

THE SCOTTISH LEGAL AID BOARD

MINUTE OF A MEETING OF THE LEGAL SERVICES POLICY COMMITTEE HELD AT 10.30 AM ON MONDAY 24 JANUARY 2011 AT 44 DRUMSHEUGH GARDENS, EDINBURGH

Present: Joseph Hughes (Convener)
Alastair Kinroy QC
Elaine Rosie
Sheriff Ray Small
Lindsay Montgomery
Graham Watson
Bill McQueen
Iain Robertson

In attendance: Tom Murray, Director of Legal Services and Applications
Catriona Whyte, Head of Legal Services – Civil (items 6 - 9 only)
Douglas Haggarty, Head of Legal Services (Technical) (item 12 only)
Joe Kelly, Head of Civil Legal Assistance (item 11 only)
Andrew McIntosh, Corporate Support Manager
Stuart Foster, Board Administrator

1. APOLOGIES FOR ABSENCE

None.

2. DECLARATIONS OF INTEREST

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

3. DRAFT MINUTE OF MEETING HELD ON 13 DECEMBER 2010

The draft minute of the Legal Services Policy Committee held on 13 December 2010 was approved.

4. DRAFT MINUTE OF THE LEGAL SERVICES CASES COMMITTEE HELD ON 13 DECEMBER 2010

The draft minute of the Legal Services Cases Committee held on 13 December 2010 was noted.

5. DIRECTOR'S REPORT

The Committee considered a report on matters of interest which had arisen since the previous meeting.

The Director reported on *Cadder*. Regulatory work was progressing to enable the implementation of a police station duty scheme and on the structure for fee arrangements. Since the interim arrangements had been in place, 84% of requests for solicitor advice were dealt with by telephone: if the feeing arrangements failed to strike the right balance, it could be expected

there would be an increase in face-to-face interviews. A videoconference centre in Ayrshire would be used to pilot videoconference interviews. Options were also being considered for dealing with cross-border detentions.

The Committee was also given an update on the package of regulations that was planned to be in force by the end of March 2011 in order to deliver savings in legal aid expenditure. Committee members noted the provisions and also the need to monitor any procedural changes to ensure that perverse incentives were not being introduced. In particular, it was noted that the proposed measure under the criminal package whereby solicitors would not be paid the full prescribed fee for a deferred sentence where a number of cases called at the same time could encourage solicitors to keep cases apart and thereby adversely affect the smooth running of the court. The Chief Executive noted that this would all be monitored carefully but that joint working and effective communication between justice partners would be critical.

It was AGREED that this particular issue be drawn to the attention of the Sheriffs Principal

ACTION: TCM

6. TEMPLATES FOR IMMIGRATION AND ASYLUM

The Committee considered a paper by Catriona Whyte concerning proposed changes to the advice and assistance templates for immigration and asylum following changes to the tribunal system.

It was noted that, following changes to the tribunal process for asylum claims, new and revised templates had been drawn up and discussed with immigration and asylum practitioners, who considered that they met the new requirements. Work to determine appropriate levels of expenditure for each template was still ongoing and this would be reported to the Committee as soon as possible.

After discussion, it was AGREED to approve the terms of the templates subject to:

- adding a block for counsel if they applied for an increase in authorised expenditure for leave to appeal;
- including the Tribunal in the list of bodies with which correspondence would be covered by an increase;
- specifying the potential level of expenditure that could be incurred in respect of the new templates, with the revised and completed templates to be submitted to a future meeting.

ACTION: CAW

7. LEGAL AID APPLICATION: DECISION OF THE SHERIFF PRINCIPAL

The Committee considered a paper by Catriona Whyte concerning the decision of the Sheriff Principal of Lothian and Borders to grant a judicial review application seeking to challenge the Board's refusal of an application for civil legal aid to bring judicial review proceedings against Aberdeenshire Council and Trump International Golf Links Scotland. This was an update for the Policy Committee since it had taken the decision to refuse the application.

The Sheriff had granted the application on the basis that the Board in its refusal in terms of regulation 15 had not given any indication as to the interest it considered other individuals had in the petition and more especially had not made any reference to why it was considered reasonable and proper for those individuals to defray the expenses of the proceedings. The Board had not given any indication of the basis of its reliance on regulation 15 (b) other than the fact that other

persons with a joint and common interest existed, and the Sheriff Principal had considered it to be arguable that this was insufficient.

An offer had subsequently been made to the applicant's agents to re-open consideration of the original application and re-examine the basis of the refusal while giving them the opportunity to provide more information about the potential joint interest other parties might have and their financial position. However, the agents had declined to do so unless this included consideration of the compatibility of Reg.15 with the Aarhus Convention. The Legal Services Department's technical area was deliberating on options for taking matters forward.

After discussion, it was AGREED:

- that Committee members would receive a further report following further legal advice being received.

ACTION: CAW

8. REGULATION 18: FINDINGS OF REVIEW

The Committee considered and noted a paper by Catriona Whyte which set out the findings and proposals arising from the Board's major review of special urgency provisions in place for civil legal aid applications. It was agreed that these should be published as soon as possible.

9. CONVEYANCING COSTS

Members considered a paper by Catriona Whyte which set out revised guidance for advice and assistance related to conveyancing costs, taking into account costs incurred where guardianship orders were in place in terms of the Adults with Incapacity (Scotland) Act 2000.

It was proposed that an additional exception be included in the conveyancing guidance to cover situations in which the conveyance was in respect of arrangements to provide living accommodation to an adult with a guardianship order in terms of the Act.

After discussion, it was AGREED:

- to approve the revised guidance subject to amending the wording so that it did not encompass too wide a range of possible applications, and referred to *other parties to the transaction* as opposed to "third party transactions".

ACTION: CAW

10. REVIEW OF FATAL ACCIDENT INQUIRY LEGISLATION

The Committee considered a paper by Kieran Burke which set out a proposed response to the Scottish Government's request for views on the recommendation relating to the provision of civil legal aid contained in Lord Cullen's report on the Review of Fatal Accident Inquiry Legislation.

In discussion, it was noted that the consultation did not understand the way that legal aid operated and that the wider economic issues should be into account when considering changes to eligibility.

After discussion, it was AGREED to approve the response as proposed.

ACTION: CAW/KB

11. ASSESSMENT OF CAPITAL RESOURCES

The Committee considered a paper by Joe Kelly which sought guidance on the approach that should be taken to a number of problematic areas which had been identified in the assessment of capital resources in applications for civil legal aid.

The Committee was informed that it was not being asked to take firm decisions on all recommendations today, the paper was meant to be obtain feedback on the specific issues and questions.

After discussion, it was AGREED:

- to obtain the up to date opinion of counsel on the subject matter of dispute;
- decisions on the remainder of the recommendations would be made at a future meeting; in order to do so, a further discussion and options paper should be prepared and submitted.

ACTION: JK

12. SANCTION FOR COUNSEL IN CRIMINAL CASES

The Committee considered a paper by Douglas Haggarty which set out proposed changes to guidelines for the employment of counsel in criminal cases. The guidance was in need of a periodic update, although a number of the changes proposed were as a result of Lady Stacy's Opinion in the *Petition of Matthew McAllister v The Board*.

After discussion, it was AGREED:

- to expand on the circumstances in which more than one solicitor could be employed, and give more weight to the application of the criterion of cost-effectiveness;
- to structure the guidance in such a way as to state at the outset the test to be applied in determining a request for the employment of counsel - namely, that the Board would sanction "where appropriate"- and then list the factors that would be taken into account in determining the request;
- to include in the guidance the importance that the Board would attach to each factor;
- the revised guidance be issued to the profession for comment and then published.

ACTION: JDH

DATE OF NEXT MEETING: Monday 14 March 2011 at 10.30a.m.

The meeting ended at 12.15 p.m.