

**MINUTE OF A MEETING OF THE MEMBERS OF THE SCOTTISH LEGAL COMPLAINTS
COMMISSION: 10.00AM TUESDAY 12th May 2020
VIA: ZOOM due to current lockdown situation**

PRESENT:

LAY:

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

LAWYER:

Denise Loney
Amanda Pringle
Kay Springham (joined at 10.35am)

In attendance:

Neil Stevenson (CEO) (Items 1-19)
Caroline Robertson (DoR) (Items 1-7)
Vicky Crichton (DoPP) (Items 1-5, 13)

██████████ Secretariat – minutes) (Items 1-19)
Louise Burnett (DoBP) (Items 1-5, 8-12)

Abbreviations used:

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

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
EA – External Auditor
DC – Determination Committee

1. Welcome

- 1.1 The Chair welcomed everyone to the Board meeting and thanked everyone for their input into the private member session and yesterday's Board Development Session.
- 1.2 Members noted the impact of coronavirus and lockdown on staff, members of the profession and clients, and the various pressures this was creating.

2. Apologies

- 2.1 The Chair advised Member, Kay Springham would be joining the meeting slightly later.

3. Declaration of Interests

- 3.1 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. Levy and Budget

- 4.1 The CEO provided Members with an update on the joint agreement reached with the LSS. It was acknowledged that this involved six weeks of ongoing discussions with the LSS, however it was agreed the joint agreement and statement issued yesterday was as previously agreed with Members. In that, the LSS will pay half the Levy on the due date 1st July 2020 and the second half on 1st December 2020. The agreement makes clear that if LSS default on meeting these deadlines, the SLCC will seek to recover costs of the default from LSS for these statutory payments. It was noted that a credit facility had been arranged with our bank for if LSS default, and the CEO stressed this will not be accessed without prior Board approval. SGvt have still to provide a formal written letter of comfort. The CEO also advised that the LSS accounts for 2018 have now been published on the LSS website, and as part of the formal agreement LSS have agreed to provide a statement on their financial situation until the second payment is received. Members enquired if the bank were providing good terms for the overdraft facility. The DoBP advised they were but it was hoped by SMT that it would not be required.
- 4.2 The Chair requested that the CEO provide an update on any comments received to the laying of the Budget. The CEO reported that two comments have been received from: the Glasgow Bar Association; and from a part-time practitioner, who is looking for discounts for individuals who offer part-time fees and legal aid work. Members noted that the CEO had responded to both parties, and that the points raised by the individual practitioner, requesting discounts for part-time legal aided practicing certificates, is not data that the LSS provide to the SLCC when they provide their annual numbers of practicing certificates.
- 4.3 The CEO also advised that they had received a telephone call from the Royal Faculty of Procurators in Glasgow, who has requested a written response to points raised in order that they can share this with their members. The CEO, in conjunction with the DoPP, is drafting responses. Members suggested that SMT take a proactive strategic approach to their responses and ensure that these are published on the website. The DoPP advised that they were utilising other mediums of communication, such as LinkedIn and Twitter, to reach the profession. The CEO also advised that they would include information through the normal communication channels of the CRM/MSP Newsletters.
- 4.4 Members enquired whether there was much journalistic interest from published articles. The DoPP acknowledged that this normally increases when press releases are issued, rather than to publishing a response on our website. Members suggested a strategic communication article might be an opportunity to set out the SLCC case, rather than reactively responding to negative comments. This was agreed by CEO and DoPP.
- 4.5 Members thanked the CEO and DoPP for their updates provided, they also requested that SMT proactively respond and publish responses to comments received.

Action	Owner	Due Date
CEO and DoPP to draft responses to comments received on the Levy and Budget.	CEO/DoPP	15 May 2020

5. Key Issues

- 5.1 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.
- 5.2 Coronavirus – Members sought clarification as to what the plans were for the possibility of returning to staff returning to work in the office. The CEO advised that SMT feel this is still some time away at the moment. It will need carefully managed as staff will understandably have worries about the office, but also travelling to work on public transport, and so on. The CEO explained that a very small number of staff were now attending the office one day a week, in a controlled way, with enforced social distancing whilst in the office. SMT and staff were continuing to work from home (WFH) for the foreseeable future, it is hoped that we hope to re-staff the office with skeleton staff, for essential services mid/end June, possibly early July. SMT are continuing to meet remotely to discuss a return to office plan and were monitoring Government advice and guidelines.

10.35am Member K Springham joined the meeting.

- 5.3 Members were keen to stress that SMT should be adhering to SGvt advice and guidelines and not travelling for any other non-essential travel. The CEO confirmed they would be doing so. Members also shared some of their own organisation's challenges in adhering to two different sets of guidance that of both Government and SGvt, as their business straddles two borders. It was agreed SMT would keep Members fully updated on this matter.
- 5.4 Fit for the Future /Scottish Government (SGvt) Working Party – Members noted the current position in particular the CMA report on Legal Services in Scotland which was published last month.
- 5.5 IT Update – The DoBP advised that the CAS support of the NewPro Case Management System has now reached the end of the five year support contract with CAS. CAS have assured the SLCC that their latest accounts will be available shortly, and we have been advised they show a return to profit, as they have been modestly but diligently building a solid recurring revenue base. CAS provided costs for 1, 3 and 5 year agreement and SMT are seeking Board approval of a 3 year contract with CAS. Renewing for one year at a time was at a higher rate. Even if a project to replace NewPro was commenced now, it is likely we would need three year's support (to define a new system, tender, deploy, and have a period of dual running). With coronavirus, and legislative reform, it is not an appropriate time for such an investment. Five years may be too long to be committed. Members agreed with SMT recommendation.
- 5.6 Communication and Stakeholder Engagement – Members sought an update on how the profession were responding to requests for information/files on current cases. The CEO advised that a 'regulatory forbearance' statement had been issued, allowing some flexibility whilst aiming to continue to deliver our statutory duties. Some firms/practitioners have requested extensions to deadlines for information and files. This is being consider on a case by case basis and allows us to balance an understanding of the current pressures on firms, along with our need to carry out our statutory duties. Guidance and information is also available on our website, which contains a statement on the flexibility that we might be able to offer.
- 5.7 Feedback Report Q3 – Members noted the explanation and reasoning for SMT not providing a full report to the Board for this meeting. The DoBP advised that this has also allowed the team to consider and explore a different process of issuing feedback requests to parties, ie by considering automatic mail-merge options, as the current system is very labour intensive. Members looked forward to receiving an update at the next Board. Members also enquired if this had been shared with the Consumer Panel. The DoPP advised that they have not as yet, however the Consumer Panel would be updated when they receive their next set of meeting papers, which are due to be issued next week. The CEO noted that improving feedback was a target within the Operating Plan for next year and going forward will be reported quarterly with the Operating Plan Report.
- 5.8 All other updates within the paper were noted by Members. The Chair thanked the SMT for their updates to the paper presented.

11.05am DoBP and DoPP left the meeting

- 6. Q3 2019/20 Long Term Trends and Management Information to 31 March 2020**
- 6.1 The DoR spoke to the papers presented and Members sought an update on the approximate number of incoming cases for April. The DoR reported it was approximately 63, which means WIP is lower than anticipated.
- 6.2 The DoR advised that JT has continued to reduce. Members were pleased to see the number of backlog cases had again reduced and the DoR confirmed the 70 incoming cases were all new cases waiting for allocation.

6.3 Members noted that March and April's figures would be affected by the current coronavirus situation. The CEO reiterated that SMT and staff were continuing to work on process improvement and ensuring that the business can still work efficiently whilst everyone is WFH. Members agreed that this was an opportunity to focus on QA and customer service satisfaction. The DoR confirmed that staff had undertaken Plain English training and this project was moving forward, including: a review of templates; looking at the quality rather than quantity cycle. Members had a free and frank discussion regarding quality and improvement targets, and it was agreed that the new KPI targets would be shared with the Board in the next update paper. The CEO confirmed they would be included in the new year of reporting.

Action	Owner	Due Date
CEO/DoR to include new KPI target reporting and share with Members for information.	CEO/DoR	Q1 July 2020

6.4 Members sought clarification on the reduction of cases being considered at Determination stage of the process and whether the current process improvement had an impact on case numbers as some DCs had been cancelled. Members also wondered if an analysis had been carried out RDC/DCM process. The DoR advised it had not to date. It was agreed that for the next meeting the DoR would provide a breakdown of figures for Board, to include:

6.4.1 no. of RDC meetings and how many cases considered by this method.

6.4.2 no. of DCM meetings and how many cases considered by this method.

6.4.3 of the cases considered by RDC, how many cases require to be considered by a DCM.

6.4.4 of the cases considered by RDC, how many cases require to be considered by a follow-up conference call.

6.4.5 of the cases considered at Determination stage, what percentage of cases at RDC and DCM agree with the CI recommendation and make no changes.

6.5 Members also requested that this information be presented using actual numbers and also as percentages of comparison. The CEO advised as this process improvement had now been in place since June 2019, it was agreed the information would be from 1 July 2019 – 30 June 2020.

Action	Owner	Due Date
DoR to provide a breakdown analysis review of the DC process improvement and share with Members for information.	DoR	Q1 July 2020

6.6 Members had a free and frank discussion about the volume of cases at DC and the impact this would have on current way of working. Following this discussion the Chair requested that future DCMs be conducted by Zoom until the current coronavirus restrictions are no longer in place. The CEO confirmed that Zoom 'host' training has been arranged with the Clerking team for later this week.

Action	Owner	Due Date
DoR to ensure all future DCMs be conducted by Zoom until current restrictions are reduced by SGvt.	DoR	Next DCM onwards

6.7 The Chair thanked the CEO and DoR for their explanation to the papers presented.

7. Q3 2019/20 Appeals Update

7.1 Members noted the paper presented.

7.2 Members had a free and frank discussion regarding the costs associated with CoS appeals and the recovery of these expenses, particularly against party litigants. The DoR advised that they were reviewing the appeals handout and are also discussing the setting up of a 'panel' with the legal advisers to reduce appeal costs. It was acknowledged the main issue of costs is that the courts are sympathetic to the lay person regarding awards of fees, expenses and experience. It was agreed that the breakdown of appeal costs would be discussed later within the finance paper.

7.3 Members thanked the CEO and DoR for their update on current appeals.

11.22am DoR left the meeting, following a comfort break, resumed at 11.27am with DoBP joining the meeting

8. Financial Management Report to 31 March 2020

- 8.1 The DoBP spoke to the papers presented.
- 8.2 Members noted the variance summary to date. Income is currently £224,783 ahead of Budget and Expenditure is underspent by £82,774.
- 8.3 The DoBP advised legal expenses are £79,303 overspent to the end of March. It was noted spend to date on legal costs was £191,803, this is split by £110,477 on legal advice, £49,526 on court fees and advocates and £31,800 on expenses. There is an annual budget of £150,000 for legal expenses; we predict this may be overspent by £116,803 by June 2020. This figure includes an estimate of £30,000 of costs that may be awarded as a result of the outcome of the Judicial Review.
- 8.4 The DoBP reported an overspend on IT costs of £36,568 to the end of March. It was noted they are forecasting an approximate overspend of £51k for the year. The DoBP advised this is linked to moving the website maintenance codes to IT costs and includes one-off costs linked to the new IT kit rollout of laptops and Office 365. With the balance is linked to the timing of the new servers being installed. Maintenance agreements for the new servers, will run alongside the annual agreements for the previous servers. It was noted these agreements could not be cancelled until they expire.
- 8.5 The DoBP advised Income was forecast for £214,677, ahead of original budget, with Expenditure forecast to show a saving of £55,125, compared with the original budget. It was noted that the Forecast is now estimating that we will have a surplus of £269,396 compared with a budgeted deficit of £406.
- 8.6 It was noted that Reserves are anticipated to be in the region of £484,852 by 30 June 2020, which represents approximately just less than 2months of average expenditure. This is below our current policy of holding 2months of operating costs as Reserves.
- 8.7 Members requested that Appeals and Legal costs be displayed differently for the next Board meeting. The DoBP agreed this could be done. The Chair sought clarification on £31,800 expenses within Legal costs. The DoBP advised these were awards paid out against us. Further discussion took place regards to Appeal and Legal costs and it was agreed that the DoBP would review the presentation of these figures for the next AC and Board meetings.

Action	Owner	Due Date
DoBP to review layout of Appeal and Legal cost reporting and share with Members at the next AC and Board Meetings in July.	DoBP	By 14 & 28 July 2020

- 8.8 SGvt Cost of Living Pay Increase 2020/21 - The DoBP spoke to the paper presented and it was noted by Members that although SGvt propose and implement their annual cost of living pay rise on 1 April, SLCC staff do not receive this payment until 1 October, in line with our current annual pay awards. All CEOs of NDPBs have received a written request from SGvt asking organisations to move to align to the SGvt pay award date of 1 April.
- 8.9 Members of RC confirmed that this was discussed in detail at their recent meeting, prior to coming to Board for approval. Members had a free and frank discussion to the feasibility and impact this change of date would have on the financial position of the new budgetary year. The DoBP and CEO confirmed that the SGvt annual cost of living percentage had already been accounted and included in this year's budget. It was acknowledged that RC did recognise that the timing of bringing everyone in to align with SGvt cost of living pay award date, was not ideal but all points were discussed in detail.
- 8.10 The CEO stressed that it would only be the cost of living award that would be implemented from 1 April, all other incremental spine point moves would not take place till the contractual pay award date of 1 October, as these are aligned with staffs' annual appraisals, and were not covered by the communication from SGvt.

- 8.11 The Chair acknowledged that the SGvt letter could not have come at a more inopportune time. However, as Members have raised concerns during their frank discussion, it was decided by a majority vote, that staff would receive the SGvt cost of living pay increase on 1 April. They will receive this in their May salary and would be backdated to 1 April, with all other incremental spine point moves remain as 1 October.
- 8.12 The Chair thanked the DoBP and CEO for their update and explanation to the figures presented.

9. Risk Register Summary

- 9.1 Members noted the paper presented. The Chair advised that the CEO and DoBP are to ensure current Risk Register was reviewed in conjunction with the 'de novo' review, with one document being produced for update to the July AC and Board Meetings.

Action	Owner	Due Date
CEO and DoBP to review current Risk Register and the 'de novo' review, to be merged and share with Members at the next AC and Board Meetings in July.	CEO & DoBP	By 14 & 28 July 2020

10. Q3 2019/20 HR Update

- 10.1 The DoBP spoke to the paper presented. Members noted the current staffing was 6.03FTE under budget and that this was due secondments and not immediately replacing vacant key roles, in large part until we better understood the medium and longer term impact of the coronavirus and lockdown. Members were pleased to see that the recruitment had concluded on the internal CIM secondment role (maternity cover) and the trialling of two additional Specialist Case Investigator roles, which will provide additional cover and support to the two SCIs in post.
- 10.2 Members sought clarification on the 'blind recruitment' process. The DoBP explained that this involved a recruitment panel reviewing CVs, which did not contain any identifiable data of an individual applying for a role but it did contain skills/background/employment history. Though there was no evidence of bias during the recruitment process, this is a method used to remove any element of unconscious bias being applied in the sifting process.
- 10.3 Members noted that a Wellbeing Inclusion Group (WIG) has been established, with 10 staff involved, including the DoBP and HR Advisor. The DoBP advised that WIG have been instrumental in organising the Mental Health weeks programme, which takes place next week and they have devised a weekly WIG newsletter, including staff socials, quizzes etc. Positive feedback has been received from staff on the WIG newsletter, which is keeping in touch with everyone during the current coronavirus situation.

11. Update from Remuneration Committee

- 11.1 Members noted the update paper presented and the DoBP gave an overview from the recent meeting.
- 11.2 Members also noted succession planning was discussed at both RC and AC meetings, and will be included in the People Strategy that will be brought to the Board in due course.
- 11.3 The Chair thanked RC Members and DoBP for their update.

12. Update from Audit Committee

- 12.1 Members noted the update paper presented.
- 12.2 The AC Chair gave an overview from the recent meeting. In particular, advised Members that the current Risk Register was being reviewed to include the current Covid-19 situation, also that a full review would be carried out on all mitigating actions and a 'de novo' risk approach would be aligned to the new strategy. From this, the CEO and DoBP will draft 12 'top' risks and a new revised Risk Register will be produced for discussion at the July AC and Board meetings.

- 12.3 The AC Chair also reported that the Budget was discussed in detail and that there had been good feedback from the IA on Strategic Planning, with one issue being highlighted on KPIs which was covered during earlier discussions. It was noted that the Operating Plan would be brought back to the July AC meeting for update.
- 12.4 The AC Chair also advised that the EA shared the Annual Audit Report, highlighting two main points which would be the focus of the upcoming Audit, completeness and accuracy of income on Levy and evidence of governance on this. The EA was very open, ensuring that a legal contract/letter of comfort was in place and suggested SMT produce three different cash flow analysis to be reviewed by Board.
- 12.5 Members sought an update on the QA process of complaints. The AC Chair advised that this was not discussed at the recent AC meeting, but there continued to be discussion on this around key principles. It was acknowledged this process would evolve into a summary dashboard for reporting to Board – the first draft of this had been contained in the early report noted by Board at Item six. It was agreed that the CEO would share initial work to date with the Board.

Action	Owner	Due Date
CEO share current information in the QA process with Members for information.	CEO	By 31 May 2020

- 12.6 Anonymous Allegation of Fraud made during Budget Consultation – The AC Chair advised that the Chair of the Board requested that the AC review this serious allegation which was received and made public in-line with the Budget Consultation process. The AC Chair also advised that this was discussed fully at AC, along with both Auditors present. The AC confirmed and agreed that this had been fully investigated and it was agreed that no further action would be taken on this matter. The AC agreed that this should be responded to, to refute the allegation publicly. They also required the SMT give consideration to the Unacceptable Actions Policy, with a view to this being applied to the individual should they continue to make such vexatious allegations.
- 12.7 The Chair confirmed and agreed with the AC, that the CEO should respond as discussed. This would be by way of updating the cover note to the response published on our website to include the discussion of the Board from today.

Action	Owner	Due Date
CEO to respond to the anonymous allegation of fraud which was made during the Budget Consultation and to also consider implementing the Unacceptable Actions Policy.	CEO	By 31 May 2020

- 12.8 The Chair thanked the AC Chair and DoBP for their update.

12.25pm DoBP left the meeting, with DoPP joining the meeting

13. Q3 2019/20 Operating Plan Update

- 13.1 The DoPP spoke to the paper presented and advised that they were on track for delivering the 20 current project targets for year-end. Members noted the update on the Consumer Panel work, which reflected the Consumer Panel contributing to the ongoing reform discussions with SGvt Working Group.
- 13.2 Members sought an update on how oversight were continuing to provide outreach support to the profession. The DoPP advised that whilst initially these appointments were cancelled by the profession, they have now been asked to contribute virtually by way of other IT platforms. The CEO noted that there was an opportunity that as the profession become comfortable utilising technology and video conferencing for training we may be able to offer more outreach within the same resources.
- 13.3 The Chair thanked the DoPP and CEO for their update.

12.30pm DoPP left the meeting

14. Board Actions Register

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

15. Minutes of Previous Meeting from 28 January 2020 and Notes from 17 April 2020 Board Conference Call

- 15.1 It was noted that due to the cancellation of the March Board Meeting, due to the coronavirus situation, the Minute of the Board Meeting from 28 January 2020 was formally approved as read, along with the notes from the Board Conference Call of 17 April 2020.
- 15.2 It was noted that in March decisions of the Board had been taken by email.

16. Chair's Report

- 16.1 The Chair reported that no external meetings had taken place and that the annual Member 1-1 chat with the Chair would take place virtually via Zoom, rather than face-to-face.

17. Date of Next Meetings

- 17.1 Members noted the dates of the next meetings as:
- Board Development Session will commence at 2pm on Monday 27 July 2020
 - Board Meeting will take place at 10am on Tuesday 28 July 2020
- 17.2 The Chair will confirm whether these meetings will take place either in the office or remotely, depending on SGvt guidelines.

18. AOCB

- 18.1 None.

19. Chief Executive's Report

- 19.1 The Board noted the paper presented.

12.35pm CEO and Secretariat left the meeting

A Private Member only session took place.

20. Review of the Meeting

- 20.1 With no other business the meeting concluded.

12.45pm Board Meeting ends