

THE SCOTTISH LEGAL AID BOARD
MINUTE OF MEETING OF THE SCOTTISH LEGAL AID BOARD HELD AT 1.30PM
ON MONDAY 8 NOVEMBER 2010 AT 44 DRUMSHEUGH GARDENS, EDINBURGH

Present: Iain Robertson, Chairman
Graham Watson
Ray MacFarlane
William McQueen
Denise Loney
Sheriff Ray Small
Les Campbell
Elaine Rosie
Alastair Kinroy QC
Susan McPhee
Joseph Hughes

In attendance: Lindsay Montgomery, Chief Executive
Andrew Menzies, Director of Corporate Services and Accounts
Colin Lancaster, Director of Policy and Development
Tom Murray, Director of Legal Services and Applications (items 1-14 only)
Ian Middleton (items 10-18 only)
Matt Taylor, Senior Analyst, Policy and Development (item 12 only)
Clare Duffy, Assistant Manager, Policy and Development (items 13 and 14 only)
Hazel Thoms, Project Manager, Policy and Development (item 15 only)
Graeme Hill, Projects Manager (item 16 only)
Marie-Louise Fox, Head of Secretariat and Chief Executive's Office
Andrew McIntosh, Corporate Support Manager
Stuart Foster, Board Administrator

1. APOLOGIES FOR ABSENCE

Paul McBride QC.

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 30 AUGUST 2010

The draft minute of the meeting held on 30 August was approved.

4. MINUTE OF THE LEGAL SERVICES POLICY COMMITTEE HELD ON 6 SEPTEMBER

The minute of the Legal Services Policy Committee held on 6 September was noted.

5. MINUTE OF THE LEGAL SERVICES CASES COMMITTEE HELD ON 6 SEPTEMBER

The minute of the Legal Services Cases Committee held on 6 September was noted.

6. DRAFT MINUTE OF THE LEGAL SERVICES CASES COMMITTEE HELD ON 4 OCTOBER

The draft minute of the Legal Services Cases Committee held on 4 October was noted.

7. DRAFT MINUTE OF THE AUDIT COMMITTEE HELD ON 30 AUGUST

The draft minute of the Audit Committee held on 30 August was noted.

8. CHAIRMAN'S INTRODUCTION

The Chairman made some introductory comments.

9. CHIEF EXECUTIVE'S UPDATE

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

Members noted the position.

10. OPERATIONAL PLAN: 6 MONTH UPDATE

Members considered a paper which updated the position on overall progress made in respect of the Operational Plan for 2010-2011.

It was noted that good progress continued to be made in quarter two, this whilst carrying out significant work on the development of proposals for savings and preparation for the Supreme Court's judgement on Scotland's approach to advice in police stations. Delivery of the projects of the highest priority to the Board remained on track.

Due to the highest priority being attached to Cadder and the development of savings, members were presented with a number of projects within the Operational Plan that would need to be delayed or changed in scope. This, however, was not expected to have a significant impact on the Board's functions or reputation. It was possible that planned activity might need to be revised further once Ministers' decisions on funding for 2011/12 became clearer and the range of savings to be made were apparent.

Members noted the position.

11. HALF -YEAR BUDGET AND PERFORMANCE REPORT

Members considered a paper which provided an update on operational performance and resources for the period from 1 July to 30 September 2010.

It was noted that:

- both applications and accounts for all legal aid types had met or exceeded the headline performance indicator for the year to date;
- total Grant-in-Aid expenditure for the first half of 2010/11 was £6.4m compared to the budget of £6.6m, the variance mainly being due to differences in the actual timing of certain payments versus their anticipated timing;

- Legal aid fund cash spend was £87.6m, which was ahead of the profiled spend; it was noted that solicitors appeared to be submitting claims more quickly in cases, thus increasing cash flow, and this would be reflected in the current re-forecasting exercise, where a number of additional pressures on the fund were likely to contribute to an increase in the current forecast;
- the invoice turnaround target of paying 90% of all invoices within 10 working days had been exceeded in July to September and for the year to date.

Members noted the position.

12. TRENDS ANALYSIS

Members considered a paper summarising legal aid trends for the 12 month period from October 2009 to September 2010 compared with previous years.

In discussion, reference was made to the significant increases in contact cases. Contact cases were the subject of a Best Value Review being undertaken by Board staff.

Members noted the position.

13. POLICY RESEARCH PROGRAMME UPDATE

Members considered a paper which updated the position on progress made against the 2010/11 research programme.

It was noted that the projects within the programme covered a range of areas and were designed to support the Board as it developed its strategic approach to the current legal aid system, as well as exploring how various aspects of legal aid operated.

Good progress had been made in delivering the programme and projects on the solicitor and staff surveys, a legal aid online survey of non-users, and stakeholder views of the Prison Advice Project and the initial asylum application process had already been completed or were nearing completion.

Members would be updated on progress and findings arising from individual projects as they reported, or through routine reporting of progress made against the research programme.

The next report was scheduled for March 2011. This would cover progress made over the full year and present the programme planned for 2011/2012.

Members noted the progress made to date and projects planned for the remaining half of the year.

14. SINGLE EQUALITY SCHEME: ANNUAL REPORT 2010

Members considered a paper which reported on activity in 2010 related to the Board's Single Equality Scheme 2008-2011.

Overall progress throughout 2010 had been good. The majority of actions scheduled for 2010 had been met. Five actions within the action plan set in December 2009 had been completed and 22 were progressing as scheduled.

Progress in a few areas had been slower than expected. This was in the main because of shifting priorities and waiting for interpretation and guidance around the new Equalities Act 2010, which was passed in October 2010 and would be fully introduced in April 2011.

Members noted the Equalities Annual Report and the planned date of publication of 1 December 2010. Members also noted the current work being undertaken to align the Board's equalities programme with the new Equalities Act.

15. TARGETED FUNDING

Members considered a paper which provided information on the current funding arrangements for targeted service delivery, and recommended options for next steps in securing decisions from the Scottish Government on future funding beyond the end of March 2011.

Savings in expenditure were considered achievable through stringent financial management and restructuring of costs. If greater savings were required by the Scottish Government, services would have to be removed from the programme to a commensurate extent. The paper set out suggested methods of achieving any required savings in different scenarios.

The risks associated with delay in decision-making had been clearly expressed to the Scottish Government.

It was AGREED:

- to note the suggested methods for achieving any required savings or deeper cuts from the targeted programme and approve the suggested next steps for achieving clarity on the programme funding for the next financial year; final decisions could not be taken until the Government had taken decisions on legal aid funding as part of the spending review.

ACTION: HT

16. LEGAL AID ONLINE UPDATE

Members considered a paper which provided an update on the Legal Aid Online Project and the strategy supporting the corporate objective of no longer accepting paper applications from 1 April 2011.

It was noted that, by September 2010, 80% of firms were doing some business online. Around 85% of the total advice and assistance intimations received by the Board were submitted online.

Sixty percent of firms were now submitting full civil legal aid applications online, with 46% of total civil initial applications being made online; in summary criminal, 68% of firms were using online, submitting 62% of the total summary criminal applications online.

The ability to submit solemn criminal sanction requests online was introduced in March 2010, and online receipts currently stood at 63%.

The current focus was on analysing feedback from firms that were not online and carrying out a further survey in early 2011 on firms who are online but not using the service for 100% of their legal aid applications or accounts. This would be coupled with continued marketing and promotion work, including regular mailshots.

Members also noted that applications from firms that did not use the online system after 1 April 2011 would no longer be accepted.

17. REDUCING THE CARBON IMPACTS OF LEGAL AID AND THE BOARD

Members considered a paper which reported on the actions being taken to minimise the carbon impact of the Board's operations and outlined plans for extending influence over carbon management of the services funded from the legal aid fund.

Members noted the extensive and effective measures being taken to minimise the carbon impact of the Board's operations, and that it was planned to liaise with the Law Society to minimise the carbon impact of legal aid solicitors in practice, most notably through influencing legal aid related travel (the most significant source of emissions relating to the provision of legal aid services) and the increased use of video conferencing.

18. POSSIBLE DE-REGISTRATION

Members considered a follow-up paper to the report submitted to the previous meeting of the board, at which it had been agreed to invoke de-registration procedures in respect of the solicitor and firm concerned.

It was noted that, in accordance with the opportunity afforded by the de-registration procedures, the solicitor had submitted representations, and that these in large measure accepted the Board's findings without question, but offered explanations for them. The solicitor's failings were administrative and not fraudulent in nature.

In discussion, members expressed the view that the solicitor, a sole practitioner, should be de-registered.

Following discussion, it was AGREED:

- to approve the recommendation of the Director of Audit and Compliance to remove the name of the firm and of the solicitor from the Criminal Legal Assistance Register;
- that the Chief Executive sign a letter conveying the Board's decision to de-register, whilst indicating to the solicitor that if another firm with effective compliance controls were prepared to employ the solicitor, a request from the solicitor to be-readmitted to the register would be considered - the justification for this approach was a recognition that although the practitioner had a record of serious non-compliance and a disregard toward rectifying this, it was recognised that there was no criticism of his work as a solicitor; however, if he was to be part of another criminal firm they would be responsible for his compliance with the code.

ACTION: IGM

19. POSSIBLE DE-REGISTRATION

Deferred to enable consideration of representations received.

DATE OF NEXT MEETING: Monday 6 December 2010.

The meeting ended at 3.20 p.m.