

**MINUTE OF A MEETING OF THE MEMBERS OF THE SCOTTISH LEGAL COMPLAINTS
COMMISSION: 10.05AM TUESDAY 19th March 2019
Venue: The Stamp Office, 10 – 14 Waterloo Place, Edinburgh, EH1 3EG**

PRESENT:

LAY:

Jim Martin (Chair)
Sara Hesp
Emma Hutton
Michelle Hynd
Morag Sheppard

LAWYER:

Denise Loney
Amanda Pringle
Kay Springham (via skype)

Apologies:

Sarah McLuckie
Sophie Flemig (DoPP)
Louise Burnett (DoBP)

In attendance:

Neil Stevenson (CEO) (Items 1-16)
John Ferrie (F&CSM) (Item 7)

██████████ (secretariat – minutes) (Items 1-16)

Abbreviations used:

F&CSM – Finance and Corporate Services Manager
WIP – Work in Progress
FMR – Financial Management Report
AC – Audit Committee
CI – Case Investigator
ABS – Alternative Business Structures
IMT – Investigations Management Team
JT – Journey Time
DoR – Director of Resolution
DoBP – Director of Business Performance

CM – Clerking Manager
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

Private Member only session

This session was attended only by the Board and no minute was taken of this private session.

With the private session concluded with the CEO and Secretariat joining the meeting at 10.45am

1. Welcome

1.1 The Chair welcomed everyone to the Board meeting and thanked everyone for their input into the member development session yesterday.

2. Apologies

2.1 Were received from Member, Sarah McLuckie and SMT Members Sophie Flemig (DoPP) and Louise Burnett (DoBP).

3. Declaration of Interests

3.1 Member Emma Hutton declared an interest, as she is a member of the Public and Commercial Services (PCS) Union; this is in relation the PCS Update in the Key Issues paper. No other declarations of interest were made, other than the standard declarations of interest declared by Denise Loney, Amanda Pringle and Kay Springham in relation to any pecuniary interest with regards to budgetary discussions.

4. Key Issues

- 4.1 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.
- 4.2 ET – the Chair sought clarification regarding the accrual made for any settlement which might result from and adverse appeal outcome, and wondered whether they would recouped in this financial year in the appeal was not successful. The CEO advised it is likely it would now be in next financial years' accounts.
- 4.3 Joint work with LSS on interim improvements to the complaints system – Members sought clarification as to whether all the relevant professional bodies were on board. The CEO confirmed they were all engaged, with LSS on Board and a meeting scheduled with the Faculty. The Board noted the annex with the main amendments, and reiterated that they required sight of final agreed amendments prior to implementation. This was agreed with the CEO. The Board agreed their ongoing support to the CEO and SMT to ensure continued discussions on this matter with all relevant professional bodies and the Scottish Government.
- 4.4 LSS Whistleblowing scheme – the CEO gave a short overview of the exchange between OPBAS (the money laundering oversight regulator), the LSS and the SLCC. There was still no clear agreed definition of what an expression of dissatisfaction and what was an issue where whistleblowing would be appropriate. A positive meeting has taken place with LSS, but since then correspondence had been received which was more aggressive. Members suggested that if they changed it to 'internal' whistleblowing of staff rather, rather than aimed at the public, this may be clearer. Members suggested that the CEO review the Financial Conduct Authority (FCA) on this matter, which sets out clearly, the differences and who to report/complain to.
- 4.5 Governance in the absence of the Chair – Members were content with the current arrangements, and agreed that, if required, they would appoint within the current Board Members if the Chair is incapacitated at any time and unable to appoint some to deputise (which would be the normal arrangement). The CEO would contact the Board immediately an issue arose, and put in place arrangements to allow Members to agree who would act as chair.
- 4.6 LSS consultation on rules change – Members sought clarification from the CEO as to the rationale from the LSS for not allowing the SLCC to have access powers to first tier complaints logs. The Board raised concern following a free and frank discussion that this would create a bizarre situation in that, the LSS will have oversight of service issues, for which they have a non-statutory role and the statutory body with a role will not have access. It was agreed this would hugely out of kilter with other ombudsman and regulatory arrangements, and will be raised in the consultation response. The Board agreed with the CEO's proposal to raise with the LSS that the SLCC be added as a body having access to first tier complaints logs, and if not added by the LSS, the SLCC then raise this issue with the Lord President's office, who have final signoff of LSS Rules. Under s34(3) of the 1980 Act the Lord President has the power to consider objections he considers relevant. Members agreed with the CEO's recommendation, and delegated authority to the CEO to raise the Boards concerns with the LSS and Lord President's office if required.

Action	Owner	Due Date
CEO to submit consultation responses requesting that the SLCC also be added as a body having access to first tier complaints logs and if this issue is not added by LSS, contact the Lord President's office (who have final approval) to request at that stage that such a power is added.	CEO	Within consultation process timescale

- 4.7 All other updates within the paper were noted by Members. The Chair thanked the CEO for his updates to the paper presented.

5. Provisional plan for Fit for Future

5.1 In the absence of the DoPP, the CEO spoke to the paper presented. Members suggested that Theme 5, be reworded to 'knowledge imbalance' and use clearer 'plain English'. Members also reminded the CEO that there were other channels to communicate and the SMT should be mindful of all available options. On the whole Members were content with the paper as presented. The Board tasked the CEO and DoPP to move this matter forward.

6. Feedback from Operating Plan and Budget Consultation

6.1 Members had a detailed discussion at yesterday's Board Development Session. From this, the CEO drafted the following output noting the Board's discussion and decisions.

BUDGET DECISIONS

The Board noted that the first step was to discuss each consultation response in turn. It was noted that the most detailed response was that of the Law Society of Scotland, and that it may be easiest to address this last as it may be the main focus of discussion.

Mr McCrindle

The Board noted the response.

The Board noted it was grateful to have one set of individual consumer input, and noted the positive tone of the response and that there were no specific comments on any of the detailed elements of the consultation document.

Consumer Panel

The Board noted the response was in line with the consumer principles, and this was consistent with other Consumer Panel inputs to the Board and helpful in terms of understanding a consistent view of priorities.

The Board noted that the Consumer Panel felt the SLCC had positively increased the SLCCs profile, ensuring consumers knew where to complaints, that there was support for a greater move to polluter pays, and that the Panel were again clearly stating the current legislative framework was not fit for purpose.

COPFS

The Board noted the letter, and this understandably focussed on the single key issue of relevant to the COPFS around the levy (although also noting that there could be a wider position in relation to the public sector generally). The Board noted there was already a significant discount for in-house lawyers, but that this year's consultation had focussed on changing the balance further.

The Faculty

The Board asked whether a response had been received by the deadline from the Faculty. The CEO confirmed it had not, and that nor had one been received prior to this meeting.

The Law Society of Scotland

The Board noted the submission, and all points raised.

The Board noted the Society's position on the 2009 year, and the executive response noting that the Society processed the majority of complaints in that year and would have been aware of this when making the statements in the response. The Board asked if our data was audited, the CEO responded that this data was published in our annual report, audit, and the audit report published on the Audit Scotland website – this covered the whole of the SLCC's history.

The Board noted that the Society made comments on the long-term trends, but did not publish information on this, making assessment of their comments hard other than on the inaccuracy above. It was noted the Executive should consider making a request for the long term trend data to inform the discussion.

The Board noted the comments on ABS levies.

The Board discussed the issue of apportionment and asked the executive whether there was further information on why the Society had asked the SLCC to look at this issue in their past consultation responses, and then were now indicating the SLCC should not look at it. The CEO noted there was no further information on the change of position.

The Board noted the focus on complaints as the core issue. The Board noted the data that had been presented in the consultation papers on this focus including the emphasis on staffing number and cost in complaints, budget focus on complaints, and operating plan actions all aimed and continuing to improve our performance. The Board noted the Society had not commented on other statutory duties we are required to perform.

The Board welcome the discussion on greater joint work on route cause analysis. As most complaints are dealt with at firm level this would require access to first tier complaints logs to understand the difference between complaints that are resolved at first tier and complaints which progress.

The Board noted the Society's position that clients would ultimately pay. The Board noted it would be better to encourage firms to tackle the obvious and frequent causes of complaints, and seek to resolve issues where possible, rather than encourage the sector to pass on the cost of mistakes to clients.

OTHER FACTORS

Changes in circumstances

The Board discussed whether there had been any material changes in incoming numbers, spending, big projects, legal costs, etc. which would affect the budgeting assumptions used when the budget was set.

The CEO and DoBP noted that there were fluctuations, but none of a level of materiality which affected the global budget. Incoming numbers were steady against projections and appeals were slightly up in absolute terms (due to higher case load - not in percentage terms) but not enough to justify changes.

Operational issues

The Board asked what the next steps were if the apportionment of the levy was changed. The CEO noted consultation was complete, so the SLCC would finalise the levies and budget but responsibility passed to the Society to operationalise these. The process for consultation was partly enshrined in statute to allow commentary from the RPOs on any operational issues with collection.

The Board discussed whether a transition year was needed, but decided this should not be required and that there would have been six months' notice between the consultation and the collection of the levy. No issues around its collection had been raised by RPOs or the profession direct and no request for a transition period made.

Other issues

The Board noted that the actual numbers of lawyers in June in different categories often varied from the indicative number generated in November by the Society based on numbers on the roll at that point. This was the case every year, and was always a risk. By placing more emphasis on one group there was slightly less ability for change in one group to cancel out another, but there was risk in any model (status quo or any change). The usual approach of applying some caution to figures would be taken.

The Board noted that there could be reputational issues if the new levies were not correctly administered, but that the administrative responsibility rested with the Society.

The Board asked about unintended consequences. It was noted that in any grouping there were issues. The focus on principals would capture those in law centres, but it was noted this was to do with the anomalous way these were regulated as private businesses and that this would be addressed if the Fit for Future model progressed and wider types of business were able to offer legal services. The Board discussed sole practitioners, but noted that if a decision was taken on 'polluter pays' then number of owners should not be relevant.

POLICY DECISIONS

The Board noted the default positioning in the consultation was that the change in apportionment would be made unless responses were made to the contrary which added new evidence or brought new balance to the issues under discussion.

The Board noted the COPFS supported the change, and no substantive response was received by any other organisation.

The Board again discussed the policy intent – that those causing complaints and therefore cost to the whole system should pay a great proportion of the cost and had most ability to influence firm culture and quality. In most, although not all, cases these were also business owners receiving benefit from the profit of work.

The Board AGREED that the policy should be pursued of freezing the levy for the majority of solicitors and moving to a model focussed on both entity regulation and the concept of polluter pays. It was noted this was consistent with two years of direction of travel in consultation since the Society raised the apportionment issues, and consistent with the Society and the SLCC's position on the move to entity regulation, which was now further supported by the Fit for the Future report.

The Board AGREED that it would monitor implementation and the relative apportionment of groups in future years.

Following a further free and frank discussion the Board agreed that Members were content with the draft Budget as presented. The CEO reminded Members about timescales of publishing responses by end of March and the laying of budget will take place the end of April as planned. The Chair tasked the SMT with reviewing and finalising the final budget documents and it was agreed that the CEO would subsequently then liaise with the Chair and Member Hutton prior to the publishing of, and laying of, our final budget with Scottish Parliament to ensure that our communications are highlighting the right messages.

FORMAL BUDGET DECISIONS

The Board formally approved:

Overall budget:

Anticipated income:	£3,719,544
Contribution from Reserves	£406
Anticipated expenditure:	£3,719,950

2007 Act Levies

Private Practice Solicitors +3 yrs PQE – Principals / Managers	£494
Private Practice Solicitors +3 yrs PQE - Employed	£386
Conveyancing Practitioner or Executry Practitioner 3+ years exp	£386
Solicitors in first 3 years of practice	£193
Practising outwith Scotland	£126
In-house Conveyancing Practitioner or Executry Practitioner	£116
In-house lawyers	£116
Advocates	£183
Association of Commercial Attorneys	£134

2010 Act (ABS) Levies

Approved Regulator (AR) Fee:	£8,000
AR complaints levy	£8,000
Licensed Provider (LP) Fee:	£1,000

The proposed levy is being set on an apportionment basis, increasing the levy for partners/managers in private practice and freezing for others. Although this was the proposed model, as it is a change to the current approach the Board AGREED that a backstop position is required in case the Society raise later concerns about numbers of operationalisation so that we could work effectively with them. It was noted that this decision could be changed by the Board if there was a significant issue any time up until the laying of the budget/the outcome being made public. A conference call or meeting could be called.

Action	Owner	Due Date
CEO to ensure that SMT review and finalise the final budget documents at published and lay before Scottish Parliament within the agreed timescales.	CEO	Within consultation process timescale

11.00am comfort break

11.10am meeting resumed and F&CSM joined the meeting

7. Financial Management Report

7.1 In the absence of the DoBP, the F&CSM spoke to the papers presented.

- 7.2 **FMR – 8 months to 28 February 2019** – Members noted Income from Recoverable Complaint Levies of £13.5k, and expenditure of direct staff costs have continued to be over budget, showing continued overspend. The F&CSM advised Members that there would be further year-end variance that will continue to be recognised, in particular, with regard to case related legal spend, where active appeals are at a particularly high level. Members noted that the SMT and IMT had met recently to discuss this, as whilst there have been a number of successes, these appeals are against party litigants and costs cannot often be recovered against these types of cases, even if awarded. The CEO reiterated that whilst the numbers of appeals have risen in absolute terms there is no increase in percentage terms compared to incoming load and that the appeals received appear to be related to specific issues, rather than themes or any issues relating to the ongoing process improvement trials. The F&CSM reminded Members that with increasing staff numbers this involves a continued increase in IT costs. Members noted that depreciation was within the budgeted figure, though the F&CSM advised there would be expenditure on CAPEX. It was noted that Reserves for end June 2019 were anticipated to be in the region of £428k.
- 7.3 **Balance Sheet** – Members noted the balance sheet presented.
- 7.4 The F&CSM advised Members that their payslips from end of April onwards would have the figures presented differently due to changes being imposed by HMRC to the annual declaration process, finance now need to show tax and NI on a monthly basis. Members were assured there was no other change other than the methodology of presentation of figures.
- 7.5 The Chair thanked the F&CSM and CEO for their update and explanation to the figures presented.

11.15am F&CSM left the meeting

8. Risk Register

- 8.1 In the absence of the DoBP, the CEO spoke to the paper presented and advised that this had been reviewed following the recent AC meeting.
- 8.2 The AC Chair advised that the summary sheet at the front had been revised and updated with better explanations to the summary. The AC Chair suggested that the DoBP ensure that the actual target risks are also reviewed once the summary sheets are updated and gave an example in relation to Risk 8. The CEO reiterated that a review of the Risk Register and update to all Risks would be provided to the next AC meeting in April. The Chair asked that an update on the improvement process so far and where this sits within the Risk Register is provided for the next Board Meeting in May. The AC Chair also reiterated that the severity of targets should be realistically set for each Risk within the Risk Register.

Action	Owner	Due Date
CEO and DoBP to review and update the severity of targets to be set realistically for each Risk to give an update to the April AC and the May Board Meetings.	CEO/DoBP	By 15 April & 14 May 2019

9. Management Information to 28 February 2019

- 9.1 The CEO spoke to the paper presented and advised that WIP has continued to reduce, though it was emphasised that SMT were not getting complacent. JT has also fallen again slightly to 8.4months, which is the lowest average for several years. Members acknowledged the positive moves in the right direction which were good to note and encouraged recognition be given to all staff on achieving this.

10. Draft HR and Remuneration Committee

10.1 Members had a detailed discussion at yesterday's Board Development Session. From this, Members formally approved the draft Terms of Reference as presented for the new HR and Remuneration Committee. It was also agreed that Members Hesp and Hutton would be Board Members appointed to this new committee, with support provided from a non-executive member, with a HR background, co-opted on to the committee at the invitation of the Chair of the Board to provide the committee with independent HR expertise.

11. Board Actions Register

11.1 Members noted the ongoing Actions and agreed that Action 260 be removed. Members sought an update on Action 296 and the CEO advised he was still waiting to hear from IoD and it was noted that the new HR and Remuneration Committee will review training and development of Board Members. An update on Action 284 will be provided at the May Board Meeting.

11.2 The Chair agreed all other completed actions should be removed from the register.

12. Minutes of Previous Meeting from 29 January 2019

12.1 The Minute of the Board Meeting from 29 January 2019 was approved as read, with Member Sheppard requesting that an additional sentence being added at point 4.6, to ensure that staff who would prefer to continue with staff representatives and do not wish to become union members be addressed, this was agreed with the Chair.

13. Chairman's Report

13.1 Members noted the verbal update from the Chair, who advised that there had only been one meeting with SGvt Director of Justice, Neil Rennick, which was a positive meeting.

14. Date of Next Meetings

14.1 Members noted the dates of the next meetings as:

- Board Development Session will commence at 2pm on Monday 13 May 2019
- Board Meeting will take place at 10am on Tuesday 14 May 2019

15. AOCB

15.1 IT and remote access unpredictability – Members raised concerns about remote access difficulties whilst having to deal with their cases. The CEO advised it was hoped the transitional move to Windows 365 would free up server space and reduce these issues. It was agreed the CEO would ask the DoBP to update Members on the planned IT improvements. Members reiterated that most of their access to IT is in the evenings and weekends when NVT do not provide an out of hour's service, and the current response time to any issues raised, can often be over 2days to resolve issues. The CEO advised that a full 'out of hours' package can cost up to £28k but would ask the DoBP to also review the service level agreement and provide Members with an update as this access issue needs resolved.

Action	Owner	Due Date
CEO and DoBP to review the NVT 'out of hours' package and service level agreement and update Members on remote IT access issues.	CEO/DoBP	ASAP - done

15.2 Cancellation of planned DCs – Members sought clarification as to why three planned DCs had been cancelled and wondered if this was down to a lack of cases coming through from Investigation. The CEO advised this related to ensuring resource at investigation, and achieving the best overall journey times for parties. A number of Sprints were still being trialled and SMT had been looking at proactive ways to tackle issues without impacting on Members diary's and are exploring various options. The CEO advised that currently cases which were being transferred from Investigation to DC were being immediately listed on the next DC, with no 'lead in' time for the cases sitting at DC stage. Members noted that there were still 42 linked cases still to come through Investigations which will ultimately end up at DC stage. Members sought clarification as to when they would be advised of the new DC schedule. The Secretariat advised it had been drafted and she was awaiting approval prior to circulation to Members. Members reiterated their concern and looked forward to receiving the revised schedule of DC dates from June to December.

16. Chief Executive's Report

16.1 The Board noted the paper presented and the CEO gave a brief overview of the recent meetings, Members in particular sought an update on:

16.1.1 *CAB in response to Fit for the Future*

16.1.2 *Falkirk Faculty of Solicitors meeting*

11.50am CEO and Secretariat left the meeting

Private Member only session on item 17.

17. Review of the Meeting

17.1 With no other business the meeting concluded.

