

**Title: GOV001 Governance Arrangements**

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# 1 Introduction

- 1.1 This document details the governance arrangements and the key operational and financial control procedures of the Scottish Legal Complaints Commission.

## Status

- 1.2 The Scottish Legal Complaints Commission (the SLCC) was established by the Legal Profession and Legal Aid (Scotland) Act 2007 (2007 Act). In terms of status, the SLCC is:
- (i) a body corporate;
  - (ii) a legal entity incorporated pursuant to an Act of the Scottish Parliament;
  - (iii) not to be regarded as a servant or agent of the Crown, or having any status, immunity or privilege of the Crown, nor are its Members or its employees to be regarded as civil servants, nor its property as property of, or held on behalf of, the Crown.

# 2 Organisation

## Definitions

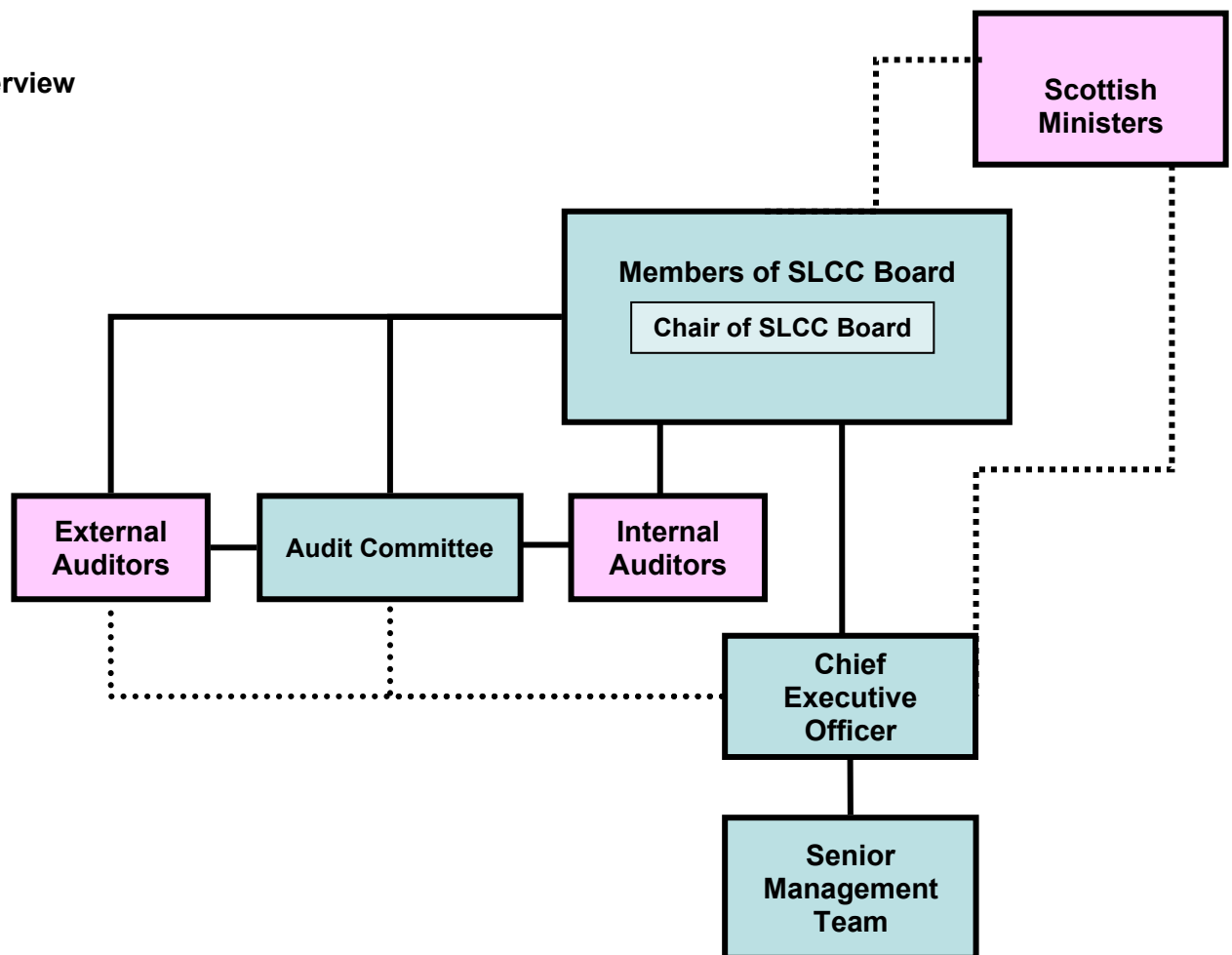
- 2.1 The SLCC is a body with both 'public body' and 'private body' characteristics. It is a hybrid body whose categorisation and status varies depending on the legal context.
- 2.2 Public bodies are defined by the Scottish Government as "*bodies which have a role in the processes of national Government but are not a government department or part of one, and which accordingly operate to a greater or lesser extent at arm's length from Ministers*". Such bodies are known as Non-Departmental Public Bodies (NDPBs). While the status and functions of the SLCC do not entirely correlate with the normal criteria applying to NDPBs it has been classified as such in terms of the joint Framework Agreement with the Scottish Government for policy and administration purposes only.
- 2.3 The SLCC is not a Scottish Government Agency. These are established by Ministers as part of Government departments, or as departments in their own right, to carry out a discrete area of work and are staffed by civil servants.
- 2.4 The 2007 Act, however, gives the SLCC certain features normally attributed to a public body:
- (i) the SLCC is subject to the requirements of freedom of information legislation aimed at making provision for the disclosure of information by Scottish public authorities;
  - (ii) appointments to the SLCC are public appointments regulated by the Ethical Standards Commissioner for Scotland;
  - (iii) the SLCC must submit to the Scottish Ministers a code of conduct for its Members in pursuance of legislation aimed at securing the observance of high standards of conduct by persons holding public appointments. Paragraph 4 of Schedule 5 to the 2007 Act amends Schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act 2000 to include the SLCC within the definition of "devolved public bodies";
  - (iv) the SLCC is a 'public authority' for the purposes of section 6 of the Human Rights Act 1998 in the exercise of its public functions, and it is therefore unlawful for the SLCC to act in a manner incompatible with Convention rights.
- 2.5 In addition to these features, the SLCC is carrying out functions of a public nature, in the public interest, in that it processes complaints against legal practitioners in Scotland, reviews the way in which the Relevant Professional Organisations (RPOs) deal with

conduct complaints, has oversight of complaint handling across the legal profession in Scotland, and has oversight of arrangements for indemnity insurance and the Scottish Solicitors Guarantee Fund.

2.6 However, there are provisions in the 2007 Act which indicate that the SLCC has certain 'private body' characteristics:

- (i) start-up costs for the SLCC were provided by the Scottish Government. Thereafter, the SLCC is funded entirely by levies on the legal profession. The SLCC receives no direct funding from the public purse for its operational work. The only exceptions have been when new functions have been established requiring additional set-up funding;
- (ii) Scottish Ministers may make grants to the SLCC of such amounts as they consider appropriate or may lend to the SLCC sums of such amounts as the Ministers may determine, on such terms and subject to such conditions as the Scottish Ministers consider appropriate;
- (iii) the SLCC is responsible for setting its annual budget and is responsible for ensuring that its income is sufficient to meet its expenditure. The SLCC retains a degree of financial autonomy from the Scottish Government in terms of its operation;
- (iv) in terms of the 2007 Act, the SLCC "*is not to be regarded as a servant or agent of the Crown, or having any status, immunity or privilege of the Crown nor are its members or its employees to be regarded as civil servants, nor its property as property of, or held on behalf of, the Crown.*" SLCC staff will not qualify for civil servant status, unless on secondment from the civil service.

## Overview



## **Main Features**

2.7 The main features of the Governance Arrangements are:

- (i) the Members will form a Board, led by the Chairing Member, which will have overall responsibility for the fulfilment of the SLCC's statutory remit;
- (ii) the Board will operate in accordance with agreed Standing Orders and within a Code of Conduct. The Standing Orders and the Code of Conduct are contained in a separate but related document to which reference should be made;
- (iii) a separate Audit Committee will oversee financial management, the management of risk and audit issues, on behalf of the Board, reporting to the Board and Chairing Member;
- (iv) other elective committees assist the Board in its role (such as the current People and Culture Committee);
- (v) Under the Act, the Chief Executive Officer (CEO) is the Accountable Officer;
- (vi) day-to-day operational and financial management of the SLCC will be the responsibility of a Management Team which will report on performance, issues and actions to the Board as directed by the Board or another governance committee;
- (vii) the Board and Accountable Office will take account of any Framework Agreement agreed with the Scottish Government currently in force
- (viii) all Governance Committees will have a formal constitution as defined by Terms of Reference;
- (ix) The establishment of a Board Effectiveness Policy which covers Board appraisal, training, periodic skills review, and periodic evaluation.

## **3 Control Protocols**

### **Overview**

3.1 The SLCC's Governance Arrangements are a series of protocols by whose proper implementation:

- (i) the SLCC can demonstrate it is meeting its responsibilities as defined in the 2007 Act; and
- (ii) the CEO can demonstrate that they are meeting all their responsibilities as Accountable Officer.

3.2 The Governance Arrangements also define how the Members of the SLCC and the CEO, as Accountable Officer, will monitor and manage:

- (i) the delivery of the SLCC strategy and supporting business plans;
- (ii) all risks, strategic and operational, to the SLCC's achievement of its strategic and operational aims and objectives
- (iii) the financial performance of the SLCC against statutory and other specified standards;
- (iv) the arrangements for external and internal audit
- (v) the operational performance of the SLCC against agreed standards of service, quality, cost and efficiency.

### **Effectiveness**

3.3 The effectiveness of the Governance Arrangements must be guaranteed by:

- (i) constantly checking that they are correctly applied;

- (ii) regularly reviewing the definition and appropriateness of each protocol within the Governance Arrangements and of other SLCC policies;
  - (iii) establishing an appropriate system of sanctions.
- 3.4 The Chairing Member, CEO or any Board Member may, at any time and acting on their own discretion, check that the Governance Arrangements are being effectively and correctly applied.
- 3.5 The Chairing Member, CEO or any Board Member may ask to consult any documents relating to any activities carried out by the SLCC and by those individuals in charge of the processes that are being controlled.
- 3.6 The CEO will periodically check the effectiveness of the protocols by means of re-examining the management of specific incidents, checking how much SLCC staff know about the Governance Arrangements and/or reviewing the protocols against changing operational circumstances.

## 4 The Members of the SLCC

### Membership

- 4.1 In terms of the membership of the SLCC, the 2007 Act, amended by The Legal Profession and Legal Aid (Scotland) Act 2007 (Membership of the Scottish Legal Complaints Commission) Amendment Order 2014 made by Scottish Ministers provides that the SLCC must consist of a person to chair the SLCC (“the Chairing Member”) and eight other Members.
- 4.2 Members are appointed by Scottish Ministers, having consulted the Lord President of the Court of Session. The Chairing Member and a majority other Members of the SLCC (the non-Lawyer Members), referred to as “Lay Members” cannot fall within any one of the following categories:
- (i) solicitors;
  - (ii) advocates;
  - (iii) conveyancing practitioners or executry practitioners;
  - (iv) any persons exercising a right to conduct litigation or a right of audience.
- 4.3 The other Members of the SLCC (Lawyer Members) can be any of the above. Three of the Lawyer Members must have practised within any or any combination, of the categories mentioned for at least 10 years.
- 4.4 Scottish Ministers may, subject to consultation, by order amend the number of Members. However:
- (i) the number of Lay Members must be greater than the number of Lawyer Members;
  - (ii) the number of Lay Members must be no fewer than four;
  - (iii) the Lawyer Members must be no fewer than three.
- 4.5 If Lay Members resign or are removed such that there was no longer a Lay Member majority, the SLCC may only continue to function if a Lawyer Member stands down until such times as sufficient Lay Members are appointed to restore a Lay majority.
- 4.6 In such a circumstance, it is the responsibility of Scottish Ministers, subject to consultation, to select and require a Lawyer Member to stand down until such times as another Lay Member is appointed.

## Terms of Appointment

- 4.7 The Chairing Member is appointed for a period of five years.
- 4.8 Appointment of Lay and Lawyer Members will be made in accordance with the provisions of the 2007 Act, for a period of five years.
- 4.9 Under statute, appointments are not renewable on expiry.
- 4.10 A Member may, by giving notice in writing to the Scottish Ministers, resign their office as a Member of the SLCC. Otherwise, a Member holds and vacates office in accordance with the terms and conditions of appointment.
- 4.11 A person is, on ceasing to be a Member, eligible for reappointment for a single further period; but not before a period of three years has elapsed.

## Conduct of Members

- 4.12 At all times Members are expected to act in accordance with:
  - (i) The Legal Profession and Legal Aid (Scotland) Act 2007 and the Regulation of Legal Services (Scotland) Act 2025;
  - (ii) the governance arrangements of the SLCC;
  - (iii) the declaration and registration of Members' interests;
  - (iv) the SLCC's processes, Standing Orders and Rules;
  - (v) the ***Principles of Public Life*** set out by the Committee on Standards in Public Life;
  - (vi) the SLCC's financial, operational and personnel policies;
  - (vii) the Board Effectiveness Policy
  - (viii) the SLCC Members' Code of Conduct.
- 4.13 At all times Members are expected to act in the best interests of the SLCC and not to act in any manner that undermines the effectiveness, status or reputation of the SLCC.

## Removal of Members

- 4.14 The Chairing Member may, by written notice, remove a Member from office if the Member:
  - (i) become insolvent and/or adjudged bankrupt;
  - (ii) has been absent from meetings of the SLCC for a period longer than six consecutive months without the permission of the SLCC;
  - (iii) has been convicted of a criminal offence;
  - (iv) is otherwise unable or unfit to discharge the functions of a Member or is unsuitable to continue as a Member.
- 4.15 The Chairing Member may not remove a Member from office without the agreement of the Lord President of the Court of Session.
- 4.16 The Lord President may, by written notice, remove the Chairing Member from office if the Lord President is satisfied as regards any of the matters mentioned above.
- 4.17 In the event of the Chairing Member being removed from office, it is the responsibility of Scottish Ministers, subject to consultation, to select and invite another Lay Member to temporarily assume the office of Chairing Member until such times as a new Chairing Member could be recruited. If this resulted in there no longer being a Lay Member



majority, it is also the responsibility of Scottish Ministers to select and require a Lawyer Member to stand down until such times as another Lay Member was appointed.

- 4.18 If sufficient Lay Members resigned or were removed from office at the same time that resulted in there no longer being a Lay Member majority, Scottish Ministers would be required to consult the Ethical Standards Commissioner for Scotland regarding emergency appointments to the SLCC.
- 4.19 If any three or more Members resigned or were removed from office at the same time, Scottish Ministers would be required to consult the Ethical Standards Commissioner for Scotland regarding emergency appointments to the SLCC.

#### **Disqualification from Membership**

- 4.20 A person is disqualified from appointment and from holding office, as a Member of the SLCC if that person is, or becomes, a:
  - (i) member of the House of Commons;
  - (ii) member of the Scottish Parliament;
  - (iii) member of the European Parliament.
- 4.21 A person who has held any of the offices above is also disqualified from appointment as a Member of the SLCC for a period of one year starting from the day on which the person last held any of those offices.

#### **Remuneration, allowances and pensions for Members**

- 4.22 The SLCC is to pay to its Members such remuneration as the Scottish Ministers may in each case determine.
- 4.23 The SLCC is to pay to its Members such allowances as the Scottish Ministers may in each case determine.
- 4.24 Members' remuneration will be reported in the annual accounts to ensure transparency.
- 4.25 The SLCC may, with the approval of the Scottish Ministers, in respect of such pensions, allowances or gratuities to or in respect of any person who is or has ceased to be a Member of the SLCC, as the SLCC may determine:
  - (i) pay or make arrangements for the payment;
  - (ii) make payments towards the provision;
  - (iii) provide and maintain schemes (whether contributory or not) for the payment of such pensions, allowances or gratuities to or in respect of any person who is or has ceased to be a Member of the SLCC, as the SLCC may determine.
- 4.26 The reference to pensions, allowances and gratuities includes a reference to pensions, allowances and gratuities by way of compensation for loss of office.

#### **Responsibilities of individual Members of the SLCC**

- 4.27 Individual Members of the SLCC should be aware of their wider responsibilities as Members of the SLCC. Like others who serve the public in Scotland, they should follow the Principles of Public Life set out by the Committee on Standards in Public Life.
- 4.28 The principles are:
  - (i) *Selflessness*: Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

- (ii) *Integrity*: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
- (iii) *Objectivity*: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merits.
- (iv) *Accountability*: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- (v) *Openness*: Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- (vi) *Honesty*: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interests.
- (vii) *Leadership*: Holders of public office should promote and support these principles by leadership and example.
- (viii) *Respect*: Holders of public office must respect fellow members of your public body and employees of the body and the role they play, treating them with courtesy at all times.

4.29 In addition, all Members of the SLCC must:

- (i) undertake, on appointment, to comply at all times with these Governance Arrangements and with Rules relating to the use of public funds;
- (ii) act in good faith and in the best interests of the SLCC;
- (iii) not misuse information gained in the course of their service for personal gain or for political purpose, nor seek to use the opportunity of public service to promote their private interests or those of connected persons, firms, businesses or other organisations;
- (iv) declare publicly any private interests which may be perceived to conflict with their duties;
- (v) ensure that they comply with the SLCC's Rules on the acceptance of gifts and hospitality.

4.30 Members of the SLCC are free to engage in political activities, provided that they are conscious of their general responsibilities and exercise a proper discretion, particularly in regard to the work of the SLCC. Members should not occupy paid party political posts or hold particularly sensitive or high-profile unpaid roles in a political party.

4.31 On matters directly affecting the SLCC, Members of the SLCC should not make political speeches or engage in other political activities.

4.32 Members of the SLCC will normally be removed from office if they fail to perform the duties required of Members of the SLCC to the standards expected of persons who hold public office.

### **Conflicts of interests**

4.33 Members of the SLCC should declare any personal or business interests which may be externally perceived by a fair-minded and informed observer as conflicting with their responsibilities as Members of the SLCC. Any potential conflicts should be declared at the earliest possible opportunity to allow appropriate action to be taken to resolve them.

- 4.34 The SLCC maintains a Register of Interests, which is open to the public. Members of the SLCC are required to register any pecuniary interests, which Members of the public might reasonably think could influence Member's judgement, any non-pecuniary interests that relate closely to the SLCC's activities, and interests of close family members and persons living in the same household as a Member of the SLCC.
- 4.35 Members of the SLCC should not participate in the discussion or determination of matters in which they have a direct pecuniary interest; and that when an interest is not of a direct pecuniary kind, Members should consider whether participation in the discussion or determination of a matter would suggest a potential risk of bias. This should be interpreted in the sense that Members of the SLCC might either unwittingly or otherwise unfairly regard with favour or disfavour the case of a practitioner or complainant or professional organisation.
- 4.36 In considering whether a potential risk of bias exists in relation to a particular decision, Members of the SLCC should assess whether they, a close family member, a person living in the same household as a Member of the SLCC, or a firm, business, practice or organisation with which a Member of the SLCC is connected are likely to be affected more than the generality of those affected by the decision in question. This would cover, for example, the consideration of a complaint against a practitioner with whom a Member of the SLCC was connected.
- 4.37 Whether or not Members of the SLCC are able in the light of the considerations above to participate in the discussion or determination of a complaint or similar matter, they should declare as soon as practicable if they have an interest, pecuniary or other, in a matter being considered.
- 4.38 They should also disclose any interests in it of which they are aware on the part of close family members and persons living in the same households as a Member of the SLCC. In addition, Members of the SLCC should consider whether they need to disclose relevant interests of other persons or organisations which Members of the public might reasonably think could influence the Member's judgement.

#### **Attendance**

- 4.39 The Chairing Member is expected to attend to SLCC business as set out in their recruitment and letters of appointment, and to meet the statutory duties of the Board.
- 4.40 Attendance at agreed Board meetings and development workshops is expected of all Members. Apologies must be formally provided to the Chairing Member and clerk of Board where attendance is not possible.
- 4.41 The nominated minute-taker shall be responsible for recording attendance of the Members of the SLCC at meetings.
- 4.42 Members are expected to attend a minimum of four Board meetings in person per operating year (these being the main quarterly meetings of the Board, and the associated workshops).
- 4.43 Other meetings will usually be held online through video conferencing.

#### **One to one review**

- 4.44 Members are required to prepare for and attend a one-to-one review each year with the Chair Member.
- 4.45 The Scottish Government organises an annual review of the Chairing Member.

## 5 The SLCC

### Constitution

5.1 The 2007 Act specifies that:

- (i) any quorum of the SLCC as contained in Rules made under section 32(1) must consist of a greater number of Lay Members than Lawyer Members. In the absence of a quorum no formal decisions can be taken (and a new meeting would be required);
- (ii) the Chairing Member must chair meetings of the SLCC or any standing committee with decision-making powers of the SLCC, apart from those defined as determination committees or where the Terms of Reference specifically state it will not be the Chair Member;
- (iii) if the Chairing Member is not available at a meeting of the SLCC or any other decision-making committee of the SLCC, the Chairing Member is to appoint another Lay Member to chair the meeting or committee;
- (iv) the Chairing Member has a casting vote. In the absence of the Chairing Member, any person appointed by that Member to chair has a casting vote for the purposes of that appointment;
- (v) the validity of any proceedings of the SLCC, or any of its committees, is not affected by a vacancy in membership nor by any defect in the appointment of a Member.

### General powers

5.2 The SLCC may do anything which appears to it to be necessary or expedient for the purpose of, or in connection with, or appears to it to be conducive to, the exercise of the SLCC's functions. In particular the SLCC may:

- (i) enter into contracts;
- (ii) with the consent of the Scottish Ministers borrow money;
- (iii) with the consent of the Scottish Ministers acquire and dispose of land;
- (iv) obtain advice or assistance from any person who, in the SLCC's opinion, is qualified to give it;
- (v) pay to any person from whom advice or assistance is obtained such fees, remuneration and allowances as the SLCC may, with the approval of the Scottish Ministers (including through the official annual 'pay remit'), determine.

### Delegation of functions and decisions

5.3 The SLCC may authorise the following to exercise such of its functions (to such extent) as it may determine:

- (i) the CEO;
- (ii) any of its Committees;
- (iii) any of its Members;
- (iv) any of its other Members of staff.

5.4 The SLCC must put in place a formal scheme of delegation in relation to delegation of functions and decision in relation to:

- (i) Governance;
- (ii) Complaints handling as it relates to The Board, Determination Committees, individual Members and Staff;

- (iii) Finance; and
- (iv) Staff governance.

5.5 Such scheme must define who has been given formal delegated responsibility, the scope of that responsibility and deputising arrangements.

### **Determination Committees**

5.6 The SLCC may authorise the following functions to be exercised only by a determination committee:

- (i) the formal determination of a complaint under section 9(1);
- (ii) the formal direction to the practitioner following the determination of a complaint under section 10(2);
- (iii) the publication of a report under section 13;
- (iv) the making of a direction under section 24(6) relating to non-compliance with a decision made under section 23(2);

5.7 The 2007 Act states that it is for the SLCC to determine the composition of its committees. However, the Act does require the SLCC to ensure that:

- (i) any Determination Committee must be chaired by a Lawyer Member;
- (ii) any Determination Committee must have at least three Members, of which the majority are Lay Members of the SLCC;
- (iii) a committee is to comply with any directions given to it by the SLCC, notably the agreed Rules of the SLCC.

5.8 Individual Determination committees are appointed on the basis of rota and availability, from the available pool of Members, in line with operational needs.

### **Retained functions**

5.9 The SLCC cannot delegate of the making of Rules under section 32(1);

5.10 The SLCC (Board) cannot delegate any of the following functions, however the SLCC must consult with the CEO in recognition of the CEO's responsibilities as Accountable Officer:

- (i) approval of annual reports and accounts;
- (ii) the determination of the amount of the annual general levy and the complaints levy;
- (iii) approval of any budget or other financial plan.

### **Annual Report**

5.11 The SLCC must prepare and publish an Annual Report and financial accounts.

5.12 A copy of the Annual Report should be sent to the relevant Minister. The Chairing Member must make themselves available to attend a meeting with the Minister, if requested, to discuss the performance of the SLCC and issues arising.

## **6 The Staff of the SLCC**

### **The SLCC as an employer**

6.1 The SLCC should ensure that:

- (i) it complies with all relevant legislation

- (ii) it employs suitably qualified staff who will discharge their responsibilities in accordance with the high standards expected of the SLCC. All staff should be familiar with the SLCC's main aims and objectives;
- (iii) the SLCC adopts management practices which use resources in the economically, efficiently and effectively and that the level and structure of its staffing, including grading and numbers of staff, is appropriate to its functions;
- (iv) the SLCC's policies for the recruitment and management of staff provide for appointment and advancement on merit on the basis of equal opportunity for all applicants and staff and are complaint with equal opportunities and employment legislation;
- (v) its staff have appropriate access to expert advice and training opportunities in order to enable them to exercise their responsibilities effectively;
- (vi) the SLCC adopts an appropriate code of conduct for its staff;
- (vii) the performance of its staff at all levels is satisfactorily appraised and the SLCC's performance measurement systems are reviewed regularly;
- (viii) its staff are encouraged to acquire the appropriate professional, management and other expertise necessary to achieve the SLCC's objectives;
- (ix) proper consultation with staff takes place on key issues affecting them;
- (x) adequate grievance and disciplinary procedures are in place;
- (xi) whistle-blowing procedures consistent with the public interest disclosure act are in place.

#### **Chief Executive Officer**

- 6.2 The SLCC is to employ a CEO. The CEO is, with the approval of the Scottish Ministers, to be appointed by the SLCC on such terms and conditions as the SLCC may, with such approval, determine.
- 6.3 The CEO must act at all times in accordance with the powers delegated to him/her by the SLCC. The Chairing Member has a responsibility to monitor the performance of the CEO.
- 6.4 The CEO is directly accountable to the Chairing Member and ultimately to the SLCC.

#### **Accountable Officer**

- 6.5 The 2007 Act names the CEO as the Accountable Officer. The functions of the Accountable Officer are:
  - (i) signing the accounts of the expenditure and receipts of the SLCC;
  - (ii) ensuring the propriety and regularity of the finances of the SLCC;
  - (iii) ensuring that the resources of the SLCC are used economically, efficiently and effectively;
  - (iv) ensuring the organisations systems are complaint with and adhere to the SLCC's governance arrangements.
- 6.6 The Accountable Officer has a duty, where required by the SLCC to act in some way that they consider would be inconsistent with the proper performance of their functions, to:
  - (i) obtain written authority from the Chairing Member of the SLCC before taking the action;
  - (ii) send a copy of the authority as soon as possible to the Auditor General for Scotland and to Scottish Ministers.



- 6.7 In addition, the specific responsibilities of Accountable Officers, as defined in the *Public Finance and Accountability (Scotland) Act 2000: Memorandum to Accountable Officers of other public bodies (Annex 2 to the Accountability section of the Scottish Public Finance Manual)*, are also to:
- (i) ensure that from the outset proper financial systems are in place and applied and that procedures and controls are reviewed from time to time to ensure their continuing relevance and reliability, especially at times of major changes;
  - (ii) sign the accounts and in doing so accept personal responsibility for their proper presentation as prescribed in legislation or in the financial memorandum or other similar document;
  - (iii) ensure that proper financial procedures are followed and that accounting records are maintained in a form suited to the requirements of the management statement/financial memorandum or other similar document as well as in the form prescribed for published accounts;
  - (iv) ensure that the public funds are properly managed and safeguarded, with independent and effective checks of cash balances in the hands of any official;
  - (v) ensure that assets such as land, buildings or other property, including stores and equipment, are controlled and safeguarded with similar care, and with checks as appropriate;
  - (vi) ensure that, in the consideration of policy proposals relating to the resources, all relevant financial considerations, including any issues of propriety, regularity or value for money, are taken into account, and where necessary brought to the attention of the SLCC;
  - (vii) ensure that any delegation of responsibility is accompanied by clear lines of control and accountability together with reporting arrangements;
  - (viii) ensure that effective management systems appropriate for the achievement of the organisation's objectives, including financial monitoring and control systems, have been put in place;
  - (ix) ensure that risks, whether to achievement of business objectives, regularity, propriety or value for money, are identified, that their significance is assessed and that systems appropriate to the risks are in place in all relevant areas to manage them;
  - (x) ensure that arrangements have been made to secure Best Value;
  - (xi) ensure that managers at all levels have a clear view of their objectives, and the means to assess and measure outputs or performance in relation to those objectives;
  - (xii) ensure managers at all levels are assigned well defined responsibilities for making the best use of resources (both those consumed by their own commands and any made available to organisations or individuals outside the SLCC) including a critical scrutiny of output and value for money;
  - (xiii) ensure managers at all levels have the information (particularly about costs), training and access to the expert advice which they need to exercise their responsibilities effectively.

#### **Other staff**

- 6.8 The SLCC may appoint such other employees on such terms and conditions as the SLCC may determine. The Scottish Ministers may give directions to the SLCC as regards the appointment of employees (including the number of appointments) and the terms and conditions of their employment.

- 6.9 The SLCC shall maintain a Staff Code of Conduct.

- 6.10 The Commission may, with the approval of the Scottish Ministers:
- (i) pay or make arrangements for the payment;
  - (ii) make payments towards the provision;
  - (iii) provide and maintain schemes (whether contributory or not) for the payment, of such pensions, allowances or gratuities to or in respect of any person who is or has ceased to be a Member of the Commission, as the Commission may determine.

## **7 Financial Functions**

### **Key functions**

- 7.1 Under the terms of the Legal Profession and Legal Aid (Scotland) Act 2007, in addition to the key functions of the Accountable Officer, the SLCC must:
- (i) keep proper accounts and accounting records;
  - (ii) prepare an annual statement of accounts in respect of each financial year; and send the statement of accounts to the Scottish Ministers, in accordance with such directions as the Scottish Ministers may give;
  - (iii) if requested by any person, the SLCC must make available at any reasonable time, and without charge, in printed or in electronic form, the audited accounts, so that they may be inspected by that person;
  - (iv) monitor financial performance throughout the year.
- 7.2 In relation to all financial matters and functions, the CEO and the SLCC must act in accordance with such directions as the Scottish Ministers may give.
- 7.3 The financial year of the SLCC is the period beginning with the date on which the SLCC commences operation and ending with 30th June next following that date, and each successive period of twelve months ending with 30th June.

### **The Funding of the SLCC**

#### ***Annual General Levy***

- 7.4 The SLCC is primarily funded through an annual general levy. This is levied on the following:
- (i) any practising advocate;
  - (ii) any practising conveyancing practitioner or executry practitioner;
  - (iii) any person exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of the 1990 Act;
  - (iv) any solicitor who has in force a practising certificate;
  - (v) any practising Commercial attorney.
- 7.5 The relevant professional body is responsible for collecting the annual levy from any of their Members falling into the above categories and paying all monies collected to the SLCC. Late payment may attract interest at a rate set by Scottish Ministers.
- 7.6 The professional bodies are liable to the SLCC for the full sum to be collected. They have some powers to recover (as a debt) any sum due by one of their Members to the SLCC.



- 7.7 In the event that an eligible person is not represented by a recognised professional body, that person must make contact with the CEO and make arrangements for the annual levy to be paid direct to the SLCC.

### ***Complaints levy***

- 7.8 At the discretion of the SLCC a practitioner may be required to pay a complaints levy where any of the following applies:
- (i) a settlement proposed as respects the complaint by the SLCC under section 9(2) of the 2007 Act (Step 4: Provisional Settlement) is accepted by both parties;
  - (ii) the SLCC makes a formal determination under section 9(1) of the 2007 Act upholding the complaint.
- 7.9 The complaints levy is paid directly by the practitioner or the practitioner's firm to the SLCC. The practitioner and the practitioner's firm will be given a set time to pay the amount owed. The time allowed is set by the SLCC. The SLCC may charge interest on outstanding amounts at a rate specified by the Scottish Ministers.
- 7.10 If any person who is liable to pay the complaints levy fails to pay any amount of the levy, or pays any such amount late, the SLCC will report the matter to the relevant professional organisation.

### ***The Amount of the Levies***

- 7.11 Each financial year, the SLCC, having consulted with the relevant parties, shall determine the amount of the levies.
- 7.12 The amount of the annual general levy and the complaints levy, in respect of each financial year is such amount as may be determined by the SLCC, having had regard to any views expressed in its consultation in respect of the financial year in question.
- 7.13 The amount of the annual general levy must be the same amount for each of the individuals who are liable to pay it; but Rules may provide for circumstances in which the SLCC may waive a portion of the amount which would otherwise require to be paid.

### ***The SLCC's budget***

- 7.14 The SLCC must, in January each year, consult each relevant professional organisation and its Members on the SLCC's proposed budget for the next financial year. The proposed budget must include the following:
- (i) an estimate as respects resource requirements;
  - (ii) the proposed amount of the annual general levy and the complaints levy;
  - (iii) the SLCC's projected work plan for the next financial year.
- 7.15 Each relevant professional organisation must provide the SLCC with an estimate of the number of persons it anticipates should be liable to pay the annual general levy for the financial year concerned. The SLCC will need to allow a contingency in its budget to cover for any inaccuracies in the estimates provided.
- 7.16 The SLCC must secure so far as is reasonably practicable that, taking one financial year with another, the amount of the annual general levy and the income from the complaints levy is reasonably sufficient to meet its expenditure.
- 7.17 The SLCC will set the annual general levy at an amount sufficient to recover the full budgeted expenditure for the financial year concerned, taking account of any monies collected by the SLCC.
- 7.18 The SLCC should not set a budget on the expectation that it will receive any amount from complaint levies.

- 7.19 The SLCC must, no later than 31 March in each year, publish the responses it has received in the consultation carried out in the immediately preceding January, apart from any responses which are subject to a request for confidentiality.
- 7.20 The SLCC must lay a copy of the finalised budget before the Scottish Parliament no later than 30 April in each year.

### ***Grants, Loans and Guarantees***

- 7.21 The Scottish Ministers may make grants to the SLCC of such amounts as they consider appropriate. Any grant may be made on such terms and subject to such conditions (including conditions as to repayment) as the Scottish Ministers consider appropriate; and the Scottish Ministers may from time to time after the grant is made vary such terms and conditions.
- 7.22 The SLCC may, subject to such conditions as the Scottish Ministers think fit, borrow from them. The Scottish Ministers may lend to the SLCC sums of such amounts as the Ministers may determine.
- 7.23 Any loan made, including interest, is to be repaid to the Scottish Ministers at such times and by such methods as they may from time to time direct.
- 7.24 The Scottish Ministers may guarantee, in such manner and on such conditions as they think fit, the discharge of any financial obligation in connection with any sums borrowed by the SLCC. Immediately after any guarantee is given under this section, the Scottish Ministers must lay a statement of the guarantee before the Parliament.

### ***Major investment programmes***

- 7.25 Any investment programmes, meeting the definition of a major investment programme in the Scottish Public Finance Manual, will be managed under the arrangements set out in that manual.

### ***Scheme of Delegation***

- 7.26 The CEO will prepare for approval by the Board as part of the SLCC Scheme of Delegation specific provision for the delegation of financial functions. The Scheme of Delegation will define the responsibilities delegated to individuals in terms of financial decision making.
- 7.27 The Scheme of Delegation will be reviewed annually and will be made available to the Board, Audit Committee, Remuneration Advisory Committee, internal and the external auditors.

### ***Liabilities***

- 7.28 Neither the SLCC nor any Member of the SLCC nor an employee of the SLCC is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the SLCC's functions. This exemption from liability in damages does not apply if:
- (i) the act or omission is shown to have been in bad faith; or
  - (ii) an award of damages made in respect of an act or omission was prevented, on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.
- 7.29 Any Member of the SLCC or an employee of the SLCC who knowingly discloses any information obtained when employed by, or acting on behalf of, the SLCC is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

- 7.30 Any Member of the SLCC or an employee of the SLCC who misuses information gained by virtue of their position may be liable for breach of confidence under common law or may commit a criminal offence under insider dealing legislation. Reference should also be made to the Confidentiality Requirements contained in the Code of Conduct.

### **Indemnity**

- 7.31 As a body corporate the SLCC has a legal identity separate from the individual Members. It is therefore the SLCC as a body which will enter into contracts and take on obligations and liabilities, not the individual Members. The SLCC will therefore:
- (i) indemnify the Members provided that any individual Member has not acted in bad faith;
  - (ii) secure professional indemnity insurance cover or appropriate indemnity from the Scottish Government;
  - (iii) secure public liability and employer's liability insurance cover.

## **8 The Board: Terms of Reference**

### **Purpose**

- 8.1 The Board of the SLCC is authorised to consider and determine any matter concerned with the planning, development and operation of the SLCC.
- 8.2 The Board and its Members should carry out their functions in accordance with Standing Orders.

### **Duties**

- 8.3 The Board's duties are:
- (i) to ensure the SLCC meets all its statutory obligations;
  - (ii) to develop the SLCC's Strategic Plans and approve Annual Business / Operational Plans and to ensure the successful delivery of such plans to agreed standards and timetable;
  - (iii) to agree relevant operational targets and standards for the SLCC and to monitor the performance against such targets;
  - (iv) to agree relevant service targets and standards for the SLCC and to monitor the performance against such targets;
  - (v) to review and assess the strategic development of the SLCC in response to external factors (political, legislative, etc.);
  - (vi) to endeavour to ensure the successful management of all risks relating to the SLCC;
  - (vii) to monitor the welfare, reward and development of staff against all relevant targets, the SLCC's HR policies and all statutory requirements;
  - (viii) to ensure that the budgetary performance of the SLCC achieves the key financial targets;
  - (ix) to approve the annual budget and accounts of the SLCC as submitted by the CEO;
  - (x) to monitor ongoing compliance to the SLCC's Governance Arrangements and to oversee the annual review of the Governance Arrangements;
  - (xi) to receive and respond to reports from the SLCC's Management Team and the Audit Committee;

- (xii) to establish a learning culture that contributes to the continual improvement in efficiency and effectiveness;
- (xiii) to ensure that effective channels of communication are established and maintained with all key stakeholders.

### **Membership: Voting to standing orders**

8.4 The following are eligible to vote:

- (i) Chairing Member
- (ii) all other Members

8.5 All decisions will be made by a simple majority of the voting Members. Every Member has one vote. Members are not normally entitled to abstain from voting. The Act gives the Chairing Member the casting vote in the event of a tie.

### **Attendance: Non-Voting**

#### **CEO**

8.6 The CEO as Accountable Officer will normally have the right of audience in relation to all matters of finance, governance, risk and audit.

### **In Attendance**

8.7 The Board may also invite any employee and/or external advisors to attend meetings. No other persons have any right of attendance.

### **Chair**

8.8 The Chair of the Board shall be the Chairing Member. If the Chairing Member is absent, they will appoint another Lay Member as Chair with a casting vote.

### **Frequency of meetings**

8.9 Meetings shall normally be held at least quarterly but may be held more frequently. The Chair can cancel a meeting for operational purposes but there cannot be a gap of more than four calendar months between meetings.

8.10 The Chair can convene a meeting of the Board at any time subject to quorum.

### **Quorum**

8.11 The quorum of the Board shall be five voting Members.

8.12 Any quorum of the Board must consist of a greater number of Lay Members than Lawyer Members.

### **Agenda**

8.13 The agenda will be issued in advance of the meeting with supporting papers. The agenda is not set, but it is good practice to ensure the following are included as a minimum:

- (i) *Annually*
  - Annual Accounts
  - Annual Report
  - SLCC budget and levies
  - Remuneration and pay
  - Staff governance
  - Health and Safety
  - Audit
- (ii) *Quarterly*

- Chair's report
- CEO's report
- Key issues review
- Financial management
- Risk management
- KPIs

8.14 Any agenda can be supplemented by any other matters agreed for inclusion by the Chair. The Chair can also postpone discussion of a particular matter until a later date or meeting.

### **Minutes**

8.15 Draft minutes of the meetings of the Board will be submitted to the Chairing Member for approval. The approved draft minute will then be placed on the agenda of the next available Board meeting. The Board will formally approve minutes of the previous meeting.

### **Limitations**

8.16 The Board is not a determination committee.

8.17 The Board cannot consider individual complaints that have yet to be determined or to have completed their progress through the processes of the SLCC.

8.18 The Board can consider anonymised complaints, where there is no reasonable possibility of identifying either the complainer or the practitioner.

## **9 Sub-Committees**

### **Mandatory sub-committees**

9.1 The SLCC must put in place the following sub-committees:

- (i) Audit Committee

9.2 The SLCC must set specific Terms of Reference for each of them ensuring that they set out their remits for:

- (i) Membership, including any required skills, experience and/or qualifications for the Chair and/or Members
- (ii) Reporting
- (iii) Responsibilities
- (iv) Rights
- (v) Access
- (vi) Meetings
- (vii) Information Requirements

9.3 Unless expressly provided for in the SLCC's Scheme of Delegation, these committees will be advisory only and will not have decision-making powers.

### **Discretionary sub-committees**

9.4 The SLCC may at any time set up other temporary or permanent sub-committees for a specific purpose. Their creation and Terms of Reference must be approved by the Board and set out the remit of the committee in the same terms as paragraph 9.2 above.

### **Appointments to sub-committees**

- 9.5 The Chair of Board will recommend appointments to the sub-committees (Members and a Chair of the sub-committee) to the Board for approval.
- 9.6 The Chair will take account of any requirements as to skills and qualifications set out in the Terms of Reference for any committee.

## **10 The Senior Management Team**

### **Duties**

- 10.1 The duties of the Senior Management Team (SMT) shall be to:
- (i) manage the day-to-day operation of the SLCC and the execution of its functions, processes, policies and procedures;
  - (ii) manage operational issues relating to staff welfare, conduct, development, performance and health and safety;
  - (iii) manage the SLCC's property, assets and resources;
  - (iv) monitor and report operational and service quality data;
  - (v) consider, suggest and implement improvements to operational and functional performance;
  - (vi) review and redraft SLCC policies and procedures for consideration at the Board;
  - (vii) implement Board instructions;
  - (viii) consider other topics as defined by the Board.

### **Authority**

- 10.2 The Senior Management Team is authorised by the Board to act as appropriate to execute its duties. Where specific authority is delegated to an office holder, this will be set out in the SLCC's Scheme of Delegation.

### **Membership**

- 10.3 The provisional membership of the Senior Management Team shall be the:
- (i) CEO
  - (ii) Director of Resolution
  - (iii) Director of Business Performance
  - (iv) Director of Public Policy
- 10.4 If any Manager is unable to attend, and Chair considers it necessary, they will nominate a deputy, dependent upon the issues under discussion for all or any part of a meeting.

### **Chair**

- 10.5 The Chair of the Management Team shall be the CEO.

### **Attendance**

- 10.6 Members of the SLCC may be invited to attend Management Team meetings. The Chair may also invite any other member of staff to attend meetings.

### **Frequency of Meetings**

- 10.7 Meetings shall normally be held weekly, with longer in-person meetings held at least quarterly. The CEO can call a meeting of the Management Team at any time without notice.

## **Quorum**

- 10.8 The quorum of the Management Team Meeting shall be three Managers, one of whom should be either the CEO or the DoR.

## **Actions**

- 10.9 The Chair of the Management Team Meeting shall make available any appropriate details of actions agreed by the Management Team plus notification of any issues that need to be addressed by the Board.

# **11 Quality**

- 11.1 The Board has overall responsibility for ensuring the SLCC has in place a quality framework, including the work of Board Members when acting in an adjudicative capacity.
- 11.2 The CEO has responsibility for ensuring appropriate and proportionate quality systems are in place and adhered to.
- 11.3 In relation to complaints
- (i) The Board is responsible for the quality of decisions in relation to determinations made under the 2007 Act, subject to limitations, as specified in the SLCC Rules and standards and consistent with the 2007 Act;
  - (ii) the Board has delegated its authority to the CEO in respect of the staff involvement in the management of individual cases, subject to limitations, as specified in the SLCC Rules and standards and consistent with the 2007 Act.
- 11.4 The CEO has overall accountability for the quality of the work produced by the staff of the SLCC with individual line managers being responsible for the output of their staff and teams.
- 11.5 Line managers are responsible for making all staff in under their management aware of the SLCC's Rules, standards and process guidance and for ensuring compliance to the same.
- 11.6 All staff have a responsibility to produce work to the standards set by the SLCC. Failure to do so may result in performance management action being taken by the SMT.

## **Complaints against the SLCC**

- 11.7 The SLCC must publish details on how to complain about the service provided by the SLCC. It must set out how to make a complaint about staff and Members.
- 11.8 The CEO must report annually on the complaints made about service and bring to the Board's attention issues that may have wider strategic impact.

# **12 Governance**

- 12.1 The Governance Arrangements cannot be amended without the recorded agreement of the Board.
- 12.2 The Governance Arrangements should be reviewed every two years, or whenever appropriate, by the Board, informed by the Audit Committee.
- 12.3 The Governance Arrangements will be available to members of the general public under the SLCC's Publication Scheme.