

DRAFT

THE SCOTTISH LEGAL AID BOARD

**MINUTE OF A MEETING OF THE LEGAL SERVICES POLICY COMMITTEE HELD
AT 10.30 AM ON MONDAY 17 DECEMBER 2007 AT 44 DRUMSHEUGH GARDENS,
EDINBURGH**

Present: Kenneth Ross (Convener)
Lindsay Montgomery
Graham Watson
David Nicol
Graham Bell
Iain Robertson
Joseph Hughes
Elaine Rosie

In attendance: Tom Murray, Director of Legal Services and Applications
Elizabeth Cuschieri, Board Solicitor (item 8 only)
Catriona Whyte, Head of Legal Services - Civil (items 9-10 only)
Eleanor Campbell, Legal Support to the Director of Legal Services
Kingsley Thomas, Head of Criminal Legal Assistance (item 12 only)
Stuart Foster, Board Administrator

1. APOLOGIES FOR ABSENCE

None.

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 19 NOVEMBER 2007

The draft minute of the Legal Services Policy Committee held on 19 November was approved.

**4. DRAFT MINUTE OF THE LEGAL SERVICES CASES COMMITTEE HELD ON 19
NOVEMBER 2007**

The draft minute of the Legal Services Cases Committee held on 19 November was noted.

5. MONTHLY ACTION POINTS

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

In relation to the further work required on the involvement of counsel in solemn cases in the Sheriff Court, the view was expressed that better information should be sought from the Court Service on the attendance of solicitors in court, and there should be clarity about what the Board would pay for, with qualified representation to be the exception rather than the rule.

The Committee noted the position.

6. DIRECTOR'S REPORT

The Committee considered a paper by Tom Murray reporting on matters of interest which had arisen since the previous meeting. The following matters were reported on: civil and criminal registers; and civil quality assurance.

The Committee noted the position.

7. REVIEW OF REASONABLENESS TEST AND COST CONTROL MEASURES WHERE BOTH PARTIES ARE IN RECEIPT OF LEGAL AID

The Committee considered a paper by Philip Shearer which updated on progress with reviewing the reasonableness test and the sufficiency of cost control measures where both parties were in receipt of legal aid.

Having reviewed the Board's current guidance and that of the Legal Services Commission on the reasonableness test, it was considered that there may be merit in clarifying the difference between probable cause and reasonableness (a source of some confusion to the profession) and producing more case-specific reasonableness guidance with examples.

A number of interim conclusions had been reached in relation to the identification of cost escalation or difficulties associated with both parties obtaining civil legal aid.

In discussion, a number of views were expressed. The Board should not encourage applicants to take out extended warranties. Careful consideration should also be given to the appropriateness of requiring actions to be raised on a "no win, no fee" basis. Applicants' agents should be required to give an explanation for their views as to prospects of success, and percentage figures may be needed for the descriptors used. There was a need to address the low level of stage reporting. There should be a duty on the solicitor to report back where a tender had been lodged but not accepted. In family cases it was not necessarily true that privately paying clients did everything possible to keep case costs down. The guidance in relation to the provisions for personal injuries cases that are no longer to be small claims should be clear that a number of factors have to be present for claims below the small claims limit.

Deleted: to be

It was noted that more detailed proposals would be submitted to the next meeting of the Committee.

ACTION: PS

8. CONSULTATION: INTERMEDIARIES FOR VULNERABLE WITNESSES IN SCOTLAND

The Committee considered a paper by Elizabeth Cuschieri which considered and set out a draft response to a Scottish Government consultation paper inviting views on the use of intermediaries as a special measure for vulnerable witnesses in Scotland.

The consultation paper asked if the use of intermediaries should be introduced as a specific statutory special measure under the legislation and, if so, how the costs of doing this should be met.

In discussion, the view was expressed that there should be further investigation of the need for introducing the measure, as there did not seem to be any advantage in moving away from the current system. If introduced, there should be a clear and explicit payment mechanism in order to achieve control of costs, and central payment and monitoring was the best way of doing this.

After discussion, it was AGREED:

- to approve the response proposed, subject to amendment in terms of the discussion.

ACTION: EC

9. SANCTION APPLICATION FORM

The Committee considered a paper by Catriona Whyte which proposed changes to the sanction application form used in civil legal aid for applications seeking the Board's authority to instruct counsel, employ an expert witness, to undertake unusual work or to incur unusually large expenditure.

After discussion, it was AGREED:

- to approve the proposed changes to the form;
- a full list of categories for whom semi-automatic sanction may be made, together with the levels of expenditure they could incur, be circulated to members.

ACTION: CAW

10. CIVIL SIMPLIFICATION PROJECT – REVISION OF CIVIL APPLICATION FORMS

The Committee considered a paper by Catriona Whyte proposing changes to the civil application forms and identifying options for application forms.

It was AGREED:

- to approve the proposed approach for taking forward the development of new civil legal aid application forms for both paper based and online applications;
- the final draft of the new forms be submitted to the Committee prior to publication.

ACTION: CAW

11. REPORT ON OUTCOMES RESEARCH PROJECT

The Committee considered a paper by Eleanor Campbell which reported on updated findings from the Outcomes Research Project following completion of the current sample of cases selected for analysis.

It was noted that the analysis exercise demonstrated that for the large majority of cases reviewed there was no information provided at the conclusion of the case which would have suggested that the original determination made by the Board was unreasonable. However, low numbers of conclusion forms were being submitted, and it was intended to merge the conclusion form with the accounts synopsis form so as to link the provision of information to payment. In the meantime, the profession would be reminded of their responsibility in this regard. The analysis exercise would continue on an ongoing basis for all civil legal aid cases for which conclusion forms were received and accounts submitted and paid, and further reports made to the Committee in due course.

After discussion, it was AGREED:

- all the cases of concern that had been identified be followed up with the relevant solicitors.

ACTION: EC

12. MONITORING OF THE CIVIL ADVICE & ASSISTANCE REFORMS

The Committee considered a paper by Kingsley Thomas reporting on the first 6 months of the operation of the second phase of the Civil Advice and Assistance reforms implemented on 1 May 2007.

The key elements to the reforms were: the introduction of approved case categories; diagnostic interviews for problems not covered by the approved case categories; and abolition of the minimum fee for civil A&A. The paper set out the intimations received for the new categories and diagnostic A&A, together with requests for uplift from diagnostic to standard A&A. It was noted that the correct figure for the total number of diagnostic grants at paragraphs 5.1 and 6.2 was 3,124.

After discussion, it was AGREED:

- the decrease in intimations for core family cases should be monitored, and more specific terms used for matters currently headed “judicial review” and “other”;
- a further report be made after the first full year of the reforms.

ACTION: KT

DATE OF NEXT MEETING: Monday 18 February 2008 at 10.30 am.

The meeting ended at 12 noon.