

**MINUTE OF A MEETING OF THE MEMBERS OF THE SCOTTISH LEGAL COMPLAINTS
COMMISSION: 10.10AM TUESDAY 31ST JANUARY 2017**

Venue: The Stamp Office, 10 – 14 Waterloo Place, Edinburgh, EH1 3EG

PRESENT:

LAY:

Bill Brackenridge (Chair)
Kevin Dunion
Sara Hesp
Emma Hutton (by telephone)
Michelle Hynd
Sarah McLuckie

LAWYER:

Denise Loney
Amanda Pringle

In attendance:

John Ferrie (F&CSM) (Items 1-25)
Neil Stevenson (CEO) (Items 1-27)

Keith MacConnachie (CM) (Items 1-25)
[REDACTED] (Secretariat, minutes)

Apologies:

Kay Springham, David Buchanan-Cook (HO) and Caroline Robertson (HI)

Abbreviations used:

F&CSM – Finance and Corporate Services Manager
HI – Head of Investigations
WIP – Work in Progress
FMR – Financial Management Report
AC – Audit Committee
CI – Case Investigator
CIM – Case Investigations Manager
SGvt – Scottish Government

CM – Clerking Manager
HO – Head of Oversight
DC – Determination Committee
LSS – Law Society of Scotland
HCF – Hybrid Conduct 1st
FoA – Faculty of Advocates
HSF – Hybrid Service 1st

1. Welcome

1.1 The Chair welcomed everyone to the meeting; in particular a warm welcome was extended to the three new Members attending their first meeting of the Board.

2. Apologies

2.1 The Chair advised that apologies were received from new Member, Kay Springham and from both the HO and HI.

3. Declaration of Interests

3.1 No other declarations of interest were made other than the standard declarations of interest declared by Amanda Pringle and Denise Loney in relation to any pecuniary interest with regards to any budget discussions.

4. Outcome of Anderson Strathern vs SLCC Appeal Update

4.1 The CEO advised the key update development was that it was now agreed that they would be considering on a 'single' Appeal case and that the substantive hearing will focus only on the issue of principle – could we re-categorise or not. The CEO also advised that the pre-hearing was currently taking place this morning at the CoS. It was noted that the pre-hearing is a procedural hearing whereby we are seeking confirmation of dates for the formal/substantive hearing to take place and it was hoped that this would be agreed for either 22 or 23 February [later in the meeting the Board were updated that the actual dates would be 23 and 24 February]. The CEO

- also advised that CIM2 was at the CoS, along with our Legal Advisers for the procedural hearing.
- 4.2 The CEO and Chair advised that they had both attended a meeting at the LSS on the 13 January along with both sets of Legal Advisers and everyone found this to be a positive and useful meeting.
- 4.3 The CEO advised that both himself and the Chair were also due to meet with the LSS on 1 March for their next joint Quarterly meeting and this would involve the CEO, Lorna Jack and potentially both the outgoing President, Eilidh Wiseman and the new President, Graham Matthews.
- 4.4 The F&CSM updated Members regarding the current financial impact costs of the CoS Appeal. The F&CSM reiterated that this figure show a loss of opportunity on normal business by diverting resources over these months, from September 2016 to date. The F&CSM acknowledged this has been decreasing but the cumulative cost at present is £127k. Members noted that this loss of opportunity does not include any additional costs towards Legal fees, which to date is £11.5k, with a further £70k set aside in next year's draft budget. It also does not take into account the considerable impact on delay to other cases within the system. Members sought clarification from the CEO for an approximate estimate of his time was being spent on this issue. The CEO anticipated at present it was now about 15-20%.
- 4.5 A new Member sought clarification as to how many parties were involved or who had instigated the 18 Appeals to the CoS. The CEO advised that all Appeals were lodged by the LSS and no other parties involved in the re-categorisation of complaints had appealed the re-categorisation decisions.
- 4.6 The Board ratified the various decisions of the CEO to date, as noted in the presentation, and the Chair agreed that another full update would be given at the Performance Call Meeting on 27 February.

Action	Owner	Due Date
CEO to advise the Board of the outcome of: 1) meeting with the CEO at the LSS, 2) decision from CoS Appeal Hearing on 23 and 24 February and 3) update on Legal fees.	CEO	27 Feb 2017

- 4.7 The Board noted the slides and updates presented by the CEO and F&CSM.
- 4.8 The Chair confirmed that Members would be kept up to date of any ongoing issues.

5. Q2 Balance Scorecard

- 5.1 For the benefit of new Members the CEO gave a short background overview to the presentation on how the data was gathered in the format of the Balance Scorecard. It was noted that the initial trend predicted a reduction in the incoming cases for 2014/15; however, the actual data shows a sharp increase from Q4 2014/15 onwards.
- 5.2 The Board noted the slides and updates presented by the CEO.
- 5.3 Members sought clarification from the CEO as to whether they were able to ascertain from the data gathered as to how efficient a CI was per hour per head and how many cases they achieve in KPIs per year. The CEO explained for the benefit of new Members the current approximate timescales for both Eligibility and Investigation cases, the individual production targets for each member of staff, and how these were monitored. Members shared with the CEO their own workplace experience of productivity and KPI performance information and how this is displayed visible to all in the team/department. Members also shared examples of how to improve morale and productivity without singling out particular individuals. Members acknowledged that there had to be a fair allocation of cases, by size, quantity and quality etc. The CEO advised that an update on the Eligibility Process paper is due to the March Board Meeting and will include a review on efficiency improvements etc.

- 5.4 The CEO spoke to the Strategy Assurance Map 2016 to 2020 slide and gave thanks to Member, M Hynd for her input to assist with the drafting of the new format.
- 5.5 Following discussion it was agreed that Members were seeking a visual display to include:
- 5.5.1 existing time perspective trends,
 - 5.5.2 graphs to include a 3D view of trends (over time) on the Strategy Assurance Map as well as red/amber/green, and
 - 5.5.3 the CEO to also provide 6monthly data on CI KPI performance of Eligibility cases.
- 6. Management Information & KPIs**
- 6.1 In the absence of the HI, the CEO spoke to the paper presented
- 6.2 WIP – The CEO advised that was down slightly at Eligibility and remained static at all other areas of the business.
- 6.3 Total Case Lifetime Averages – The CEO advised that this had slightly increased again at both Eligibility and Investigation stages, due to cases on hold because of the AS case, but had decreased at Determination stage.
- 6.4 Cases to be allocated – The CEO advised that there were currently 215 cases awaiting allocation at Eligibility stage and 18 at Investigation.
- 6.5 Enquiry & Eligibility - The CEO advised that the complaints received for November had increased to 118, but had dropped back down again to 82 for December. The F&CSM shared a graph which showed a comparative of the last 2 years for December which shows an average of 72 cases and 78 cases respectively, however, this year the average is showing 98 cases. It would therefore indicate a consistent rise in complaints received rather than a decline as what was formerly predicted.
- 6.6 Mediation – The CEO advised it was anticipated that the number of cases being considered at Mediation would increase next Quarter.
- 6.7 Investigation – Members noted the figures presented.
- 6.8 Determination - The CM advised that there had been 11 Determination Reports issued. The CM gave an overview of the current Clerking caseload and advised that there were still currently 8 cases within the recat stage of the process at the LSS.
- 6.9 Members thanked the CEO and CM for their update to the papers presented.
- 6.10 The CEO advised that confirmation had now been received that the CoS had approved an early date for the Appeal Hearing, and this will take place over 2 days on 23 and 24 February 2017.
- 7. Appeals Update**
- 7.1 The CM spoke to the paper presented and for the benefit of the new Members gave an overview of the Summary and Background process to Appeals. The CM confirmed no new Appeal cases had been received at either Eligibility or Determination stages of the process.
- 7.2 The CM gave an update on all ongoing Appeals and also explained the reasons for not pursuing for expenses due to financial difficulties of individuals who have now been sequestrated. The Chair sought clarification as to whether the decision to proceed or not proceed for Expenses was within the current Scheme of Delegation Procedure and the CEO confirmed it was.
- 7.3 A new Members sought clarification as to whether or not they were given notice regarding Appeals of cases they were involved in and the CM confirmed that yes they would be under the current Appeals Procedure. The CM also confirmed that learnings are also taken from CoS Appeal decisions and shared with Members and staff, though it should be noted that they do not always receive a written judgement from the Court in all cases.
- 7.4 Members thanked the CM for the update on current Appeals.

8. Q2 Finance Report

8.1 FMR – 6 months to 31 December 2016

The F&CSM spoke to the FMR papers presented and advised these were for the first 6mths of the new Financial Year.

8.2 The F&CSM advised that as with previously reported with the ongoing CoS Appeal decision, there continues to be an increase in Direct Staff and Non Staff Costs. This is due to recognition of the issue and of resources being committed to deal with this additional work and higher than budgeted legal expenses. Adjustments will be made and reflected in the year-end figures. Again, it was noted that there had been a slight reduction in Indirect Staff Costs for the month.

8.3 The F&CSM also advised that whilst Members expenses were below budget with the corresponding period last year it was anticipated this would increase to accommodate new Member recruitment and training for the rest of this financial year.

8.4 The F&CSM advised that the total expenditure out-turn have been revised to £2,978,800 which is now £115,500 over budget. This means the Reserves at the end of June 2017 is anticipated to be in the region of £455,000 with the prospect of additional expenditure commitments continuing into the 2017/18 financial year.

8.5 The F&CSM also gave an overview of the Balance Sheet figures as presented along with the FMR. It was noted that the cash and bank balance as at 31 December 2016 was £2,167,300 and included a provision for lease recovery till September 2018, LPF provision was included in the Pension Scheme Liability.

8.6 Members sought clarification as to whether or not consideration should be given to reviewing the risk of having the majority of monies held within one particular banking institution. Consideration was given to the complexity and risk of utilising more than one different type of bank account and whether or not the interest rates being offered by banks was worth the risk of switching banking providers. It was agreed that the F&CSM would review of options to be presented to the March Board Meeting for further discussion by Members.

Action	Owner	Due Date
F&CSM to give consideration to reviewing savings account banking arrangements to ensure that we are obtaining the best investment with Cambridge & Counties.	F&CSM	21 Mar 2017

8.7 Members thanked the F&CSM for his explanation to the papers presented.

12noon comfort break

12.07pm Meeting resumed

9. Update on Operating Plan and Budget 2017/18 Consultation

9.1 The CEO advised that the LSS have circulated a copy of the draft Operating Plan and Budget to their members and have sought clarification on certain figures within the drafts which have been responded to. It was noted that the deadline for formal comments was not due till 13 March 2017.

10. Q2 Operating Plan Update

10.1 In the absence of the HO, the CEO spoke to the paper presented and advised that all projects were ongoing. Members sought clarification on two RAG reports, in particular:

10.1.1 1(b) *Ensuring consumers know how to complain and reducing barriers to complaining*, this was currently scored as Green and it was suggested that this should be reviewed to either Red or Amber. Following discussion it was agreed this should be changed to Amber.

10.1.2 1(c) *Client Relations Managers – helping lawyers manage complaints, and reducing those which need to progress to us*, again this was currently scored as Green and clarification was sought as to what examples of evidence there were to warrant this scoring. The CEO explained that we now publish anonymised decisions, provide a Quarterly CRM newsletter and the Oversight Team had increased the number of talks with the profession. The Chair also suggested that the CEO and HI work with our new Member to utilise her knowledge and experience of being a Partner/CRM to assist with this particular project.

10.2 The Chair thanked the CEO for his update to the paper and looked forward to a further update at the May Board Meeting.

11. Q2 HR Update

11.1 The CEO spoke to the paper presented and Members noted the headcount variance was down 1.57FTEs (noting that if maintained for a year this would equate to approx. 100 eligibility determinations; however it was acknowledged that this will be addressed within the recent recruitment exercise.

11.2 Members noted the Sickness Absence for Q2 was 3.82% and the Chair stated that for a relatively small organisation though this was worrying it was probably due to normal winter viruses.

11.3 Members thanked the CEO for his explanation to the paper presented.

12. Q2 Customer Feedback

12.1 The CEO spoke to the paper presented and Members noted that during the Q2 period 128 cases were closed and from this 40 responses were received, giving an approximate response rate of 15%. Members noted that the overall feedback response from the profession was much higher than from consumers, averaging between 80% and 94% satisfaction against the different criteria). Members acknowledged it was useful to see the data and noted that the Board had already identified the need to use plain English more when responding to all parties. Members also acknowledged that decisions had to include the formal wording used within the Act, ie Frivolous, Vexatious and Totally Without Merit, which some consumers found particular unhelpful and difficult to comprehend.

12.2 Members noted that one point in particular was raised about the length of time a case took in our process and clarification was sought as to whether there was a consistent promotion of the Mediation service which if parties engaged in, would possibly reduce timescales within the process. It was agreed that the CEO would clarify this for the next Board Meeting.

Action	Owner	Due Date
CEO to clarify whether within the Customer Feedback relating to 'length of the process' whether or not there is a consistent approach to promote Mediation which would reduce the time for	CEO	21 Mar 2017

12.3 The Chair sought clarification as to whether or not the SMT felt the overall return rate was relatively low, given that 128 cases were closed. The CEO advised that upon checking 15-20% is a typical return, however acknowledged there were other ways to follow this up, ie by telephone samples etc.

13. Reviewing our Hay Market Rate Benchmarks – Looking Ahead to 2018/19 & 2019/20

13.1 The CEO spoke to the confidential paper presented.

13.2 The Chair declared a conflict of interest as he previously had been a Director with the Hay Group.

13.3 Following a free and frank discussion Members agreed that the CEO could commence an initial information gathering exercise on the benchmarking process.

14. Update on the Eligibility Process

14.1 In the absence of the HI, the CEO advised that a full update paper would be brought to the March Board Meeting.

15. Response to SGvt Consultation on the Draft Gender Representation on Public Boards (Scotland) Bill

15.1 The CEO spoke to the draft consultation response paper presented. Members noted the importance of responding when SGvt has requested we do and when we were directly affected, although also raised concern that the proposed comments might be considered by some to be outwith the scope and remit of the SLCC. Members also acknowledged that we could be at risk to exposing the SLCC, ie by narrowing down the Chair's replacement to recruit a specific gender (male) as the current gender balance of our members greater than 50:50 of 7 females to 2 males. Members discussed whether overall the gender issue was clouding the wider diversity and geographic impact this would have on the SLCC.

15.2 Following discussion it was agreed that the draft response would be finalised by the CEO and submitted on behalf of the Board.

Action	Owner	Due Date
CEO to submit the SLCC response to the SGvt Consultation on the Draft Gender Representation on Public Boards (Scotland) Bill	CEO	to SGvt by 17 Mar 2017

15.3 Members thanked the CEO for his update to the paper presented.

16. Annual Update on Reporters Panel

16.1 In the absence of the HI, the CEO gave an overview for the benefit of new Members to the reasons for the use of an external Reporter Panel.

16.2 Members noted the paper presented and agreed with the future planned work and looked forward to the next annual update in January 2018.

17. Consistent Decision Making

17.1 The CM spoke to the paper presented and advised that following the overview given at the Member Development Session yesterday, on Conveyancing Guidelines it was suggested and agreed that the next subject matter would be Executries and Family Law. Concerns were raised that as this document evolves it might become cumbersome and time-consuming to keep up to date with accurate data. The CM therefore, suggested the formation of a short-life working group to examine the process for producing Decision Guidelines and agreeing any efficiency in improvements to this process. It was agreed that the CM would update the CEO, Chair and Member K Dunion on this and provide a report to the full Board in May.

Action	Owner	Due Date
CM to organise a short-life working group to review CDM and report back to the Chair, KD and CEO prior to updating Members at the May Board meeting.	CM	30 May 2017

17.2 The Chair reiterated that this was an important tool to be utilised by Clerks and Case Investigators as well as Members. The Chair did acknowledge in its current format the document was cumbersome to search within and would like to see it easier to use.

18. Update on Member IT Facilities

- 18.1 Members noted the paper presented by the CEO and Members were encouraged to report any current IT issues directly to NVT in the first instance.
- 18.2 Members noted that a further review will be carried out once the new Members have tested the system for a few months.

19. Update from AC Meeting from 17 January 2017

- 19.1 The AC Chair gave an overview of the recent AC meeting; in particular noted that the draft revised Risk Register dominated the main discussion of the meeting. The AC chair advised it was agreed that all recorded future risks would be well described and an updated Risk Register would be presented to the next Board Meeting in March.
- 19.2 The AC Chair reminded the Chair that the AC was seeking another Member to join the AC.
- 19.3 The AC Chair advised that the Internal Auditors attended the meeting and they would also be assisting the SMT in developing a Framework for Risk. It was noted with disappointment that the newly appointed External Auditors, Deloitte did not attend the AC meeting and that there had been several glitches in starting to work with them. The Chair is keen that they attend next AC Meeting on 24 April 2017.
- 19.4 The Chair thanked the AC Chair for his update to the AC meeting of 17 January 2017.

20. Language Accessibility and Translations

- 20.1 The CEO in the absence of the HI spoke to the paper presented.
- 20.2 Members noted the website content and how to request translated copies of documents will be updated, along with producing a small range of short general information leaflets.
- 20.3 Members were reminded that the forthcoming implementation of the BSL (Scotland) Act (2015) later this year, which will mean that we will need to ensure that all documents will be compliant. The CEO advised that is in hand as we will have access to the SGvt funded service to assist with interpretation and would be included as part of the SGvt main Action Plan (rather than having to create our own).
- 20.4 Members thanked the CEO for his update to the paper presented.

21. Board Actions Registers

- 21.1 The Chair and CEO provided Members with an update on the actions register.
- 21.2 Updates were given in particular to the following Actions:
 - 21.2.1 Action 159 – the CEO and HI are moving this forward.
 - 21.2.2 Action 162 – an update to be provided at next Board Meeting.
 - 21.2.3 Action 169 – agreed that an update would include current information, process map and 3D view of trends.
 - 21.2.4 Action 183 – still outstanding as waiting to hear from SGvt on the finalisation of the Framework Agreement.
- 21.3 Members noted the updates and all cleared items had been removed from the Actions Register.

22. Minutes of Meetings from 29 November 2016 and 20 December 2016

- 22.1 29 November 2016
The Minute of the Board Meeting was approved as read.
- 22.2 20 December 2016
The Minute of the Board Performance Call Meeting was approved as read.

23. Chairman's Report

- 23.1 Members noted the meetings undertaken by the Chair. The Chair also advised that both he and the CEO had an enjoyable evening at the Annual LSS Dinner on 27 January.

23.2 The Chair advised that he had commenced discussions with SGvt Sponsor Department regarding the appointment of both his and K Dunion's successors and it was anticipated that they would only run one recruitment exercise, and he will ensure that a Member from the Board is involved in the process.

24. Dates of Next Meetings

24.1 Members noted the dates of future Board Meetings and Development Sessions as listed.

24.2 There will be a **Board Performance Call on Monday 27 February 2017 at 10.00am**; and there will be a **Board Development Session on Monday 20 March 2017**, commencing at **2.00pm** with training provided by an external trainer. The next full **Board meeting taking place on Tuesday 21 March 2017 at 10am**; all meetings will take place in the Stamp Office 10 – 14 Waterloo Place, Edinburgh, EH1 3EG.

25. AOB

25.1 Future Plan of Determination Committee Dates - The Chair confirmed that due to availability of the current membership of the Board, Members had discussed and agreed at the Board Development Session with the suggestion from the Clerking Team, that future DCs will now, where possible, take place on Monday mornings. The Chair reiterated that where possible, they can take place after a Performance Call but they will not take place prior to a Board Development Session. The Chair also advised that going forward Board Meetings, Performance Calls and DCs will all commence at 10am. It was agreed that the Secretariat will revise the DC schedule and circulate confirmed dates to Members.

Action	Owner	Due Date
Secretariat to revise DC and Board Meeting schedule planners and circulate to Members.	Secretariat	By 3 Feb 2017

26. CEO's Report

26.1 The CEO spoke to the paper presented. Members noted the meetings undertaken by the CEO and acknowledged all the CEO's time spent on the AS Appeal.

26.2 Members also noted the future planned meetings for February.

1.10pm F&CSM and CM left the Meeting

27. Update on Performance Review Arrangements

27.1 The CEO gave a verbal update on an ongoing Tribunal issue and advised that matters were progressing to a procedural hearing.

27.2 [REDACTED]

1.30pm CEO and Secretariat left the Meeting

MEMBER ONLY SESSION

28. CEO's 6 Monthly Appraisal

28.1 Members noted and agreed with the Chair's presented paper on the proposed 6 monthly Appraisal for the CEO and agreed the appropriate assessment was 'superior'. The Chair confirmed the paper had been agreed in advance with the CEO.

28.2 With no other business the meeting concluded.

1.45pm Board Meeting ends