

**MINUTE OF A MEETING OF THE MEMBERS OF THE SCOTTISH LEGAL COMPLAINTS
COMMISSION: 11.00 AM TUESDAY 24TH JANUARY 2012
Venue: The Stamp Office, 10 – 14 Waterloo Place, Edinburgh, EH1 3EG**

PRESENT:

LAY:

Jane Irvine (Chair)
Siraj Khan
Iain McGrory
Ian Gibson
Samantha Jones

LAWYER:

George Clark
Ian Leitch

APOLOGIES:

Fiona Smith
Maurice O'Carroll

In attendance:

Rosemary Agnew (CEO)

(minutes)

Abbreviations used:

LSS – Law Society of Scotland
SGvt – Scottish Government
RPBs – Relevant Professional Bodies
SMT – Senior Management Team
FVTWM – Frivolous, vexatious, totally without merit
IM – Investigations Manager
GWTM – Gateway Team Manager
F&CSM – Finance and Corporate Services Manager
DC – Determination Committee

1. WELCOME, APOLOGIES & DECLARATION OF CONFLICT OF INTERESTS

1.1 Apologies – Fiona Smith and Maurice O'Carroll.

2. MINUTES, MATTERS ARISING AND ACTION POINT UPDATE

2.1 The Board again noted the minutes which had previously been approved in December.

2.2 The Chair ran through the action points and gave a brief update on the outstanding actions, however she stated that most matters arising are covered within the agenda items of the meeting. The following points were raised:

2.2.1 The Board agreed that Board statistics will be maintained by the Secretariat detailing member FVTWM workloads and the time taken on these cases. These will be circulated monthly after being viewed by the Chair. The Chair will arrange for these to come out at the same time as Board papers and Discussion papers.

- 2.2.2 There was a discussion around Board feedback and the responses by the SMT and staff and it was agreed that save for case specific feedback the SMT will provide one feedback paper for responses. This running paper should go out monthly to time with sending out of Board papers of it forms the agenda for Board and Discussion days. The Chair reminded Board Members that they should be clear when raising strategic issues, so these can be separated out from operational issues. Strategic and policy issues would be discussed at Board meetings, and operational issues would continue to be addressed at Discussion Days.

3. BUDGET

- 3.1 The CEO presented the draft budget and outlined the key points:
- 3.1.1 The budget is commensurate with last year, the main costs being in relation to staff and Members.
- 3.1.2 As indicated to the RPOs last year, the SLCC is not releasing reserves to underwrite the levy. Budget planning has been on the assumption that the SLCC will not under-spend and that it will use the contingency to procure a replacement IT system, a situation that could not have been predicted during the budget round last year.
- 3.1.3 The SMT proposed a radical change to the complaints levy. The CEO stated that the view of the SMT is the current system is inefficient to administer and apply and does not provide sufficient incentive to settle complaints at investigation stage. The alternative approach suggested is to:
- (i) to set the complaints levy at mediation and investigation stages at zero for all complaints resolved.
 - (ii) To set a single capped figure of £5,000 for complaints upheld in full or part at determination. The SLCC's policy will be to apply discretion to charge up to that figure taking into account the circumstances of the case and providing reasons for the levy charged.
- 3.1.4 Operationally, the SMT would see the process of setting the levy as the investigator providing a recommendation to the DC of the level to set, taking into account the discretionary factors. Operationally this would cut the amount of non-value adding work for investigators and the clerks by spending time only on those cases going to determination, rather than on every case investigated.
- 3.1.5 It is felt that a potentially high amount could act as an incentive to resolve earlier, as it did when the levy at mediation was set at zero.
- 3.1.6 Every case being passed to the clerk for determination would be subject to a management check and so is likely to improve consistency.
- 3.2 Following the key points of the draft budget there was a discussion around whether the legal Members on the Board who still have practicing certificates have a conflict of interest in respect of setting the general levy. It was agreed that even though they are paying for practicing certificated they are at the Board meeting in their capacity as 'Commissioners'. Also, the approval of the general levy is not final until after full consultation. At this stage the Board was approving a draft budget. The Chair stated that the Act set up the SLCC with legal and lay Members and it does not state

anywhere that the legal members cannot vote on such matters. The Board approved the expenditure.

- 3.3 The CEO asked the Board if they were content to continue using the same method to calculate the general levy as was used last year which is based on the current number of practising certificates. The Board agreed this.
- 3.4 There was further discussion on the complaint levy and the CEO stated that this was not just related to budget setting, but also the review of policies and procedures. The CEO stated she has been looking at processes within the organisation and the resources required at different stages of the complaints process. The proposed levy capped at £5,000 was based on staff salaries and the staff and time involved in each area. The Members agreed to the proposed change to the levy and asked the CEO to provide further information before the final budget is agreed.

4. QUARTERLY COMPLAINTS UPDATE

- 4.1 The Board had previously requested a change to the format and content from previous reports. The CEO stated that the report may be unlikely to be exactly what is required in both format and level of information but it was presented as a first proposal to enable the Board to identify more precisely what it is seeking. She made the following key points:
 - 4.1.1 In terms of complaints numbers, volumes are remaining consistent with the previous year.
 - 4.1.2 In terms of KPIs, KPI data has been collated covering each quarter since 1 July 2009, for each stage of the complaint process. The overall conclusions are that it is taking longer to process complaints than provided for in the KPIs and that the length of time had increased over time due to three main factors: the end of transition arrangements which in turn resulted in the Gateway Team having to assess eligibility under the 2007 Act on a greater number of cases; historical resourcing issues which has meant teams have only been fully resourced in the last six to twelve months and we are only now seeing the benefit of more experienced staff; and the backlog of old cases has 'shifted' from investigation to determination and it likely to result in a further dip as predicted in previous reports.
 - 4.1.3 The current KPIs were approved the Board on 18 May 2011 following the recommendations of the KPI Working Group (three Members). The original intention had been to review these at a point where there was sufficient data to give meaningful information. The SMT recommends that this is done now by the SMT, to return to the Board for discussion and approval.
- 4.2 A discussion ensued regarding what could be done to shorten the time taken to deal with complaints and whether more determination committees would help. The CEO suggested that changes to the 'input' side of the determination process might make significant changes to the flow of work and that a series of small changes in process would help. The CEO stated that the Clerk resource is currently at full capacity and that further temporary Clerk input is needed to help clear the 'backlog' of old cases now reaching determination. It was agreed that the CEO should investigate arrangements for an additional temporary clerk resource to enable additional DCs to sit. Members confirmed they would be able to work extra days.

- 4.3 Members noted the report and arising from it decided to arrange a specific day to agree the best way forward.

Action	target	actual	Comment / update
ACTION: Chair to make arrangements for Board off-site meeting end of March/beginning April 2012.	asap		The 2 nd of April has now been agreed.

- 4.4 The Board stated they would keep the format of the quarterly complaints update report at the moment and would also like to see issues of performance management reported by exception.

Lunch – 1pm – 1.30 pm

- 4.5 **Eligible Person Policy:** The new version of the policy was approved subject to a tweak to the wording regarding the signing of the complaint form and minor typographical amendments.
- 4.6 **Time Limits Policy:** There was discussion around the differing time limits for a complaint to be made dependent on whether the complaint is a service or conduct complaint. The policy was approved but it was agreed that the CEO and Board would monitor how the current timescales work and if any issues arise.
- 4.7 **Appeals Update:** The CEO informed the Board there was one live appeal at present.

5. OVERSIGHT

- 5.1 **Master Policy:** The IM reported that the SMT and oversight staff are in the process of reviewing the SLCC's activity in respect of the oversight of the Master Policy, including the value of the research which was previously undertaken, and that of the further research which had initially been proposed, with a view to proposing a forward programme of work. He also reported that the SLCC had met with both Marsh and RSA, and is still to meet with the LSS to keep them up to date with the SLCC's considerations. The Members agreed a report should come to the Board in March with a proposal for taking this area of SLCC oversight forward with more of a focus on current activity, rather than historical.
- 5.2 **Guarantee Fund:** The IM reported to the Board that the LSS had responded to the SLCC regarding the monitoring of customer satisfaction questionnaires to state that, having reviewed the position with the LSS's Data Protection Officer, the LSS was of the view that the terms of the 1988 Act preclude the Society from releasing to us the personal details of Guarantee Fund claimants. Whilst upholding their position that the LSS should issue and receive the returned questionnaire forms, the LSS has confirmed that it would share the results of any feedback received although the precise nature of what would be shared has not been confirmed. The CEO confirmed that the SLCC had taken legal advice on this DPA issue. As the situation currently stands if the SLCC and LSS progressed in the way suggested, it is probable that the LSS could be exposed to risk of challenge from the data subjects under DPA if they shared names and addresses. There are steps that could be taken to address this but this would require further action by the LSS and the benefits of this were questionable given the offer to share the results of the survey questionnaires. The Board recognised the DPA issues raised limit the SLCC's oversight function,

however, they agreed to accept the LSS's offer to share feedback received from claimants and for the SMT to monitor effectiveness of this mechanism going forward with a view to revisiting the position should this be deemed necessary.

Action	target	actual	Comment / update
ACTION: IM to write a letter to LSS to accept the position , to request the LSS to use the research questionnaire for ongoing customer satisfaction monitoring, and confirm that results will be shared in relation to the Guarantee Fund.	asap		

5.3 **Oversight Update:** The Investigations Manager reported on recent oversight activities, including oversight audit work as follows:

5.3.1 **Handling Complaints:** The Board noted that there had been no new handling complaints since the last update. It was agreed that research into the reasons for the low numbers and this would be part of the project plan for the oversight team. The oversight team will also be looking at the LSS training for Client Relations Managers.

5.3.2 **Monitoring and Projects:** The Board discussed the Oversight Trend Analysis report in some detail and noted that they are still awaiting a response from the LSS to the issues raised with them in November 2010. As it has been some time since the LSS were in receipt of the findings, the Board expect a response in time for the next Board meeting in February to consider further the action to be taken. The Board also discussed how they would report on this area of their oversight function, but decided that further discussion should be deferred until the LSS's views were known.

Action	target	actual	Comment / update
ACTION: CEO to ask the LSS again for a response to the Oversight Trend Analysis Report in time for the next Board meeting.	Asap for Feb mtg		

5.3.3 **Oversight Audit:** There was a discussion following the response from the LSS to the audit of the Society's Conduct Complaints Process. It was agreed that the CIM would circulate a proposal on publication to be agreed by email as soon as possible.

Action	target	actual	Comment / update
ACTION: CIM to circulate a proposal to publish LSS Audit findings by email to Members.	asap		

5.3.4 The IM reported that the fieldwork in respect of the Guarantee Fund Audit has been completed and a draft report will be provided to the Board in February.

6. COMMUNICATIONS

6.1 **Customer Feedback:** The Board noted the Customer Feedback Summary and the F&CSM stated that the low response rate was being addressed by making some

operational changes in terms of when the feedback request is issued to parties. The Board asked that further reports are quarterly by exception.

6.2 **FOISA Summary:** The Board noted the summary provided.

7. CEO UPDATE

7.1 **Audit Committee Membership:** The CEO asked the Board to confirm the membership of the Audit Committee and it was agreed that the Audit Committee be allowed 3 Members (of the Audit Committee, they did not have to be members of the Commission) with 2 Members for quorum. Ian McGrory was appointed as Chair, Iain Leitch as a member of the Audit Committee, David Chaplin was co-opted as an external member for 1 year following which Ian Gibson will be appointed as a member of the Audit Committee. It was agreed that all AC meetings would commence at 10am.

7.2 **Remuneration Committee:** The Board confirmed the membership of the Remuneration Committee as follows – Fiona Smith as Chair and George Clark and Sam Jones as members of the Remuneration Committee.

7.3 **Governance Arrangements:** The Board confirmed they had approved all Governance Arrangements.

7.4 **Member Expenses Policy:** The Board stated that they would discuss and approve the policy at the next Board meeting.

Action	target	actual	Comment / update
ACTION: Board to review arrangements re travel in the Member expenses policy and approve	Asap for Feb mtg		

7.5 **IT Arrangements:** The CEO confirmed that the SLCC are going through the SGvt procurement route for new IT services. The risks involved with the procurement and installation of a new IT system for the office had been incorporated into the SLCC Strategic Risk Register.

7.6 **Health & Safety:** The Board agreed for an annual review on H&S progress within the SLCC.

8. DATE OF NEXT BOARD MEETING

8.1 The next Board Meeting due to be held on Tuesday 21 February 2012 at 10.30 am at the Stamp Office 10 – 14 Waterloo Place, Edinburgh, EH1 3EG.

Board Meeting ends 3.15 pm