

THE SCOTTISH LEGAL AID BOARD

**MINUTE OF A MEETING OF THE LEGAL SERVICES COMMITTEE HELD AT 10.30
AM ON MONDAY 24 OCTOBER 2005 AT 44 DRUMSHEUGH GARDENS,
EDINBURGH**

Present: Margaret Scanlan (Convenor)
Kenneth Ross
Jean Couper
Graeme McKinstry
Willie Gallagher (items 5-13)
Elaine Rosie
Malcolm Thomson
Peter Gray

In attendance: Lindsay Montgomery, Chief Executive
Tom Murray, Director of Legal Services and Applications
Philip Shearer, Board Solicitor (items 8-10 only)
Catriona Whyte, Head of Legal Services (Applications) (item 11 only)
Douglas Haggarty, Head of Legal Services (Technical) (item 12 only)
Joe Kelly, Treasury Manager (item 7 only)
Marie-Louise Fox, Legal and Policy Support to the Chief Executive
Stuart Foster, Board Administrator

1. APOLOGIES FOR ABSENCE

Ian Percy.

2. DECLARATIONS OF INTEREST

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

3. MINUTE OF MEETING HELD ON 27 SEPTEMBER 2005

The minute of the Legal Services Committee held on 27 September 2005 was approved.

4. DRAFT MINUTE OF LEGAL SERVICES SUB-COMMITTEE

The draft minute of meeting of the Legal Services Sub-Committee held on 27 September 2005 was noted.

5. COMMITTEE ACTION POINTS

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

It was reported that the Law Society had still to be advised of the approach the Board intended to take in relation to the proposed uplift in fees in children's referrals. The revised guidelines for the use of sanctions in civil reparation cases had been sent to APIL.

It was AGREED:

- in relation to the response that had been submitted on behalf of the Committee to the consultation “Secure and Safe homes for our Most Vulnerable Children”, it be noted that the Committee did not share the sponsor department’s view that the system for the appointment and training of curators, reporters and safeguarders was better operated locally – it was local operation that caused the difficulties with the system;

- a further report on the costs of reporters would be submitted to the November meeting;

ACTION: TCM

- future reports include a list of outstanding action points.

ACTION: TCM/SF

- a further report on the proposed financial assessment arrangements for civil advice and assistance reform would be submitted to the December meeting;

ACTION: TCM

6. DIRECTOR’S REPORT

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

After discussion, it was AGREED:

- Tom Murray consult with the appropriate representatives of the Law Society’s Quality Assurance Committee on the themes emerging from the current peer review cycle, with a view to submitting a report on the issues to the November meeting of the Committee.

ACTION: TCM

7. A&A HARDSHIP APPLICATIONS

The Committee considered a paper by Joe Kelly concerning hardship applications that were being received in relation to Proceeds of Crime cases.

It was noted that the Treasury Department had until recently had little involvement in Proceeds of Crime cases, and that the Board’s guidance on hardship applications had not so far included reference to Proceeds of Crime cases. The paper set out a number of concerns arising from queries being received from solicitors and internally about whether property had been recovered or preserved, and the hardship applications now being received.

Of particular concern was a hardship application which, if the normal Treasury Department tests were applied, would lead to the application being refused. The applicant had been successful in opposing an attempt by the Crown to confiscate his savings through being caught up in an action in which he was not the accused, but in doing so had incurred legal expenses which would lead to the loss of those savings. However grossly unfair, this did not equate to hardship.

It was reported that reports had now been received from a forensic accountant and a psychiatrist, but that these did not alter the position, and the application under Reg. 16(3) should still be refused.

In discussion, concern was expressed that the regulations relating to hardship applications created such unfairness and expense.

After discussion, it was AGREED:

- it was not possible under the existing regulations to grant the particular application in question;
- to contact the Scottish Executive to seek to come to an arrangement on an *ex gratia* basis, and to point out the fundamental unfairness in the relevant legislation as evidenced by this case for both legally aided and privately funded clients;
- it was unacceptable that a convicted person could preserve property and not be the subject of clawback because the matter had been dealt with under criminal legal aid, whilst a family member in the same case receiving A&A/ABWOR who preserves property would be subject to clawback.
- guidance be prepared and issued to the profession as indicated in the paper, together with an explanation of why the guidance was being issued;

ACTION: JK

- contact be made with the Crown Office to discuss the issues identified.

ACTION: TCM

8. CONSULTATION – ADULTS WITH INCAPACITY (SCOTLAND ACT)

The Committee considered a paper by Philip Shearer concerning a Scottish Executive consultation on the Adults with Incapacity (Scotland) Act. The paper set out the background to the consultation together with a proposed response.

It was noted that the consultation outlined a number of possible improvements that could be made to the Act in light of post-implementation experience to simplify and streamline existing provisions in the Act. Any amendments would be made at the earliest legislative opportunity.

It was AGREED to approve the response as proposed.

ACTION: PS

9. SCOTTISH COMMISSIONER FOR HUMAN RIGHTS BILL

The Committee considered a paper by Philip Shearer on the Justice 1 Committee's call for evidence on the Scottish Commissioner for Human Rights Bill. The paper set out the background to the proposals together with a draft response.

It was AGREED to approve the response as proposed.

ACTION: PS

10. POLICE, PUBLIC ORDER AND CRIMINAL JUSTICE (SCOTLAND) BILL

The Committee considered a paper by Philip Shearer on the Justice 2 Committee's call for evidence in relation to the Police, Public Order and Criminal Justice (Scotland) Bill, which had recently been laid before the Scottish Parliament. The paper set out the background to the proposals, together with a draft submission to the Justice 2 Committee.

Subject to clarifying potential costs of aspects of the proposals with the Scottish Executive it was AGREED to approve the submission as proposed.

ACTION: PS

11. REVIEW APPLICATION

12. AWARDS OF EXPENSES IN JCPC CASES

The Committee considered a paper by Douglas Haggarty about the issues arising from an application for an award of expenses in criminal proceedings before the Judicial Committee of the Privy Council.

It was noted that because appeals on devolution issues could since 1998 proceed to the Judicial Committee of the Privy Council, which sat in London, and since the rules of that court allowed for costs (expenses) to be awarded to the successful party in criminal cases, but the Legal Aid (Scotland) Act did not allow for expenses arising from a criminal legal aid case, there was a tension between those rules of court and the Board's legal aid legislation. This had the effect that any expenses awarded by the Court could not be accepted by counsel or solicitors, or paid into the Fund.

The paper set out a number of recommendations to address the issue.

After discussion, it was AGREED to approve the recommendations.

ACTION: JDH

13. DATE OF NEXT MEETING:

Monday 28 November 2005 at 10.30 am.

The meeting ended at 12.30.