, stating that '[The Grazings Officer] stands by his report of the meeting as an accurate summary of events and statements. Other than [Mrs C], the report was seen by relevant staff of the Commission concerned with her complaints and was not circulated further by [the Grazings Officer]'.

(d) Conclusion

79. It is apparent from the evidence set out above that Mrs C and the Grazings Officer have differing recollections of the events which took place at the start of the 14 December 2001 AGM. What is not in dispute is that Mrs C and her husband left the meeting shortly after the start. It is also apparent that there were different expectations and realisations, such as Mrs C expecting to be invited back to the meeting and the Grazings Officer not realising that she was waiting outside, expecting this invitation.

80. Mrs C has complained that the Commission seriously mishandled the meeting. The crux of her complaint is that by suggesting that a reference in the previous minutes be amended, the Grazings Officer provoked the very subject that she did not want to be discussed. It is the case that the Grazings Officer made direct reference to the subject near the start of the meeting, but it is difficult to envisage how the subject could have been avoided completely, appearing as it did in the previous Minutes. I do not consider that the Grazings Officer can be held responsible for the reaction of other meeting participants in relation to the subject being raised, such as the decision by another shareholder to comment and the decision by Mrs C and her husband to leave the meeting. I also do not consider that the Grazings Officer could have been expected to know that Mrs C and her husband were waiting in the foyer, expecting to be invited back into the meeting. I consider that the Grazings Officer was faced with a difficult situation at the meeting and that he was required to make quick decisions to the best of his ability in trying circumstances and I do not uphold the complaint that the meeting was seriously mishandled.

81. The position of the Commission remains that the Grazings Officer stands by his report as an accurate summary of events and statements at the meeting. Therefore, they do not consider it to be a false report and see no reason to correct it or to apologise. It is known that in 2002, Mrs C has also received assurances from Chief Executive 1 that her comments on the report of the AGM would be supplied to the Commissioners. Chief Executive 2 has subsequently

confirmed to this office that the report was seen by relevant Commission staff concerned with the complaint and not circulated further by the Grazings Officer. I am satisfied that the Commission has provided appropriate responses to the concerns raised by Mrs C in relation to the report of the meeting and for this reason I do not uphold this aspect of the complaint.

(d) Recommendation

82. The Ombudsman has no recommendation to make.

(e) The Commission failed to deal with complaints made about the financial accounts of the Grazings Committee, including failure to provide correct information on dealing with a formal complaint and putting forward an unacceptable solution to resolve the complaint

83. Eleven complaints in total were investigated under this heading. The majority related to complaints made by Mrs C to the effect that the Commission had failed to deal conclusively with her complaints about the Grazings Clerk and the financial accounts of the Grazings Committee. Complaints included that the Commission failed to provide her with a copy of the Grazings Committee draft accounts for the calendar years 2000 and 2001 until April 2003. Mrs C has also complained that when the Commission eventually decided to take action in response to her complaints, it was exclusively on the failure to produce accounts and they did not take action on the non-financial issues she had raised. Other complaints investigated under this heading were that the Commission put forward a solution that Mrs C considered unacceptable to resolve the complaints and that they failed to provide her with the correct information on dealing with a formal complaint.

84. This investigation sought to clarify the duties and powers of the Commission in relation to these complaints. In a letter of 9 February 2004 to this office, in response to this question, Chief Executive 1 stated that the Commission did not have any general duty to ensure that any grazings committee's accounts were in order or that there were no financial irregularities in the management of a common grazings. The letter also said 'A distinction has to be drawn between breaches of regulations by shareholders – which the Commission, ultimately, have no power to deal with, other than by mediation or persuasion – and alleged breaches of duty by a grazings committee, or their clerk. The latter alone may be dealt with by the Commission under section 47(8) of the 1993 Act'.

85. Section 47(8) of the 1993 Act states 'If the Commission are satisfied, after making such inquiry, if any, as they may deem necessary, that any or all of the members or the clerk of a grazings committee (however appointed under this section) are not properly carrying out the duties imposed on them under this Act, the Commission may remove from office any or all such members or such clerk and may appoint or provide for the appointment of other persons (whether crofters or not) in their or his place'. Chief Executive 2, in his 28 June 2007 letter to this office, has advised that this is a very serious step and accordingly it is employed infrequently and only when other options, including the provision of advice and assistance (which the Grazings Clerk and Grazings Committee are not bound to follow) has not resulted in the proper fulfilment of duties.

86. An account of the history of the complaints about the Grazings Clerk and the financial accounts of the Grazings Committee prior to October 2001 can be found under complaints headings (b) and (c). Mr and Mrs C met the Grazings Officer and the Solicitor to the Commission on 1 October 2001. A 28 June 2007 letter from Chief Executive 2 to this office, states that Mrs C set out complaints about the Grazings Committee at this meeting, requested that the Commission consider their removal from office and was invited by the Commission to put her complaints in writing.

87. Mrs C has complained that it was not until this meeting, some 20 months after she had first made a complaint in February 2000 (see complaint heading (b)), that she was told that in order to achieve anything she would need to make a specific formal request for action by the Commissioners under section 47(8) of the Crofters (Scotland) Act 1993 (see Annex 5). Mrs C considers that the Commission should have told her earlier that they could not do anything without a formal request of this nature and considers that she was, in effect, obliged to start the complaints process again from scratch.

88. On 26 October 2001, Mrs C formally submitted her written complaints to the Commission about the failure of the three Grazings Committee Members (including the Grazings Clerk) to properly to carry out their responsibilities. She asked the Commission to exercise their powers under Section 47(8) of the Crofters (Scotland) Act 1993. As well as her complaints relating to the accounts, her submission included details of the Apportionment issue, driving her sheep off the machair (a stretch of land lying behind the sand of the seashore), failure to inform her about gatherings and failure to properly call or

hold an AGM in 2000 (see the complaints headings above for some background detail to these non-financial complaints).

89. Chief Executive 2 has told me (in a letter dated 28 June 2007) that by October 2001, the Grazings Officer had suggested that an effort should again be made to bring the parties together and that the best means of approaching this was that the outstanding matters, including the question of the Financial Statement, should be the subject of the December 2001 AGM. Prior to the AGM, a copy of the complaints made by Mrs C was given to the Grazings Clerk and a summary issued to the committee members. As set out under complaint heading (d), this AGM did take place in December 2001, but Mrs C was present only at the start of the meeting.

90. In relation to concerns about the financial accounts, the report of the AGM on 14 December 2001 recorded that the Grazings Clerk handed out a financial statement at the start of the meeting. The report also records that the Grazings Clerk spoke in detail about the costs and income, apologised for the mistakes on the second page of the financial report and agreed to correct and send an updated copy to the Grazings Officer (which was received on 17 December 2001). The Report records that the Grazings Officer/Chair had noted that the second page of the financial statement was incorrect, since the income and expenditure columns had been swapped over, that the Grazings Clerk indicated that cheques covering expenditure outstanding had still to be cashed and that a payment was expected in December 2001.

91. In a letter to the Commission dated 7 January 2002, Mrs C advised that she wrote to the Grazings Clerk on 29 December 2001, asking him to clarify apparent discrepancies in the accounts. It is known that the Grazings Clerk resigned for health reasons in January 2002 and that another crofter later took on the role, only assuming responsibility for the accounts in April 2002.

92. Chief Executive 1 wrote to the Grazings Clerk on 28 January 2002, stating that 'There are a number of anomalies in the financial statement that require to be addressed as matter of urgency', listing six issues that needed to be addressed and asking for a copy of the audited accounts for the 12 month period up to 31 October 2000.

93. On 31 January 2002, the Solicitor to the Commission wrote to the three Grazings Committee members (including the Grazings Clerk) who were the

subject of Mrs C's complaint, including full copies of the materials submitted and asking for written representations within 21 days. All three responded, denying the complaints and advising that that they would prefer a hearing to take place as they found it difficult to respond in writing to the complaints and accusations. However, further correspondence indicates that Mrs C maintained that the matter should be dealt with on the basis of written submissions, without a hearing, as the provisions for a hearing in the Rules of Procedure did not apply to action under 47(8), that she was not a 'party' and nor was this a 'proceeding before the Commission'. Mrs C also considered that a public hearing would in any case be detrimental to the best interests of the community and the Grazings.

94. Mrs C has complained that she was advised wrongly, in response to her formal complaint request, that the Area Commissioner and two members of management would deal with her complaints and decide what action to take. In response to an enquiry during this investigation, Chief Executive 1 confirmed to the Ombudsman's office in July 2006 that the Commission did not have a process in place for dealing with Section 47(8) complaints, as these were very rare in the history of the Commission. He advised that it had been decided at the time to refer the complaint to the Area Commissioner. However, he confirmed, that as Mrs C had quite rightly pointed out at the time, complaints of this nature could not be dealt with by individual Commissioners as the delegated powers set out that Section 47(8) complaints needed to go to the full Commission.

95. In the letter to Mrs C dated 7 March 2002, Chief Executive 1 advised that the Commission 'have not yet received the audited accounts although we have been advised that accountants have been commissioned to audit the accounts'. Mrs C met Chief Executive 1 and the Solicitor to the Commission on 13 March 2002 and subsequently wrote to Chief Executive 1 on 20 March, setting out questions on the accounts in some detail and including a suggested draft 'brief' for an audit of the accounts. Mrs C also commented on the responses received from the three Committee members, refuting many of them.

96. Mrs C's request for the removal of members and clerk from office under Section 47(8) of the Crofters (Scotland) Act 2002 was considered by the Plenary Meeting of the Commission on 25 April 2002. The request was presented to the Commissioners in the form of a 30-page paper which included a Background Note, the complete written submissions made by Mrs C

(including financial and non-financial complaints), responses received from the Grazings Committee members and further comments made by Mrs C.

97. The Minute of the April Meeting recorded Chief Executive 1 introducing the request by saying that 'this was an unusual situation where one shareholder has requested that the Commission remove the members of the Grazings Committee from office' and 'The last known similar case was in Skye in 1960. This case was heard under a formalised procedure in the Sheriff Court in Portree'. Chief Executive 1 also advised the meeting that when progressing the case he had asked for audited accounts for the last two years from the Grazings Committee, but no accounts had been presented to the Commission. He went on to explain that the Commissioners had been given sight of all the written information and papers from Mrs C and the respondents, as well as comments supplied by Mrs C since Plenary papers had been issued. Also, that as Mrs C was dissatisfied with the manner in which officials had dealt previously with the case, care had been taken to ensure that no recommendation had been given so that the Commissioners were not influenced in any way.

98. It is recorded that the April Plenary meeting noted the complaints from Mrs C with concern and decided to continue consideration of the matter to the June Plenary, pending the production and presentation of audited accounts for the last two years. The Commissioners considered that the absence of audited accounts was a serious outstanding obligation for the Committee and must be dealt with by the Committee now. They emphasised, however, that care must be taken to avoid jeopardising the health of the now former Grazings Clerk. They directed Chief Executive 1 to continue to press for the audited accounts to be produced.

99. The Minutes of the Plenary Session of 19 June 2002 record that 'The Commissioners reiterated their thoughts from the April Plenary that, if at all possible, a solution had to be found that allowed for people to continue living and working the grazings together'. With this in mind, the Commissioners agreed that a meeting should be arranged with all parties concerned and seek agreement from them to appoint a five-person Committee, with Mrs C being appointed to the new Committee along with a SEERAD staff member who should act as Chairman. The recorded action was that Chief Executive 1 'should contact existing Committee Members to arrange a meeting to have the new Committee in place before 26/7/2002'.

100. The Commissioners also agreed that if the parties were not agreeable to this as a practical working solution, then, under the provisions of Section 47(8) of the Crofters (Scotland) Act 1993, the whole Grazings Committee should be removed from office before 26 July 2002.

101. Mrs C was very dissatisfied about the proposal to include her on the Grazings Committee. She considered that this proposal did not deal with all matters complained about (including the accounts), that the Commission already knew that this outcome was both unacceptable to her and unworkable and that it would not resolve her concerns as she had asked for the Grazings Committee to be removed.

102. A meeting of the Grazings Committee was arranged for 22 July 2002. Mrs C has raised separate complaints in relation to this meeting (see complaint heading (f)), which she was unable to attend. The 22 July meeting did take place and the Note of the meeting recorded that it was attended by Chief Executive 1, the Solicitor to the Commission, the SEERAD Officer mentioned in complaint heading (a) and two of the Grazings Committee members. It was noted that the Grazings Clerk was unable to attend as he was awaiting readmission to hospital and that Mrs C also could not attend due to a prior longstanding engagement.

103. The Note of the 22 July meeting recorded that agreement was not reached to the proposed solution to include Mrs C on the Grazings Committee. Chief Executive 1 set out the consequences of this failure to agree and the Grazings Committee was subsequently dismissed on the grounds that they had failed to produce audited accounts. Chief Executive 1 also emphasised that following the removal of a grazings committee it was for the Commission, not the shareholders to appoint replacements.

104. However, it is noted that considering the categorical stances of the existing Committee Members on the Commission's proposal, discussion then centred on the alternative solution of appointing a Grazings Constable in lieu of a Grazings Committee (see Annex 5). Following the meeting, the Commission appointed the SEERAD Officer as Grazings Constable on 16 August 2002. This appointment was for a period of six months, during which time it was intended that the Grazings Constable would secure production of the accounts, report back to shareholders and a new Grazings Committee would be appointed.

105. A letter from Chief Executive 1 to Mrs C dated 3 December 2002 advised that the accountants had been given a deadline of 29 November to complete the accounts or hand over the relevant papers to the Grazings Constable. The accountants failed to meet this deadline, the papers were recovered and taken away by the Grazings Constable on 29 November and it was intended that the Commission and Grazings Constable would identify accountants to produce the accounts and advise all shareholders when these were complete. The Commission then decided that as the six month term of the Grazings Constable was due to expire on 15 February 2003, this would be extended until the end of March 2003, by which time the accounts would be available and a meeting could be convened to both report on the accounts and seek a new Grazings Committee.

106. In his letter 9 February 2004 letter to this office, Chief Executive 1 advised that when accounts were finally produced they showed a discrepancy of some £130 and some personal transactions passing through the accounts which should not have taken place. He commented that the Commission judged that accounts were not as dramatically flawed as has been suggested, and concluded that the accounts should be reported to a full meeting of the shareholders and that they should be given an opportunity to consider if they wanted to appoint a new Grazings Committee from their own number.

107. The Grazings Constable wrote to Mrs C on 27 March 2003, referring to the meeting of shareholders to be held on 31 March and enclosing a balance sheet and profit and loss account for the year ended 31 December 2002 prepared by accountants. He also advised that his term as Grazings Constable would end during that meeting, that the appointment of new office bearers would be sought and that the Commission would advise on the procedure involved in establishing a Grazings Committee and the office bearers. Mrs C has complained that the 31 March meeting was invalid as it had been called on inadequate notice.

108. Mrs C attended the 31 March meeting. A letter from Chief Executive 1 to Mrs C dated 1 April 2003 explained that as required notice had not been given for the meeting, the shareholders could not themselves have appointed a Grazings Committee there and then. He went on to say that of those six shareholders present the previous night, five were content that a committee of three persons would suffice and include those who had been removed

previously from office under subsection 47(8) of the 1993 Act. At the meeting, the full Commission (with the exception of one Commissioner who declared an interest) therefore, considered and resolved that they could (and should in the circumstances) obviate further procedure and unnecessary delay by proceeding to appoint a new Committee from amongst the interested shareholders. They did so under the power contained in section 47(3) of the 1993 Act. The Commission considered and agreed that they had no specific power under section 47, or any other statutory provision, to effectively disqualify persons so removed from eligibility for further appointment.

109. It is noted that two of the three Grazings Committee Members who had been dismissed on 22 July 2002 were appointed to the new Grazings Committee. It is also noted that the wife of one of these re-appointed Members was later appointed as Grazings Clerk.

110. Chief Executive 1 also wrote to Mrs C on 2 April 2003, saying that it had emerged at the Shareholders' meeting on 31 March that the Accountants had produced draft accounts for the Grazings Committee for the financial years ending 31 December 2000 and 2001, that he (Chief Executive 1) had promised at the meeting to copy these documents to all shareholders for their information and that the documents were attached. Also enclosed with this letter were guidance notes on the appropriate role and tasks for a Grazings Clerk, which Chief Executive 1 hoped might help Mrs C to identify a suitably qualified individual to nominate to the Commission for the position of Grazings Clerk.

111. Mrs C was very dissatisfied with this letter from Chief Executive 1, considering that it was an issue of integrity that a false claim had been made in saying that the accounts had 'emerged' at the meeting. She had been advised by a senior staff member that the Commission had in fact been in possession of these draft accounts since November 2002. Mrs C also, in a letter to the Ombudsman's office dated 7 January 2005, disagreed strongly with Chief Executive 1 stating that accounts had been produced. She advised that 'what they ended up with was draft, unsigned and uncertified figures, not even for the right periods, but for the calendar years 2000 and 2001', and that therefore, no accounts were produced for 1999-2000 or 2000-2001.

112. Mrs C wrote to the Commissioners on 10 April 2003, stating that the Commission's appointment of a Grazings Committee under section 47(3) was invalid as the circumstances in which that sub-section can be applied did not

exist. Section 47(3) required the shareholders to have 'failed' to appoint a Grazings Committee. Mrs C argued that as the Commission made the appointments, there was no such failure as 'one cannot be held to have failed if one has not been given the opportunity'. In this letter, Mrs C does allow that there might have been the same outcome without the involvement of the Commission, but that now the Commission had been seen to appoint the Grazings Committee. The Commission disagree with Mrs C's interpretation of section 47(3), considering it possible for shareholders to fail to appoint a committee where circumstances prevent them from doing so, as was the case here.

113. Mrs C has told me that she brought these complaints to the Ombudsman as the Commission failed to deal properly with her complaints, as despite all her representations, they had based their decision to remove the Grazings Committee under Section 47(8) solely on their failure to produce accounts. As a result, she considered that the Commission did not pass any verdict or impose any consequence on the treatment of her by the Grazings Committee, on her sheep/business or on any other matters in her complaints and had in effect washed their hands of the matter. So all the time that she had spent in preparing and presenting her complaints had been in vain. She considered that by reappointing two of the three Committee Members that they had removed, the Commission had effectively condoned their behaviour. Mrs C further considered that as a result she has continued to suffer exclusion from the Grazings Committee, to her personal distress and to the harm of her business, and that it also further harmed her relationship with the Commission.

(e) Conclusion

114. An issue central to the complaints investigated under this heading is the role of the Commission in relation to alleged breaches in Grazings Regulations by shareholders and to alleged breaches in duty by Grazings Committees. Chief Executive 1, in his 9 February 2004 letter to this office (paragraph 106) set out his understanding of the distinction between these breaches, stating that it was only breaches of duty by a grazings committee or their clerk which could be dealt with under section 47(8) of the 1993 Act.

115. I will deal firstly with the complaints about the Grazings Clerk and the financial accounts of the Grazings Committee. Mrs C has complained that the Commission did not take action on the non-financial issues she had raised. The evidence indicates that the Commission did act in that the Grazings Officer

raised concerns with the Grazings Clerk (see complaint (b)), the Commission intended to bring the parties together at the December 2001 AGM and Mrs C's complaints were brought to the attention of the Grazings Committee members in January 2002. Also, the Commissioners considered all the documentation relating to these complaints at both their April and June 2002 Plenary Meetings (see paragraphs 87 to 90). It is known that the Commissioners agreed at their June 2002 meeting that a practical working solution would be for Mrs C to be appointed to the Grazings Committee and essentially instructed Chief Executive 1 to put that action into effect.

116. Therefore, I consider that the Commission did take action in relation to the non-financial complaints, although the outcome was that their actions did not lead to a resolution of the complaints and their proposed solution did not come to fruition. Mrs C remains dissatisfied that the Commission did not pass any verdict or impose any consequence on the treatment of her by the Grazings Committee. I consider that the Commission raised justifiable expectations by Mrs C that they would do so through advising the Grazings Committee members about these complaints, asking for their written representations and putting the non-financial complaints to meetings of the Commissioners. I am critical of the fact that the Commission does not appear to have made it clear at any point to Mrs C that they would not, themselves, be taking any decisive or enforcement action in relation to these non-financial complaints.

117. Mrs C also complained that the Commission failed to deal conclusively with her complaints about the Grazings Clerk and the financial accounts of the Grazings Committee. As set out in some detail above, it is clear that in relation to the financial accounts, the Commission did consider that the evidence was both sufficient and conclusive to evoke action under section 47(8) of the 1993 Act, albeit that this was some time after Mrs C first started to complain about the accounts. As the evidence has demonstrated, the actions of the Commission in relation to these complaints resulted in the removal of the Grazings Committee from office. However, it is the case, as Mrs C has complained, that Commission did not provide her with a copy of the Grazings Committee draft accounts for the calendar years 2000 and 2001 until April 2003. I share her concerns about the delay in the both the production of these somewhat incomplete documents and in the start of formal action relating to her complaints.

118. I partially uphold the aspect of the complaint relating to the failure of the Commission to deal conclusively with complaints made about the Grazings Clerk and the financial accounts of the Grazings Committee for the reasons set out in paragraphs 116 and 117. It is worthy of comment that Mrs C has told me (in a letter dated 16 August 2008) that no AGM has been held and no accounts have presented to shareholders since the end of the Grazings Constable regime (in 2003). I understand that Mrs C has not complained to the Commission about these omissions, as she has no faith in the Commission doing anything effective about them.

119. Secondly, Mrs C complained that the Commission put forward a solution (her inclusion on the Grazings Committee) that she considered unworkable, unacceptable to her and would not resolve the complaints. It could be argued that this solution was not going to work, but the Commission obviously considered that it was worth a try. And it is noted that a solution requested by Mrs C for the Grazings Committee to be removed did take place in July 2002.

120. It is understandable that Mrs C has concerns about the reappointment of the two of the three Grazings Committee Members who had been dismissed. However, it is difficult to envisage a different outcome. The Commission are of the opinion that it would have been neither just nor practicable to permanently exclude these shareholders from office. It is also the case that there were only a few active shareholders in the Township, which made it almost inevitable that members of the former Committee who had support amongst shareholders would again take office. Taking all this into account, I do not uphold this aspect of the complaint.

121. Finally, Mrs C complained that it took some 20 months for the Commission to tell her that she needed to make a specific formal request for action under section 47(8) of the 1993 Act. She also complained that the Commission wrongly advised her about this process. It is known that the Commission did not have a process in place at the time for dealing with Section 47(8) requests, but now has a process in place. I appreciate that Section 47(8) requests were rare, but I am of the opinion that there was delay and misunderstanding on the part of the Commission as a result of the lack of a clear or established process. In particular, I cannot see how Mrs C could have been expected to know that she needed to make a formal request or know the process for so doing. I also consider that the lack of an agreed process led to the Commission referring the

complaint to the Area Commissioner, whereas as Mrs C had rightly pointed out at the time, complaints of this sort needed to go to the full Commission.

122. It is also my opinion that there was a tension regarding ownership of the complaints made by Mrs C. It is the case that it is for the Commission to satisfy themselves before taking action by making such inquiry, if any, as they may deem necessary. However, the Commission appears to have taken the view that they were Mrs C's complaints, and that Mrs C needed to evidence where wrongdoing had occurred before they could act. Mrs C's view was that investigation by the Commission needed to take place in order for the Commission to obtain the evidence needed to enable to use their section 47(8) powers. Therefore, it was not clear when responsibility for 'proving' the complaints passed from Mrs C to the Commission.

123. I consider that there was failure to provide Mrs C with the correct information on dealing with a formal complaint, and for this reason I uphold this aspect of the complaint.

124. In summary, I partially uphold this head of Mrs C's complaint to the extent explained in paragraph 118 and paragraph 123.

(e) Recommendation

125. A general observation in relation to this complaint heading is that Mrs C was, and continues to be, in a difficult position. It is recognised that Mrs C has demonstrated a reluctance to become a Grazings Committee member, as detailed in her dissatisfaction with the Commission's proposal, but it is considered that the contentious relationships with her fellow shareholders have effectively excluded her from this membership. Also, she has no way of challenging any Committee decisions or Grazing Regulation breaches.

126. It is noted that Section 28 of the Crofting Reform etc Act 2007 has amended Section 52 of the 1993 Act (see Annex 5), so that the owner of the land comprising the Common Grazing or the Grazings Committee can now ask the Commission to investigate a breach of Grazings Regulations by any individual shareholder, and if needs be, carry out enforcement action. However, there does not appear to be any mechanism whereby an individual shareholder can request an investigation of an alleged breach. It is appreciated that primary legislation would be required to amend the revised Crofters (Scotland) Act 1993 so as to give a single shareholder the statutory right to request a breach of

Grazings Regulations under section 52. I suggest that the merits of such an amendment be considered by the Commission. The Ombudsman recommends that the Commission gives consideration to the merits of introducing a process whereby an individual shareholder can request an investigation of an alleged breach of the Grazings Regulations.

127. It is also understood that the Grazing Regulations do not include a mechanism for dispute resolution if a shareholder disagrees with a decision. The Ombudsman recommends that the Commission gives consideration to introducing an appropriate mechanism to assist in the resolution of disputes between a shareholder and a grazings committee.

(f) The Commission failed to give adequate notice of a meeting that took place on 22 July 2002, wrongly called and conducted the meeting and recorded inappropriate and false statements in the Commission minutes

128. Seven complaints were investigated under this heading. Two of the complaints were that the Commission failed to give adequate notice of the 22 July 2002 meeting, failed to enquire as to the availability of Mrs C to attend this meeting and proceeded with the meeting despite Mrs C telling the Commission straight away that she could not attend on the date in question.

129. As set out under heading (e), the complaints made by Mrs C about the Grazings Committee were considered at Plenary Meetings of the Commission. The recorded discussion at the 19 June 2002 Plenary Meeting was that the Commissioners agreed that a meeting should be arranged with all parties concerned and seek agreement from them to appoint a five-person Committee, with Mrs C being appointed to the new Committee along with a SEERAD staff member who should act as Chairman. The recorded action was that Chief Executive 1 'should contact existing Committee Members to arrange a meeting to have the new Committee in place before 26/7/2002'.

130. Mrs C considers that this wording indicates that her presence as a 'party concerned' was not seen as being as important as the presence of the existing Committee Members. She suggests that this is borne out by the fact that although Chief Executive 1 did write to her on 9 July 2002 (with a similar letter being sent to the other three shareholders), that this was simply to inform her of the date of the meeting to be held on Monday 22 July at 19:30. Also, unlike the Grazings Committee members, she was not contacted beforehand to check her

availability. It is noted that the 9 July letter from Chief Executive 1 mentioned that the current Grazings Committee would demit office on 26 July 2002.

131. Mrs C responded to Chief Executive 1 on 11 July 2002 by faxing a letter, advising that she had a longstanding engagement and would not be able to attend the meeting. She also requested copies of the minutes of the 25 April and 19 June Plenary Sessions. In response, Mrs C received a letter dated 12 July from the Commission, advising that Chief Executive 1 was on leave and would not return to the office until the morning on Monday 22 July. The letter went on to say that the meeting would proceed as arranged and that any comments Mrs C wanted to make in writing would be conveyed to the meeting. It enclosed copies of the minutes requested for the two Plenary Sessions (those for the 19 June meeting in draft).

132. The meeting went ahead on 22 July. Two of the complaints investigated under this heading are that the Commission wrongly conducted the meeting by allowing remarks that were hostile to Mrs C to be raised when she was absent and unable to rebut them, and that these adverse remarks were recorded in the Note. Mrs C considered that the remarks recorded may have given the SEERAD Officer an adverse impression of her, to the harm of future relations and that they were liable to cause, or reinforce, prejudice against her in future involvement with the Commission.

133. A fifth complaint made by Mrs C and investigated under this heading was that the Minute of the August 2002 plenary meeting of the Commissioners had recorded an untrue statement that Mrs C had expected the 22 July meeting to take place, and that, therefore, sufficient notice of the meeting had been given. Two other related complaints were that Chief Executive 1 failed to provide any evidence, following her denial of any such expectation, to support this statement and that the Commission failed, at the next Plenary Meeting, to accept her denial. Her concern was that these actions prejudiced further her standing with the Commission.

134. The Minutes of the 15 August 2002 Plenary Meeting recorded that the Commissioners noted that they 'were satisfied that sufficient notice about the meeting had been given to the parties as they had expected the meeting to be held prior to the 26 July 2002 when the term of the Committee was due to expire'. Mrs C understood that the 'they' quoted above referred to her, not to the Commissioners, and she stated in a letter to the Chief Executive dated

16 September 2002 that 'clearly this comment relates to me'. When I met Chief Executive 1 on 6 July 2006, in response to a specific question on this issue, he confirmed that the 'they' referred to Mrs C and the other shareholders, not to the Commissioners.

135. The Minutes of the 19 September 2002 Plenary Meeting record that Mrs C had written to Chief Executive 1 on 16 September 2002, requesting that her letter (containing her concerns about the statement in the 15 August Minute which she considered to be untrue) be brought to the attention of the Commissioners before they decided to approve the draft Minute. The Minute of the September meeting records that the letter from Mrs C was circulated to the Commissioners prior to the meeting along with a response letter from Chief Executive 1 to Mrs C dated 13 September 2002, and that the Commissioners noted the contents of the letters. It is understood that the Minute of the August 2002 Plenary Meeting was not amended in any way as a result of this complaint.

136. Chief Executive 1 provided an explanation of the relevance of the 26 July 2002 date in a letter to Mrs C dated 9 October 2002. He stated that 'the decision by the Commissioners to dismiss the Grazings Committee could only be implemented prior to 26 July 2002. If the Commission did not act before 26 July, then the existing Grazings Committee could proceed to elect a new Grazings Committee from 26 July when their term expired. If the Committee proceeded to elect a new Committee, then the Commission would have no scope to dismiss the Grazings Committee or prevent their re-election'. However, Mrs C has pointed out that, although it had a similar objective, the meeting that the Commission decided to arrange before 26 July 2002 differed from a shareholders meeting to elect a new grazings committee, which the Grazings Clerk was required to call in accordance with the Grazing Regulations, and as such, she could not have known that the Commission was going to decide to call a meeting of this nature.

137. It is also apparent from this investigation that Mrs C and the Commission differ in their understanding as to when the three year term of the Grazings Committee should have ended. It is noted that Paper No 3.3 to the April Plenary Meeting, under the heading 'Timing', stated that 'it should be noted that the present committee were apparently appointed on 27 July 1999 so that their term of office expires on 26 July this year'. A footnote to the Paper stated that intimation of the appointment of the present Grazings Committee was made to

the Commission on 27 July 1999, and that as the date of the shareholders meeting was not given, the term of appointment was deemed to start from this date of intimation. The 9 July 2002 letter from Chief Executive 1 said that the Grazings Committee would demit office on 26 July 2002. When asked as part of this investigation why the Commission were looking to hold a meeting of shareholders before 26 July 2002, the Head of Regulation responded in a 4 August 2006 letter stating that 'this was on the instruction of the Board as the Committee was due for re-election on 27 July 2002'.

138. However, Mrs C has told me that she attended a meeting on 15 March 1999 at which the Township Grazings Committee reappointed itself, and that the Grazings Officer knew that this meeting had taken place as she had told him about it in a letter dated 7 March 2000. As the Grazings Regulations specify a three year term, Mrs C is adamant in her understanding that the three year term had already expired on 15 March 2002 and that the term had simply run on. Mrs C is also adamant that the Commission knew at the time of their Plenary Meeting on 25 April 2002 that the Committee's term of office had expired on 15 March 2002, as a report presented to that meeting had included reference to the Grazings Committee reappointing itself on 15 March 1999. Mrs C had told me this being the case, and not knowing at the time that the Commission had a different date in mind for the Grazings Committee demitting office, that she cannot understand how she could possibly have had any expectations about the 26 July date.

(f) Conclusion

139. Mrs C has complained that the Commission failed to give adequate notice of the 22 July 2002 meeting, failed to enquire as to her availability to attend and proceeded with the meeting despite her telling the Commission straight away that she could not attend on the date in question. It is the case that the Commission did not enquire about Mrs C's availability before deciding on the meeting date and it is a fact that Chief Executive 1 wrote to Mrs C on 9 July 2002, informing her of the meeting date on 22 July 2002. It is also the case that the Commission decided not to change the meeting date when it was established that Mrs C was not able to attend and it is understood that factors including a belief that the meeting had to take place before 26 July and the absence of Chief Executive 1 on holiday contributed to this decision. However, these are discretionary decisions which the Commission was entitled to make.

140. Mrs C has also complained that the Commission allowed remarks that were hostile to her to be raised at the 22 July 2002 meeting and recorded these remarks in the meeting Note. It is difficult to envisage how the Commission could have prevented participants at the meeting from expressing their views and it appears that the Note of the meeting reflected accurately the views that were expressed.

141. Mrs C has also complained about inappropriate and false statements being recorded in the Commission Minutes. These statements related to her expecting the 22 July 2002 meeting to take place. It is clear from the evidence set out above that the Commission had proceeded on an assumption that the Grazings Committee was due for re-election on 27 July 2002. There also appears to have been an assumption at the Commission that Mrs C shared this understanding, and that with this assumed understanding, she should have anticipated that a meeting would need to be held before that date.

142. I have been convinced from the evidence provided by Mrs C that she could not have had any expectations about the 26 July date as she understood that the three year term of the Grazings Committee had expired on 15 March 2002, with the term simply running on. Also, as Mrs C has pointed out, that she could not have had any expectation that the Commission would decide, at their 19 June 2002 Plenary Meeting, to call their own meeting on 22 July. I acknowledge that the Commissioners did have sight of correspondence from Mrs C on this matter at their 19 September 2002 Plenary Meeting, but from the records of this Meeting, I am not convinced that the Commissioners understood fully what Mrs C was telling them in her representations. It is for this reason that I partially uphold the complaint.

(f) Recommendation

143. The Ombudsman recommends that the Chief Executive reports to the Commission that Mrs C could not have expected that a meeting needed to take place before 27 July 2002 and that the Commission provides a response to Mrs C in relation to this matter.

(g) The Commission failed in the handling of an application for a small area of apportionment out of the Common Grazings

144. Mrs C complained that the Commission failed to comply with their own Rules of Procedure in respect of a second application for the Apportionment of Common Grazings (see Annex 3). Her complaint related to Rule 18. Mrs C

applied for another Apportionment in December 2002 and, in accordance with Rule 16, this was 'advertised in a newspaper circulating in the district and by notice posted in an appropriate place or places'. Rule 17 requires the Commission to 'make such enquiry and carry out such inspection as they consider necessary' in relation to an application. If they are satisfied, and there has been no objection from the landlord, the Grazings Committee (or Grazings Constable) and the other shareholders, they can grant the apportionment without further procedure. If not, then the procedure specified in Rule 18 should apply.

145. The Commission sent a letter to Mrs C on 23 June 2003, stating that they had agreed to her application and 'decided to propose to apportion an area of the Common Grazings'. The letter went on to say that 'All interested parties have been advised of the proposed decision. Should we receive no further written communication from you or the other interested parties, our deliberation of this case will be complete and this proposed decision will stand'.

146. Mrs C provided me with a copy of an advertisement placed by the Commission in the local newspaper on 27 June 2003, setting out the proposal to grant the Apportionment to Mrs C and stating that 'Written comments on the proposal may be made to [the Commission]'. Mrs C has told me that a Commission notice also appeared in the window of a local shop (which is the traditional 'notice board'), giving the proposed decision and that particulars of the proposed Apportionment could be inspected by any person interested. It went on to say that 'A statement of any objection to the proposed apportionment and also a note of whether or not the person objecting wishes to be heard in support of his/her objection should be lodged with the Commission'.

147. Mrs C wrote to the Commissioners on 3 July, objecting strongly to both the advertisement and notice, stating that they were not within the Rules. She pointed out that the regulatory requirement was to notify the landlord, the Grazings Clerk and shareholders, whereas the advertisement that had appeared in the newspaper was an invitation to comment which was not confined to these people, but was made to its readership in general. Mrs C also wrote to the then Chairman of the Commission on 21 July.

148. Chief Executive 1 wrote to Mrs C on 22 July 2003 stating: 'Where the Commission propose to grant an apportionment application it is their practice to advertise the proposal in the local newspaper and post notices in the locality.'

This is to ensure that the landlord of the grazings, the grazings clerk and shareholders are aware of the Commission's proposed decision and what steps are open to them. Whilst these precise steps are not set down in our Rules of Procedure the Commission has to consider and adopt the practicalities necessary in order to abide by their Rules of Procedure. It is not always practical for instance to inform all shareholders in a township of a proposed decision. There may be dozens of shareholders'.

149. Mrs C was not satisfied with this response. She wrote again to the then Chairman of the Commission and he responded on 5 August saying that he had been advised by Chief Executive 1 that advertising in the local newspapers and putting up a local notice was in line with normal Commission procedures. Also that 'while there was a slight discrepancy in the notices advertised and posted I am satisfied that this was a minor administrative oversight which has not affected the decision making process'.

150. It became apparent during my investigation that the Commission had not addressed an aspect of this complaint. They had responded on the method of advertising the application, but not to the concern from Mrs C about inviting responses. The issue here was that the Commission advertisement and notice did not make it clear that the invitation to respond was limited to shareholders. I discussed this issue at the 6 July 2006 meeting with the Commission. At this meeting, the Head of Regulatory Division agreed that Mrs C had been correct in that the Commission had to comply with the 1993 Act and he advised that the Commission had changed their procedures as a result. A copy of the amended desk instructions, restricting invitation to submit representations to a proposed decision, was subsequently sent to me on request.

(g) Conclusion

151. I am satisfied that the Commission did not act wrongly in deciding where to advertise the Apportionment application, as their Rules of Procedure state clearly that the application can be advertised 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. I also accept the view of the then Chairman of the Commission that the decision making process was not affected, in that Mrs C was granted the Apportionment. However, I do consider that both the notice and the advertisement were inaccurate. For this reason, I partially uphold the complaint.

(g) Recommendation

152. The Ombudsman has no recommendation to make as the Commission have already changed their procedures as a result of this complaint from Mrs C.

153. However, the Ombudsman has a final overall recommendation, which is that the Commission provides Mrs C with a meaningful apology for the shortcomings identified in the Report.

154. The Ombudsman asks that the Commission to notify her when the recommendations have been implemented.

Explanation of abbreviations used

Mrs C	The complainant
Mr C	The husband of the complainant
The Commission	The Crofters Commission
The 1993 Act	Crofters (Scotland) Act 1993
Chief Executive 1	The Chief Executive of the Crofters Commission in post at the time that the complaints were raised
Chief Executive 2	The new Chief Executive of the Crofters Commission
The Grazings Clerk	The Grazings Clerk in post until January 2002
SEERAD	Scottish Executive Environment and Rural Affairs Department (now the Scottish Government, Rural Payments & Inspections Directorate)
CCAGS	Crofting Counties Agricultural Grants Scheme
The Grazings Officer	The Commission member of staff whose job it was to provide guidance and assistance, particularly to grazings committees
AGM	Annual General Meeting
Grazings Constable	The SEERAD Officer appointed to take on this role

The Commissioners

The seven Area Commissioners who
comprise the Board of the Crofters
Commission

The then Chairman of the Crofters
Commission

The Chair of the Crofters Commission
in post at the time that the complaints
were raised

Glossary of Terms²

Apportionment	Piece of common grazings land allocated to a particular croft and fenced off for its own exclusive use
Common Grazings	Area of grazing land used by a number of crofters and other shareholders
Croft	A holding registered with the Crofters Commission on the Register of Crofts
Crofter	The tenant of a registered croft
Crofting Counties Agricultural Grants Scheme (CCAGS)	Grant designed to provide assistance towards improving the infrastructure of crofting and eligible small/medium scale agricultural businesses operating in the Highlands and Islands of Scotland
Grazings Clerk	Person elected to co-ordinate the functions of the Grazings Committee
Grazings Committee	Elected by the shareholders to administer a Common Grazings
Grazings Constable	A person appointed to administer a Common Grazings in the absence of a Grazings Committee
Shareholder	Person with an entitlement to use a Common Grazings
Township	A group of crofts which share Common Grazings

² Some definitions taken from the Glossary on the Commission's website

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.

(4) 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.'

Grazings Regulations

The management of Common Grazings is governed by regulations based on statute (the Crofters (Scotland) Act of 1993 in relation to the complaints in this Report). Each Township has its own regulations. Since 1955 the supervision of the regulation of the Common Grazings has been the responsibility of the Crofters Commission.

Grazings Committee Members and Grazings Clerks are voluntary offices provided for in the Crofters (Scotland) Act 1993. The Grazings Committee is elected by the shareholders in the Common Grazings and its purpose is to administer the Common Grazings. Section 49(1) of the Crofters (Scotland) Act of 1993 requires the Grazings Committee to make 'Regulations for the Management of the Common Grazings' in consultation with the landlord. These are then submitted to the Crofters Commission for confirmation. The content of the Grazings Regulations vary depending on local circumstances, but they are required by statute to deal with certain matters. After confirmation by the Crofters Commission the Grazings Regulations become legally binding on the Common Grazings and its shareholders.

The Township Grazings Regulations in question set out the Constitution and Proceedings of the Grazings Committee:

Appointment of Committee

3. The shareholders in the Common Grazings shall, at the meeting called under paragraph 4 hereof, appoint a Grazings Committee of such number as the meeting shall decide. The term of office of the Committee shall be three years; at the expiry of that period a new Committee shall be appointed following the procedure in paragraph 4. A retiring member of a Committee shall be eligible for re-election.
4. No later than one month before the term of office of the Committee ends they shall give notice to the shareholders of a meeting for the appointment of a new Committee. This meeting must take place before the term of office of the existing Committee ends. At least 10 day's notice of the meeting must be given; this shall be done by advertisement in each of two successive weeks in one or more newspapers circulating in the Committee

district, or by notice posted up for two successive weeks in a public place or places approved by the Commission. The new Committee appointed at this meeting shall take up office immediately on retiral of the existing Committee. The Clerk of the retiring Committee shall inform the Commission of the names and addresses of the members and Clerk of the new Committee.

5. Any vacancy occurring by reason of death or resignation of a member shall be filled by nomination of the remaining members.

They also deal with meeting procedure, the appointment and responsibilities of the Grazings Clerk, the calling of meetings and Annual General Meetings:

MEETING PROCEDURE

6. The Committee shall appoint one of their members to be Chairman and he shall preside at all Committee meetings and at the Annual General Meeting as he is able to do so. If the Chairman is unable to be present at any meeting, the Committee shall appoint some other member present to be Chairman of that meeting and that person shall have the same powers and voting rights at that meeting as if he were the Chairman of the Committee. The Chairman shall have a casting vote as well as deliberative vote at Committee meetings. A majority of members shall be a quorum.

APPOINTMENT OF CLERK

7. The Committee shall appoint a Clerk who need not necessarily be a Committee member or shareholder. He shall deal with all correspondence, keep stock records, record Minutes of all meetings and carry out all other duties as required by the Committee under these Regulations. He shall be responsible for all cash transactions and shall keep up-to-date accounts which he shall arrange to be audited annually. He shall include a financial statement in his report to the Annual General Meeting. The Committee may from time to time inspect the accounts and arrange for further audit if they consider this appropriate'.

CALLING OF MEETINGS

9. The Committee shall hold meetings as and when they may determine but in any event they shall hold at least one meeting every four months. The Clerk may call a meeting of the Committee at any time and he must do so

when asked to by two members of the Committee. The Clerk must give each member of the Committee at least five days' notice of the date, place and time of meeting called under this paragraph. Such notice shall be in writing and shall be served on the Committee members either personally by the Clerk or by posting the notice by first class mail at least seven days before the meeting. A shortened period of notice may be agreed on by all members of the Committee in an emergency; this agreement shall be recorded in the Minutes of the meeting by the Clerk.

ANNUAL GENERAL MEETINGS

10. In addition to the meetings provided for in paragraph 9 (above) an Annual General Meeting of the shareholders shall be held on such a date in the month of November each year as the Committee may determine. At the Annual General Meeting the Clerk shall present a report of the Committee's transactions during the preceding year and the Annual Report shall be presented to the meeting for adoption. Notice of the Annual General Meeting must be given by the same methods as for a meeting called to appoint a new Grazings Committee (paragraph 4).

The Grazings Regulations also deal with the gathering of stock:

GATHERING OF STOCK

17. The Committee shall fix certain days for the gathering of sheep for all management purposes. All shareholders shall be bound to assist at gatherings as instructed by the Committee. If any shareholder fails to attend a gathering the Committee are empowered to recover from him such sum, in lieu of attendance, as the Committee consider reasonable compared with the rate of agricultural wages payable in the district. No person shall gather sheep on any other occasion without the permission of the Committee.

Extracts from the Crofters (Scotland) Act 1993

Section 47(3)

If the crofters who share in a common grazing fail at any time to appoint a grazings committee, the Commission may, after making such inquiry, if any, as they may deem necessary, appoint a grazings committee, or may appoint a person to be grazings constable; and a committee or constable so appointed shall have the like powers and duties as a grazings committee appointed under subsection (1) above.

Section 47(8)

If the Commission are satisfied, after making such inquiry, if any, as they may deem necessary, that any or all of the members or the clerk of a grazings committee (however appointed under this section) are not properly carrying out the duties imposed on them under this Act, the Commission may remove from office any or all such members or such clerk and may appoint or provide for the appointment of other persons (whether crofters or not) in their or his place.

Section 52(1)

Any person who contravenes or fails to comply with any common grazings regulations for the time being in force under section 49 of this Act shall be guilty of an offence and shall be liable on summary conviction to a fine of an amount not exceeding level 1 on the standard scale; and in the case of a continuing offence to a further fine not exceeding 50 pence for each day on which the offence is continued after the grazings committee or the Commission have served notice on him warning him of the offence.

Explanatory Notes relating to the Crofting Reform etc. Act 2007

Section 28: Contravention of, or failure to comply with, common grazings regulations

124. Section 28 amends the provisions of section 52 of the 1993 Act so as to provide a new means of enforcing common grazings regulations. As a result of the replacement of the previous section 52(1) with a new section 52(1), breach of grazing regulations will no longer be a criminal offence.

125. A new procedure is put in place by means of new subsections (1) to (1F). These provisions provide for the Commission to intervene at the request of the owner or grazings committee where grazings regulations are not being observed. If the Commission are asked to intervene new section 52(1A) requires them to give notice of the contravention to the person accused of not observing the regulations, the grazings committee and the owner. The Commission, or a person appointed by the Commission, are thereafter required by new section 52(1B) to allow all these parties to make representations about the allegation and evidence may also be heard. If the Commission determine there has been a contravention of or failure to comply with grazings regulations in terms of new section 52(1C) they can require the offender to comply with the regulations and make good any damage. Where an offender does not so comply, new section 52(1D) allows the Commission either to determine that all or part of that person's share in the common grazing is suspended or, if the person is required to make good damage to the grazing, to allow a further period for that to be done. This section also allows the Commission to end a period of suspension. New section 52(1E) provides that when a grazing share has been suspended and a requirement imposed by the Commission is still not complied with, the Commission can extend the period for making good damage done or determine that the share is terminated and apportion it to the other shareholders. New section 52(1F) confirms what other rights are included within the meaning of the term share.

126. It is important to note that each determination by the Commission under section 52(1C), (1D) and (1E) is subject to the appeal provisions in new section 52A (see section 33 of the Act.) This therefore affords the person accused of a breach the opportunity to challenge the Commission's actions in court at each stage.