

THE SCOTTISH LEGAL AID BOARD

MINUTE OF A MEETING OF THE LEGAL SERVICES COMMITTEE HELD AT 10.30 AM ON MONDAY 16 MAY 2005 AT 44 DRUMSHEUGH GARDENS, EDINBURGH

Present: Margaret Scanlan
Willie Gallagher
Jean Couper
Graeme McKinstry
Malcolm Thomson
Elaine Rosie

In attendance: Lindsay Montgomery, Chief Executive
Tom Murray, Director of Legal Services and Applications
Kingsley Thomas, Manager, Criminal Applications (item 10 only)
Catriona Whyte, Head of Legal Services (Applications) (items 7-8 only)
Douglas Haggarty, Head of Legal Services (Technical) (items 12-13 only)
Steven Carrie, Senior Technical Specialist (items 12-13 only)
Marie-Louise Fox, Solicitor – Legal and Policy Support
Stuart Foster, Board Administrator

1. APOLOGIES FOR ABSENCE

Ian Percy, Peter Gray and Kenneth Ross.

2. DECLARATIONS OF INTEREST

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

Malcolm Thomson and Jean Couper declared interests in relation to the additional agenda item in that they had been party to the decision of the Legal Services Sub-Committee in the case concerned.

3. MINUTE OF MEETING HELD ON 25 APRIL 2005

Subject to deleting the reference to an adversarial system under item 13, the minute of the Legal Services Committee held on 25 April 2005 was approved.

4. DRAFT MINUTE OF LEGAL SERVICES SUB-COMMITTEE

The draft minute of meeting of the Legal Services Sub-Committee held on 21 February 2005 was noted.

5. COMMITTEE ACTION POINTS

The Committee considered a paper by Tom Murray outlining action taken in relation to decisions at the previous meeting.

It was noted that it was important for the tone of the proposed letter to External Reporters to be appropriate.

6. DIRECTOR'S REPORT

The Committee considered and noted a paper by Tom Murray updating members on matters of interest since the previous meeting on 25 April.

It was also reported that the Scottish Executive would be informed about the changes to primary legislation which would be needed as a result of summary justice reform and the EU proposals for procedural rights during criminal proceedings.

The Committee noted the position.

7. SANCTIONS – EXPERTS

The Committee considered a paper by Catriona Whyte reporting on work undertaken since March 2005 in relation to sanctions for the employment of experts.

After discussion, it was AGREED:

- a report distinguishing between curators, reporters and safeguarders would be submitted to the June meeting;
- there was no need for the existing Sub-Group to continue – work in relation to sanctioning experts would however continue to be undertaken by CAW and other relevant members of staff;
- a plan of action (within the overall plan agreed in March) for a pilot of providers of quality assured translation services at an agreed standard rate be submitted to the Committee for approval.

ACTION: JDH

ACTION: CAW

8. SANCTION FOR COUNSEL

The Committee considered a paper by Catriona Whyte concerning guidance for the use of counsel.

It was AGREED:

- Catriona Whyte was awaiting responses on reparation cases, and would revise the guidance if necessary and report back to the Committee;
- the remit and timetable of the new Sub-Group looking at how the revised guidelines for criminal cases were working in practice be submitted to the next meeting of the Committee;
- that revised guidance for civil cases be circulated to various bodies for consultation in June;

ACTION: CAW

9. CONSULTATION: EU DECISION ON PROCEDURAL RIGHTS DURING CRIMINAL PROCEEDINGS

The Committee considered a paper by Philip Shearer which set out the background to a Home Office consultation on the draft EU Framework Decision on certain procedural rights during criminal proceedings throughout the EU, together with a proposed response.

It was noted that the Board had already responded to the legal aid issues raised in the Home Office response in earlier responses to a European Commission Green Paper consultation in 2003 and a Scottish Executive consultation in 2004.

It was AGREED that a response drawing on the points made in the previous responses and including an assessment of the financial implications be made

ACTION: PS

10. REFORM OF CIVIL ADVICE AND ASSISTANCE

The Committee considered a paper by Kingsley Thomas updating on progress with the reform of civil advice and assistance. The paper sought approval for a list of case categories for full advice and assistance and invited further consideration of a suggestion to exclude the additional costs associated with clients with special needs from the new financial arrangements.

It was noted that the main issues identified in discussions with the Law Society and Scottish Executive on the responses to the Civil A&A consultation exercise were: possible additions to the approved cases categories, and the higher costs in cases where clients had special needs. A revised list of approved categories had been drawn up, and the Committee was invited to approve the list, and consider whether or not certain costs should be excluded from the threshold of the higher contribution level.

In discussion, clarification was sought and provided in relation to the distinction between diagnostic and full A&A subject matters and the nature of the “trigger” into the templated cases. It was noted that of the additional categories suggested by the consultees, most would be contained within the proposed categories, and full guidance would be provided for the profession.

In agreeing with the principle of removing the costs in cases where clients had special needs from the threshold, it was not clear whether such cases should be restricted to sight and hearing disabilities, or include language interpretation, which would have significant cost implications. And, if the resulting contribution was higher, was this discriminatory in terms of access to justice, and who should bear the extra cost?

After discussion it was AGREED:

- subject to grouping the categories, to approve the list as proposed;
- guidance for the profession be drafted;
- the extra costs in cases where clients had special needs in sight or hearing be removed from the threshold;
- the Scottish Executive be consulted on the wider issues of whether language interpretation be included as a special need in this regard, and the implications for access to justice of higher contributions for special needs clients.

ACTION: KT

11. CIVIL ADVICE AND ASSISTANCE REFORM: SYSTEM ISSUES

The Committee considered a paper by Tom Murray seeking views on the need to simplify arrangements surrounding the diagnostic interview.

It was noted that, in developing the electronic civil system, a need to simplify arrangements for the diagnostic interview had been identified. To do this, it was recommended that there should be only one level of fee applying not only to mainstream advice and assistance but also to the diagnostic interview; and that solicitors lodge only one account for diagnostic interview, regardless of the number of meetings held, within three months of the conclusion of the work. It was recognised that introducing these new arrangements was likely to be relatively cost-neutral, given the probability that solicitors would seek to charge the maximum of £35.

After discussion, it was AGREED to approve the recommendations.

ACTION: TCM

12. FEES FOR COUNSEL IN CIVIL CASES UPDATE

The Committee considered a paper by Douglas Haggarty reporting on progress in the discussions with Faculty on developing the table of fees for payment of counsel in civil cases in the Court of Session and sheriff court (Schedule 4).

It was reported that, whilst good progress was being made on a number of fronts, there was a point of contention over Faculty's proposal to create a category of "exceptional cases." The Board found it difficult to understand why counsel should be paid more for what counsel considered to be the more complex cases when the very reason that counsel had been appointed in the first place was indicative of the complexity of the case. Faculty's justification for the proposal was unclear. The Board had a fundamental objection in principle to the proposal, given that base or basic fees which could be enhanced were not involved.

After discussion, it was AGREED to approve the basis on which the Board's representatives were seeking to finalise arrangements with the Faculty of Advocates.

ACTION: JDH

13. NEW BLOCK FEE TABLES

The Committee considered a paper by Douglas Haggarty concerning a draft block Table of Fees for solicitors in High Court and Sheriff and Jury cases (solemn cases) which had been agreed with the Law Society for the purpose of consultation.

It was noted that the paper referred to a draft block Table of Fees, which should more accurately have been described as a draft fees structure, since the costing exercise had yet to begin.

After discussion, it was AGREED to approve the proposed fee structure for further discussion and consultation with the profession and others.

ACTION: JDF

Additional item not listed on agenda:

14. LEGAL AID APPLICATION

15. DATE OF NEXT MEETING:

Monday 27 June 2005 at 10.30 am.

The meeting ended at 11.55.