

**MINUTE OF A MEETING OF THE MEMBERS OF THE SCOTTISH LEGAL COMPLAINTS
COMMISSION: 10AM TUESDAY 13th DECEMBER 2022 in the SLCC Boardroom**

PRESENT:

LAY:

Jim Martin, Chair
June Andrews
Jean Grier
Niki Maclean, Vice Chair
Morag Sheppard
John Stevenson

LAWYER:

Lynne Collingham
Richard McMeeken

Apologies:

Dale Hughes

In attendance:

Neil Stevenson (CEO) Louise Burnett (DoBP)
Vicky Crichton (DoPP online) Caroline Robertson (DoR)
[REDACTED] (Secretariat) [REDACTED] (FacO) (*items 10 & 11*)
Anne Gibson (observing online, *left 11.53am*)

Abbreviations used:

WIP – Work in Progress	DC – Determination Committee
FMR – Financial Management Report	LSS – Law Society of Scotland
AC – Audit Committee	FoA – Faculty of Advocates
CI – Case Investigator	CIM – Case Investigations Manager
RPO – Relevant Professional Organisation	SGvt – Scottish Government
IMT – Investigations Management Team	CoS – Court of Session
JT – Journey Time	WT – Working Time
DoR – Director of Resolution	DoPP – Director of Public Policy
DoBP – Director of Business Performance	IA – Internal Auditor
RC – Remuneration Committee	EA – External Auditor
WFH – work from home	BCP – Business Continuity Plan
SDC – Service Delivery Complaints	FacO – Facilities Officer

1. Welcome and Apologies

- 1.1 The Chair welcomed everyone to this his last Board meeting as Chair, especially to our new Board Member, Anne Gibson, who was observing and will be joining the Board formally from 1st January 2023.
- 1.2 The Chair confirmed that the Board would be ratifying formal discussions from yesterday's Board Development Session with regards to budget assumptions and priorities, which will be discussed later in the meeting.

2. Declaration of Interests

- 2.1 The Chair noted the standard declarations of interest declared by Lynne Collingham and Richard McMeeken in relation to any pecuniary interest with regards to budgetary discussions and the reform consultation process/response by the SLCC.

3. Minutes and Matters Arising from Meeting of 31 October 2022

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

4. Board Actions Register

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

4.2 The Chair requested an update on Action 487 be brought to the January Board meeting. This was confirmed by the DoPP.

5. Key Issues

- 5.1 The CEO spoke to the paper presented and agreed all items would be taken as read, with additional updates provided on specific matters. It was also noted several items had been discussed at the Board Development Session and they would be formally agreed today.
- 5.2 **Working Party Progress & Hybrid Working Pilot** – The DoBP advised the Newpro switch over planned for 4 December did not go ahead. This was due to a bandwidth on our broadband (Commsworld) impacting the transfer of data issue between our current on-site servers and the CAS data centre. This will now take place early January. Members sought assurance there would be no implications to staff working etc. The DoBP confirmed Newpro was working as is at present but advised the servers will need moved over before the break clause in the lease takes place next year.
- 5.3 **Board Member Appointments and Post 31 December Governance** – Members noted the current situation regarding the recruitment of a new Chair. The Chair and CEO are still in discussions with SGvt. Members noted the interim Governance arrangements. The Chair confirmed Niki Maclean as Vice Chair, would become Acting Board Chair, until such time as SGvt recruit and appoint a new Board Chair. Going forward, the Vice Chair and CEO will update Board upon the departure of the Chair.
- 5.5 Reform and **joint work with LSS on Interim Improvements to the Complaints System** – The CEO confirmed they were still awaiting the formal statement from SGvt on reform. The Chair sought assurance that if there was an announcement from SGvt in the next few weeks, that SMT had matters in hand ready to respond appropriately. The DoPP confirmed they have a plan in place and advised Board will receive a copy of all communications. It was anticipated a more detailed paper on the Bill will follow the brief Ministerial statement. We continue to think interim improvements will be abandoned to focus resource on the wider reform.
- 5.6 **ABS** – The CEO advised the LSS annual plan for 2022-23 states they will commence the licensing of new legal service providers within the alternative business structures regime. SMT anticipate this might not now be till spring/summer next year, however, work continues in the background. The Chair confirmed the ABS Levy will be set during the Budget discussions later in the meeting.
- 5.7 **Communication and Stakeholder Engagement** – The DoPP confirmed the Annual Report and Annual Accounts have been published and laid in Scottish Parliament. Members sought clarification on the recent press article regarding a complainer having to pay for court transcript for her complaint. The DoPP confirmed the CoS do charge for this service, but this document was not required for classification for cases being considered at Eligibility stage. Unfortunately, this was not as was described in the press.
- 5.8 The DoPP give an overview of the role of Consumer Scotland and Citizens Advice Scotland in the reform debate for our new Member. Members noted several consumer organisations have been approached by the LSS to join a ‘representative consumer reference panel’, which is proposed by their Regulatory Committee in its 2021-22 workplan. The DoPP advised membership of this panel has not been confirmed by the LSS.
- 5.9 **Oversight** – The DoPP advised the LSS have now responded to our findings on the first part of our analysis (open cases) of their conduct complaint handling times. They are addressing the points raised and have outlined their current and future plans to address their backlog and long complaint handling times.
- 5.10 The DoPP gave an overview of Master Policy for the benefit of our new Member.
- 5.11 Members sought an update on key matters being discussed with the RPOs. The DoPP gave an update on matters currently being discussed and advised the main concern was Insurance awards for complainers, and the need to ensure that Master Policy covers this. It is understood there are several reasons the Master Policy does not cover but often complainer(s) do not receive any compensation due to them. Members sought clarification on whether any firms fall outwith the ‘self-assured’ policy. The DoPP

explained this depended on numerous factors and if awards are under the self-assured amount. However, there have been some instances where firms pay this off themselves, at say £50 per month over a certain period. The AC Chair noted that often amounts awarded are below the excess value, so Insurance is never going to cover the amounts awarded and this impacts on the complainers. Members acknowledged that Insurance will never cover all the awards. The perception by complainers from the LSS website, is that if they have cause to complain about a solicitor/firm then they are covered but this is not always the case, as Master Policy does not always pay out and in some instances, it can take a very long time for complainers to get their money, often years.

- 5.12 Members sought clarification on the LSS current timescales for conduct investigations, as they were concerned their oldest case being over 12years. The DoPP advised they were averaging 12-14months for conduct investigations, though it was acknowledged some cases were taking longer. Members requested a copy of the analysis report and findings be shared with Board. The DoPP confirmed it would. The Chair reiterated timescales were a concern for the Board but acknowledged in some instances cases can be complex and take longer to investigate but over 10years was too long and a failing! The CEO reiterated the SGvt Reform Bill might have an impact on the strategic and oversight powers and advised further information would be brought to Board in due course.
- 5.13 Board noted oversight continue to meet quarterly with both Faculty and LSS to discuss issues raised in handling work.

Action	Owner	Due Date
The DoPP to share a copy of the second part of the analysis (cases closed over the past two years) on the LSS conduct complaint handling times with Board, when finalised in early 2023.	DoPP	Q3

- 5.14 **Cyber** – The DoBP explained and confirmed the Board rollout of Multi Factor Authentication would take place early 2023.
- 5.15 **Digital and AI** – The Chair sought clarification on whether the two organisations that have been identified as having worked successfully with other public sector organisations on AI and had been sourced as part of a procurement process. The CEO advised that these organisations potentially offered funded work. We have no budget for AI, other than staff time, and so no ability to procure work. We have therefore looked at free and funded opportunities, including schemes that are part funded by SGvt (like the Data Labs Intern scheme we recently participated in). Both organisations do have public sector clients and references. The aim continues to be to assess our data and look for possible businesses uses that could be justified with a business case and use external expertise to aid that. Whilst in the short-term this may be outwith a cost/benefit case for the SLCC this helps us keep an eye on the evolving 'state of the art'.
- 5.16 Members noted the CEO attended a briefing on Prometea tool, which is being used in the public sector in Argentina and shared the output of this briefing with Board.
- 5.17 The Chair was keen that Board and SMT continued to review this but erred caution on the ethics of AI, before considering the level of investment likely to be needed to understand the limits of our data. The CEO agreed.
- 5.18 **S17 Work Update** – The CEO provided Members with an update on the recent S17 CoS Decision issued. This relates to a 3rd party complaint, and the Legal Professional Privilege (LPP) of correspondence within a client file. Board noted a copy had been circulated to Members.
- 5.19 Board discussed the CoS decision in detail and sought clarification on whether clear guidelines and training should be drafted to share with staff and Members about the differences between 'confidential' and 'legal professional privilege (LPP)' information. Following a free and frank discussion, also on need for a consistent approach on the request for information on 3rd party complaints. It was agreed this would be drafted and arranged by SMT/IMT. The DoR confirmed at present it was only the Investigation CIM lead and the DoR who were dealing with this small number of cases, to ensure that a

consistent approach is being taken where firms are citing LPP on all correspondence within their client files.

- 5.20 Legal Members were very clear, that ‘privilege’ is client privilege, for solicitors and firms, it is their client who might be refusing information in relation to 3rd party complaints, not necessarily the solicitor or firm who are doing so. Members wondered if there was any scope for information to be redacted before being passed over. The DoR advised in some cases they do this but in others they merely remove the documentation.
- 5.21 The DoPP noted the LSS have indicated they will be updating their guidance for the profession, though no timescales have been advised when this will be done. The DoPP reiterated it was important for the LSS to issue guidance to the profession, as solicitors/firms contact the LSS Professional Practice Team when they get requests for 3rd party files. Legal Members reiterated that the breaking of LPP is a serious legal concern for practitioners.
- 5.22 The Chair confirmed SMT/IMT will meet to discuss: the outcome of the CoS decision; consider the need for guidance and training for staff and Members to ensure a consistent approach is applied for all requests for 3rd party client files; and to report back to the Board on what is planned. It was agreed SMT will bring this back to Board for further discussion.

Action	Owner	Due Date
The DoR, along with SMT and IMT to consider the need for draft guidance and training for staff and Members on the definition of LPP and report back to Board.	DoR	ASAP

- 5.23 Members sought assurance that in instances where 3rd party client files have been provided, no information has been released. The DoR confirmed information is redacted from final decisions that are issued to parties.
- 5.24 Members agreed SMT would work on a case-by-case basis and continue to update Board on this matter.
- 5.25 **Property Project Update** – The CEO advised this would be discussed later in the meeting.
- 5.26 **Recordings Submitted as Evidence** – The CEO confirmed Legal Chairs would be meeting to discuss the matter of admissibility further and an update would be provided at the January Board meeting.

Action	Owner	Due Date
The CEO to provide an update from meeting with Legal Chairs on the matter of admissibility of recordings submitted as evidence by complainers.	CEO/DoR	By 23 January 2023

- 5.27 **Board Meeting Schedule for 2023** – Members noted the draft timetable for meetings planned in 2023. Following discussion by Board, it was agreed Members were favourable to the Quarterly meetings taking place all in one day. Members were mindful of the impact this has on expenditure and travel costs on the budget.
- 5.28 The Chair confirmed for 2023 the Quarterly Board Meetings would take place on Mondays. Board Development Sessions would be in the morning, with Board Meetings in the afternoon, and lunch being provided in between. It was agreed the Secretariat would confirm diary appointments in both Board and SMT diaries for all meetings scheduled for 2023.

Action	Owner	Due Date
Secretariat to send out diary appointment invites to Board and SMT for all meetings scheduled in 2023.	Secretariat	By 23 rd December 2022

11.16am comfort break, meeting resumed at 11.24am

- 5.29 The CEO confirmed an additional action from yesterdays Board Development Session on ‘chill factors’ has been added and feedback will be given to the January Board meeting.

6. Draft Budget and Operating Plan

- 6.1 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 March Board for final approval.
- 6.2 The CEO and DoBP provided, as requested following Board's discussions at yesterday's Development Session, an updated set of figures, this included three variances to costs of potential salary increases and the impact these percentages would have on the reserves position.
- 6.3 The Chair reiterated that the draft Budget and Operating Plan would be presented to the January Board meeting. Board noted the 2023-24 Budget and Levy was based on discussions at both the November Workshop and the Board Development Session yesterday. The DoBP advised these figures showed an increase below inflation and included 'one off' costs that might be incurred if we exercise the lease break clause.
- 6.4 Lay Members sought the views of Legal Members on whether there was any sentiment within the profession of things being commercially better for the legal profession. The view was this was dependent on various things, i.e. the size of a firm, their location, and the type of work they conduct. The consensus was most firms will need to wait and see, as some are reporting better than others.
- 6.5 Draft Levies - Board had a free and frank discussion and following which, they confirmed and agreed to ratify their discussion from yesterday's Board Development Session, in that, a 9% increase in Levy for 2023-24 would be proposed. Unless circumstances changed further by the time of the January Board meeting. This would see the General Levy being set at £484.
- 6.6 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 | £484 |
| 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 |
- 6.7 The CEO reminded Members of the timescale and process, in that, the budget must be out for consultation by the end of January 2023. With responses received being published by end of March 2023, and the final budget must be laid before Scottish Parliament in April 2023. The CEO explained the process of sharing consultation responses for the benefit of new Members.
- 6.8 The CEO also explained 'apportionment' and how this was applied in respect of discounts applied relating to the General Levy for different practitioner groups.
- 6.9 The CEO confirmed that any significant changes would be circulated by email to Board and followed up with an additional Conference Call, if required. The DoPP confirmed SMT found Board's discussion at the Development Session yesterday on the external messaging immensely helpful and this will be used to finalise this statement. The Chair requested the finalised statement be shared with Board prior to publication. The CEO and DoPP confirmed it would be.

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 23 January 2023

7. Property Project

- 7.1 The CEO advised that SMT found the Board discussion yesterday extremely helpful and reiterated that whilst they are not yet in the position of recommending a suitable property at present, they are seeking an interim decision by Board. To allow us to exit the property in September 2023, we need to exercise the tenant only lease break clause by March 2023. If this timescale is not met, the default position is that we remain in our current

office location. All options considered so far suggest significant savings can be made by moving, and so staying in the current location is undesirable. For the benefit of the new Member, the CEO explained, under the LP&LA(S) Act2007 the Minister has the final say on the location of our offices and SMT are liaising with our SGvt Sponsor Team. The SGvt Sponsor Team have yet to confirm if this includes exercising the lease break clause, or just the approval of a new property.

- 7.2 The DoBP confirmed if we serve the lease break clause with our landlord, we will ensure that all rent costs are up to date.
- 7.3 Board confirmed their approval of the serving of the lease break clause, subject to ministerial consent, if required, and delegating the detail to the CEO.

Action	Owner	Due Date
CEO to action the serving of the lease break clause with our landlord.	CEO	No later than end Feb 2023

8. Update on Reform

- 8.1 The CEO advised there was no update as they were waiting on the ministerial statement, which was due sometime soon.

9. Strategic Risk Register

- 9.1 The DoBP spoke to the paper presented and reminded Members this was a summary update, and the full quarterly update would be given at the January Board meeting.
- 9.2 The Vice Chair sought clarification on risk 8, as the mitigation had increased. The DoBP reported this was due to the Board Chair vacancy and will be revised for the next meeting now that a Vice Chair has been temporarily appointed. Members also suggested that risk 5, should be increased until ministerial approval is sought and confirmed. The DoBP advised this would also be reviewed for the January AC and Board meetings.
- 9.3 Members were content with the information provided and noted as read.

11.43am FacO joined meeting

10. Annual Health & Safety Report

- 10.1 The FacO spoke to the papers presented and drew Members attention to the IA H&S Audit, which had only one recommendation. This related to the Lone Working Policy, which was in hand, with the Policy being in the process of being updated. Board was very pleased with the IA Report and noted this will be presented to the AC January meeting.
- 10.2 The FacO advised there was only one other minor recommendation noted in the IA H&S Audit Report.
- 10.3 The DoBP advised Board that as part of the staff and Member Induction programme, compliance training has been issued to staff and it will now be rolled out Members in Q3.
- 10.4 The FacO reminded Members to sign in/out when they attend the office, as this helps with H&S and Fire Wardens know who are in at any given day and time.
- 10.5 Members thanked the FacO for a comprehensive report.

11. Sustainability Report

- 11.1 The FacO and DoBP spoke to the paper presented and gave an overview of biodiversity Report, which is published on the website. The FacO reported they were pleased that they had several staff who were keen on green issues and interested in promoting sustainability within the organisation.
- 11.2 Members sought clarification on what L2 was used for. The FacO advised this was used for file archive and excess equipment storage purposes.
- 11.3 Members thanked the FacO for a comprehensive report.

11.51am FacO left meeting

12. Cyber Security Update – Vulnerability Scanning

- 12.1 The DoBP spoke to the paper presented and gave an overview of the latest vulnerability scanning report. The DoBP confirmed that NVT have now completed the actions raised, agreeing next steps for the next round of scanning.
- 12.2 The AC Chair acknowledged this report had been discussed by AC. The DoBP confirmed that whilst there had been a breakdown in communication between CAS and NVT, it was agreed going forward only NVT would action any updates required on the system.

13. Chief Executive’s Report

- 13.1 Members noted the paper presented and the CEO confirmed both the LSS and FoA meetings took place after SGvt meetings, which ensured both meetings were useful in engaging stakeholders.

11.53am Member, A Gibson left meeting

14. Chairs Report

- 14.1 The Chair advised there had been no formal meetings to report on.

15. AOB

- 15.1 The Chair concluded the business meeting of the Board by extending his warm thanks to demitting Member, M Sheppard, who like himself was demitting office on 31 December 2022. The Chair thanked M Sheppard for all her support, to him in his role as Chair, and for her valuable contribution as AC Chair and lead of the Working Party and to the SLCC.
- 15.2 Member M Sheppard extended her thanks and best wishes to the remaining Board Members, SMT and staff.
- 15.3 The Chair thanked the SMT for their support over his term of office and thanked the CEO for doing a sterling job of steering the SLCC over the past 5years.
- 15.4 The Chair lastly thanked the Secretariat for her support and keeping him right.
- 15.5 The Chair also took the opportunity to wish the Vice Chair and remaining Board Members best wishes on the year ahead.
- 15.5 The CEO also extended his personal thanks on behalf of himself, the SMT, the Secretariat and all staff to the demitting Chair, J Martin and Member, M Sheppard.

16. Date of Next Meetings

- 16.1 The Chair reminded Members of the earlier discussion and confirmed the January Board meeting and Development Session would take place all in one day, on **Monday 23 January 2023**, with lunch being provided.
- **Board Development Session will commence at 10am**
 - **Board meeting will start thereafter at 2pm**

17. Review of the Meeting

- 17.1 With no other business the meeting concluded.

11.59am Board Meeting ends