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| Report to: | The Board |
| Meeting Date: | 21st March 2022 |
| Report Title | The Public Defence Solicitors’ Office Update |
| Report Category | For Information |
| Issue status: | Business as usual |

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| Delivery of Strategic Objectives | |
| Select the Strategic Objective(s) relevant to the issues | 1. We deliver a high quality user focussed service 2. We embed ways of working across the organisation that enhance the quality, consistency and transparency of our decisions and delivery 3. We engage with users and delivery partners across the legal aid and justice system to inform good design of our system and services |
| The purpose of this paper is to update the Board on the operations of PDSO | |

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| Link to Board or Committee Remit |
| To monitor the performance of operational departments |

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| Publication of the Paper |
| The Board has previously agreed that this paper should be published as a matter of course. It will be published on the Board website in due course. |

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| Executive Summary |
| The pandemic has continued to have a marked impact on business levels for PDSO. Recent action by private solicitors has necessitated PDSO providing duty solicitor services in a number of additional locations across the country, primarily by virtual means. We are working with justice partners to better support the client experience in these areas. Our new case management software is due to be deployed this month and work will conclude shortly on the backog of records management work for the network. Initial work has commenced on the next PDSO Business Plan. |

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| Previous Consideration | |
| Meeting | Detail |
| December 2020. |  |

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| Report |

**BACKGROUND**

PDSO is a national network, currently of twenty-six solicitors and fifteen support staff, employed by the Board, operating from seven offices across Scotland providing criminal legal assistance. Five colleagues are employed on a part-time basis. The bulk of the caseload comes from the duty solicitor scheme. PDSO is ordinarily duty solicitor 33%-35% of the time, on the duty plans in which it features. Since early 2022, PDSO has been the sole provider of court duty solicitor services in a number of geographical areas in response to resignations from the duty plan by private solicitors.

**PDSO MANAGEMENT**

In Sept 2021, after 16 years in post, the Director of PDSO, Matthew Auchincloss, left SLAB to take up a position as a Summary Sheriff. The Chief Executive has taken this opportunity to restructure the management of SLAB’s direct services under a single Directorate. Recruitment is ongoing to appoint a new Director of Direct Legal Services. This will be a non-casework position. Consequently, it is intended to create a new Head of Service post within PDSO. In December 2021, Paul Haran, Head of Office PDSO Edinburgh, was appointed as interim Director of PDSO.

**PDSO EXTENT OF SERVICE**

As expected, the coronavirus pandemic has had a significant impact on new business levels. At the time of the last report to the Board in December 2020, it was anticipated that case levels would return to pre-pandemic levels during the early part of 2021. The emergence of the Delta variant caused a significant setback to plans to ramp up the operations of the criminal courts. During 2021 we also saw a significant scaling back of court operations during the COP26 conference period as well as the emergence of the Omicron variant. This new variant has had, and continues to have, an impact on throughput of criminal business in the courts.

PDSO ended the financial year 20/21 with an overall decrease in new cases of 43% compared to the previous year, with a total of 1,969. Overall business levels during the current financial year suggest that we are on course to see an approximately 15% increase in case numbers compared to 20/21. The table below highlights that November 21 and Feb 22 saw business levels matching pre-pandemic levels and we are on course do see pre-pandemic case numbers this month too. Hopefully this is an indication that we can expect case numbers to rebound fully during 22/23.

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During year 19/20, 65% of PDSO’s new cases came from the duty solicitor scheme. During year 20/21, this number dropped to 55%, reflecting the particular impact that the pandemic has had on the number of persons appearing from police custody. We are on track to see the proportion of new cases coming from duty return to 60% for the current financial year. There has been a noticeable shift against this general trend in the PDSO Falkirk office. Having seen a 43% reduction in new duty cases during 20/21, PDSO Falkirk has seen a further reduction during the current financial year to date of over 30%. SCTS introduced a virtual custody court pilot scheme in the central area during 2021. Anecdotal evidence suggests that custody numbers are noticeably lower following the introduction of the virtual custody court pilot. This would appear to be borne out by the PDSO Falkirk case numbers. To date there has been no SCTS report on the pilot scheme published so we do not have any data on overall custody numbers in the pilot area.

**THE OPERATIONAL LANDSCAPE DURING 2021**

During 2020 there was a growing discontent among private solicitors involved in providing criminal legal aid. This was initially focussed on the removal of a number of court holidays. Many private solicitors across Scotland withdrew their services on the St Andrew’s day holiday court, leaving the duty solicitor or a small number of local faculty representatives to deal with all custody cases, the intention being to slow down the operation of the courts on those days. This action continued on holiday custody court days during 2021. PDSO was able to offer assistance to the courts in which we operated as well as some additional courts in which we would not normally have a presence. We were supported in this by solicitors from the Solicitor Contact Line.

The COP26 conference period saw a significant escalation of action by private solicitors. General criminal court business was significantly reduced during this period, there being no sheriff court trials running during the 3 week period. There was however a risk of significant number of arrests stemming from protests surrounding the conference. Planning had to be put in place to ensure that solicitors were available to represent arrested persons appearing from custody. Scenario planning suggested we could have seen up to 400 people appearing from custody on any day. Arrangements needed to be put in place for the custody courts to operate on weekends and late into the evenings during the week

Despite a significant financial package being offered by Scottish Government to encourage private solicitors to engage in the duty plans for the conference period, there was a boycott of the COP26 duty solicitor arrangements by all but a few firms of private solicitors. PDSO was therefore asked to take on a significant burden during this period. We had to develop bespoke arrangements for covering custody courts in areas where we did not have a solicitor available to be present in person, such as Aberdeen. There arrangements involved virtual appearances by video link or by telephone.

Matters were further complicated in the lead up to the COP26 conference when private solicitors escalated their actions further by withdrawing from many of the court duty plans in areas that were unaffected by the COP26 conference. This further action appeared intended to make it impossible for SLAB to provide duty solicitors to all areas of the country. The burden on PDSO was therefore further increased.

In light of the dedication and determination of PDSO solicitors and other colleagues from the SCL, we were able to ensure that every single person in Scotland appearing from custody and asking for the services of a duty solicitor during the COP26 period was represented by a duty solicitor.

Private solicitors in several areas of the country then decided to escalate their action. In January 2022 all private solicitors in Edinburgh, the Borders, Aberdeen, Banff and Peterhead intimated their resignations from all SLAB duty plans. This was followed in February with similar resignations from solicitors in Dundee, Forfar, Dunfermline and Kirkcaldy. This has placed a significant burden on PDSO as we are now the only duty solicitor in Edinburgh and Dundee as well as having to provide duty solicitor services in a number of areas where we have no operational presence. Given its size and location, Aberdeen is a particular challenge. As with the COP26 period, PDSO has worked closely with justice partners to provide a duty solicitor service, primarily by virtual means. This is far from the quality of service that PDSO would ordinarily aim to provide to its clients. We will continue to work with justice partners to promote improvements to these arrangements.

This escalation in action by private solicitors has come at a time when PDSO have lost a number of experienced staff who have left to join COPFS or the private sector. We are also due to lose 2 further solicitors in April from our Edinburgh team. We have been seeking to recruit in recent months to replace these staff but have met with limited success. It is likely that the significant recruitment by COPFS and the notable improvement to the remuneration package for COPFS solicitors has had a far-reaching impact on the recruitment market for criminal defence solicitors in Scotland.

**RECOVERY FROM THE PANDEMIC**

PDSO operations during the pandemic were significantly adapted to reflect the general changes to society as well as the reduction in court operations. Our staff, particularly our solicitors, continued to work in courts and police stations across the country in what were challenging circumstances. Generally, we have managed to avoid any significant numbers of staff absence for covid related illness or self-isolation. Whilst our offices remained closed to walk-in visitors during much of the pandemic, we were able to maintain the availability of our offices for use by our clients by pre-arranged appointment. Our offices have now been fully open for a number of months with only a very small number of our staff working from home. There has however been a noticeable shift in how our clients wish to interact with us, with many now using video meeting solutions, such as Facetime and Zoom.

**NEW CASE MANAGEMENT SOFTWARE**

Before the pandemic, we had identified that our systems required to adjust to the changing technology landscape. The current PDSO case management software has been in use for over 20 years with little change during that period. Following a successful procurement process, we are now in the final stages of developing our new case management software and hope to go live in early April 2022. This new software will significantly enhance how we communicate with our clients with integrated messaging and email. We hope to have a client facing cloud-based portal developed and in place later this year. As well as improving the speed and ease with which we will be able to engage with our clients, the software will enable our solicitors to be far more flexible in how they work. With SCTS driving a shift to virtual operations, in particular with custody courts, the new software solution will better help our teams to work in a more agile way.

**PROGRESS ON PDSO BUSINESS PLAN**

The pandemic limited our ability to deliver fully on the previous PDSO Business Plan. Whilst much of our focus in recent months has been reactive, we are also currently working on meeting a number of objectives from the plan. Many of the objectives have been or will be met from the significant work done on developing the new case management software. One key objective from the business plan was to develop our file retention policies and address the backlog of outstanding file destruction work. We are on track to have all outstanding file destruction work completed and up to date for the start of the new financial year. We are now starting to identify priorities for the next business plan that will be developed over the coming months following the appointment of a Director of Client Legal Services and a PDSO Head of Service.

**RECRUITMENT**

Reference has been made above to the significant challenges we face in recruiting solicitors. We are currently recruiting for 2 trainee solicitors and are considering whether to increase this number. This will undoubtedly assist in the medium term in ensuring PDSO can meet the growing demands being placed upon it as well as addressing the anticipated growth in court business as the courts recover from the pandemic. We have been fortunate in being able to recruit an experienced solicitor on a temporary contract who will be based in Aberdeen. They are due to start work in early April 2022. This will ease the burden placed on existing staff and allow us to provide a better service to the public in the Aberdeen area. Scottish Government are aware that urgent consideration must be given to the longer term approach to Aberdeen.

**IMPROVING THE CLIENT JOURNEY**

In February 2022, the Scottish Sentencing Council’s Guidance on sentencing of young persons came into effect. A particular focus of the guidelines is an expectation that a court must consider the question of any history of trauma or adverse childhood experiences. There has also been a particular emphasis from Scottish Government in recent years to improve public sector services in a trauma informed way. As such, we intend to provide trauma training to all PDSO staff over the coming year with a small number of our solicitors likely to undertake advanced training. This will be of benefit to not only our clients but also to our staff, in providing them with self-care tools that will promote their own wellbeing.

Just prior to the pandemic starting in 2020, our PDSO Edinburgh office relocated to York Place. Part of the business case for the new premises was to allow us to better support clients with not only physical disabilities but also to look at how we can provide spaces that meet the needs of our clients with mental health disabilities. Working with guidance from Autism Scotland, we hope to have our first ASD friendly meeting space up and running by summer 2022. We are also currently in the process of relocating our Dundee and Ayr offices and will look to identify opportunities to improve the environment for staff and clients wherever possible.