

THE SCOTTISH LEGAL AID BOARD

**MINUTE OF MEETING OF THE SCOTTISH LEGAL AID BOARD HELD AT 1.50PM
ON MONDAY 12 SEPTEMBER 2005 AT 44 DRUMSHEUGH GARDENS, EDINBURGH**

Present: Jean Couper, Chairman
Peter Gray
Susan McPhee
Ian Percy
Graeme McKinstry
Elaine Rosie
Willie Gallagher
Margaret Scanlan

In attendance: Lindsay Montgomery, Chief Executive
Andrew Menzies, Director of Corporate Services and Accounts
Ian Middleton, Director of Audit and Compliance
Tom Murray, Director of Legal Services and Applications
Colin Lancaster, Head of Policy and Planning (items 6 and 8 only)
John McLeod, Head of Information Systems (item 9 only)
Joe Kelly, Manager, Treasury (item 13 only)
Marie-Louise Fox, Solicitor-Legal and Policy Support
Stuart Foster, Board Administrator

1. APOLOGIES FOR ABSENCE

Apologies were received from Malcolm Thomson, Kenneth Ross, David Nicol and Ellen Morton.

2. DECLARATIONS OF INTEREST

No interests not previously registered in the Register of Board Members' Interests were declared.

3. MINUTE OF MEETING HELD ON 25 JULY 2005

The minute of the meeting of 25 July 2005 was approved.

4. MINUTE OF THE LEGAL SERVICES COMMITTEE HELD ON 8 AUGUST 2005

The minute of meeting of the Legal Services Committee held on 8 August 2005 was noted.

5. CHIEF EXECUTIVE'S UPDATE

Members considered a report by Lindsay Montgomery, Chief Executive, updating them on matters of interest since the previous Board meeting.

The Board was informed that because the regulations for the reform of civil advice and assistance were not yet finalised by the Scottish Executive, the implementation of the reforms would be delayed until approximately February 2006.

The Board noted the concerns expressed by the Chief Executive as to the availability of resources at the Scottish Executive to take forward the Legal Aid Bill and associated projects and the likely impact on the Board of the large programme of development work.

In discussion of the monitoring of civil legal aid reform, the point made in the report that the final position in relation to the average percentage increase in fees paid to solicitors would be significantly lower than 35% was emphasised.

Members noted the position.

6. STRATEGIC REVIEW CONSULTATION: ADVICE FOR ALL

Members considered a paper by Colin Lancaster which updated the position on the Advice for All consultation and set out a draft response for comment.

Members made a number of points in relation to the specific questions asked in the consultation, including:

- in expressing support for tapering as a means of increasing access to justice (Q14) it was important to recognise that the supply side also needed to be strengthened;
- further consideration needed to be given to the difficulties faced by applicants in the operation of the clawback arrangements and the response modified to reflect this (Q16);
- in relation to Q(21) the response should be modified so as not appear to pre-empt the outcome of further consideration of section 19 of the Act;
- the response to Q22 about determining the liability of the unsuccessfully legally aided party should mention that two tests – ability to pay, and conduct of the case – were the bases for determining liability.
- the response to Q35 should emphasise the need to protect the public purse.

It was noted that the comments made would be reflected in the response, the final version of which would be signed off by the Chairman for submission to the Executive.

ACTION: CL

7. LEGAL AID BILL – POSSIBLE MATTERS FOR INCLUSION

Members considered a paper by Douglas Haggarty about the introduction of a Bill - provisionally entitled “The Legal Profession and Legal Assistance (Scotland) Bill” – which was designed to bring forward the changes to primary legislation necessary to allow for implementation of the “Advice for All” consultation. The paper set out a list of proposed changes to primary legislation which the Board considered necessary and desirable in addition to any proposals to be taken from the consultation.

After discussion, it was AGREED:

- to approve the recommended changes to the legislation, subject to emphasising that the Board should have powers of registration and de-registration over solicitors providing civil legal aid;
- the issues concerning removal of criminal sanction against staff in connection with s. 34 and assessment of the resources of the applicant instead of the *incapax* in relation to adults with incapacity, should be included in the list.

ACTION: JDH

8. EMPLOYMENT OF SOLICITORS BY THE BOARD

Members considered a paper by Colin Lancaster which set out proposals for the employment of solicitors by the Board to provide a civil legal assistance service in areas of identified need.

It was noted that, following an analysis of the number of solicitors offering civil legal assistance in different geographical areas, it was suggested that there was sufficient evidence of current or imminent supply problems to support the employment by the Board of solicitors in each of the areas covered.

In discussion, the view was expressed that any solicitors employed by the Board in this connection should be capable of operating with minimal support from the Board. Support was expressed for the concept of a civil version of the PDSO in due course. The importance and value of development work in consulting with those who would use the proposed service was emphasised.

After discussion, it was AGREED:

- to submit an outline proposal to the Scottish Executive setting out the options for the operation of Board employed solicitors as proposed, and recommending that Ministers bring forward the necessary regulations;
- as soon as Ministers had indicated it was appropriate, to commence implementation work.

ACTION: CL

9. ICT STRATEGY

Members considered a paper by John McLeod updating progress against the ICT Strategy 2004-06 as reported to the ICT Steering Group on 25 July.

It was noted that the ICT Steering Group had concluded that the broad strategy of expanding web-based services, the integration of case management through the entire lifecycle; and the streamlining of the technology, remained both appropriate core objectives for the strategy, and consistent with the Board's Corporate and Operational Plans.

The delivery plan remained on schedule to ensure delivery of the projects underpinning the achievement of the strategy. Resources were being utilised effectively to ensure appropriate priority was attached to each of the individual delivery objectives.

After discussion, it was AGREED:

- the Chairman be provided with a comparison of total expenditure against budget;
- members' recognition of the good progress being made be conveyed to the department's staff.

ACTION: JMcl

10. PERFORMANCE AND RESOURCES REPORT

Members considered a paper updating the position on operational performance and resources for the period ending 31 July 2005.

It was reported that almost all headline performance indicators had been exceeded for the year to date period; total Grant-in-aid expenditure was slightly under budget; and that Fund expenditure for 2005/06 was expected to be around £151m.

It was AGREED:

- to note the excellent performance by staff against target, particularly in view of the major system changes that had been implemented;
- consideration be given to whether decisions on civil legal aid applications should be made within the 14 day objection period to avoid double-handling where objections were received.

ACTION: TCM

11. REVIEW OF SCOTTISH COURTS SERVICE

Members considered a paper by Kingsley Thomas setting out issues which it was proposed to raise in consultation with the team conducting the Scottish Executive's Agency Review of the Scottish Court Service.

It was AGREED to approve the list of issues it was proposed to raise, subject also to:

- pointing out that it was unclear where the remit of the Sheriffs Principal ended and that of the Court Service began, and that there were wide variations in practice in different parts of the country;
- clarifying the suggestion contained in paragraph 6.10 concerning court expenses:
- encouraging the Court Service to develop electronic communication and the provision of facilities within court buildings to enable solicitors to utilise remote communications via laptops.

ACTION: KT

12. SUMMARY JUSTICE REFORMS

Members considered a paper by Kingsley Thomas updating the position on how the Board's plans for the reform of summary criminal legal assistance were fitting in with the Scottish Executive's timescales for the reform of Summary Justice, together with further information on the local criminal justice pilot exercises in Grampian and West Lothian.

It was noted that although a working group of officials from Summary Justice Reform, Access to Justice and the Board had been set up to allow better co-ordination of the wider reform agenda, there remained concerns about linking the Bills on the reform of summary criminal legal assistance and summary justice reform, and how the lessons learned from the Grampian and West Lothian pilots would be rolled out nationally and fit in with the timing of the drafting of instructions for the Bills. The concerns over timescales would be raised with Micheline Brannan and Robert Gordon when they visited the Board on 27 September.

13. PROPOSED SEQUESTRATION

Members considered a paper by Joe Kelly recommending that liquidation proceedings be commenced in a debt recovery case in which the debtor - a company which had been the opponent in a case against an assisted person in an action for payment - had been unwilling to

come to any arrangement for payment of any of the sums due, there being a net liability to the Fund of £24,242.

In discussion, consideration was given to the implications of liquidation for the company.

After discussion, it was AGREED that liquidation proceedings be initiated, and members be kept informed of developments.

ACTION: JK

14. CHAIRMAN'S REPORT

The Chairman reported that:

- the Legal Services Committee and the Legal Services Sub-Committee had been re-scheduled to 28 November to accommodate the Strategy Away Day on 20 and 21 November;
- meetings were being arranged with stakeholders as part of the Strategic Review;
- the McKinstry Company had received an award at the Law Awards Dinner;
- 2 Christmas staff party tickets were available for members wishing to attend.

15. DATE OF NEXT MEETING

Monday 7 November 2005.

The meeting ended at 4.20pm.