

THE SCOTTISH LEGAL AID BOARD

**MINUTE OF A MEETING OF THE LEGAL SERVICES POLICY COMMITTEE HELD
AT 10.30 AM ON MONDAY 26 JUNE 2006 AT 44 DRUMSHEUGH GARDENS,
EDINBURGH**

Present: Margaret Scanlan (Convener)
Graham Watson
Kenneth Ross
Iain Robertson
Elaine Rosie
Lindsay Montgomery

In attendance: Tom Murray, Director of Legal Services and Applications
Douglas Haggarty, Head of Legal Services (Technical) (item 11 only)
Kingsley Thomas, Manager Criminal and A&A Applications (items 9-10
only)
Catriona Whyte, Head of Legal Services (Applications) (item 7 only)
Joe Kelly, Manager, Treasury
Marie-Louise Fox, Legal and Policy Support to the Chief Executive
Stuart Foster, Board Administrator

1. APOLOGIES FOR ABSENCE

Graham Bell.

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 15 MAY 2006

The draft minute of the Legal Services Policy Committee held on 15 May 2006 was approved.

**4. DRAFT MINUTE OF MEETING OF THE LEGAL SERVICES CASES COMMITTEE
HELD ON 15 MAY 2006**

The draft minute of the Legal Services Cases Committee held on 15 May 2006 was noted.

5. MONTHLY AND QUARTERLY COMMITTEE ACTION POINTS

The Committee considered a paper by Tom Murray setting out progress with the implementation of actions arising from previous meetings.

The Committee noted that, for the quarterly report, actions that had been implemented would be marked "done," and shown for one meeting before being removed from the list.

The Director further updated the position in relation to curators and reporters, and themes emerging from Peer Reviews. It was noted that no response had been received from the Scottish Executive to the Board's letter in relation to A&A "hardship" applications – the matter was with OSSE.

After discussion, it was AGREED:

- momentum needed to be maintained in addressing the issues associated with reporters and curators. A draft Table of Fees should be submitted to the next meeting of the Committee together with a paper outlining how the interim measures are being taken forward;
- the Convener have sight of Douglas Haggarty's paper to Sheriff Principal Bowen, whose response to the Board's initiative should be awaited and received prior to consultation with the Family Law Association;

ACTION: JDH

- the Chief Executive write to the Convener of the Quality Assurance Committee to express members' concern that the QAC had still not issued a report to the profession on themes emerging from Peer Reviews;

ACTION: LM

- a short report be made to the Committee every four months on the Peer Review findings.

ACTION: TCM

6. DIRECTOR'S REPORT

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

The Director provided a further update on developments with the Legal Aid Bill following meetings with OSSE, and summarised a number of changes helpful to the Board that had been made. It was noted that powers under section 31 were being retained, which as things stood meant that the Society would continue to deal with service complaints. However, members expressed the view that it would be preferable for the Board rather than the Society to have powers to deal with complaints under section 31.

After discussion, it was AGREED:

- Tom Murray push for the Board rather than the Society to have powers under section 31 at the next meeting with OSSE, and keep the Committee informed of developments;
- otherwise, to note the position.

ACTION: TCM

7. PAYMENT OF CONTRIBUTIONS IN CIVIL LEGAL AID

The Committee considered a paper by Joe Kelly reporting on proposals for the implementation of greater flexibility in the payment of contributions that had been agreed with the Scottish Executive, and seeking approval for proposals regarding the use of that flexibility.

It was noted that despite the previous extension of the period for payment of contributions, significant numbers of people had still been unable to proceed with their grant of legal aid on the grounds of unaffordability. It had therefore been proposed, and the Scottish Executive had now agreed, to further extend the timescales for payment, and introduce other measures set out in the paper to address the high percentage of refusal/terminations.

In discussion, reference was made to capital contributions and the difficulties associated with these where existing assets were illiquid or inaccessible because, for example, an asset was held in joint names and the partner was unco-operative. In relation to solicitors' estimates of case costs, it was unclear why this facility had been so little used. Further research should be done on this.

After discussion, it was AGREED to:

- introduce new instalment periods:
 - Up to £500 - 20 months
 - £501 to £1,000 - 30 months
 - £1,001 to £1,500 - 36 months
 - £1,501 to £2,000 - 42 months
 - Over £2,000 – 48 months
- introduce a facility for Treasury Department to apply flexibility to individual cases, subject to approval limits and reporting mechanisms, with the Means Unit to advise applicants of this facility;
- apply new provisions to new cases only, except where default occurs, when Treasury Department would be authorised to apply new flexible arrangements;
- apply estimates provided by solicitors in legal aid applications;
- agree a start date with the Scottish Executive;
- inform the profession and public of the changes;
- amend leaflets, letters etc to reflect the new approach;
- carry out further analysis into the reasons for the low uptake by solicitors of the facility for estimating case costs, and how to address the difficulty with access to illiquid or inaccessible assets in relation to capital contributions;
- respond in due course to the Committee on the effects of the implementation of these proposals.

ACTION: JK

8. CIVIL LEGAL AID APPLICATIONS FOR CHILDREN

The Committee considered a paper by Catriona Whyte providing information on civil legal aid applications by children where there may have been financial motives behind the application, together with revised guidance.

At the previous meeting, the Committee had requested that further analysis of applications with possible financial motives be carried out to determine if further guidance was needed, and of the reasons for the relatively high grant rate for such cases.

On the basis of the analysis undertaken, it was recommended that the guidance in place for the assessment of financial eligibility did not need any change to cover applications by children, but that change was needed in relation to guidance on the assessment of the merits of an application and, in particular, the reasonableness test.

After discussion, it was AGREED:

- that the general guidance be displayed on the Board's website and that detailed guidance should be issued after the outcome of the *Sinclair* judicial review was known.

ACTION: CAW

9. SUMMARY CRIMINAL LEGAL ASSISTANCE REFORM

The Committee considered a paper by Tom Murray detailing the current position on the reforms to summary criminal legal assistance. The paper explained why a small number of the Board's proposals for reform published in March had proved incapable of implementation, and set out the current approach and proposed changes in legal assistance needed at each of the various stages that cases passed through, these stages making up the summary criminal procedure model. Further reports would be made to the Committee as the system model developed.

It was noted that much more work was needed to provide costings for the proposals, but that this was premature until a clearer picture developed on how Scottish Ministers intended to take forward the proposals contained within Sheriff Principal McInnes' review.

Because eligibility for A&A / ABWOR would still be determined by the solicitor and not the Board, and higher fees would be paid, it was stressed that strict controls would be required: the Board needed to ensure it had the power to refuse to pay accounts that did not meet requirements, regardless of the application having been granted.

It was AGREED:

- to approve the approach to the reform of summary criminal legal assistance set out in the paper;
- otherwise, to note the current position.

ACTION: TCM

10. CIVIL ADVICE AND ASSISTANCE REFORM

The Committee considered a paper by Kingsley Thomas updating on the latest position regarding the reform of civil advice and assistance.

It was noted that the intended timetable for implementation of Phases 2 and 3 of the reforms could not be adhered to because of the opinion of the Chief Law Officer that only Scottish Ministers could determine what were or were not distinct matters for A&A. By legislating to provide Scottish Ministers with the power to delegate this authority to the Board, the reform package could be introduced as previously agreed, but not before Spring of next year.

It was therefore intended to:

- delay the introduction of Phase 2 until Spring 2007
- introduce an amended advice and assistance form in October 2006
- develop the new financial arrangements and submit a further paper to the Committee in Autumn 2006 with a view to implementation in Spring 2007, with Phase 2.

Subject to keeping on the agenda the issues of an enhanced fee for more complex cases and charging private rates following recovery, the Committee noted the position.

ACTION: KT

11. STAGE 3 LEGAL AID SAVINGS/EFFICIENT GOVERNMENT

The Committee considered a paper by Douglas Haggarty reporting on progress with the implementation of issues outstanding from Stage 2 of the Savings and Efficiency Package, and setting out the issues which had now been identified as consisting of Stage 3 of the package.

It was noted that the Scottish Executive would write to the Law Society and, where appropriate, the Faculty of Advocates advising of the content of Stage 3 with a view to consultation on the issues. In the meantime, the Board would continue to develop the various issues to assist the Justice Department to prepare detailed policy instructions for OSSE to frame the regulations in due course.

In discussion, reference was made to the positive impact of the original measures addressing failure to appear. These had eliminated the bulk of the costs of failure to appear, which had been around £2m per annum; the Stage 3 measures could be expected to account for the remainder. Reference was also made to the entirely different approaches adopted by the Drug Courts in Glasgow and Fife, the extent to which the pilots were achieving their objectives, and whether the model on which they were based had been sufficiently robust. The Scottish Executive's definitive position on the success of the pilots would probably not be known until at least April of next year. In relation to the proposed measures for sanction for travel, it was important to strike the right balance between providing staff with suitable guidance while avoiding being overly bureaucratic.

After discussion, members noted the position and approved the content and underlying rationale of the various elements of Stage 3 of the Savings and Efficiency package.

12. DATE OF NEXT MEETING:

Monday 31 July 2006 at 10.30 am.

The meeting ended at 11.55am.