**THE SCOTTISH LEGAL AID BOARD**

**APPROVED MINUTE OF MEETING OF THE SCOTTISH LEGAL AID BOARD HELD by VIDEO CONFERENCE ON monday 17TH MAY 2021**

Present: Ray MacFarlane, Chair

Sheriff John Morris

Sarah O’Neill

Stephen Humphreys

Tim McKay

Lesley Ward

David Sheldon QC

Brian Baverstock

Raymond McMenamin

Gerry Bann

Brigid Whoriskey

In attendance: Colin Lancaster, Chief Executive

Graeme Hill, Director of Corporate Services and Accounts

Marie-Louise Fox, Director of Operations

Anne Dickson, Director of Strategic Development

Ian Dickson, Director of Legal Services

Andrew McIntosh, Corporate Support Manager

Stuart Drummond, Corporate Governance and Policy Officer

1. **APOLOGIES FOR ABSENCE**

There were apologies from Marieke Dwarshuis.

1. **DECLARATIONS OF INTEREST**

None

1. **REVIEW OF MINUTES**

The draft minute of Board 15th March 2021 was **approved**.

The draft minute of the Legal Assistance Policy Committee on 29 March 2021 was **noted**.

The draft minute of the Audit Committee on 1 March 2021was **noted**.

The minute of the Legal Services Cases Committee on 22 February 2021 was **noted**.

The minute of the Legal Services Cases Committee on 12 April 2021 was **noted**.

1. **CHAIR’S REPORT**

The Chair reported on matters of interest since the last meeting.

The Chair welcomed the two new Board members, Brigid Whoriskey and Gerry Bann.

The Chair reported that she met with Ash Denham, the Minister for Community Safety, on 18th March. The meeting was a positive one with the Minister expressing her satisfaction with SLAB.

1. **CHIEF EXECUTIVE’S UPDATE**

The Chief Executive reported on matters of interest since the last meeting.

The latest developments in relation to the support being provided to the profession through the Scottish Government Coronavirus Legal Aid Resilience Fundwere reported to the Board. This included the total amount offered and the number of applicants who had received an offer.

It was noted that the Scottish Government had committed to spending the full £9 million of the fund but after discussions between the Scottish Government, the Law Society of Scotland and the Scottish Solicitor Bar Association the mechanism for doing this had not yet been identified.

It was reported that the options available to the Scottish Government in order to achieve the payment of the £9 million would be to either make changes to the existing scheme or launch a new scheme. SLAB have been identifying the main points of concern expressed in feedback from solicitors, collating this and advising the Scottish Government accordingly.

SLAB had, however, made it clear to the Scottish Government that any new scheme might not be within SLAB’s expertise to administer as it would likely be more akin to a business support scheme rather than representing a statutory function of SLAB. There had also been concerns raised about the impact on SLAB’s resources if it was expected to administer another round of applications.

The Board expressed its concern at the impact on SLAB’s resources in managing the fund. It also expressed concern about the negative impact on staff and reputation given the level of criticism directed at SLAB by some members of the profession. There followed some discussion about the extent to which SLAB should respond directly to criticism or review its future public positioning on legal aid reform generally. It was suggested that this should be discussed in more detail at the Board meeting in June.

It was also reported that the Payment Panel report had been made available to panel members, who were to provide comments. The Scottish Government would then present the report to the new ministers, who were due to be appointed later in the week. The Board were provided with an overview of the recommendations.

The results of the staff survey that indicated around 10% of staff expressed a preference for a full return to office working was noted. The Board were informed that a flexible approach would be adopted when the office reopened for staff and that a mix of working from home and office working would be the most likely model. The Board were also informed that in terms of the Board meetings themselves, technology that better facilitated blended meetings with some participants attending remotely were being examined.

The report was noted.

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| 1. **ADMINISTRATION FINANCE AND RESOURCES REPORT**   The Board were presented with the Administration Finance and Resources Report. The year-end cash outturn position reflected a slight increase in spend by £65k against our planned drawdown, utilising our full Scottish Government cash budget for 2020/21. As was reported to the March Board, the actual underspend in Pensions was due to retirements taking place later than originally forecast, resulting in the year end position final spend of £0.2m below budget.  It was noted that invoice turnaround times were estimated at 94% paid within 10 days, which was considered good in the circumstances. The low rate of staff sickness and absence rates were also noted.  It was clarified that capital overspend noted in the budget variances was due to the pandemic and the requirement to procure additional equipment to facilitate home working.  The report was noted.   1. **LEGAL AID FUND – FINANCE REPORT**   The Board were presented with the Legal Aid Fund Finance Report, which showed the cash expenditure to March 2021 against the revised forecast.  It was noted that the draft year end position showed the outturn as being slightly under the forecast of £100m. It was forecast that this would increase dramatically in 2021-22 to just over £140m as a result of the court system increasing throughput post Covid-19 lockdowns, and business volumes increasing.  The report was noted. |
| 1. **JOINT WORK WITH THE EHRC**   The Board were presented with a paper by the Chief Executive, which updated them on the latest developments in relation to discussions with the EHRC regarding a section 23 agreement and the accompanying action plan. It was reported that the agreement was close to finalising.  There had been an issue with the EHRC agreement template, which referred to an “unlawful act”. It was SLAB’s view that there had been no unlawful act and a compromise was reached in the wording of the agreement whereby there was agreement that SLAB had not complied with regulation 5 of the Equality Act 2010 (Specified Duties) (Scotland) Regulations 2012 in relation to the duty to make arrangements to review.  A lengthy discussion followed during which a number of concerns were raised by the Board.  A further suggestion was to insert “fully” before “complied” as it was considered that the breach in duty had not been at the non-compliance end of the spectrum. The Board **agreed** with this.  The Board **agreed** that the s23 agreement was an acceptable compromise.  It was also **agreed** that the action plan would be reviewed by the Board periodically.   1. **COMPLAINTS UPDATE**   The Board were presented with the complaints update covering the number and outcome of complaints in the period April 2020 to March 2021. The Board commented on the low number of complaints and noted that there were no trends in the upheld complaints or any evidence of systemic failures.  The Board were also advised that the revised model complaints handling procedure issued by the Scottish Public Services Ombudsman had been implemented and communicated to staff by the deadline of 1 April.  The high percentage of upheld complaints in one function was queried. The Board were assured that this should be viewed in the context of the low number of complaints in the area over the course of the year (61 resolved complaints) and that the function itself included three separate teams with different roles.  The Board **noted** the report.   1. **PERFORMANCE REPORT**   The Board considered the operational performance report noting the following:   * The figures reported for March were a three month average i.e. reflecting the position for January, February and March 2021 as a whole. * The performance across applications was good and there were no particular concerns or issues to highlight. * The reported performance in accounts remained very good with most measures being reported as “met” or “better than” the benchmark. * This would be the final reporting period under the benchmarks for 2020-21. As reports include average figures over a three month period, the next report would present a transition period where decisions being taken in the previous year would be reported against the new benchmarks and which would be taken into account when commenting on the figures.   The Board **noted** the remainder of the report.   1. **TRENDS REPORT**     The Board was presented with a paper setting out key trends in legal assistance between w/c 26 Apr is the week ending on Sunday 2nd May 2021.  The Board were complimentary about the new format of the report and stated that they found it easy to read and understand. |
| 1. **MEETINGS WITH OUTSIDE ORGANISATIONS**   The Board noted a paper setting out the details of key meetings attended by senior SLAB staff with external organisations.   1. **DATES OF NEXT MEETINGS**   The Board noted the following dates:   * Policy Committee – 1st June * Audit Committee – 14th June * Cases Committee – 14th June * Board – 28th June |

The meeting concluded at 15:30