

**THE SCOTTISH LEGAL AID BOARD**

**MINUTE OF MEETING OF THE SCOTTISH LEGAL AID BOARD HELD AT 10.30AM  
ON MONDAY 6 FEBRUARY 2006 AT 44 DRUMSHEUGH GARDENS, EDINBURGH**

Present: Jean Couper, Chairman  
Ian Percy  
Susan McPhee  
Ellen Morton  
Graeme McKinstry  
Elaine Rosie  
Willie Gallagher  
Margaret Scanlan  
David Nicol  
Peter Gray  
Malcolm Thomson

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 8, 9,10 and 13  
only)  
Marie-Louise Fox, Solicitor-Legal and Policy Support  
Stuart Foster, Board Administrator

On behalf of the Board, the Chairman congratulated Margaret Scanlan on being awarded the O.B.E. The award was richly deserved on account of her work at the Board and, more widely, for her excellent contribution to the promotion of access to justice.

**1. APOLOGIES FOR ABSENCE**

Apologies were received from Kenneth Ross.

**2. DECLARATIONS OF INTEREST**

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

**3. MINUTE OF MEETING HELD ON 12 DECEMBER 2005**

The minute of the meeting of 12 December 2005 was approved.

**4. MINUTE OF THE LEGAL SERVICES COMMITTEE HELD ON 19 DECEMBER  
2005**

The minute of meeting of the Legal Services Committee held on 19 December 2005 was noted.

**5. MINUTE OF THE LEGAL SERVICES SUB-COMMITTEE HELD ON 19  
DECEMBER 2005**

The minute of the Legal Services Sub Committee held on 19 December 2005 was noted.

## **6. MINUTE OF THE AUDIT COMMITTEE HELD ON 12 DECEMBER 2005**

The draft minute of meeting of the Audit Committee held on 12 December 2005 was noted.

## **7. CHIEF EXECUTIVE'S UPDATE**

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

Updates were provided on: Part V; Faculty issues; the additional resources required to progress the development programme; fixed payments research; the report of the Legal Services markets Research Working Group; the assault on the Chief Accountant of the Law Society; discussion at the latest tripartite meeting; and the branding of the Board's Learning Centre.

The Chief Executive reported further that meetings with Faculty on civil and criminal fees had now been arranged.

Members noted the position.

## **8. OPERATIONAL PLAN**

Members considered a paper updating progress made with the operational plan during the third quarter of 2005-06.

In discussion, concern was expressed that delivery of so much of the development programme was dependent on the Scottish Executive. The Executive was taking longer to draft regulations, which added to timing pressures. The Chief Executive had raised the issue with the Head of the Justice Department and would continue to do so.

In relation to curators, reporters and safeguarders, members expressed concern about the cost to the public purse of unnecessary and excessively expensive reports by experts.

After discussion, it was AGREED:

- a paper be submitted to the Legal Services Committee as soon as possible on the subject of curators, reporters and safeguarders;

**ACTION: TCM**

- otherwise, to note the position.

## **9. STRATEGIC REVIEW-LEGAL AID BILL: CHANGES TO PRIMARY LEGISLATION**

Members considered a paper updating on developments with the Legal Aid and Legal Profession Bill.

It was reported that the Board's often expressed concerns that the Scottish Executive had allocated insufficient time and resources to the development of detailed legislative provisions to implement the reform proposals had proved to be justified: despite the Board's advice on the amendments needed to the primary legislation, the Executive had now advised that due to time constraints and drafting complexity, very few of the issues introduced in the 'Advice for All' consultation would be included in the Bill. This limited the scope of the reform of the system to what could be achieved by regulations.

It was extremely disappointing, frustrating and demoralising for all those involved both at the Board and externally that the huge amount of time, effort and resources that had been devoted to these reforms which could not now be delivered by the provisions contained in the draft Bill. Significant efforts would now have to be directed at working with the Executive to secure substantial amendments to the provisions at Stage 2 of the Bill.

It was expected that the advice sector generally would be equally disappointed at what had been left out of the Bill by the Executive.

In discussion, members expressed deep dismay at the situation. It appeared that the decisions taken by the Executive on what to include or exclude from the Bill had been taken with an insufficient understanding of the subject matter, and that the issues raised in the Strategic Review consultation - and the broad consensus in favour of most of the proposals contained in it - had been ignored. Even the most important reform – the development of flexible powers for funding and service provision – had been left out of the Bill.

After discussion, it was AGREED the Chairman communicate to Ministers the Board's extreme disappointment at the lack of content in the Bill, and major concern about the consequent restriction on the Board's ability to deliver Ministers' objectives for the development of the legal aid and PFLA system and the delivery of the savings package and increased value for money.

**ACTION: JC**

## **10. MONITORING OF CIVIL LEGAL AID REFORM: REPORT TO SCOTTISH MINISTERS**

Members considered a paper setting out the Executive Summary from the report to Ministers on the monitoring of civil legal aid reform.

Members made a number of points in relation to the content of the summary, including:

- adjustment to the cycle of quality assurance reviews
- removal of the word “anecdotal”
- separation of the points about the fall of applications in relation to divorce and the issue in relation to the availability of advice on protective orders
- insertion of “adequate or better” in relation to firms quality of service

After discussion, it was AGREED to approve the Executive Summary for submission to Scottish Ministers, subject to the amendments proposed by members.

**ACTION: M-LF**

## **11. CIVIL ADVICE AND ASSISTANCE REFORM: ROADSHOWS**

Members considered a paper concerning the recent roadshows on civil advice and assistance reform and the need to address some issues raised.

It was noted that, despite the lack of Law Society representation at four of the eight events, the roadshows had been well attended, and were judged to have been a success: the profession had clearly given a good deal of thought to the implications of the reforms.

Of the issues raised at the events, two in particular required immediate attention: whether debt should be a separate approved category on which substantive legal advice could be needed; and whether solicitors should be requested to collect equality information at the diagnostic stage.

It was still not clear when the reforms would be introduced because of issues surrounding the finalisation of the regulations. The main issue was whether the list of approved categories should be specified in the regulations. This matter was still under discussion with the Scottish Executive.

After discussion, it was AGREED:

- that debt should remain excluded as a ‘green light’ category, but the profession should be advised that there was still the opportunity for deserving cases to be allowed past the diagnostic stage;
- solicitors should be requested to collect equality information at the diagnostic stage but guidance be issued to assist solicitors to obtain this information as efficiently as possible;
- to approve in principle the list of categories as set out in the paper, subject to clearer definition of what was meant by “community care”;
- the reference to “restoration of driving licence” be replaced with *removal of disqualification*.

**ACTION: TCM**

## **12. RESOURCES AND PERFORMANCE REPORT**

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

Members noted the position.

## **13. REVIEW OF KEY PERFORMANCE INDICATORS**

Members considered a paper which reviewed performance against current targets and proposed revised performance standards and targets for 2006/07.

It was noted that the improvements proposed for the year were more wide-ranging and significant than those made last year because the new civil computer system had allowed an increase in civil service standards and related targets.

Members welcomed the revised standards and targets as proposed and agreed that the Scottish Executive be asked to agree these for inclusion in the corporate plan.

**ACTION: CL**

## **14. POSSIBLE DE-REGISTRATION**

Members considered a paper by Ian Middleton, Director of Audit and Compliance, concerning a possible de-registration. The paper detailed the failings from a number of compliance audit reports on a solicitor and his firm, and recommended the removal of the solicitor and his firm from the Criminal Legal Assistance Register.

It was noted that the failings were administrative in nature, and there was no question of impropriety on the part of the solicitor concerned. However, there was a history of consistent non-compliance with the code.

In discussion, members expressed reluctance to de-register the solicitor in such circumstances but recognised that action needed to be taken. It was also reported that the firm was merging with another.

After discussion, it was AGREED:

- the first letter in the de-registration process be issued but to make clear that the Board would wish to have the firm's proposals for improving matters and complying with the code. However, there would require to be a short and defined timescale set for any improvement plan. Such a plan would have to be produced within one month.
- a further report be submitted in due course.

**ACTION: IGM**

## **15. CHAIRMAN'S REPORT**

The Chairman asked members to note in their diaries that an evening reception would be held on 28 March from 6-8pm in the Signet Library to commemorate the 20<sup>th</sup> anniversary of the Board's inception. The guest speaker would be the Justice Minister, Cathy Jamieson.

On 23 March, an event would be held to allow the Chairman to thank members of the Law Society with whom she had worked. Solicitor members were asked to note the date in their diaries. A letter with more details would follow.

## **16. DATE OF NEXT MEETING**

Monday 13 March 2006.

The meeting ended at 12.45pm.