

**MINUTE OF A MEETING OF THE MEMBERS OF THE SCOTTISH LEGAL COMPLAINTS
COMMISSION: 10AM TUESDAY 14th DECEMBER 2021
VIA: ZOOM**

PRESENT:

LAY:

Jim Martin (Chair)
June Andrews
Sara Hesp
Niki Maclean
Sarah McLuckie
Morag Sheppard
John Stevenson (new Member Observing)

LAWYER:

Denise Loney
Kay Springham
Richard McMeeken (new Member Observing)

Apologies:

None

In attendance:

Neil Stevenson (CEO)
Louise Burnett (DoBP)
Caroline Robertson (DoR)

[REDACTED] (Secretariat – minutes)
Vicky Crichton (DoPP)

Abbreviations used:

WIP – Work in Progress
FMR – Financial Management Report
AC – Audit Committee
CI – Case Investigator
RPO – Relevant Professional Organisation
IMT – Investigations Management Team
JT – Journey Time
DoR – Director of Resolution
DoBP – Director of Business Performance
RC – Remuneration Committee
WFH – work from home

DC – Determination Committee
LSS – Law Society of Scotland
FoA – Faculty of Advocates
CIM – Case Investigations Manager
SGvt – Scottish Government
CoS – Court of Session
WT – Working Time
DoPP – Director of Public Policy
IA – Internal Auditor
EA – External Auditor
BCP – Business Continuity Plan

1. Welcome and Apologies

- 1.1 The Chair welcomed everyone to the Board meeting and thanked everyone for their input to yesterday's Board Development Session.
- 1.2 The Chair extended a warm welcome to new Member, Richard McMeeken who was observing.
- 1.3 The Chair noted that there were no apologies had been received for the meeting today.
- 1.4 Members noted the continued impact of coronavirus and lockdown on staff, members of the profession and clients, and the various pressures this was creating.

2. Declaration of Interests

- 2.1 The Chair noted the standard declarations of interest declared by Denise Loney and Kay Springham in relation to any pecuniary interest with regards to budgetary discussions and the reform consultation process/response by the SLCC.

3. Key Issues

- 3.1 The CEO spoke to the paper presented and it was agreed that all items would be taken as read, with additional updates provided on specific matters.
- 3.2 Covid-19 update – For the benefit of the new Members the CEO gave a brief explanation on the blended model approach SMT had been consulting with staff on. The CEO acknowledged following feedback from the facilitated staff workshops a number of points

- raised had been considered by SMT and following a review, some adjustments had been made. This included: requirement to access to the office, this specifically meant clarifying the percentage of time staff would be required to attend per quarter; a virtual desk booking system, which is linked to all outlook calendars for easy access and update.
- 3.3 Board Member Appointments – The CEO provided an update from the SGvt sponsor team. It was noted, an additional lay member had just been appointed to commence 1 January 2022, for a term of 5years. The CEO and Chair advised, unfortunately there would be a further delay to advertising of two legal members, as the Public Appointment Team Representative was now unavailable for our recruitment. It was hoped that the advertisement would still be made by the January time scale, however it was thought this would be doubtful. The Chair reported that various points on the recruitment process would be shared with the Minister, at their next meeting.
- 3.4 Joint work with LSS on Interim Improvements to the Complaints System – The Chair sought clarifications on timescale for implementation. The CEO reported there would be a targeted consultation on the draft statutory instrument, however as we have yet to see a copy of the draft statutory instrument we remain unsure about the implementation timescales. The DoPP advised they were meeting with SGvt officials later this week and as it was not anticipated that a draft would be circulated before Christmas, it might be nearer to the summer recess before this is implemented, so into the next operating year (2022/23). The Chair noted the timescales to date and whilst the CEO acknowledged that some progress had been made with the LSS since starting this process in December 2017, it would be approximately 4-5years before any changes are implemented.
- 3.5 ABS – The DoPP reported that they have responded to the LSS's new proposed scheme, which had only minor changes from the previous version. It was noted SGvt are considering granting authorisation ahead of recess next week. The DoPP advised that they are in discussion with SGvt regarding the implications of this timescale, so that we are able to update our website and processes in readiness. The Chair clarified, for the benefit of the new Members, that by the time the Board meet in January, this should be in place. The DoPP confirmed it would and it will be a new type of complaint that will be considered, thus developing a different type of relationship with the RPOs.
- 3.6 Cyber Update – the DoBP advised there was a slight change to the server patching date which would now take place earlier than planned and a reminder would be issued to Members and staff by the FacO.
- 3.7 Digital and AI – Members noted the CEO attended a recent AI event, with learning points being shared with SMT to be incorporated into developing the next 4year strategy..
- 3.8 S17 Work Update – The CEO reported the outcome of the third hearing at the CoS. For the benefit of new Members, the CEO explained the Judges' ruling of obtemper and the implications of this on the failings of the solicitor to provide the files to the SLCC, and for also failing to attend court for the other hearings. Members noted there had been press coverage as a result. The DoR advised that whilst the solicitor's file had now been provided, unfortunately it was incomplete. Further action is now required to obtain the remaining documents. The CEO reported there was another case against the same solicitor, with court proceedings now commenced to obtain case files. Members sought clarification on whether this matter had been raised with the LSS for response, as this would allow the LSS to raise a conduct complaint against this solicitor. The CEO advised it had but no conduct complaint has been raised/received to date. Members wondered whether there was an option for the individual complainer to do so, whilst it was noted there was this option, it potentially could take 2-3years before the matter was concluded. The CEO explained the complainer raised a conduct complaint in 2017 and it would be January 2022 before this is heard. Members had a free and frank discussion on this matter and it was agreed as the solicitor had not provided the complete file this will be pursued with both the solicitor and the LSS. The Chair sought clarification on the number of cases being pursued under S17 powers. The DoR reported there were 10 cases at present being pursued by this means. For the benefit of new Members the DoR gave an overview of the timescales before a case is pursued in court.

- 3.9 External Recognition of Work – Members noted the SLCC had been shortlisted in the Holyrood Public Service Awards. The CEO was delighted to report they had been awarded the best project in the Delivering results – agile improvements in action. The Chair and Board extended their congratulations to everyone on this achievement.
- 3.10 Data request from SGvt on Sex, Gender and Trans status – Members noted that this information had been requested by SGvt and submitted using the staff survey data previously collected. Following discussion, it was agreed that this would also be shared with Members.

Action	Owner	Due Date
DoPP to share with Board a copy of the consultation response submitted to SGvt on Sex, Gender and Trans status survey.	DoPP	ASAP

- 3.11 Consultation on Consumer Duty for Public Bodies – The DoPP expanded on the response submitted to SGvt on this request. Members noted this Duty forms part of the Consumer Scotland Act and the impact this new Duty has on public bodies to consider the impact of their policies and strategic decisions have on consumers. The DoPP stated in their response, we have clarified that the Duty should apply to our strategic decisions but not to our adjudicative decisions, we also expect the reporting to be minimal and have explained that we already have a statutory Consumer Panel in place. We also stated that we believe this Duty could be extended to other non-public bodies operating in the legal regulation field, including RPOs. The Chair confirmed that he had met with the new Chair of Consumer Scotland and looked forward to establishing links with them.
- 3.12 LSS's Third Survey of the Profession – Members noted the results of the LSS's published findings on the impact of Covid-19 on the profession.

4. Draft Budget and Operating Plan Consultation document for 2022/23

- 4.1 The Chair reported Members were being asked to formally agree and approve the Draft Budget presented, along with the draft Operating Plan. The CEO reiterated the draft Operating Plan document would formally come back to the January Board for final approval.
- 4.2 Draft Budget – The DoBP spoke to the paper presented and advised that the FMR for December would be presented to the January Board Meeting. It was noted by Members that the 2022-2023 Budget and Levy presented was based on discussions at the November Workshop. Members noted total planned expenditure of £3,870,446.
- 4.3 Draft Levies – Following a free and frank discussion, it was agreed there would be a 5% increase on the Levy for 2022/23, unless circumstances changed further by the time of the January Board meeting. This would see the General Levy being set at £444.
- 4.4 Board formally agreed (again, unless there was a material change in circumstance by the time of the January Board):
- | | |
|------------------------------------|---------|
| General Levy would be set at | £444 |
| Complaint Levy would be set at | £5,000 |
| Approved Regulator (AR) Fee set at | £10,000 |
| AR Complaint Levy would be set at | £8,000 |
| Licensed Provider (LP) Fee set at | £1,000 |
- 4.5 The CEO reminded Members of the timescale and process, in that, the budget must be out for consultation by the end of January 2022, with responses received being published by end of March 2022, and the final budget must be laid before Scottish Parliament in April 2022. Members sought clarification on previous responses and how these were shared. The CEO explained the process for the benefit of new Members.
- 4.6 The CEO also explained 'apportionment' and how this was applied in respect of discounts applied relating to the General Levy for different practitioner groups.
- 4.7 Draft Operating Plan Consultation Document for 2022/23 – The CEO spoke to the paper presented. Following a free and frank discussion, it was agreed this would be brought back to the January Board Meeting for final review and approval.
- 4.8 Board approved both draft documents presented by SMT and Members thanked the CEO and SMT for their explanation to the papers presented.

Action	Owner	Due Date
CEO and SMT to provide final updated draft documents to the January Board meeting for approval prior to consultation.	CEO/SMT	By 25 January 2022

- 4.9 IT Infrastructure Module - The Board noted the scale of the project, and that public bodies had not always executed IT projects well (with the AC and Board previously having reviewed learning shared by Audit Scotland on this matter). The Board sought assurance there was capacity and capability to deliver the project.
- 4.10 The CEO and DoBP noted that this was in many ways a series of smaller projects, each with a clear deliverable. The SLCC is outsourcing significant parts of project management of each of the elements to either CAS or NVT. Independent advice had been taken from FarrPoint, and budget would allow further advice to be taken and/or additional internal staffing to be considered for the project period. The project also had concrete deliverable outcomes, for example a working VPN, where it is easy to scrutinise if that is delivered or not. This is perhaps in contrast to many of the projects in the public sector which have not gone well, where bespoke new database/management solutions were being introduced based on a business case of efficiency, cut cost, or services. The planned work uses 'off the shelf' products, which are suppliers (doing the detailed project management) are familiar with. The SMT had also spoken to others who had gone through these changes – for example, the SPSO doing the same move to the Cloud version of NewPro to learn lessons.
- 4.11 The Board noted the assurances, and agreed that a proportionate way to proceed would be to approve the full programme of work, but ask for a 'gateway' review after delivery of the first two sub-projects, in so far as they relate to delivery of the VPN and active directories. Reporting to AC and the Board on delivery, any issues, and time/cost overruns would then allow scrutiny at that point before fully committing to other elements (although preparatory work would be done).
- 4.12 Alongside the above, the Board noted that the project element relating to Cyber Essentials Plus seemed some time off. The DoBP noted that this is because we have to do the work first to meet the standard. At the moment, we'd apply, not be fully compliant, and so need to go through the process a second time later anyway. This would take resource from actually dealing with known issues from the assessment carried out by FarrPoint (which specifically considered Cyber Essentials Plus compliance), and duplicate cost. The Board noted we should try to reach that point earlier, if possible.

Action	Owner	Due Date
CEO and SMT to update AC and Board in once VPN elements complete, and all ensure all parties are content before progressing to the next stage (the exact method to be agreed with the Chair and dependent on timings).	CEO/SMT	By 25 January 2022

5. Management Information to 30 November 2021

- 5.1 The DoR spoke to the paper presented, and advised incoming cases for end November was 97, with WIP being 362 to date.
- 5.2 Members had a free and frank discussion on productivity and the impact that S17 was having on JT, which is consistently monitored by SMT/IMT. The DoR reiterated that as part of the agile working project, CIs were continuing to be moved between Eligibility to Investigation and vice versa, thus meeting the demand of cases at different stages of the process and this was proving to work well. However, as there had been a few recent leavers of CIs, it was noted that SMT were considering carrying out a recruitment exercise early in Quarter 3. This is due to the timescale of a CI becoming fully trained in the investigation process, which takes approximately 9months. Members noted this would be the first CI recruitment in two years. The DoR reiterated that IMT are consistently liaising with staff on the agile process and the only backlog were cases at Investigation, which are S17 cases that are awaiting firm's files.
- 5.3 Members sought clarification in the Mediation rates and the DoR explained the previous backlog was now clear.

5.4 The Chair thanked the DoR for the explanation to the paper presented.

6. Enquiries – data collected, projects, opportunities

- 6.1 The CEO and DoR both spoke to the paper presented and acknowledged this had been outstanding on the Board Action register for some time. The CEO advised SMT and IMT took the opportunity to review the overall work stream data information that is gathered.
- 6.2 The Chair sought assurance from the analysis gathered, there was no pattern identified which helped predict incoming complaints numbers based on incoming enquiries. The CEO advised that although many of the calls to the Enquiry team are because individuals do not know the first step to making a complaint about their solicitor, we know most complaints now originate with the submission of an online complaint form. Even the calls which lead to a complaint, are therefore only a small subset of incoming complaints. Many other calls are looking for other information – how to find a solicitor, legal advice, a second opinion as to whether they have been given correct advice, how to appeal a court decision, etc. To assist, the CSOs have been instrumental in developing improvements to their signposting service. This along with the development of the SET (Service Experience Team) should see this improve. Our aim is to be to quickly suggest someone who can help.
- 6.3 The CEO was clear to stress that CSOs and CIs do not give individuals any legal advice and they make sure that if any individual has any concerns, then they should be raised formally with us, there was a clear direction from the court that we cannot add or coach complainants in making complaints.
- 6.4 Members were keen to see the output of the QA data being gathered into a statistical format. Whilst it was not currently available, the DoR confirmed this could be populated and shared with Board.

Action	Owner	Due Date
DoR to share with Board a copy of the output of the QA data gathered in a statistical format.	DoR	ASAP

6.5 Members noted the paper presented.

11.08am comfort break, meeting resumed at 11.15am

7. Finance Report to 30 November 2021

- 7.1 The DoBP spoke to the papers presented and reported Income was £52,838 ahead of Budget, with Expenditure showing a saving of £159,260.
- 7.2 The DoBP reported that of the Complaint Levy income, they were predicting £13,000 to be added to the bad debt provide at the year-end, though it was noted they have managed to recover £5,000. Members noted the information presented on the bad debt provision with regards to the Board Action Register. This is where the SLCC have been awarded expenses on Appeals and have not been able to recover these costs. The table presented only represents where expenses which have been awarded and does not include costs of appeals and where the SLCC have won an appeal but have not been awarded expenses. Members found this very interesting and informative and thanked the DoBP for providing the data. For the benefit of new Members, the CEO explained the majority of firms listed in the bad debt provision were former firms and whilst all avenues were pursued in the recovery of monies for parties involved, in most cases this is often futile and the money remains outstanding.
- 7.3 The DoBP reported staff salary costs were £49,219 under budget for the month, with secondment income being £26,424 ahead of budget. Staff savings were a result of vacancies within the staff establishment, as there were no plans to recruit on current staff vacancies. Further savings of £4,160 have been made by not utilising reporters.
- 7.4 Members noted their costs were currently £23,032 under budget, however there will be additional costs as new Board Members come in for Induction and shadowing. It was anticipated they were forecasting a saving within this area at year-end.
- 7.5 Members had a free and frank discussion on how to communicate the full cost of litigation, in particular, how expensive this was to the profession and more importantly

how much of these monies were unrecoverable to the SLCC. It was agreed this would be monitored by SMT for possible inclusion in future annual reporting.

7.6 Members noted the other figures presented by the DoBP.

8. Risk Register Summary

8.1 The DoBP spoke to the paper presented and gave an update on current Risks. In particular: Risks 2, 9 and 12 which are linked to new Board Member recruitment; Risk 4 which relates to major IT failure and cyber security; and Risk 13 ongoing safety concerns – return to work post Covid-19 and the new Covid variant/flu season.

8.2 Members also noted this was a summary paper, with a full update being provided to the January Board Meeting.

9. Cyber Security: An Update from the SEPA Attack

9.1 The DoBP spoke to the paper presented and gave an overview of the current learnings shared by SEPA following their cyber security attack last year. Members noted this information had also been shared with all NDPBs, in the hope that they too could improve their IT infrastructures to minimise the risks to their organisations. SEPA have worked with SGvt, Police Scotland, the National Cyber Security Centre (NCSC) and the Scottish Business Resilience Centre (SBRC) to build a clear recovery strategy. As part of this work, they also voluntarily commissioned reviews from independent experts to help them enhance their cyber security as they rebuild new systems and practices. SEPA also hope that by publishing as much information as possible, they can help other organisations learn from their experiences.

9.2 The DoBP advised that upon receiving this report, SMT have also carried out an internal benchmarking exercise, with the reporting on progress being provided to AC.

9.3 Following a free and frank discussion, where Board raised their concerns of how our IT provider would respond to threats of a cybersecurity attack. The DoBP advised this was being actively pursued by SMT, at present, as our IT system is 'fully hosted' security of our system is covered by our IT providers. However, the DoBP is engaging in communication with a company that provides cyber security to ensure that what is in place is correct for the SLCC. Members sought clarification on whether our IT provider had an intrusion detection system in place. The DoBP would check where in the process this sat and will provide an update to Members. The DoBP advised they had also taken up membership with SBRC, who will provide extra support and advice.

9.4 Members noted we would be undertaking Cyber Essentials Accreditation training and that Azets our IA would be carrying out an IT security review during January, with the output being reported to AC, at their April Meeting. SMT also plan to add cyber security to the annual compliance training for all staff and Members, with training materials being part of Cyber Week in February. The DoBP has attended the SBRCs Cyber Security for Executives course and was also arranging for the SBRC to provide training to both staff and Board.

9.5 Members sought clarification on the frequency of penetration testing. The DoBP advised this had been performed twice to date and it was anticipated it would be every two years. Members suggested this should be carried out annually. It was agreed the DoBP would seek clarification on this.

Action	Owner	Due Date
DoBP seek clarification on frequency of penetration testing and feedback to Board in the Key Issues paper.	DoBP	By 25 January 2022

9.6 Members noted the new IT infrastructure also gives the opportunity to build a system with cyber security at its heart, with the end project hopefully allowing for the application of Cyber Essentials Plus Accreditation. SMT acknowledged there was a requirement to never become complacent in area and they will continue to review our systems and work with other bodies to learn and improve. Feedback on how this is progressing will done via AC and the key issues paper.

9.7 Members noted the paper presented and thanked the DoBP for the update.

10. Health & Safety Annual Policy Statement Review

- 10.1 The DoBP spoke to the paper presented and gave an update on the Annual H&S Policy Statement to Members.
- 10.2 The DoBP advised the main change was additional First Aid provision as staff return to the office. Following a discussion at SMT/IMT, it was agreed that all Managers would be trained in Emergency First Aid at Work during Q3 to ensure that there would always be first aid cover.
- 10.3 Members noted the additional H&S spend to date, £789.93 directly related to ensuring the office was Covid-19 compliant, for hand sanitizer and wipes etc.
- 10.4 The DoBP advised that they were now encouraging all staff to report any accidents that occur whilst working at home, to date there have been 3 notifications from staff. Members sought clarification on whether any of these related to DVTs (deep vein thrombosis) due to staff sitting down more at home. The DoBP advised they were not and expanded on the 3 reasons for accidents. Staff were also encouraged to move throughout the day with some 5minute stretch exercises being shared with them to encourage movement throughout their day.
- 10.5 Members also sought clarification on whether staff carried out a LFT (lateral flow test) before attending the office. The DoBP advised staff were referred twice weekly to the official guidance (which includes guidance on lateral flow testing (through the Tuesday meeting note and the WIO email). We do not, however, check whether people have done this (and the SGvt and Union guidance suggests we should not be checking unless there is a particular and specific reason to do so). The Chair and Board were keen to ensure that everyone complies with SGvt guidance and it would be good practice to encourage staff to do so.
- 10.6 Members thanked the DoBP for explanations to the paper presented and approved the annual H&S Policy Statement.

11. Remuneration Committee Notes from 8 October 2021

- 11.1 Members noted the paper presented for information. The DoBP advised that no further meetings had taken place since the last update to the October Board Meeting.

12. Audit Committee Notes from 5 October 2021

- 12.1 Members noted the paper presented for information. The DoBP advised that no further meetings had taken place since the last update to the October Board Meeting.

13. Draft Response to Reform Consultation

- 13.1 The DoPP spoke to the paper presented
- 13.2 The Chair reiterated the earlier note of declaration of interest by Members, Denise Loney and Kay Springham. The Chair also noted the previous long standing dissenting view recorded by Member, Kay Springham.
- 13.3 Members noted the draft consultation response, and that the principles applied to our responses had been discussed at the November Workshop. The Board noted the information circulated between meetings by the DoPP, and that no substantive issues had been raised by Board Members. The DoPP confirmed that points raised in previous discussion had been incorporated (for example, the Venice Principles).
- 13.4 The Chair asked whether there were any matters on which clarity was needed, and which would benefit from further discussion, before the response was submitted. The Board noted that our policy positions had been developed over a long period, and whilst constantly reviewed had remained broadly consistent, and that no further discussion at this stage was required.
- 13.5 Members thanked the DoPP and CEO for their update.

14. Board Actions Register

- 14.1 Members noted the ongoing Actions and agreed all other completed actions should be removed from the register.

15. Minutes of Previous Meeting from 18 October 2021

15.1 The Minute of the Board Meeting was noted and approved as read.

16. Chair's Report

16.1 The Chair advised there had been no meetings to report on.

17. Date of Next Meetings

17.1 Members noted the dates of the next meetings as:

- Board Development Session will take place at 2pm on Monday 24 January 2022.
- Board Meeting commence at 10am on Tuesday 25 January 2022.

17.2 The Chair advised it was anticipated that these meetings will continue to take place remotely due to SGvt guidelines, however should the guidance change Members would be advised accordingly.

18. Chief Executive's Report

18.1 The Board noted the paper presented.

19. AOCB

19.1 The Chair concluded the business meeting of the Board by extending his warm thanks to the four demitting Members, S Hesp, D Loney, S McLuckie and K Springham for all their support, to him in his role as Chair, and to the SLCC. It was noted that due to the current lockdown restrictions, it was unfortunate that Members were demitting office via Zoom and not in person and it was agreed that they would all be invited to meet at a mutually convenient date, time and venue when restrictions allowed.

19.2 Members S Hesp, D Loney, S McLuckie and K Springham all extended their thanks and best wishes to the remaining Board Members, SMT and staff.

19.3 The CEO also extended his personal thanks on behalf of himself, the SMT and all staff to the demitting Members, S Hesp, D Loney, S McLuckie and K Springham.

20. Review of the Meeting

20.1 The Chair thanked Members and SMT for their input into both the Development Session yesterday and the Board Meeting today, and in particular, thanks were extended our new Member observing, Richard McMeeken. Member, R McMeeken reciprocated his thanks for the warm welcome and advised he looks forward to working with everyone.

20.2 With no other business the meeting concluded.

11.52am Board Meeting ends