

**DRAFT MINUTE OF THE MEETING OF THE
LOTHIAN AND BORDERS COMMUNITY JUSTICE AUTHORITY**

Newbattle Abbey College, Dalkeith
Thursday 17th February 2011

Present: Councillor John Muir (WLC)(**Chair**), Councillor Sandy Scott (SBC),
Councillor Margot Russell (MLC), Councillor Paul Edie (CEC),
Councillor Kenny McLeod (ELC)

In Attendance: Rob Strachan (CJA), Jennifer Scott (WLC), Mike Brown (CEC), Mary Lewis (ELC), Colin Anderson (MLC), Andrew Lowe (SBC), David Cressey (SBC), Phil Mackie (NHS Lothian), Jim Dustan (SPS), Ged McEneaney (Apex), Mary Bowman (Audit Scotland), David Wightman (Audit Scotland), Graeme Stenhouse (CEC), Dr Eric Baijal (NHS Borders), Nancy Loucks (Families Outside), Grant Sugden (Circle); John McFarlane (COPFS), DS Lesley Boal (L&B Police), Sally Crighton (CJA), Andrea McLachlan (CJA)

Apologies: Monica Patterson (ELC), Murray Leys (ELC), Brian Battison (Audit Scotland), Michelle Miller (CEC), Jim Aitken (Includem), Fiona Steel (Action for Children), Laura Baxter (Victim Support), Dr Alan Mordue (NHS Borders), ACC Iain Livingstone (L&B Police)

DECLARATION OF INTEREST

The Members present confirmed they had no financial or non-financial interest in any matter included in the Agenda for this meeting.

1. WELCOME & INTRODUCTION

The Chair welcomed and introduced:

- Mary Lewis, East Lothian Council
- Jennifer Scott, West Lothian Council
- Grant Sugden, Circle
- John McFarlane, Crown Office Procurator Fiscal Service
- Mike Brown, City of Edinburgh Council

The Chair also introduced the CJA's new Chief Officer Mr Rob Strachan and welcomed him to his first CJA meeting.

2. APOLOGIES

The Chair advised the meeting of the apologies for absence.

3. PREVIOUS MINUTE

3.1 The Chair advised the Minute of the 21st October had previously been circulated and two proposed amendments had been received. The Chair stated his recollection was in line with the original minute which he had approved prior to circulation and sought comments from the Members as to the proposed amendments.

Following a discussion between Mr Lowe and the Chair in respect of the second amendment, Mr Lowe requested his amendment be withdrawn.

Councillor Scott supported Amendment 2.1, submitted by Michelle Miller and this was seconded by Councillor Russell.

Decision

The Members agreed to:

1. Note the previous Minute which had been previously circulated
2. Approve Amendment 2.1 and request the Minute be amended accordingly
3. Noted the withdrawal of Amendment 2.2

3.2 Minute Process

The Chief Officer advised Members the purpose of this report was to provide reassurance on the Minute process and to recommend the Minute is not added to the CJA website until it has received full Members approval at the subsequent CJA meeting.

Decision

The Members agreed to:

1. Note the report.
2. Accept the proposals to amend the Standing Orders to include the Minute process as recommended by the Chief Officer

4.1 Integrated Case Management Report for Quarter 2 of 2010-11

The Chief Officer reported on the positive performance across Lothian & Borders with an attendance rate of 95% against the national compliance rate of 85%.

Decision

The Members agreed to:

1. Note the report.
2. Receive a progress report at the next CJA meeting to include a position statement on the relative performance of Lothian & Borders CJA against the other seven CJAs.

4.2 East & Midlothian ‘Agenda for Change’

Mary Lewis advised Members that the business case was completed on 21 January 2011 and a feasibility study is planned for mid March. The business case across both Councils recommends the service is retained internally whilst making best use of finance available.

Colin Anderson recapped that this project received CJA approval and it has progressed on the understanding that it would be supported where necessary by the CJA. As such any savings or efficiencies which may come as a result of the shared service will need to be reinvested into the joint service. There is robust governance in place through a Shared Services Chief Officer Working Group and an Elected Members Steering Group. Mr Anderson offered to bring a future report to the CJA providing more detail in how this proposed single service for East and Midlothian with a single lead officer will be taken forward.

Decision

The Members agreed to:

1. Receive a progress report at the next CJA meeting.

4.3 Audited Accounts 2009/10

The Chief Officer confirmed the CJA had met the requirement to submit the final 2009-10 Accounts to Audit Scotland and these were laid before Parliament and accepted with no amendments on 22 December 2011.

Decision

The Members agreed to:

1. Note the report

5. FINANCE

5.1 Section 27 2010-11 Update at 30 September 2010 (Quarter 2)

Graeme Stenhouse presented his report to Members which forecast an overspend of £684K. Mr Stenhouse advised Members that since submitting the written report he has now received the Quarter 3 returns which are forecasting a reduction of £95K in the overspend figure to £589K comprising Edinburgh (£497k over); East Lothian (26k under); Midlothian (even); West Lothian (£160k over); Scottish Borders (£42k under).

Mr Stenhouse further advised Members that this forecast could worsen to £700k if the Scottish Government reclaimed the underspend from the Caledonian men's service. The forecast does not take into account any subsidy which may be provided by individual Councils.

The Chair confirmed that the subsidy previously provided by West Lothian Council to support the Criminal Justice Services would no longer be available and he anticipates the financial situation will worsen next year.

Decision

The Members agreed to:

1. Note the contents of the report

5.2 Baker Tilly Report

The Chief Officer advised Members that the reply from Baker Tilly had been received and circulated outwith the meeting papers and noted the two key points of note within the reply which were that Baker Tilly identified an overspend on their part which undermines any potential for reclaim of monies by the CJA; the letter indicates a level of discontent on their part.

The Chief Officer suggested there was an opportunity to learn from this process but it was now the time to move on.

Councillor Edie requested that the correspondence is circulated to all meeting attendees as they are public documents. Councillor Edie felt the Baker Tilly reply reflected badly on the officers of the CJA and past Chief Officer. Councillor Edie added his satisfaction with the reply from Baker Tilly and asked that a response is sent to them thanking them for their reply.

Decision

Members agreed to:

1. Note the report
2. Correspondence is circulated to all meeting members
3. Response is sent to Baker Tilly

5.3.1 and 5.3.2 Proposals for Revised Allocation of Section 27 Funds

The Chair proposed that both papers were presented to allow Members to consider both options before taking any decision.

5.3.1 Proposals for Revised Allocation for Section 27 Criminal Justice Social Work Funds

Colin Anderson presented this paper in Michelle Miller's absence. This paper has received the support of 4 out of the 5 member Councils with one authority, Scottish Borders Council choosing not to endorse it.

Mr Anderson advised Members that following the CJA meeting on 21 October 2010, a working group had been established with a Criminal Justice Social Work (CJSW) and Finance representative from each Council. This group had been unable to develop a unit cost model and agreed the only feasible model was one based entirely on workload as this utilised the most recent and accurate information, taken from the published aggregate returns.

The consensus of the group is the current allocation is outdated and inequitable as it disadvantages one council in particular (West Lothian). However, the group also recognised the viability of Scottish Borders Council CJSW could be affected if no transitional arrangements are put in place.

This proposal recommends the adoption of a workload based allocation with a transitional approach to mitigate the impact on Scottish Borders Council. Mr Anderson requested Members to note the considerable effort and staff time which had been committed to this piece of work.

5.3.2 Alternative Proposals for Revised Allocation of Section 27 CJSW Funds Across the Five Constituent Members

Andrew Lowe advised Members that the Directors/CSWO have worked together to set a fair allocation both through the Lothian & Borders Consortium and now with the CJA. Mr Lowe agrees the current arrangements are not ideal but feels that it is not appropriate for a decision to be taken today which would switch one unfair model for another.

Mr Lowe argued against the workload model on the basis it does not address the fundamental basis for the review which is to be fair and equitable. With Scottish Borders Council covering 2/3 of the area of Lothian & Borders there are consequences in delivering services which have an impact on unit cost. Mr Lowe through this paper is offering an alternative basis for allocation using the GAE formula which is currently used by Government for Social Work and Police funding and he invited Mr Cressey to provide the detail behind this proposal.

Mr Cressey stated the 'workload only' model had only been proposed at the meeting held on 14th December which gave little time for alternatives to be proposed and in addition this model did not receive the support of the Service Managers Group. The 'workload only' model would result in a 31% reduction in budget for Scottish Borders Council CJSW service and whilst Mr Cressey and his colleagues in Scottish Borders recognise that workload is an important variable, it is argued that it should not be the only factor. The Scottish Government formula for determining the level of grant payable is based on 2/3 workload to 1/3 need. Mr Cressey stressed that should the CJA adopt the 'workload only' model it would be unique in Scotland.

The minority proposal is to use the GAE Police & Social Work calculation as this is a widely accepted methodology across Scotland for identifying relative resource need. It is accurate, future proof and defensible and can allow for medium to long term planning.

Mr Cressey noted the majority proposal which included a period of transition but Scottish Borders' position is they still have an issue with the large reduction in funding. Scottish Borders Council as an alternative option propose they forgo the resource increase of £69K (reference Item 5.3.2 para 3.3) and commit to a further reduction of £50k over a period to be agreed by the CJA Board.

The Chair thanked both presenters and opened up the debate to Members and attendees for comment.

Mr Anderson commented that at no time had GAE been raised at the Directors/Lead Officers Group as an option and in an email from Michelle Miller dated 19th January 2011 this was clarified and confirmed that it had been ruled out from the outset. This is due to the CJSW workload being determined by the Courts in respect of the Orders that are commenced rather than based on local demographics and other local factors. In addition the Scottish Government formula does not use GAE therefore it is not appropriate for it to be used for determining onward local allocation within Lothian & Borders.

Councillor Scott noted his disappointment that this matter had not been resolved prior to it being taken to the CJA meeting and added the proposed £274k reduction for Scottish Borders Council when applying the 'workload only' model equated to a 31% cut which was not acceptable. Councillor Scott noted rurality did not feature in the calculations in option 5.3.1 and this as well as DTTO should be looked at differently. Councillor Scott favoured the compromise option of Scottish Borders Council forgoing their resource increase as proposed by Mr Cressey.

The Chair advised the meeting that the national formula used by Government to determine S27 allocations had been reviewed twice and approved by the Association of the Directors of Social Work (ADSW), CoSLA and the Scottish Government.

Councillor Edie restated the rationale behind this exercise which was to address the anomaly whereby West Lothian Council have been disadvantaged and added the Scottish Borders Council report was not acceptable as this would add to this disadvantage.

Jennifer Scott added her support for 5.3.1 and the case against using the GAE model as discussed by Mr Anderson earlier in the meeting and confirmed that West Lothian Council could not accept a continuation of the status quo as they need to receive a fairer allocation.

Dr Baijal noted his disappointment that no consideration had been included for the end user of the service and the impact of the proposed reallocation under 5.3.1 would impact on the quality of their experience. Dr Baijal noted his support for the 5.3.2 proposal as it was a proven approach and any untried model could have an adverse impact on service and reputation.

Mike Brown, representing Michelle Miller restated the principles behind the 'workload only' proposal due to the Courts driving the number of disposals whilst noting GAE does not take into account workload at all.

Phil Mackie concluded the open discussion by stating all resource allocation formulae are flawed and one aspect to consider would be how far you can accept these flaws before implementing a new formula. He further noted both options focus on management rather than outcomes with no direct link to reducing re-offending or offender reintegration.

The Chair invited the Chief Officer to summarise his views on the two proposals.

Rob Strachan advised Members he had not submitted a report on this matter as the Directors/CSWO had been asked by the CJA Board to take this matter forward. In addition, the 2011-12 allocation had been received too late to allow him to provide a report for the CJA meeting, hence the separate circulation of correspondence to Members.

Mr Strachan went onto identify the key messages that were involved in this item. He noted the significant amount of effort which had gone into this complex issue. He stated there is nothing in the legislation or guidance of the CJA for it to determine the unit cost of services – that is for local government to determine - but the CJA's role is to ensure as fair and equitable allocation as possible, based on the evidence available. The Scottish Government have recognised the significant challenge of introducing the new Community Payback Order and this has resulted in a moratorium year in respect of financial allocation in 2011-12.

Mr Strachan also highlighted the move of Drug Testing and Treatment Orders (DTTO) from non-core funding to core funding from April 2011. In addition the method applied to DTTO funding by the Scottish Government will change in 2012-13 to one based on local DTTO workload (over 3 year period) rather than the current historical basis. This is particularly important at this time of deficit reduction.

Mr Strachan gave his support to the 'workload only' model in principle noting the following 5 key points:

1. 2011-12 is a moratorium year, in light of the introduction of Community Payback Orders (CPO). The pattern of workload is likely to change in light of CPO.
2. Workload only is the easiest and most transparent model to apply.
3. 5.3.1 has the support of four out of five of the Directors/CSWO based on their professional advice received so far.
4. The Scottish Borders Council DTTO allocation is an anomaly at present and it is recognised that the context will change in 2012-13 with the application of workload base allocation for DTTO by Government.
5. Workload is the predominant factor in the national formula and is the nearest, of the two proposals to the national formula. The national formula has been evaluated and approved twice in the recent past and found to be fit for purpose.

In addition Mr Strachan asked Members to consider the following three caveats when considering the 5.3.1 proposal:

1. The CJA is responsible for funding the statutory delivery of core services across all Lothian & Borders and it is not in the interest of the CJA to undermine the viability of the statutory services provided in any area or part of Lothian & Borders.
2. What we agree to at this meeting will determine how we work together around similar challenges in the future. Whilst Scottish Borders Council may be adversely affected by the decision taken today, it is possible that another Council in the future will face similar difficulties. The magnitude of the proposed change needs to be phased and due consideration given to the moving of DTTO to core and what that might mean.
3. The CJA should consider the application of the national formula in whatever guise it takes in future and suggest that the national calculation is applied to each local authority in future years. Further suggest that this is looked at jointly with the Directors/CSWO over the course of 2011-12 plus agree to a 'workload only' allocation in 2011-12 with reallocation of DTTO implemented over time.

Councillors' Russell and McLeod both acknowledged the potential difficulties Scottish Borders Council would experience if the 'workload only' proposal was adopted but agreed to follow the lead of the Chief Officer based on his recommendations.

Proposal

The Chair moved to request Members to vote on the two proposals they had received whilst noting the caveats the Chief Officer had attached to Item 5.3.1. At this point in the meeting Councillor Scott moved to withdraw the proposal under 5.3.2.

Decision

Councillors' Edie, Russell, McLeod and Muir approved the CJA adoption of the proposal under 5.3.1 with the caveats proposed by the Chief Officer. Councillor Scott abstained.

6. Reducing Re-offending Performance Framework

Mr Strachan presented his paper and advised Members that in light of the environment of deficit reduction there is a clear need to demonstrate outcomes from funding, to ensure a robust business case can be made for future investment in the reducing re-offending agenda.

The CJA has a statutory obligation around Performance and the Chief Officer reported on the positive responses he had received from Partners for the development of a Performance Framework.

Councillor McLeod requested the framework focus on re-offenders not just offenders or offences committed.

Decision

Members agreed to:

1. Note the report.
2. Seek a further report at the May meeting.

7.1 Policy, Research and Good Practice Sharing

Mr Strachan presented his paper which promotes the sharing of good practice and sought the approval of Members to use the CJA Board Agenda for this purpose.

Members agreed to:

1. Note the contents of the report
2. Include showcasing of Good Practice in future CJA meetings

7.2.NHS Prison Healthcare Transfer

Phil Mackie provided Members with an update on the transfer of prison healthcare which had been initially presented to them at the July 2010 CJA meeting. Mr Mackie advised there would be health care support provided in Lothian & Borders to ensure the transition of offenders from the community into custody and back into the community. Health is seen as a major factor in addressing and reducing re-offending. This project has also provided an opportunity to review health care in all custody settings, not just prisons. This includes restricted patients in the Orchard Clinic in Edinburgh; Forensic medical examiner and Police surgeon (both funded by the NHS); and additional support for offenders at stage of being taken from Court to prison in the form of early triage, possible diversion and transfer to prison.

Mr Mackie concluded by confirming NHS Lothian will take over healthcare in HMPs Edinburgh and Addiewell from 1 November with the first 12 months using existing arrangements to ensure there is a smooth transition.

Decision

Members agreed to:

1. Note the contents of the report

8. Showcasing Local Delivery

Presentation 'COMMUNITY PAYBACK ORDERS' by Criminal Justice Social Work

Ian McLean (CJA Training Manager) supported by Ian Neil (Midlothian) and Marian Gray (Scottish Borders) provided the meeting with a presentation on the background to the Community Payback Order (CPO), its key features and state of readiness within Lothian & Borders for the introduction of this new Order from 1st February 2011.

The new CPO is being introduced to CJSW staff at the same time as the new National Outcomes & Standards, new Court Report guidance and the introduction of LSCMI (Level Service Case Management Inventory) which includes two new risk assessment tools. This has resulted in high levels of training to ensure staff are ready to deliver the new services and procedures.

The new CPO will replace Probation, Community Service and Supervised Attendance Orders for all offences committed on or after 1st February 2011. DTTO and Restricted Liberty Orders will remain as separate Orders. The other major change from the Criminal Justice & Licensing (Scotland) Act 2010 is the presumption against 3 month sentences and it is perceived that this change of legislation could potentially have a huge impact on service delivery.

The CPO brings a change of emphasis from one of constructive and helpful to that of punishment. It also puts reparation at its core rather than rehabilitation which will by necessity result in a cultural change within CJSW. Practitioners have shown a willingness to engage with this change process.

There are varying Levels within the CPO which the Court can apply to the Order. Level 1 CPOs do not require a social work report; have a maximum of 100 hours and must be completed within 3 months. A Level 2 Order has a maximum of 200 hours and must be completed within 6 months.

A further offence whilst on a CPO will not be treated as a breach as each CPO is sentence in its own right.

There are 9 CPO requirements, of which two only are stand alone – Offender Supervision (equivalent of Probation) and Unpaid work or other activity (equivalent of Community Service).

For the introduction of CPO to be a success, it will be vital to have the support of partner's agencies to ensure the relevant services are available and provide quality of service.

Mr McLean concluded by restating the opportunity that surrounds the CPO which has positioned CJSW at the centre of Criminal Justice through the new legislation and there is an opportunity to and a challenge to develop social inclusion for offenders.

Councillor McLeod queried how Justice of the Peace Courts could deal with repeat offenders who continually refused to pay their fine or complete their Order. Mr McLean confirmed the Justice of the Peace and Sheriff still had the option of sending someone to prison for a short term sentence of up to 3 months if they felt that this was the best option available.

The Chair thanked Mr McLean and his colleagues for an informative presentation.

Note: Councillor Edie and Councillor Russell had to leave the meeting at this point for other engagements.

8.1 Implementation of Community Payback Orders

This report had been previously submitted by the Chief Officer.

Decision

Members agreed to:

1. Note the contents of the report
2. Seek a progress report at the August CJA meeting

9.1 Accommodation Protocol

The Chief Officer had previously submitted his written report and advised Members that he will provide a full update at the next meeting.

Decision

Members agreed to:

1. Note the contents of the report
2. Seek a full report at the May CJA meeting

9.2 CJA Groups – Update Report

This report had been previously submitted by the Chief Officer. The Chief Officer advised Members that the growth funding of £190k received over each of the last 3 years has been withdrawn by the Scottish Government in 2011-12 and this will impact on the level of group work which may be feasible over future years. A small payment of £20K will be received in the 2011-12 and the Chief Officers will update Members on this in due course.

Decision

Members agreed to:

1. Note the contents of the report

10. Informing and Influencing National Policy

The Chief Officer had previously submitted his written report and advised Members that this provided an update on the attempts being made to inform and influence national policy.

Decision

Members agreed to:

1. Note the contents of the report

11. No AOCB Items were submitted

12. Date of Next Meeting

The next meeting will be held at Newbattle Abbey College, Dalkeith, on Thursday 19th May commencing at 2pm.

CLOSING REMARKS

Councillor Sandy Scott on behalf of all Members congratulated Rob Strachan on his first CJA meeting.