

**Meeting of the Northern Ireland Legal Service Commission
held on THURSDAY 19 FEBRUARY 2009 at 9.30AM, Board
Room, Waterfront Plaza**

MINUTES

Present: Jim Daniell (Chairman)
Les Allamby
Fiona Donnelly
Joe Donnelly
Bridege Gadd
Dr Jeremy Harbison
Hilary McCartan
Miceal McCoy
Gillian McGaughey
Ronnie Spence

NILSC: Gerry Crossan Chief Executive
Theresa Donaldson Director of Policy & Service
Development
Lesley Johnston Director of Corporate Services
Jill Herron Secretary to the Board
Drusilla Hawthorne Principal Legal Adviser
Linda Norris Interim Change Manager
Rose Jellie Personal Secretary to Chairman and
Chief Executive

In attendance: Paul Andrews, NICtS

The Chairman welcomed Gillian McGaughey, as a new Commissioner, to her first meeting of the Board.

09/13 Apologies & Declaration of Board Members Interests

Apologies - Wilson Matthews

The Chairman reported on his quarterly liaison meeting with the Law Society earlier in the week and advised that there had been useful and productive discussion around issues of common concern.

09/14 MINUTES of the 15 January 2009 Board Meeting

The Minutes were agreed, subject to minor amendment.

- 14.1 Expert Witnesses – It was reported that a number of key stakeholders had been invited to sit on a Steering Group being established to consider the remuneration of expert witnesses in the Family Courts, and that a process was under way to engage support through a recruitment agency to take this work forward. A letter would be prepared for the Chairman to write to Mr Justice Gillen advising him of the plans for taking the range of associated issues forward.

09/15 Action Point Report and matters arising from the Minutes of 15 January 2009

All issues were referred into the main agenda items.

- 15.1 Commissioners Remuneration – The Chairman requested this agenda item to be discussed now as he had to leave the meeting early. It was reported that the issue regarding the change to remuneration arrangements for the Commissioners had been noted in the Statement of Internal Control (SIC) to the 2004/05 accounts. A more detailed statement had been drafted for inclusion in the Statement of Internal Control to the 2005/06 accounts. The Chairman advised that it was necessary that all Commissioners were sighted on, and content with, the final statement.

ACTION: To be taken forward by the Chair of the Audit Committee, NICtS, the Chief Executive and the Director of Corporate Services.

09/16 Financial Performance – Summary Report

- 16.1 High Costs Cases - The Director of Corporate Services reported that the Commission was being kept informed of progress on the work in relation to Very High Cost Cases (VHCCs). The interim payment scheme and the provision of additional capacity in the Taxing Master's Office had resulted in the resolution of the dispute with the Bar over the delays in the determination of VHCCs by the Taxing Master.
- 16.2 In-year Funding – HM Treasury had authorised additional funding of £20M. Further funding had also been secured by the NICtS through the Supplementary Estimate Process. Sufficient funding had, therefore, been secured to enable authorised legal aid payments to be made from the Legal Aid Fund for the remainder of the current financial year including interim payments for VHCC's. It was reported that an under spend in GIA was anticipated. Within the ICT provision, the under spend would be released into the Legal Aid Fund. NICtS confirmed that any additional funding secured and not spent would be lost.
- 16.3 Remainder of CSR Period 2010/11 – Current projections indicated an estimated shortfall of £60m in the Legal Aid Fund during the remainder of the current CSR period. HM Treasury had asked for an indication of what reforms were ongoing that would reduce costs to the end of the CSR period. It was noted that further negotiations with HM Treasury would also be informed by the pace of the devolution of justice programme.

- 16.4 Annual Reports and Accounts - The Director of Corporate Services reported that 2003/04 and 04/05 accounts were at proofing stage and 2005/06 were in preparation for presentation to the Board. Work was almost complete with NICtS to finalise 06/07 and the audit work was largely complete on 07/08. It was anticipated that 04/05 accounts would be laid before Parliament on 26 February 2009.
- 16.5 Assembly and Executive Review Committee (AERC) – The Chairman reported on his correspondence with the AERC about planned legal aid expenditure post devolution and the potential extent of the shortfall in funding. The Chairman and the Chief Executive had been invited to appear before the AERC on 3 March 2009. NICtS had also been invited to appear on 3 March 2009. The Board identified a number of issues within the administration of legal aid in this jurisdiction, and the reform of legal aid, that it considered should be drawn to the Committee's attention.

09/17 Funding for 2008/09 and CSR Period and Options for Savings

- 17.1 Options for Savings – The Board were invited to consider the tabled paper which had been jointly prepared by the Commission and NICtS outlining options for savings in both criminal and civil legal aid. It was noted that any savings to the Legal Aid Fund, brought about by reform, would not be significant in the current CSR period, and would not begin to impact until the next CSR round. It was also noted that the current economic downturn could place increased demand on the Legal Aid Fund in the short term.

ACTION: Comments to NICtS to be provided as soon as possible.

09/18 Draft Business Plan 2009/10

- 18.1 The Chief Executive introduced the draft Business Plan and the proposed publication timetable. Following discussion, the Chief Executive was asked to bring a second draft back for Board consideration.

ACTION: A revised draft to be brought to March Board meeting.

09/19 Chief Executive Report

- 19.1 The Chief Executive provided an update report:
- Progress on Business Plan 2008/09 – The Chief Executive apologised that, due to staffing pressures, it had not been possible to provide an updated report, and confirmed a paper on the current outturn position would be submitted to the Board as soon as possible.
 - Risk Management – A revised draft Corporate Risk Register would be considered by the TMT and Business Managers (Grade 7) in March before submitting to the Audit Committee and the Board. A Corporate Assurance Framework was in preparation and would be considered by the TMT in March before being submitted to the Audit Committee and the Board.
 - Financial Reporting – A draft Annual Report for 07/08 would be circulated to the Board as soon as possible.

- Transformation Programme – It was noted that the solid interface arrangement with NICtS continued to be critical to ensure delivery of the Transformation Programme on time. It was also noted that the Board and Committees would be briefed immediately on any matters, including staffing, that would cause delay.
- Workforce Plan – Notwithstanding the difficulties in setting staffing profiles against a backcloth of uncertain budgetary provision, the Board stressed the need for indicative staffing profiles for the next 5 years to be developed as a matter of urgency.
- Culture Change – The Board was advised that a workshop for senior managers had been facilitated on 19 January 2009 to discuss the findings of the Culture Change Survey. A draft action plan to take forward the survey findings would now be developed by the TMT for consideration at the March GPC. The action plan would be developed alongside the workforce plan (also under development).
- Pensions – The Interim Change Manager briefed the Board on the current position.

19.2 Parliamentary Ombudsman – The Chief Executive reported that the Parliamentary Ombudsman's Office had completed an investigation into a complaint against the Commission's handling of a legal aid application and had decided that maladministration had occurred. The Ombudsman was recommending that an apology, together with a compensatory payment of £500, should be made and a review of the complaints handling system should be carried out. The Chief Executive confirmed that he had accepted the Ombudsman's findings but did not accept that a compensatory payment should be made and he had responded to the Ombudsman's Office accordingly. The Chief Executive was also taking steps in Service Delivery to resolve the delays in responding to queries.

19.3 The Board noted the finding of maladministration. Following discussion, the Board considered that the payment of £500 should be made. The Chief Executive advised this was an Accounting Officer issue but that he would take the Board's view into consideration in settling the matter with the Ombudsman's office.

ACTION: The Chief Executive to reconsider the appropriateness of the compensatory payment in settling this case with the Parliamentary Ombudsman.

A draft action plan to take forward the survey findings would now be developed by the TMT for consideration at the March GPC.

09/20 Devolution of Justice

20.1 Devolution of Justice – The Chairman reported on a meeting with NIO about the potential review of the governance arrangements of the Commission in a post devolution environment. Agreement had been reached to a joint exercise being carried out involving the NIO, NICtS and the Commission to:

- Assess the Commission's financial position and future requirements for funding:
- Consider options for reducing predicted levels of expenditure:
- Review the relationship between (and respective responsibilities of) the Commission and its sponsor organisation.

20.2 The Chairman advised that he anticipated that this review would be carried out during the summer with a view to a more strategic review being considered in the autumn, thus ensuring that the options for moving forward would be available to the new Ministers for Day 1. The issue of capacity within the Commission to engage in this work was discussed. The Chairman advised that NIO would be releasing a senior officer to assist in the exercise. The Chairman considered it would be appropriate for him and other Commissioners to be involved.

09/21 Report from Committee Chairs on Issues and Matters Requiring Decision

21.1 Access to Justice Committee – The Chair of the Committee reported on progress on the reform agenda and, specifically, around the progress on preparation of documentation in relation to Funding Code. It was noted that the Board and the AJC would oversee the preparation and publication of an overview document which would provide new Ministers, MLA (and stakeholders) with a statement of existing plans for the reform of civil and criminal legal aid to assist them in coming to a view on whether to continue with, or modify, the planned approach.

21.2 Registration Scheme Working Group – The Chair of the Group reported that an outline paper for a pre-cursor scheme had been developed and agreed by the Working Group. A draft paper would be available for the next meeting of the Board.

ACTION: Draft paper on pre cursor scheme to be presented to March Board.

21.3 Civil Fees Update – The Director of Policy & Service Development introduced the paper and stated that there was a need to set fees where no fees had previously been set and recommended the introduction of fees for the following:

- Life Sentence Review Fees – retain scheme which expired on 31 December 2008
- ASBO and Sex Offender Order cases

ACTION: The Board agreed to the proposals.

21.4 Freeing Order Proceedings – It was noted that the Bar had generally welcomed proposals made on Family Car Centre fees before Christmas, although points of detail to be remained to be resolved and barristers continued to return briefs in these cases. The Board agreed to a negotiating strategy designed to bring the issue to an early conclusion.

ACTION: Negotiations with the Bar to continue in line with the strategy agreed by the Board.

The Chairman, Fiona Donnelly and Paul Andrews left the meeting. The Vice - Chair chaired the remainder of the meeting.

21.5 Audit Committee Report – The Vice-Chair of the Committee introduced the report and highlighted the Committee’s concerns over the VAT issue. It was reported that Internal Audit had been disappointed in the delay by the TMT in responding to outstanding reports.

ACTION: A detailed report on the VAT issues to go to the GPC in March.

The TMT to consider outstanding audit reports as a matter of urgency.

21.6 General Purposes Committee – The Chair of the Committee introduced the report and the Board noted the Committee’s concern over the slow progress in the development of the action plan to take forward the findings of the culture change survey. The continuing delay in bringing forward a workforce plan was also noted.

09/22 KPMG Appraisal of Reform of Financial Eligibility Test for CLA and its Administration in Northern Ireland

22.1 Financial Eligibility – The Board noted the report and the position of the AJC. This would have staffing implications and it was recommended that there needed to be full discussion on this and requested that any decision made would come back to the Board for approval. The Board requested further clarity on how this would be carried out in house, together with an indicative timetable.

ACTION: The TMT to give further consideration to bring financial eligibility testing in house in the longer term.

09/23 Disclosure of Payments

23.1 The Chief Executive reported that he expected to be in a position, before the Easter break, to publish disclosure of payments from legal aid to barristers and solicitors for 2006/07 and 2007/08.

09/24 Board Away Day – 9 March 2009

24.1 The Board noted the paper and the agenda for the day.

09/25 Communications Plan 2009/10

25.1 A Communications Plan for April to September 2009 was approved, with a particular focus on engagement with MLA’s and the press in the run up to

devolution. The Board signalled its commitment to the use of road shows and training seminars to continue to engage positively with the profession.

09/26 Review of Complaints Policy and Procedure

26.1 The Vice-Chair reported that she and Joe Donnelly had recently carried out a review of the complaints handling review. The Vice-Chair advised the Board that the current culture for dealing with complaints needed to change with proper training given to all staff and managers involved in complaints handling as soon as possible. More work was also needed with the profession to enhance understanding of respective issues to reduce the number of misunderstandings and complaints. The Board agreed that further work was necessary to improve the current complaints culture. The potential to run joint events with the Law Society and to work with the IPLS would be explored further.

ACTION: The Complaints Policy and Procedure to be referred back to the GPC for further consideration.

09/27 Judicial Review Report

27.1 The report was noted and the Principal Legal Adviser confirmed that the Commission was in the process of ensuring that the new pre-action protocol in relation to Judicial Reviews was factored into the Commission's systems and procedures organisation wide. The development linked in with reasons for refusals and the new appeal arrangements on the service delivery side. Internal meetings and discussions had taken place and the CEO procedure on Judicial Reviews was being amended to reflect this development.

27.2 Law Society JR

ACTION: A letter to the Law Society had been prepared and would issue in due course.

09/28 IS/IT Strategy

28.1 The draft strategy document was remitted to the March meeting of the GPC for consideration and decision on immediate business critical issues. It was agreed that the longer term IS/IT strategy would be brought back to the Board in due course.

09/29 Any Other Business

29.1 Nothing was discussed under AOB.

09/30 Date of Next Meeting – Thursday 19 March 2009 at 9.30am

Meeting ended 1.30pm

SIGNED:
CHAIRMAN

DATED: