**THE SCOTTISH LEGAL AID BOARD**

**approved MINUTE OF MEETING OF THE SCOTTISH LEGAL AID BOARD HELD In person and by VIDEO CONFERENCE (VC) ON Monday 03 october 2022**

Present: Ray Macfarlane, Chair

Marieke Dwarshuis

Brigid Whoriskey

Sarah O’Neill

Lesley Ward

Brian Baverstock

Steve Humphreys

Raymond McMenamin (by video)

David Sheldon KC (by video)

In attendance: Colin Lancaster, Chief Executive (by video)

Marie-Louise Fox, Director of Strategic Development (by video)

Ian Dickson, Principal Legal Advisor (by video)

Adam Ford, Director of Operations

Andrew McIntosh, Corporate Support Manager

Stuart Drummond, Corporate Governance and Policy Officer

Esther Scoburgh, External Auditor, Audit Scotland (by video)

1. **APOLOGIES FOR ABSENCE**

There were apologies from Sheriff John Morris KC, Tim McKay, Gerry Bann and Brian Baverstock

1. **DECLARATIONS OF INTEREST**

There were no interests declared.

1. **REVIEW OF MINUTES**

The draft minute of the Board meeting held on 15th August 2022 was **approved**.

The following minutes were **noted**:

* Approved Minute of the Legal Assistance Policy Committee 4th July 2022
* Draft Minute of the Legal Assistance Policy Committee 15th August 2022
* Approved Minute of the Legal Services Cases Committee of 22nd August

1. **CHAIR’S REPORT**

The Chair requested feedback on the hybrid nature of Board meetings. It was the Chair’s preference that face-to-face meetings should be the default option.

The strength of face-to-face meetings and the ability to informally network before and after meetings was acknowledged but there was a view that hybrid meetings did offer a degree of flexibility for those members who might not otherwise be able to attend, therefore maximising attendance.

It was agreed that there should be a presumption of attendance but that participating by video should remain an option. In terms of the practical set up of the technology it was noted that other options would continue to be explored.

The Chair reported that the Law Society of Scotland had accepted the Scottish Government’s offer of an increase in fee levels and associated reforms. The Board welcomed the news and the Chair expressed her thanks to all those involved in the process and hoped that this would see an end to the dispute.

1. **THE CHIEF EXECUTIVE’S REPORT**

The Chief Executive reiterated the Chair’s welcoming of the Law Society of Scotland’s acceptance of the Scottish Government’s offer and stated that he was hopeful this would see an end to the dispute.

The Board were updated on the latest developments in relation to the 2022 pay award and were informed that discussions with the Scottish Government and the Union were ongoing but it was hoped that an agreement would be reached soon. Although the Board acknowledged the constraints within which SLAB were operating, it expressed concern that the pay award was not yet settled and urged a speedy resolution.

An update on the Evidence and Procedure Review pilots was provided. It was reported that further work to resolve an issue with eligibility had been identified and would be taken forward that week.

The Board were informed that the Scottish Government had indicated they were prepared to pursue the most radical of the options provided in relation to the Legal Aid Reform Bill although it was acknowledged that there was still a considerable amount of work to do. It was agreed that a refresher briefing on the Bill and the options would be provided to the Board in due course.

**ACTION: CE’s OFFICE**

It was agreed that there would be further discussion of the Bill at the Strategy Day in December.

The Board were assured that SLAB’s role in the development of the Bill would be to advise the Scottish Government and not direct them to pursue a specific policy.

1. **PREPARATION FOR MEETING WITH MINISTER FOR COMMUNITY SAFETY**

The Board were informed that efforts were still being made to fix a date to meet with the Minister for Community Safety, Ash Regan. Members were asked to consider questions for the Minister. A briefing would be provided to Board members in advance of the meeting once the date had been agreed.

**ACTION: CE’s OFFICE**

1. **ANNUAL REPORT AND ACCOUNTS**

The Board were presented with the Annual Report and Accounts for 2021 - 22. The Audit Committee had considered the report on 26th October and was of the view that it was a well written and transparent report that was a fair and true reflection on the year’s developments and achievements. The Committee had been content to recommend the Annual Report and Accounts to the Board for their consideration and approval.

It was noted that the Annual Report and Accounts were not qualified and that there were no audit recommendations.

Esther Scoburgh confirmed that, as the external auditor, she was satisfied that the annual report and accounts and that no significant findings had been identified by the auditor.

On the basis of a satisfactory recommendation from the Audit Committee, and the positive report from the External Auditor, the Board agreed that it could recommend to the Accountable Officer that he sign the Annual Report and Accounts and make arrangements for its submission, through Audit Scotland, the Auditor General and Scottish Government, for laying in the Scottish Parliament.

It was acknowledged that this would be the last set of accounts audited by Audit Scotland and the Board expressed their thanks to Esther and her team.

1. **LEGAL AID FUND FINANCE REPORT**

The Board was presented with the Legal Aid Fund Finance report. The purpose of the report was to show current legal aid expenditure to August 2022 which was at £52.5m.

It was noted that position showed a positive picture with legal aid expenditure at £8.0m higher than in the comparable period in 2021-22 and £2.6m behind profile.

The Board acknowledged the difficulties in forecasting presented by the current post-Covid environment and the dispute with the profession.

The report was noted.

1. **SLAB ADMINISTRATION – FINANCE AND RESOURCE REPORT**

The Board was presented with the SLAB Administration Finance and Resource Report. The purpose of the report was to show the expenditure for the period ended 31 August 2022. It was noted that expenditure was £5.6m which was broadly in line with budget profile of £5.7m (a 2.5% variance).

There were no significant concerns reported.

The report was noted.

1. **AUDIT COMMITTEE ANNUAL REPORT TO THE BOARD**

The Boar was presented with the Audit Committee Annual Report. The purpose of the paper was to provide a summary report on activity of the Audit Committee during the financial year 2021-22. The Audit Committee had discussed the issues, and considered it to be a true and fair reflection of their activities to 31 March 2022.

The Board noted the report.

1. **DRAFT POLICY: RESPONSES TO BREACHES**

The Board was presented with a draft policy statement for consideration and feedback. It outlined a policy to govern the decisions SLAB make on the steps to take when there are suspected breaches of professional rules; legal aid legislation, policy and procedures; and enforcement of breaches. The draft policy aimed to govern the discretion applied when making such decisions.

The report highlighted the approach taken to the creation of the policy and some of the issues considered when developing the policy. The following four objectives of the policy were noted:

* protection of the Legal Aid Fund - recovery of past loss and prevention of future loss
* cessation or rectification of bad or poor behaviours
* ensuring professional standards of conduct and service are maintained by those providing publicly funded legal services
* promoting the delivery of good quality publicly funded legal services, thereby achieving value for money for the taxpayer.

There was some discussion over whether the policy should be more explicit about the protection of clients but it was considered that this was a policy focussed on the legal aid system and that the second and fourth objectives covered the interests of the client. Care had been taken to draft a policy that stayed within the remit of SLAB and the Law Society of Scotland and the Scottish Legal Complaints Commission would more explicitly recognise client interests.

It was explained that the Board were asked to review the policy as it was the Board that made section 31 decisions, however it was agreed that the Legal Assistance Policy Committee should also have the opportunity to review the policy.

1. **OPERATIONAL PERFORMANCE REPORT**

The Board were presented with the Operational Performance Report the purpose of which was to report on operational performance as at 31st August 2022.

The Board noted that performance across applications and accounts was generally good and in line with the agreed benchmarks.

The report was noted.

1. **PDSO UPDATE**

The Public Defence Solicitors’ Office Update was presented. The Board noted the impact the dispute with the profession had had on the workload and resources of the PDSO. It was noted that there had been some positive developments with recruitment and that consideration was being given to filling the vacancy in the Aberdeen office.

It was also noted that in September 2022, Paul Haran, Director of Client Legal Services left SLAB to take up appointment as a Sheriff in the Sheriffdom of South Strathclyde, Dumfries and Galloway sitting at Airdrie. The Board expressed its best wishes and thanks to Paul. ,

The report was noted.

1. **MEETINGS WITH OUTISIDE BODIES REPORT**

The Board was presented with a paper setting out the details of key meetings attended by senior SLAB staff with external organisations.

The paper was noted.

1. **AGENDA PLANNER**

The agenda planner, which set out the main agenda items for forthcoming meetings, was noted.

1. **DATES OF NEXT MEETINGS**

The dates of the next meetings were noted

* Legal Services Cases Committee 17th October 2022
* Legal Assistance and Policy Committee 7th November 2022
* Audit Committee 21st November 2022
* Board Strategy Day 12th December (am) 2022
* Board Meeting 12th December 2022