

MINUTE OF A MEETING OF THE MEMBERS OF THE SCOTTISH LEGAL COMPLAINTS COMMISSION: 11.00AM ON MONDAY 23rd & TUESDAY 24th NOVEMBER 2009

Venue: The Stamp Office, 10 – 14 Waterloo Place, Edinburgh, EH1 3EG

PRESENT:

LAY:

Jane Irvine (Chairing Member)
Ian Gordon
Linda Pollock
Douglas Watson

LAWYER:

Margaret Scanlan
David Chaplin
David Smith
Alan Paterson (part of the meeting)

APOLOGIES:

George Irving and Eileen Masterman (CEO)

In attendance:

Rosemary Agnew (HOI) (part of the meeting)
Allison Leitch (HR Mgr) (part of the meeting)
Doreen Graham (HOC) (part of the meeting)
(Accountant) (part of meeting)
Sheena Robson (Minutes)

Abbreviations used:

LSS Law Society of Scotland
FoA Faculty of Advocates
SGvt Scottish Government
SRA Solicitors Regulatory Authority

1. APOLOGIES

As noted above.

2. DECLARATION OF CONFLICT OF INTERESTS

None.

The Chair and the Board wished to formally record their thanks to the HOI, HOC and the HR Mgr for their recent work on the preparation of the Budget, Annual Report and other papers in relation to today's meeting in the absence of the CEO.

3. BUDGET & LEVY SETTING

- 3.1 The HOI spoke on the Proposed Budget for 2010/11, and explained the rationale behind the preparation of the Budget presented to Board Members today. The HOI explained that a 'zero' based approach has been adopted for this year's budget and fresh headings and groupings have been used to collate costs in the Budget to provide a clearer calculation of figures. The Board was asked to agree the operational costs in principle; then to discuss the strategic costs, contingency and reserves and the approach to levy setting for approval at the next meeting.
- 3.2 The HOI explained that the running costs for Members does not include the Chair's work for SLSO but it is based on what is being worked on now and future planned dates. HOI noted actual workload is problematic to predict as handling issues may also arise.

- 3.3 The Annual review figure is based on 1.5% uplift from SGvt. Temporary staff has had Mediation removed from this figure and included as a separate line as this is now a normal running cost.
- 3.4 The HOI went on to explain that the IT cost does not include the costs for Respond which still need to be shown separately and telephony has now been removed from IT and put in with the utilities costs. IT costs assume that Scotslite remains the IT provider. It was agreed that the HOI would review this figure and it was noted that legal fees would be a significant yet difficult figure to predict.
- 3.5 Following the overview provided by the HOI, a discussion took place on the budget and its relationship to Financial Management Reports. Members requested an explanation where figures appeared to differ. The HOI explained that the figures for the budget were based on actual costs using sourced data and confirmed that together with the Management Team she was improving accuracy of predicted figures within the Management Reports. Members were concerned to ensure that ARAC had not been presented with finessed figures, but it was agreed this was ongoing work. The HR Mgr stated she had picked up the action point from the last ARAC meeting to give a realistic outturn however she has been unable to finalise this piece of work due to current work commitments.
- 3.6 Members felt they required accurate draft Financial Management Reports to move this forward and queried why there were such variances in the figures. Members suggested that an interim meeting of ARAC be convened to discuss the issues raised today and also to provide support to the Management Team in producing the final budget. It was agreed that this would be set for 10 am Friday 11th December 2009. The HR Mgr further stated that some lines were wrongly located and this has been rectified. The action point was to return to ARAC in January 2010.
- ACTION: HOI/ARAC Chair
- 3.7 The HOI stressed that she was not asking the Board to sign off the figures presented today but she did wish the Board to agree to the process adopted to prepare the Budget. She confirmed the Management Team will continue to review the figures and it was looking at committed spend to ensure it is recorded accurately, along with cost code structures, thus ensuring we are forecasting accurately.
- 3.8 The HOI explained to Members how the costs were derived relating to Member Development which was based on the number of days worked this year and pro-rata for the forthcoming year. She confirmed staff development is calculated differently as it is based on projected training for next year. Members requested this be re-examined.
- 3.9 Members felt that SLCC should be prudent on legal costs as it was difficult to predict the volume of Appeals or the impact that ABS will have on SLCC; such factors will impact on these costs.
- 3.10 Members discussed whether there should be an increase in the special projects amount. Members also indicated that there was no budget line to cover Guarantee Fund/Oversight functions. After discussion it was agreed that this title should be renamed Master Policy/Oversight Research and increase the figure to reflect this and allow additional projects to be undertaken.

- 3.11 Members discussed if there is a need to include an operational float within the contingency figure, along with a provision for communications. It was agreed that an operational float should be added back into the proposed Budget.
- 3.12 The HOI explained that she was still working on the final figures for the Reserves.
- 3.13 As regards Levy setting, the HOI stated that the final figures would not be available from the LSS till late December and that impacts on budget setting, so there was a need to look at our approach to Levy setting and how we approach the profession on this.
- 3.14 As regards other figures, it was felt that the planned structural review would have an impact on the SLCC but this would not be reflected in the budget to be set. The Fixed Asset Costs (furniture and IT) should reflect realistic costs to cover the replacement of said items.
- 3.15 Members were reassured that a considerable amount of work had been completed on the proposed Budget by the Management Team and did not wish to appear negative by the queries raised at today's meeting. The HOI explained that a great deal of work had been done to mitigate risk and the Management Team would take on board all the issues raised by Members.

12.20pm Accountant joined the meeting

- 3.16 It was agreed that the Accountant would join the meeting to discuss contingency and reserves. The Accountant confirmed that the minimum amount of reserves would normally reflect winding up costs and, for winding up a non-profit making organisation, 3 months worth of reserves would generally be held as a contingency. The HR Mgr stressed figure did not include a value to cover the extra risks on Pension, as this is an unquantifiable cost that cannot be factored in.

3.17

- 3.18 Members asked the HOI to draft options for reviewing the Levy, based on the figures provided by the LSS. This was agreed by the HOI. The Chair stated that the proposed Budget would be subject to a further discussion at the Board Meeting on 21st December 2009, depending on the outcome of the ARAC meeting on 11th December 2009.

- 3.19 The HOI was asked to revise the proposed Budget in line with the above comments at 3.7 to 3.18.

ACTION: HOI

- 3.20 The HOI thanked Members for allowing the Management Team an extension to the deadline for circulating papers to the Board.

12.40pm Accountant and Alan Paterson left the meeting

12.45pm Break for Lunch

1.15pm Resume after Lunch

4. DRAFT BUSINESS PLAN 2010/11

- 4.1 The HOI explained her reasoning for sharing the draft Business Plan for 2010/11 with the Board, which is an operational document but one that ties in with the proposed Budget. Members agreed this document was helpful.

5. REVIEW OF ANNUAL REPORT

- 5.1 The HOC spoke to her draft Annual Report which was circulated to Members prior to the Meeting.
- 5.2 Discussion took place on whether Members felt anything else should be included in the Annual Report. Members felt the Report was an excellent, well laid out draft, there were some minor general comments/typographical errors that they would send to the HOC.
- 5.3 The HOC advised Members that she was looking to launch the Annual Report by the end of January; this was dependent on the additional information required regarding the Annual Accounts.
- 5.4 Following discussion it was agreed that the SLSO Section of the Report should be produced as a separate document. It was further agreed that the HOC would write to SGvt regarding this. Members agreed that there should be a reference to the SLSO function being carried out by the SLCC in its Annual Report.

ACTION: HOC

- 5.5 Members suggested that quotes should include anonymised quotes from staff and Members.
- 5.6 The HOC thanked the Board for its comments and would revise the draft Annual Report to reflect these changes.

2.00pm Full Board Meeting concluded Rosemary Agnew, Allison Leitch, Doreen Graham and Sheena Robson left the meeting

2.00-3.20pm Members Only Discussion

3.20pm Full Board Meeting resumed Rosemary Agnew and Sheena Robson rejoined the meeting

6. MINUTES & MATTERS ARISING FROM 19/10/09 & 26/10/09

- 6.1 Minutes from 19.10.09 – small typographic changes to points 8.1.2, 8.3.4.2, 12.3.1 and 12.5.1. It was agreed that an additional action should have been included for point 8.3.4.3 whereby it should record that “the **CEO** is to check and review information being supplied in all FOI’s, this should involve quality control checks before FOI’s are sent out.”
- 6.2 Minutes from 26.10.09 – small typographic changes to points 3.9 and 3.12.
- 6.3 Following the above amendments both sets of Minutes were approved by the Board.

7. CHAIRS REPORT

- 7.1 The Chair reported on her tabled paper (7.1) and advised that she had also met with the Chair of the BIOA Accreditation Sub Group. Members advised they would like quarterly statistics on the number of complaints against members of staff.
- 7.2 Guidance Notes – the Chair advised that in the absence of the CEO she was progressing this item with both the LSS and FoA. She was simplifying the guidance to be: ‘that Practitioners should inform anyone who engages their legal service about the services of the SLCC at an appropriate time’. It was agreed by Members that Practitioners should be telling others about the SLCC. The Chair expressed her disappointment that this was still an ongoing issue with the LSS and FoA and a discussion was held about publication directly by the SLCC rather than LSS or FoA. Members acknowledged it was the SLCC’s Guidance, but that placing it on our website obliged practitioners to check in at least 2 places for professional guidance. It was agreed the Guidance could now be issued via the professional bodies and via the HOC placing it on our website. The ease with which Guidance could be promulgated would be kept under review and reference would be included in next years Annual Report to published guidance.
- 7.3 IT Provider – the Chair advised there was currently no further update. She had not chased them nor had they responded as the HOI was reviewing need. The HOI advised that she had contacted an external provider for a User Requirement Report for our IT systems to check viability of moving supplier.

4.00pm concluded the Full Board Meeting for 23rd November 2009

10am resumed the Full Board Meeting for 24th November 2009 present as at 23 November above.

8. CEO REPORT

- 8.1 The HOI reported on the tabled paper (8.1) in the absence of the CEO. The HOI said that draft reports had been received from SLAB and Members had raised some comments about their content. Members asked the HOI to review these reports - HOI said this was already being done. Members agreed that SLAB would complete the current internal audit. The HOI advised that SLCC is able to appoint future internal auditors by utilising a provider who has already been through the SGvt tendering process.
- 8.2 Members directed the HOI to ensure that all FOI responses were being harm tested by a Senior Manager prior to being sent out.

ACTION: HOI

- 8.3 Master Policy Research – it was agreed that in the absence of the CEO, Members would receive support on this project from a Case Investigator. The HOI to organise.

ACTION: HOI

8.4 Draft Annual Accounts – the HOI said that the HR Mgr has been working closely with the external auditors on this document. The HOI asked Members to give consideration to the drafting of the foreword to be included in the Annual Report in relation to the Annual Accounts section. It was agreed this would be discussed at the ARAC meeting on 11th December 2009. Members also requested a copy of the reported Annual Accounts for this meeting and it should include an explanation on depreciation/wording on the introduction to the Annual Accounts.

ACTION: HOI

8.5 Draft Business Plan – the HOI also advised that this paper was circulated for Agenda item 3.2.

8.6 Members were happy with the content of this document, however they requested the HOI drafted an Operational Business Plan to reflect the proposed Budget.

8.7 Some Members stated they would like to meet to consider drafting a Strategic Plan in February 2010. It was agreed this could be considered in 2010.

ACTION: HOI

8.8 VAT – the Chair confirmed she had signed a letter of engagement with an external provider for VAT advice in the absence of the CEO.

8.9 Legal Tendering – the HOI confirmed it was a requirement of SGvt to tender for legal advice and this would occur in February 2010.

ACTION: HOI

9. COMPLAINTS UPDATE

9.1 The HOI reported on her tabled paper (9.1). Members stated they would like to see VFTWM cases split into complaint types, ie conduct/service. The HOI gave an overview of the cases that are currently at the Determination stage. The HOI said there was a new category for cases that have been resolved where no investigation report was produced; they will be shown as 'discontinued before going forward'.

9.2 Members debated whether the Determination Committee Chairs should meet to discuss the effectiveness and operation of Determination Committees in their current format and ascertain whether any of the processes should be reviewed. It was agreed that this would take place with the involvement of both the HOI and the Clerk at a later date. Members discussed whether the time taken on particular cases was appropriate and it was agreed this would be discussed further by the Determination Committee Chairs, the Clerk and the HOI.

9.3 Members raised a number of issues that came to light whilst carrying out recent Determination Committees and it was agreed that the Chairs would meet with the HOI to discuss these issues. Following this meeting, the HOI would meet with the Clerk to agree a process and move the matter forward. It was agreed that Members should refer any files back to HOI via the Clerk.

ACTION: HOI

9.4 One issue raised was whether there was an automatic requirement for Case Investigators to obtain copies of the Solicitors' file when investigating cases? Following a detailed discussion it was agreed that this judgement would be left to individual Case Investigators following discussion with line manager. The Chair acknowledged that the HOI would like the Board to have a constructive conversation with Case Investigators on this issue. It was agreed that DS would meet with RA to discuss how to constructively progress this issue; one option being a meeting of Board Members and Case Investigators.

ACTION: HOI/DS

9.5 Members discussed the issue of file management and copying. It was agreed that the Determination Chairs would also discuss this.

ACTION: HOI

9.6

ACTION: HOI

9.7 Members made some minor amendments to the proposed wording for their decision that there will be no investigation at the Gateway stage of the enquiry; which will now be implemented. The HOI will write and circulate a copy of guidance on 'date of instruction' as requested by Members.

ACTION: HOI

9.8 The HOI sought clarification relating to the policy on suspending action on a complaint where there is concurrent litigation. Members stated that the underlying principle for suspension would be to ask 'is there an ongoing litigation which only involves the parties involved in a 3rd party complaint?' An example would be: Mr & Mrs X are in the middle of a divorce, Mr X complains about Mrs X's solicitor. This is not investigated until the divorce has been finalised. The HOI thanked Members for this clarification. HOI to circulate to staff.

ACTION: HOI

9.9 The HOI gave an update on the office layout project and said there will be cost implications in reviewing the utilisation of office space. These costs will be submitted to ARAC for consideration. It was noted that the fee for the design layout will be captured in this years' budget.

9.10 The Board agreed that the Process & Rules Advisory Group review the suggested proposal of an internal appeal system.

ACTION: HOI/PRAG

10. CEO SCHEME OF DELEGATION

10.1 The Chair presented the revised CEO's Scheme of Delegation document, which now includes the signatures of the HR Manager and the HOI. Members approved the recommended change and suggested this be sent to the Internal and External Auditors for information.

ACTION: HOI/Office Manager

12.25pm Break for Lunch

1.00pm Resume after Lunch and HOC joined the meeting

11. COMMUNICATIONS/WEBSITE UPDATE

11.1 The HOC referred to action point 12.3.1 from the Minutes of 19th October 2009, whereby it was agreed that it would not be cost effective for the SLCC to install an Intranet system for our staff. The Chair suggested this be reconsidered. It was agreed that the HOC would look into a proposal which would disseminate information to staff and members but which would not become a 'chatting forum'. It was suggested that it could include such topics as: issuing of guidance notes, staff policies and draft decisions etc. The Chair stressed it was important this was moved forward and it was agreed that the HOC and the HOI would progress the matter.

ACTION: HOI/HOC

11.2 The HOC updated Members on the response to the information leaflets being sent to Client Relations Partners of all LSS firms. Approximately 60,000 leaflets are being sent out in a staggered format and the response so far has been positive for requests for talks. Members enquired whether this information had been sent in a PDF format thus cutting down on postage. The HOC advised this had not been practical, it being important to ensure that the correct printing of the SLCC logo was maintained.

11.3 The HOC gave an overview of the talks which have taken place so far. She advised Members that visits to the SLCC were planned from the Advocacy Alliance and Registers of Scotland and Members were welcome to attend. A note of thanks had been received from Dunbartonshire Faculty of Solicitors in relation to the talk given by the HOI. Members stressed they would be more than happy to support the HOI in any future talks and presentations.

11.4 It was noted that so far the SLCC staff have raised £720 to date for CHAS.

11.5 The HOC advised that the office building has been sold and SLCC is waiting for confirmation of the new landlords.

11.6 The HOC advised that she would like to try and obtain a slot as a speaker at the next LSS conference, to raise our profile to all the legal professionals. Members suggested that the HOC might wish to organise an SLCC conference in the future. The HOC agreed this would be a good idea but would also like to organise smaller group visits/presentations to our office.

1.30pm HOC left the meeting

Two Case Investigators joined the Board Meeting to discuss Legal Services (Scotland) Bill Considerations for the SLCC

12. LEGAL SERVICES (SCOTLAND) BILL

12.1 The Case Investigators put forward notes to help the Board form a response to the Bill. It was noted these highlighted the main areas to be considered in the Bill and how it will affect the operation of the SLCC.

12.2 Members were advised the deadline for responses to be submitted to the Justice Committee for consideration was 1st December 2009, with a more detailed response being submitted by 18th December 2009.

- 12.3 After discussion it was agreed that the HOI and the Chair would draft a brief response on behalf of the Board which would collate all views of Members and request the option for the SLCC to present oral evidence to the Justice Committee, with a full response being provided by 18th December 2009.

ACTION: Chair/HOI & Case Investigators

- 12.4 Members thanked the Case Investigators for the background work on this Bill on behalf of the Members and acknowledged their report.

2.15pm Case Investigators left the meeting

2.15pm HRM joined the meeting

13. STAFF GOVERNANCE

- 13.1 The Chair thanked the HR Mgr for her detailed report.

13.2

13.3

ACTION: HR Mgr

13.4

ACTION: HR Mgr/ARAC/ACEO

- 13.5 The HOC referred to action point 13.2 from the Minutes of 19th October 2009, whereby it was agreed that the HR Mgr would submit an amendment to this point.

ACTION: HR Mgr/Chair

2.35pm HRM left the meeting

- 13.6 The Chair advised Members that the HR Mgr had recruited a part-time HR Officer to concentrate on the drafting of SLCC Policies.

14. MASTER POLICY & GUARANTEE FUND OVERSIGHT

14.1 AP gave a verbal overview of the recent meeting with the LSS. He confirmed that SLCC had spoken with Professor Stephen in regard to the statistical information required to allow them to make an informed decision on figures provided by Marsh and the LSS.

14.2 AP advised that whilst the LSS was happy to assist with the survey and research, Marsh was less inclined.

He confirmed that the CEO has resent the questions to the LSS and he has spoken with them and they advised that the MP Committee was considering the list of questions and seeking legal advice as to what information it can release. AP agreed to pursue GF information without breaching any data protection issues and he would also speak to SGvt with regard to reviewing the tendering process.

14.3 It was acknowledged that the LSS and Marsh had agreed to send out a survey on our behalf and also produce a bi-annual report.

14.4 It was agreed that:

14.4.1 AP and the HOI would meet to discuss a Case Investigator providing a supporting role for this project.

14.4.2 AP would pursue the tendering process with SGvt.

14.4.3 AP would remind the LSS that they would provide a bi-annual report for the SLCC.

ACTION: HOI/Members (AP & MS)

15. PRAG

15.1 It was agreed that future PRAG report papers would be in the same format as ARAC.

15.2 Members were asked to note that the Governance document states that PRAG should report to the Board in the same way as ARAC does.

16. DATE OF NEXT MEETING

The next Board Meeting will be held on Monday 21st December 2009, 10 am at the Stamp Office 10 – 14 Waterloo Place, Edinburgh, EH1 3EG.