

THE SCOTTISH LEGAL AID BOARD

**MINUTE OF A MEETING OF THE LEGAL SERVICES COMMITTEE HELD AT 10.30
AM ON MONDAY 27 JUNE 2005 AT 44 DRUMSHEUGH GARDENS, EDINBURGH**

Present: Margaret Scanlan
Willie Gallagher
Kenneth Ross
Graeme McKinstry

In attendance: Lindsay Montgomery, Chief Executive
Tom Murray, Director of Legal Services and Applications
Kingsley Thomas, Manager, Criminal Applications
Marie-Louise Fox, Solicitor – Legal and Policy Support
Stuart Foster, Board Administrator

1. APOLOGIES FOR ABSENCE

Ian Percy, Peter Gray, Malcolm Thomson and Jean Couper.

2. DECLARATIONS OF INTEREST

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

3. MINUTE OF MEETING HELD ON 16 MAY 2005

The minute of the Legal Services Committee held on 16 May 2005 was approved.

4. DRAFT MINUTE OF LEGAL SERVICES SUB-COMMITTEE

The draft minute of meeting of the Legal Services Sub-Committee held on 25 April 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 AGREED papers be submitted to the next meeting on:

- sanction for experts in making a distinction between curators, reporters, and safeguarders;
- sanction for counsel in relation to responses to reparation cases;
- a plan of action for a pilot of a translators scheme (as opposed to introducing standard rates).

ACTION: TCM

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 16 May.

It was AGREED papers be submitted on:

- the fees issues raised by the profession and the Board following the introduction of the civil block fee structure;
- the operation of A&A Hardship Applications, including examples of cases refused after review and figures on the number of applications submitted under Reg 16(3) (a) or (b);

ACTION: TCM

- the success of the Grampian Clean Stream project.

ACTION: KT

7. HIGH COURT REFORM

The Committee considered a paper by Kingsley Thomas reporting on the decisions of the Joint Member/Officer Working Group on Criminal Sanctions in relation to proposed amendments to the Board's guidelines for authorising sanctions to employ counsel following the introduction of new High Court procedures which came into force on 1 February 2005.

After discussion, it was AGREED:

- to approve the revised Section 3.2 of the sanction guidelines for employment of counsel in criminal applications;
- to note that the amended guidelines would be issued to the profession for comment and use once further consideration of the administrative processes required by the Board and Faculty Services Ltd. for noting the automatic use of junior counsel at earlier stages had taken place;
- that no further consideration of the sanction guidelines for counsel in sheriff court cases should take place until the new solemn fee structure was in place;
- a paper be submitted to the late August meeting on sanction for counsel in criminal cases following the changes in sentencing powers, how the guidelines were working in practice and the levels of refusal of sanction.

ACTION: KT

8. SECTION 31

The Committee considered a paper by Tom Murray updating the position on implementation of a process to deal with section 31 referrals to the Law Society.

It was noted that discussions with the Law Society to agree a procedure for such referrals had been continuing. The Law Society had now agreed matters of principle regarding the procedure.

As a consequence of introducing this process the Memorandum of Understanding between the Board and the Society entered into in respect of the Quality Assurance Regime needed amendment. The paper set out a proposed amendment to the memorandum

It was AGREED to approve the amendment to the memorandum as proposed.

ACTION: TCM

Additional items not listed on agenda:

9. SOLICITOR ADVOCATES IN THE HIGH COURT

The Committee considered a paper by Douglas Haggarty.

It was noted that under current arrangements, where the Board granted sanction for senior counsel, any solicitor advocate, no matter how inexperienced, could act in that case and be paid as senior counsel. This was unsatisfactory because the Board had no assurance as to the quality of representation but had to pay whichever solicitor elected to act at senior counsel rates.

Following discussions with the Society of Solicitor Advocates and the Law Society, a consultation paper on proposals for a system of authorisation of solicitors to charge as senior counsel had been issued to solicitor advocates for comment.

In discussion, the view was expressed that the Law Society's proposals were too simplistic, did not provide for quality assurance or external input and were not "Nolan compliant." There needed to be ranking of solicitor advocates on the same lines as for counsel in the High Court (junior, senior junior and senior) but it was for the Society to determine how those distinctions were made. The onus was on the Society to come up with transparent, robust proposals satisfactory to the Board.

After discussion, it was AGREED:

- it be intimated to the Law Society that the current proposals were unsatisfactory to the Board for the reasons stated, and that the onus was on the Law Society to come up with a process satisfactory to the Board;
- if no satisfactory system emerged, to pay solicitor advocates in the High Court at a flat rate without differentiating between senior and junior.

ACTION: JDH

10. SOLICITOR ADVOCATES IN THE SHERIFF COURT

The Committee considered a paper by Douglas Haggarty.

It was noted that the issue of solicitor advocates in the Sheriff Court arose out of the increased sentencing powers of Sheriffs resulting from the Bonomy review, and the desire to encourage better quality of representation in serious cases whilst avoiding "doubling up." The paper outlined a number of options for addressing the issue.

After discussion, it was AGREED:

- not to follow any suggestion of introducing the concept of a specialist pleader;

- the preferred route was to pay solicitors significantly better rates for advocacy in solemn trials and considerably less for “doubling up;”
- there should be no differentiation between solicitors and solicitor advocates in the Sheriff Court;
- solicitors could ask for sanction for unusual expenditure to employ two solicitors where that was required and reasonable;
- otherwise to note the position.

ACTION: JDH

11. DATE OF NEXT MEETING:

Monday 8 August 2005 at 10.30 am.

The meeting ended at 12.10.