

**THE SCOTTISH LEGAL AID BOARD**

**MINUTE OF A MEETING OF THE LEGAL SERVICES POLICY COMMITTEE HELD  
AT 10.30 AM ON MONDAY 22 OCTOBER 2007 AT 44 DRUMSHEUGH GARDENS,  
EDINBURGH**

Present: David Nicol (in the Chair)  
Elaine Rosie  
Lindsay Montgomery  
Graham Watson  
Joseph Hughes  
Graham Bell (items 1-7)

In attendance: Tom Murray, Director of Legal Services and Applications  
Ian Vickerstaff, Board Solicitor (item 7 only)  
Eleanor Campbell, Legal Assistant to the Director of Legal Services and Applications  
Sarah Rova, Legal and Policy Support to the Chief Executive  
Stuart Foster, Board Administrator

**1. APOLOGIES FOR ABSENCE**

Iain Robertson and Kenneth Ross.

**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 25 SEPTEMBER 2007**

Subject to recording Tom Murray's apology for non-attendance at the meeting, the draft minute of the Legal Services Policy Committee held on 25 September was approved.

**4. DRAFT MINUTE OF THE LEGAL SERVICES CASES COMMITTEE HELD ON 25 SEPTEMBER 2007**

The draft minute of the Legal Services Cases Committee held on 25 September 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.

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 Quality Assurance; Judicial Studies Committee; and Verification of Financial Circumstances in Advice and Assistance.

In relation to Civil Quality Assurance, it was noted that only one of the two interviews scheduled for 25 October to discuss final review outcomes would take place.

In relation to verification of financial circumstances in advice and assistance cases, the Chief Executive advised that Board staff had been asked to analyse applications with a view to identifying particular firms not carrying out the checks, and contacting them to take it up with them.

The Committee noted the position.

## **7. SECTION 34 GUIDANCE**

The Committee considered a paper by Ian Vickerstaff setting out proposed guidance for staff on the application of Section 34 of the Legal Aid (Scotland) Act 1986. The approved guidance would be published on the website.

It was noted that Section 34 had been amended recently by primary legislation, and the opinion of counsel had been sought on the numerous issues arising from the terms and effect of the section. Given the wide-ranging effects of the operation of the provision across the Board, representatives from the Board had met with counsel during the preparation of his Opinions. The guidance had been drafted in terms of Counsel's Opinions.

In discussion, the view was expressed that, where there was a change of solicitor, there should be scope to pass on information about the client from the original to the new solicitor in cases where the original refuses to give consent. It was noted that this particular issue would only arise in very few cases. Reference was made to the Board's pragmatic approach in relation to disclosure of a suspension of legal aid to opponents.

Members suggested some amendments to the draft guidance:

- the reference to solicitors' "conduct" at 34(2)(aa) should be deleted;
- it should be made clearer that client confidentiality was not a valid reason for a solicitor to withhold information about their client from the Board: solicitors had a duty to do so under the legislation;
- mention should be made that persons / bodies given information by the Board under the section 34(2) exceptions (e.g. an ombudsman) were not permitted to disclose that information to a third party;
- reference be made to journalists and FOI requests, and how the Board treated these under S34;
- consideration be given to appropriate wording in relation to the extent to which S34 applied to reviewers and those who administered the Quality Assurance Scheme (this to be inserted after the section on Audit and Compliance);
- a caveat be inserted in the response to the question (number 3) relating to information already in the public domain, to the effect that it was still possible for information that was in the public domain to be subject to the effect of S34, (e.g. if the information came from an unreliable source) – such information would only be made available in cases where consent was provided.

After discussion, it was **AGREED**, subject to incorporation of the points raised in discussion, to approve the guidance for early publication.

<b>ACTION: IV</b>
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## **8. SUMMARY CRIMINAL LEGAL ASSISTANCE REFORM**

The Committee considered a paper and heard a verbal update by Tom Murray, reporting on the first two of the joint seminars held on summary criminal legal assistance reform.

It appeared from the questions and discussion at and before the event at Ayr that delegates were not particularly well informed of the wider justice reform proposals, as contained in the system model document produced by the Scottish Government, or the content of the joint consultation document. This was less the case at Dundee, where the main concerns appeared to be the subsuming of A&A into ABWOR and legal aid, and the lack of increase in the summary core fee.

In discussion, it was recognised that these events were the first opportunity the profession had had to discuss the proposed reforms, and that with the further exchange of information, more informed comment could be expected to emerge from the consultation period. With a view to broadening understanding of the potential impact of the reforms on the wider system, the Chief Executive intended to contact the Sheriffs Association to arrange a meeting in November, and he would attend a meeting with the Cabinet Secretary, representatives from the Law Society, and Presidents of local Bar Associations.

It was reported that the proposed reforms had been negatively received in Glasgow, where some solicitors were of the view that the reforms would result in a need to close offices and lay-off staff.

It was also important to bear in mind that it was extremely difficult to cost the proposals, and their financial implications for typical firms, because outcomes depended partly on Crown Office assumptions, and also on future behaviour in relation to direct measures and continuations without plea that could not be predicted with any certainty. It was therefore more appropriate for firms to see a range of costings.

The Committee noted the position.

**9. DATE OF NEXT MEETING:** Monday 19 November 2007 at 10.30 am.

The meeting ended at 11.35.